

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

Criminal
Case No. 21/2991 SC/CRML

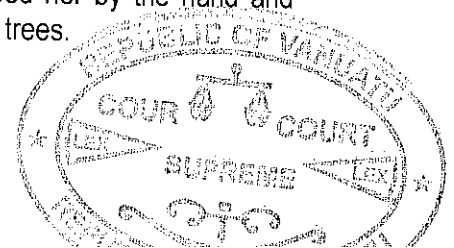
BETWEEN: Public Prosecutor

AND: 1. Jaysong George
2. Touruk Kalsong
Defendants

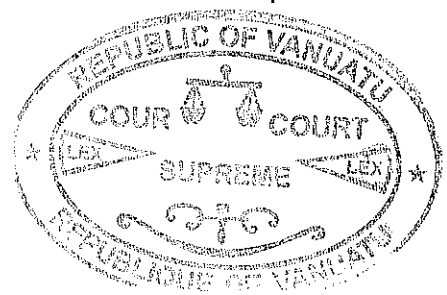
Date: 11 November 2021
By: Justice G.A. Andrée Wiltens
Counsel: Ms M. Tasso for the Public Prosecutor
Mr T. Melsung for the Defendants

Verdict

1. Mr George stood trial on 2 charges of sexual intercourse without consent.
2. In support of the charges Ms Tasso called two witnesses, the complainant and her mother.
3. The mother was intended to give evidence of recent complaint. Instead, she gave evidence that she accompanied her daughter to Port Vila Central Hospital, as Karina was "off colour". While there, it was learnt that her daughter was 9 weeks pregnant, which was very upsetting for them both. That was the full effect of her evidence.
4. 18year-old Karina Kalmermer was the complainant. Her evidence alleged lack of consent on the occasions she and Mr George had sexual intercourse. She denied that consensual sexual intercourse took place between them at any time.
5. Her evidence vacillated between sexual intercourse occurring in total on 4 occasions, 5 occasions and 6 occasions. At times, she stated there was no sexual intercourse in June 2021; at other times, she alleged there had been. She stated that the sexual intercourse was always at the same location, yet at times she stated that Mr George grabbed her by the hand and dragged her to a banana plantation; at other times to a stand of Burao trees.



6. The incident on 16 July 2021 either took place at 11.30am or 4.30pm that day; after she had run to her parents' home to get away from George's obvious intent of further sexual intercourse, or after she had been given a lift to her parents' home in a truck.
7. When she arrived at her parents' home, she did not go in. She waited outside, despite going there to be safe from Mr George's attentions. Only 10 metres away was her aunt and uncle's home, and she knew that her aunt was then at home, yet she did not go there for safety. She only thought of doing so after Mr George had caught her up and was about to again assault her.
8. Individually, these discrepancies are not hugely significant; but looked at together, they present a picture of a very confused witness whose evidence simply cannot be safely relied on.
9. Further, there is the evidence that the first time Karina's mother knew Karina had engaged in sexual intercourse was at the hospital. According to Karina, she first told her mother about the lack of consent aspect the following day. It is difficult to conceive of a young woman feeling sufficiently unwell to ask to be taken to the hospital for a spurious reason a day after she had been sexually abused. Logic would suggest the actual reason might be more persuasive – namely that Karina had been forced to endure sexual intercourse against her wishes.
10. Karina gave 3 different statements to the police. Pertinent facts were not advanced, namely that in resisting his advances, Karina had kicked out at Mr George. Other highly material aspects of the allegations were not mentioned, such as the fact that Mr George had instructed Karina to not tell anyone about what had occurred. There are also discrepancies between the individual statements.
11. I concluded the most likely scenario was that the sexual intercourse leading to her pregnancy was explained away by Karina to her parents on the basis that she had been forced, and that she was attempting to maintain that stance in Court. However, her evidence as to that, at its highest, was that Mr George had taken her hand and led her to the relevant location, undressed her and then had sexual intercourse with her. She stated that he had spoken harshly to her. No details of that were offered, despite rigorous questioning. I concluded that the alleged force was improbable and insufficient to overcome a normal 18 years-old woman who was resisting the advances.
12. Even if my view of the actualities is incorrect, the fact remained that the prosecution was required to prove the lack of consent to the sexual intercourse taking place. The only evidence to consider in that regard, was the evidence of Karina, which I considered was poor. I did not accept her evidence as either reliable or credible. Her mother's evidence was actually of no assistance to the prosecution case.
13. Mr George did not give or call evidence, as was his right.
14. I found the charges not proved beyond reasonable doubt. Accordingly, I dismissed both charges and acquitted Mr George.
15. On 22 October 2021, Mr George had pleaded guilty to assaulting Karina; and his partner Ms Kalsong did likewise. They are to be sentenced in relation to those matters at 2pm on 2 December 2021.



16. Prior to that, the prosecution sentencing submissions are to be filed and served by 4pm on 19 November 2021; and the defence sentencing submissions are to be filed and served by 4pm on 26 November 2021.
17. Mr George was granted bail on his own recognisance until the time/date for sentencing.

**Dated at Port Vila this 12th day of November 2021
BY THE COURT**

G.A. Andree Wiltens
Justice G.A. Andree Wiltens

