

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 21/241 SC/CRML

PUBLIC PROSECUTOR

v

WESSAO MOSES

Date of Trial: 9 June 2021
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mr D. Boe
Defendant – Mr J. Garae
Date of Decision: 10 June 2021

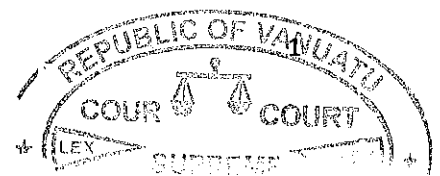
VERDICT

A. Introduction

1. The Defendant Wessao Moses is charged with one count of sexual intercourse without consent. The Prosecution called one witness – the complainant GA. Mr Moses elected to give evidence. This is the verdict.

B. Law

2. The Prosecution must prove the following 3 legal ingredients in order for a finding of guilt to be made and conviction entered – that in December 2019:
 - Mr Moses and GA had sexual intercourse; **and**
 - That GA did not consent; **and**
 - That Mr Moses did not believe on reasonable grounds that GA was consenting at the time that the sexual intercourse occurred.
3. There is no dispute that on 27 December 2019, at the Showground area at Luganville, Mr Moses and GA had sexual intercourse. Accordingly the trial centred on whether it was proved that the sexual intercourse was not consensual.



4. The Prosecution had the onus of proof and was required to establish the lack of consent beyond reasonable doubt. If that was not the case, then Mr Moses would be entitled to be acquitted. Mr Moses was not required to establish anything.

C. The Issues

5. This was a matter purely of credibility.

6. The credibility and accuracy of a witness' evidence is not to be assessed solely by how the witness appears in Court. How he or she does so plays only a small part in the process of evaluation.

7. I placed more significance on consistency of accounts. I looked firstly for consistency within a witness' account. Secondly, I looked for consistency when comparing that account with the accounts of other witnesses, and also when comparing the accounts of witnesses with relevant exhibits.

8. On that basis I formed certain views as to the reliability and veracity of each of the witnesses.

9. I also had regard to the inherent likelihoods of the various situations then prevailing.

10. These factors all impacted on my findings of fact.

D. Evidence and Analysis

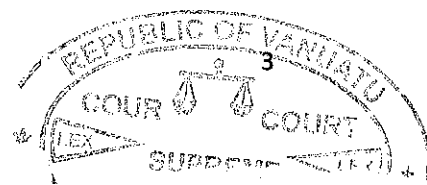
11. The following witness statements were tendered by consent:

- a. Jenelyn Rongley dated 22 February 2020 [**“Exhibit PW1”**];
- b. Vira Maeto dated 28 January 2020 [**“Exhibit PW2”**];
- c. Alet Swua dated 28 January 2020 [**“Exhibit PW3”**];
- d. Charles Bice dated 21 March 2020 [**“Exhibit PW4”**];
- e. Arnold Tari dated 12 November 2020 [**“Exhibit PW5”**];
- f. Claudia Paul dated 11 November 2020 [**“Exhibit PW6”**];
- g. Noelline Stephen dated 12 November 2020 [**“Exhibit PW7”**];
- h. Mr Moses's Police record of interview dated 11 November 2020 [**“Exhibit PW8”**];
- i. Medical report by Dr Mark Turnbull of Wings of Hope Flying Doctor Service dated 15 February 2021 [**“Exhibit PW9”**]; and
- j. Photographs of the customary reconciliation ceremony by Mr Moses with GA's father and family [**“Exhibit PW10”**].

12. I heard evidence from GA as the complainant and from Mr Moses in his own defence.



13. Jenelyn Rongley [**“Exhibit PW1”**] She is GA’s big sister. She had a sexual relationship with Mr Moses. When she found out he was also seeing her small mummy, she stopped her relationship with Mr Moses. She said that he had also had sexual relationships with her other sisters and her small mummy and now with her small sister.
14. This is similar fact evidence but is not evidence about the sexual intercourse the subject of the charge against Mr Moses.
15. Vira Maeto [**“Exhibit PW2”**] and Alet Swua [**“Exhibit PW3”**] are crew members of the MV Lara Star. Mr Maeto related that others saw Mr Moses and GA lying together on a bed on the ship and taking photos. Mr Swua saw them himself. They now know that GA is a daughter of Mr Moses.
16. This is not evidence about the sexual intercourse the subject of the charge against Mr Moses.
17. Charles Bice [**“Exhibit PW4”**] He is a chief at Naveto area, Gaua island. He stated that there was a custom ceremony in 2017 because Mr Moses had an affair with a girl Nicole and then in 2019, a custom reconciliation ceremony with GA’s father because of what Mr Moses had done with GA.
18. Arnold Tari, Police officer, arrested Mr Moses on Santo [**“Exhibit PW5”**]. Police Officers Claudia Paul [**“Exhibit PW6”**] and Noelline Stephen [**“Exhibit PW7”**] interviewed Mr Moses – the Police record of interview is [**“Exhibit PW8”**].
19. Dr Mark Turnbull stated in his medical report dated 15 February 2020, [**“Exhibit PW9”**], that GA presented as an alleged sexual abuse victim. He stated that there was no physical evidence of sexual trauma due to the time since GA was assaulted. However, GA’s psychological state, history and examination was consistent with the sexual abuse alleged to have happened. The balance of the medical report contains hearsay and is inadmissible.
20. GA She is from Mere Lava island, residing at the airport area on Gaua island. Mr Moses is a father of hers, she calls him “papa” because he is married to her mother’s small sister.
21. In December 2019, she was at Santo after a trip to Port Vila to attend a Youth Convention at the church opposite the Lycée. The person looking after their youth group to the Convention was Pastor Wessao, that is, Mr Moses. After the convention, they stayed on Ifira island before travelling by ship to Santo. They stayed at the Banban area on Santo.
22. Before Christmas, she, Mr Moses, Valine, Bob and Jason went to Shark Bay for the boys to dive for fish for their Christmas celebration. She said that at Shark Bay, Pastor Wessao pressured her for sex but she did not agree.
23. She said that after the Christmas celebration, her sisters left in a taxi but her Daddy Bob had said to go and see him first at the Showground area. GA said she asked Pastor Wessao if she could go to the Showground area. He said no, not to go by herself but that he would go with her. She said but I already know the house, I can go by myself. He said no, you will

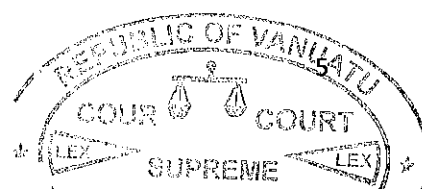


not go by yourself because marijuana smokers are on the roads. He also said that if she went by herself, he would report her to her parents. So she agreed that he accompany her.

24. They walked to the Showground area. On a gravel road there, near a big nabanga tree, where there was elephant grass on the roadside, Pastor Wessao said we will go into that elephant grass to have sex ('blo mekem problem'). She said no, let's just keep going.
25. She said that Pastor Wessao pulled her by the hand into the elephant grass. He made her lie on the ground after forcing her to remove her clothes. She told him that she could not do it but he forced her to lie down on the grass. Then he removed his clothes too and lay on top of her chest. He had sex with her which was very painful ('mi filim I sore tumas'). He also put his penis in her mouth ('hemi pusum boi blo hem lo maot blo mi').
26. GA said that Mr Moses took some time to complete the sexual intercourse with her. When it ended, they put their clothes back on and walked to her father Bob's house at Showground. She did not tell Daddy Bob what had happened because Mr Moses told her that if she told anyone that he would do something to her or he would go to prison. Also, she was ashamed to tell anyone because Pastor Wessao is a father of hers. She said that she could not have a romantic relationship with Mr Moses because he is her papa and she respects him.
27. A brother of hers met them there and the three of them walked into town for shopping before returning to Banban. She did not have money with her so Pastor Wessao gave her VT1,000 to shop with.
28. GA, Mr Moses and their youth group travelled back to Gaua on the MV Lara Star. Their departure was delayed because of rough seas so they had to spend a night on-shore. They left the next day but the ship was so full and there was nowhere to sleep so she asked crew member Joe for his bed. She lay down on it and was then surprised when Pastor Wessao lay down on the bed next to her. The sea was so rough that when she wanted to leave the bed, the crew shouted at her not to move because the ship was too crowded. Pastor Wessao kissed her during that night.
29. On reaching Gaua, the crew told her parents what they had seen on the ship. Then she detailed everything that had happened to her mother. Her mum gave her a beating and then rowed with Pastor Wessao. Her parents were so distraught at what had happened that Pastor Wessao performed a custom reconciliation ceremony with them.
30. She said that after that however, in August 2020, Pastor Wessao trespassed into the area of her home and forced her to have sex with him. The next morning he returned and said that he had made a mistake ('hemi mestem ia'). He said that if she became pregnant to say that another man had made her pregnant. In the month after that she found out that she was pregnant. She stopped going to school.
31. In cross-examination, it was put to GA that on Ifira, she and 2 other girls slept in the same room as Mr Moses and she flung her leg and arm onto his chest and genitals on the first and second night. She denied that. She said that he forced her to kiss him and to hold his penis. He was forcing to kiss her. It was put to her that she told him then that she had had

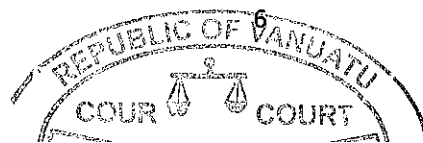
6 boyfriends. She said no, that's a lie! He was the first man that I knew. She denied that she told Pastor Wessao that she could not have sex because she had her period. She said that at the time she did not have her period. GA said that Pastor Wessao told her not to tell anyone what happened.

32. GA was also cross-examined about going to the sea on 27 December 2019 with Pastor Wessao and a man called Bob. She agreed Bob left them but not that Pastor Wessao asked her if her period had ended. She stated that at the VNPF subdivision, he forced her to remove her clothes and forced her to the ground. She did not even smile at the time as was put to her. When she tried calling out, he told her to keep quiet. She denied telling him to hurry up or they might be seen. She agreed that after the sex, she used water from a plastic bottle to wash her private parts, then dressed herself and they left.
33. GA agreed that the third time they had sex was when they walked on the road to the Showground area. She said that at that time, he forced her to have sex. He shouted strongly at her to remove her clothes and to quickly lie down. He told her not to call out because the main road was close by. She said that she did not tell Daddy Bob what had happened because Mr Moses told her not to and she felt ashamed because he was her father.
34. GA stated in cross-examination that Pastor Wessao said he would give her VT1,000 for shopping and her sisters could refund the VT1,000 afterwards. She said that Pastor Wessao forced her to touch his body on the ship. He told her to put their photos from the ship on his phone to music. She said that after the reconciliation ceremony, Mr Moses trespassed into her area and forced her to have sex. She agreed that they had had other sex as well after that which only stopped when he went to Santo.
35. In re-examination, GA stated that she continued to have sex with Mr Moses because he blocked her from telling anyone or he would go to prison or he would do something to her. Also, she felt ashamed to tell others because he is her father. She said that she answered 'yes' to the question about having sex with Mr Moses after the reconciliation ceremony because he trespassed into her area and asked to have sex with her. She said no but then he held her tightly when she tried to leave and forced her to the ground. Her mum and dad had gone out to visit her big sister. She said that she did not tell the Police about the other 2 times that she and Mr Moses had sex on Santo because he had given her money not to tell anyone.
36. I accepted GA as a truthful and accurate witness. She withstood cross-examination without deviating from her original account. She made reasonable concessions when appropriate for example conceding that she had sex with Mr Moses on two other occasions on Santo that she had not told the Police about. She explained that she did not because Mr Moses had given her money not to tell anyone. GA also conceded in cross-examination that she had had sex with Mr Moses after the reconciliation ceremony which only stopped when he went to Santo. She gave evidence about being forced to have sex with him in her area in August 2020.
37. I considered also that GA's evidence was not materially different to her statement to the Police. There was strong support for parts of her account from the MV Lara Star crew



members about seeing her and Mr Moses together on the ship and from Dr Turnbull's medical report when she presented to him as a sexual abuse victim.

38. Mr Moses is from Mere Lava island. He lives on Gaua. He is married and has 3 children. In December 2019, he went to a 4-day Youth Convention at the church opposite Lycée and then stayed on Ifira island. He said that he shared a room with GA and 2 other girls as there was no other room to sleep in. In the night, GA threw her arm and leg over him. He moved her away and in the morning after devotion with the three of them, told GA not to do that again. She did again the following night. So he woke her and asked if she meant to do that. Then they kissed and talked until daybreak. He asked her for sex but she said that she had her period.
39. He said that on the ship to Santo, they had many opportunities to kiss and touch each other ('fulap program blo kiss mo holholem mitufala'). They hid those and also much talking in secret. He said that she would joke with him because she knew he had had sexual relationships with 4 of her sisters before he married. So they hid their relationship from others.
40. Mr Moses said that on 24 December 2019, they went to Shark Bay. He was contacting GA because of their intention to have sex ('folem program we i stap long tingting blong mitufala'). She told him to wait as she had her period.
41. He said that on 27 December 2019, he, Bob and GA went to the sea. Bob left for home. Then he asked GA about sex ('abaot program blo mitufala'). She said that her period finished on 25 December and if it was alright to now have sex. He said it was alright. She said could they do it because they were surrounded by people's gardens. Then he thought of behind the big nabanga tree at the VNPF subdivision at Showground. They had sex there then went home. She went off to play with her friends.
42. He said that they had sex again at Banban in the bathroom. He said the final sex they had was on 3 January when they had a good agreement to. This was in the same plot, near the place where they had their first sex on 27 December. GA wanted to go to her Daddy Bob's house and her friends had already left on the bus. He said that they already had a plan for sex ('mitufala i bin program finis'). He said that behind the nabanga tree, she pushed him in the side which he thought was her reminding him that this was where they had had sex. He said she removed her white top and panty and told her to hurry up as they were near a road. He lay on top of her and had sex with her ('Mi go kam long hem'). She did not call out or complain. After that they went to Bob's house.
43. After lunch, the two of them and her brother Bob walked to town. Her friends had GA's money so he said he would give her money for shopping and then be refunded when her sisters gave her money.
44. He said they shared beds on the ship to Gaua. They would kiss and hold each other. He said their main activity was kissing. He denied that he forced GA to have sex, that they always talked to have sex. At Gaua, Joe from the ship told GA's mum about seeing them kissing and then GA's mum came to row at him at his house. He performed a custom reconciliation ceremony for the problem that had happened with GA and to clean face. He



paid a fine of 2 live pigs, VT12,000, 2 mats, yams in a 25kg rice bag and 1 roll calico. He and GA continued to have sex after that until he went to Santo.

45. In cross-examination, Mr Moses stated that GA is his daughter because he is married to her small mummy. GA calls him papa. He said that it was correct to have sex with her because they had an agreement to. He agreed that GA told him it was wrong to have sex with her because he was her father. He denied that he forced GA to have sex with him at Showground; that they had had an agreement to have 1 final sex before leaving Santo to return to Gaua. He said they kissed a lot on the ship to Gaua because there was no place to have sex. He agreed he was the Pastor with the youth group that went to Port Vila. He denied that he did not respect GA and his youth group members but that he had sex with GA because they had an agreement to.
46. Mr Moses was also cross-examined that the main reason he gave in his Police statement for having sex with GA was not that they had an agreement but that Satan had controlled him to do so. He answered that he did not say that Satan controlled him but that it was a temptation by Satan that he had never expected.
47. In re-examination Mr Moses said he and GA had an agreement to have sex but he thought it was planned by Satan to spoil his leadership and ministry, and he had not expected it.
48. Mr Moses was a less credible witness. His accounts differed between his evidence at trial and in his Police statement. At trial he stated that he and GA had an agreement to have sexual intercourse on 27 December 2019. However his main explanation given in the Police statement was that it was Satan's doing rather than an agreement that they had. He agreed GA told him it was wrong to have sex with her because he was her father. Even so, he had sex with her. In denying that he forced GA to have sex with him at Showground, he said that they had had an agreement to have one final sex before leaving Santo to return to Gaua. However, in his earlier evidence, he had said that their third and final sex on Santo was on 3 January 2020. Mr Moses' detailed account of the sex they had was about the third and final sex rather than the sexual intercourse on 27 December 2019. He was inconsistent with his evidence and undermined his credibility.

E. Discussion

49. I put to one side the evidence of Jenelyn Rongley, Vira Maeto, Alet Swua, Charles Bice, Arnold Tari, Claudia Paul, Noelline Stephen and Dr Turnbull as not relevant to the issues before the Court as to whether or not the sexual intercourse that occurred at the Showground area in December 2019 was consensual.
50. I also put to one side Mr Moses' evidence as unreliable and not credible where it differed from GA's evidence.
51. I accepted GA's evidence. Her account was materially unchanged throughout cross-examination. She explained without hesitation why she gave the evidence or answers that she did. She established that she did not consent to the sexual intercourse as she was forced into it. Mr Moses could not have reasonably believed that she was consenting to have that sexual intercourse with him in light of GA's evidence of pulling her into the



elephant grass, of shouting strongly at her to remove her clothes and quickly lie down, and that the sex was painful for her. The Prosecution has established that in these circumstances, Mr Moses could not have believed on reasonable grounds that GA was consenting at the time that the sexual intercourse occurred.

52. I consider that the inherent likelihoods of the various situations then prevailing is that Mr Moses as GA's pastor and father, took advantage of her – a young girl and his daughter. GA was unshaken in her evidence that Mr Moses said to her not to tell anyone or he would do something to her or go to prison. Also she was ashamed to tell others because Mr Moses was her father. I consider it more inherently likely that he said this given his acceptance that it was wrong to have sex with GA, than that GA made this up.
53. Mr Moses made sure that she would not report him by accompanying her after that to her father Bob's house and continued his sexual activities with her during their travel back to Gaua and even after the custom reconciliation ceremony performed in relation to his wrongdoing. The sexual relationship only ceased when he went to Santo.
54. The Prosecution has proved Mr Moses's guilt beyond a reasonable doubt.

F. Result

55. Mr Moses is convicted as charged.

**DATED at Naveto, Gaua island this 10th day of June 2021
BY THE COURT**


.....
Viran Molisa Trief
Judge

