

PUBLIC PROSECUTOR

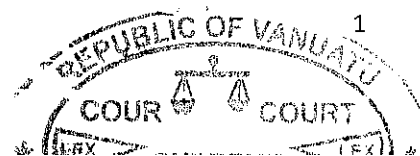
v

JACOB KEIAO

Date of Trial: 27 January 2023
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Ms M. Tasso
Defendant – Ms J. Kaukare
Date of Decision: 31 January 2023

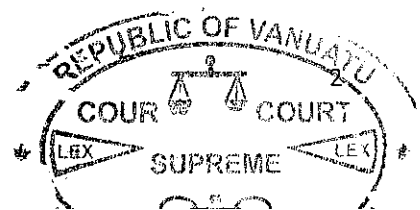
VERDICT

1. Mr Keiao is charged with sexual intercourse without consent.
2. It was accepted that he and the complainant had sexual intercourse many times between August and October 2019.
3. Accordingly, what the Prosecution was required to prove beyond reasonable doubt was that the complainant did not consent to the sexual intercourse at Club Hippique area and that Mr Keiao at the time did not have an honest and reasonable belief that she consented.
4. Mr Keiao did not have to prove anything.
5. This case came down to an assessment of credibility. I did not assess the witnesses solely on their demeanour in the witness box. I also looked for consistency within the witness' account, for consistency between different witnesses' accounts and the inherent likelihood, or not, of the witness' account.
6. The Prosecution called the complainant and her mother.
7. Mr Keiao elected to give evidence in his own defence, although if he had not, that would not of itself have led to an inference of guilt against him.
8. The complainant said that the second last time she had sex with Mr Keiao, who is her uncle, was after work one late afternoon, at Club Hippique. She took a bus from her



workplace at Nambatu area to Club Hippique, he was waiting for her on the road and she went into the bush with him because she was afraid that he would hit her. She was afraid that he would hit her so she forced herself to remove her panty and had sex with him. Afterwards, he told her not to tell anyone – that if she told his wife, he would beat both her and his wife.

9. When asked if she could recall one time when Mr Keiao had hit her, she said, "No".
10. She said that her family found out about her and Mr Keiao's sexual relationship when her 'small daddy' Manu came upon them as they were finishing up having sex at Club Hippique.
11. In cross-examination, she said that Mr Keiao had asked her for sex and she told him to buy her a phone then she would. He gave her cash, she bought a phone and then they used the phone to arrange where and when to have sex. The first time was on a Saturday at their workplace at Nambatu.
12. In re-examination, she confirmed that Mr Keiao bought her a phone and told her that she would not refund the money but would do as he said. She was asked to say what one of the things he asked her to do was. She said it was to go and see him and they would have sex.
13. The following inconsistencies elicited during cross-examination were not explained in re-examination:
 - a. She said that her family found out about her and Mr Keiao's sexual relationship when her 'smol daddy' Manu happened upon them at Club Hippique, but agreed that Manu in his second statement to the Police said only that he heard them talking, so what she said about Manu seeing them having sex was not true;
 - b. She agreed that she what she said to her parents and family that she had sex with Mr Keiao because he threatened to hit her was a lie that she had told because she was scared of them (her family);
 - c. She agreed that she only said that Mr Keiao said he would hit her if she did not remove her clothes because she was afraid of Manu;
 - d. She agreed that she would meet up with Mr Keiao knowing that they would have sex;
 - e. She agreed that after they had reported Mr Keiao to the Police, she called him to say sorry, that she was crying and that they arranged to and then had sex at the 'dark corner' area near USP; and
 - f. She agreed that it was someone else, not her, who wanted to report Mr Keiao to the Police.
14. The complainant's mother stated that her daughter the complainant had had hearing and learning difficulties since she was a child. The complainant lip-read to understand what was said to her. She did not know anything about her daughter and her brother Mr Keiao



having a sexual relationship until Manu found out and it was disrespectful of Mr Keiao to do so.

15. Mr Keiao denied forcing the complainant to have sex with him or threatening to hit her or that he told her not to tell anyone what had happened. He said she had agreed to sex with him, which started after he bought a phone for her and she agreed to have sex with him in return, and she would smile and willingly remove her clothes.
16. He said after he was reported to the Police, they continued to have sex including at 'dark corner' then at other times and places until a community meeting was held at Ohlen Nabanga area at which he was fined. After that, he moved to Dry Creek so that he would not be near her anymore and be tempted to resume the relationship.
17. In cross-examination, he said that he also bought the complainant a gas bottle, gave her VT5,000 towards a second phone and every time he had sex with her, he gave her VT1,000 or VT2,000. If he did not give her money or have money, he did not have sex with her. He gave her the money after sex. He said that the complainant willingly came to meet him for sex, she heard him fine on the phone and did not ever get wrong the place they had agreed to meet at, and if she had not wanted sex with him, she would not have met him at the bush!
18. The lack of explanation for the inconsistencies in the complainant's evidence raised doubts in my mind as to the reliability of her evidence. This was coupled with Mr Keiao's evidence about his belief – which I considered to be reasonable in the circumstances – that the complainant consented to the sexual intercourse with him.
19. For those reasons, I do not consider that the Prosecution has proven this charge to the high criminal standard required of proof beyond reasonable doubt.
20. I return a verdict of not guilty. Mr Keiao is deemed to be innocent of the charge and is acquitted.

**DATED at Port Vila this 31st day of January 2023
BY THE COURT**

VM Trier
Justice Viran Molisa Trier

