

BETWEEN: PUBLIC PROSECUTOR

AND: AMZY APIA
Defendant

Date of Trial: 22nd February 2024

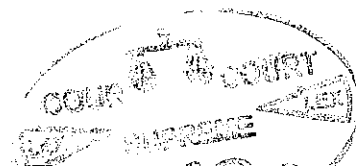
Date of Verdict: 22nd February 2024

Before: Justice Oliver A Saksak

Counsel: Ms Marie Meltebury for Public Prosecutor
Mr Kalo Shem for Accused

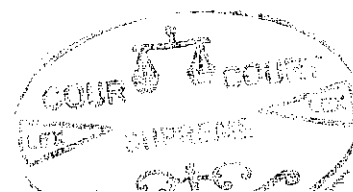
VERDICT

1. The defendant was charged with one count of sexual intercourse without consent contrary to section 90 and 91 of the Penal Code Act [CAP 135].
2. He pleaded not guilty to the charge. Whilst he admitted the first element of the offence that he had sex with the complainant, he asserted that sex was consensual. That it occurred following a plan they had made together on 24th July 2023.
3. Prosecutions had the burden of proof of his guilt beyond reasonable doubt. Prosecution had to prove there was no consent.
4. It was charged that on 27th July 2023 the defendant had sexual intercourse with the complainant against her free will. The offending happened at Espigels Bay.
5. The complainant gave evidence. She was shy and reluctant to give evidence at first because of the public audience. Prosecution applied for an order to close the Court to the public. The application was allowed and the public was excluded and she was able to give her evidence with more ease.
6. The complainant is from Ambrym. On 27th July 2023 she was alone in their house sleeping. Her partner Andrew went to Matanvat that day for football games. She said it was then the



defendant came to their house and went inside to where she was sleeping. She sat up when she saw him there. He asked her where Andrew was and she told him he had gone to Matanvat. It was then the defendant started to ask for sex. She told him he was uninvited and told to leave. She told him to leave and go to see his wife but he did not leave. He then started touching her body and demanding sex. He held a knife and said he would cut her if she did not give in to him. She was 4 months pregnant when the offence happened. He then removed his clothes, held her hand together and removed her clothes. He pushed her into the room and onto the mattress, got on top of her and had sex with her. It only took a short time. She told him that he had ruined her relationship with Andrew and her baby. He then wore his clothes and left. He warned her not to tell anyone or else he would shoot them with a gun. He had the knife under his armpit when he was holding her and undressing her. And during sex the knife was kept close to the defendant.

7. Andrew, the complainant's partner gave evidence. He confirmed on 27th July 2023 he went to Matanvat. He left at 7:00am and Josephine was left alone in the house. He returned at 7:00pm. On his return he saw Josephine crying. She told him the defendant had come around asking for lemon. She gave him some but he would not leave. He entered the house instead, closed the door and removed her clothes and had sex with her. She was crying when telling the story. He said the only time he left Josephine was on 27th July 2023. He said it was their agreement together to have the case reported to the Police on 2nd August 2023. There was a short delay because the matter was first brought to the chief to look into.
8. The defendant gave evidence in his defence. He denies holding a knife. He admitted he had sex with the complainant but that it was on Wednesday not Thursday. He said he had had sex with the complainant first on 20 July 2023. The second time was on Monday 24th July 2023 and the third time was on 27th July 2023 when Andrew assaulted Josephine so badly because of the incident.
9. The evidence of Andrew shows a recent complainant made by the complainant. She was seen crying and telling the story to her partner. If sex was consensual, why was Josephine crying even at 7:00pm in the night when her partner returned from Matanvat. Tears are a language.
10. The Court cannot believe the defendant's story that he had had sex previously with the complainant on 20th and 24 July 2023. He said it was on 24 July 2023 that they had planned to have sex again on 27th July. The defendant admitted in his evidence that sex occurred on 27th



July 2023. If there was truth in that plan why did he ask Josephine about Andrew's whereabouts when he entered the house?

11. There was clear evidence from Josephine that she told the defendant he was not invited and told to leave. It was repeated about 2 times. The defendant did not leave. The demand for him to leave was indication to the defendant that his presence was not welcomed. It followed therefore that when sex occurred subsequently, it was consensual sex. Prosecution had proved beyond reasonable doubt that there was no consent.
12. I therefore find the defendant guilty as charged and return a verdict of guilty.

**DATED at Lakatoro this 22nd of February 2024
BY THE COURT**



Hon. Oliver A Saksak
Judge

