

**PUBLIC PROSECUTOR -v- ALLEN NOPPERT
DORAH NOPPERT**

Coram: *Chief Justice Vincent Lunabek*

Counsel: *Kayleen Tavoia, Public Prosecutor
Nigel Morrison for the Defendants*

JUDGMENT ON VERDICT

This is the verdict in this case. The two (2) Defendants: Allen Noppert and Dorah Noppert were charged as follows:

Count 1

Allen Noppert, sometime between 10-11 January 2007, you had sexual intercourse with the complainant woman without her consent at Tagara Beach Comber, contrary to Section 91 of the Penal Code Act [CAP.135].

Count 2

Dorah Noppert, sometime between 10-11 January 2007, you helped your husband, Allen Noppert, to have sexual intercourse with a woman without her consent, contrary to Sections 30, 90 and 91 of the Penal Code Act [CAP.135].

Mr and Mrs Noppert are both discharged and acquitted on count 3 accordingly.

The offence under Section 91 of the Penal Code Act is the principal offence. The offence of complicity to commit the offence under ss.30 and 91 of the Penal Code Act is dependent upon the findings and determination of the principal offence. The indecent assault was alleged to have been committed before the events at the time of rape but during the events alleged to amount to complicity in the rape.



The defence admits that there were sexual intercourse occurring between Defendant Allen Noppert and the complainant woman on the night of 10 January 2007 at Tagara Beach Comber but the sexual activities were consensual. The Defendants deny rape, complicity to rape and indecent assault.

The only issue relating to the allegation of rape is consent. The trial proceeds on that basis.

The prosecution called the complainant Lisa Samson as their only witness.

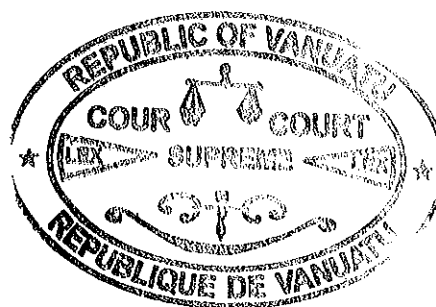
Before the prosecution case starts, the Defendants were informed of their rights under section 81 of the Penal Code Act which were also explained to them. Equally at the end of the prosecution case, the Defendants' rights under Section 88 of the Act [CAP.136] were also explained to them. The Defendant, Allen Noppert elected to give evidence on his own behalf. His evidence will be considered on equal basis with the evidence of the complainant woman. Defendant Dorah Noppert did not give evidence.

Sexual intercourse without consent is defined under Section 90 of the Penal Code Act as follows:

"s.90. Any person who has sexual intercourse with another person:

- (a) without the person's consent; or*
- (b) with that person's consent if the consent is obtained:*
 - (i) by force; or*
 - (ii) by means of threats of intimidation of any kind; or*
 - (iii) by fear of bodily harm; or*
 - (iv) by means of false of false representation as to the nature of the act; or*
 - (v) in the case of a married person, by impersonating that person's husband or wife;*

commits the offence of rape. The offence is complete upon penetration."



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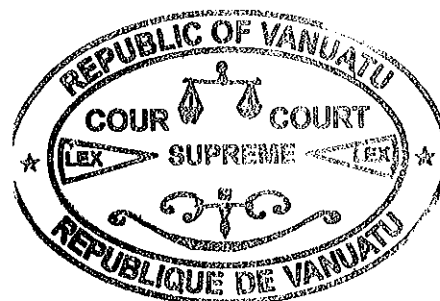
Complicity in the commission of a crime is prohibited under Section 30 of the Penal Code Act. It provides as follows:

“30. Any person who aids, counsels or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principal offender.”

The evidence of the trial is recorded in the trial notes kept in the Court case file. What follows is a summary of the relevant part of the evidence. Lisa Samson is the only prosecution witness. She gave evidence to the following effect:

She said she called Dorah Noppert auntie. Prior to the 10 January 2007. She said Defendant Allan Noppert and his wife contacted her to go work at Tagara Beach Comber to get on experience and it would be okay for her to go down on 10 January 2007. She got a bus to Epule. She called the Beach Comber and told the Defendants she was on her way. The Defendants informed her that she would wait and they would be picked after the Bonne Année songs.

The Defendants picked her up at about 10.30PM to 11.00PM at night. She had drunk kava. She asked the Defendant Allen to stop the bus on their way to Beach Comber to get a bottle of tusker beer. She bought a tusker beer and they went to Beach Comber. She was shown a room and she put her bags in the room. They had some beers. They talked about the Beach Comber and the family. Lisa and Defendant Dorah went swimming in the swimming pool for sometime. Then Defendant Allen Noppert followed them in the pool and swam with them. She said she saw the two Defendants kissing and Defendant Dorah was performing oral sex on the sexual genital of the Defendant male in front of her. She said Defendant Allen tried to touch her private part and hold her breast while in the pool. She said what if her auntie saw Allen doing that on her. She will kill her. They got out of the pool and had some whiskey. Then Defendant Dorah told her and Allen that she was going to go to Epule to get some more beers. She said there were beers still in the fridge. She said she went to bed and locked the door to the room 1A as exhibited in the evidence.



While she was asleep she said she heard Defendant Allen went into the room she was sleeping; he then jumped on the bed she was lying on and sat on her laps started to caress her before he had sexual intercourse with her. She said she was struggling but because she was too drunk, she did not freely consent to have sexual intercourse with the Defendant Allen Noppert.

Again on the next morning, the Defendant Allen Noppert entered the room 1A and again has sexual intercourse again with her.

The next morning she said she started work at the Beach Comber. Then a sister of Defendant Dorah came and abused her by saying words to the effect that what kind of woman are you to fuck my sister's husband.

She was cross-examined. She said Dorah is not her blood related but she is one of her relatives of Tongoa. She was asked whether she met Allan Noppert before 10 January 2007. She testified that to her understanding, Allen waved at her in the bus of Beach Comber when she was working at the Centre Point. This was about the Christmas period of that time. She said she did not talk to Allan at that time. She was asked if she saw Allan on different occasions. She admitted she saw Allan Noppert at Sunset Bar on or about June – July 2006. She admitted she reminded Allen about who she was and they exchanged telephone numbers. She and Allan had talked over the phone on numerous occasions. She admitted she talked to Allen about her chance of working at Beach Resort. She also admitted she saw Allen at Mamu bar at about September 2006. It was put to her that when she said she saw Allen from the bus it was not true. She said she saw Allen plenty of times. Allen was contacting her but she did not do anything with Allen.

She was asked about the number of bags she brought with her when she went to Beach Resort. She said she had a black bag and another small bag. At Takara, Dorah showed her where the room is and where she would put her bags. She put her bags then went outside, have talks and drunk with Allen and Dorah. She got changed to swim into the swimming pool. She wore a bikini and a top. She got changed in her room. She was then asked that when she went for swimming, she got changed in another room with Dorah. She said Dorah went to change and she changed in the same bed room. She was then challenged neither she told the



truth. She replied she said she got changed but she never said she got changed in her room. She had a Mobile phone and she charged it. She denied receiving any phone calls.

She was asked about when she was in the pool with Allen, she said she did not want Allen to touch her because if auntie Dorah caught him doing that, Dorah would kill her.

She also said she did not think that Dorah saw things happened when Allen and her were in the pool. She said Dorah was drunk. She said she had a tusker and she knew what she was doing at the pool. She was then asked:

“Q: What you were doing was touching Allen when he touched you?”

“A: I do not agree. Why she would be angry when she told me that whatever Allen was doing to me is ok.”

Dorah then left. Lisa got to her room. By then, she got drunk as she had some whiskies and got to sleep. She said Allen had sex with her but she did not consent. Allen took off her clothes after sex she wore her clothes again. In the morning, Allen had sex with her again. Allen came in her room and took off her clothes. She was naked. It is put to her that she sat on top of Allen and had sex with him. She said she did not think so. It was put to her that other witnesses will come to Court and say that they saw her sitting on top Allen doing sex. She said they told lies. She was asked whether she said she went outside her room and met a woman called Rita the housekeeper. She confirmed she and Rita worked together at the Beach Comber Resort the next morning.

She said one of Dorah’s sisters swore at her. Dorah’s brother was accusing her and people at Epule Village. She was asked:

“Q: Dorah was still drunk and she was angry?” She answered:

“A: Yes.”

She said she remembered Rita told people of what happened. She said the story started at about lunch hour. She said she was not really happy. It was put to her because of what Allen had done. She confirmed. She said Allen’s behaviour



scared her. It was then put to her: "Q. But you asked him to take you back to Vila". And she replied: "Yes I know only Allen was driving there."

She admitted she did not report this matter until 15 February 2007. she said Mr Laumae told her she should get some money because of what happened. She said she was not aware that Laumae demanded some money to Noppert otherwise she will tell the police. She confirmed she was ashamed because of talks about the sex. She brought the case to clear her name and she wanted Allen and Dorah to give her some money to her family.

Lisa was re-examined. She said the bikini and juries shown in the photos belonged to her and were left at Takara Beach Comber Resort.

The defence called two (2) witnesses. Mr Allen Noppert is the First defence witness. He testified that he resides at Beach Comber Resort at Takara, North Efate. He is the shareholder of that Resort since 1995. The co-defendant, Dorah Noppert is his wife. He met Lisa Samson in June-July 2006 for shopping, he had some beer and quick snacks. It was about 5.00PM, he was sitting at a table. He noticed two girls were talking to the tourists. He noticed Lisa was eyed him. She approached him and asked how was Dorah. He asked her how she knew Dorah. She said she lived at seaside. She said she knew Dorah has relatives who live at seaside. He was talking with Lisa for about 20-25 minutes.

The next time he saw and met Lisa was at Mabeka Restaurant. He and Lisa spent 40-45 minutes. He said they had conversation about Lisa knowing Dorah and that Dorah is a very possessive and jealous person.

In December 2006, he met Lisa at the Centre-Point. He saw her more than once before he met her at Centre-Point. Sometimes he was running on her in the street. He said there were some discussions about Lisa coming to work at Beach Comber Resort. The discussion was about a plan for Lisa to come with a possibility of him having an affair with Lisa without making it suspicious. They made plan that Lisa would do some work to get some bar service experience with Dorah and Rita.



She arrived at the Resort on 10 January 2007. On that date, she rang him in the morning and in the afternoon she arrived at 8.30PM at Epule Village.

Allan, Dorah and their son Matthew picked up Lisa at Epule. He said Lisa did have possession. She has 3 very big bags and 3 small ones. These bags took space in the area of the floor. He sat down at a table and had 3 beers with Dorah and Lisa. Dorah and Lisa had conversations in language about Beach Comber Resort and he had 3 glasses of whisky.

Lisa asked if she would swim in the pool. She did not have swimming clothes Dorah offered her a swimming cloth which are kept in their bedroom. Dorah and Lisa got into Allen and Dorah's bedroom and got changed in the manager's room. Lisa was wearing a blue one piece swimming.

He was asked whether he touched Lisa inappropriately as Lisa told the Court. He replied he did touch her because she touched him. He said the whole idea of this plan is to have a liaison without Dorah being aware of it.

He testified that Dorah was out in the bar to get more beers, the mutual touch was intense. Dorah came back unexpectedly and said: "why are you so close to each other? What are you doing? He said Dorah was angry. She came in the pool, handed the drinks to him and Lisa and then got out of the pool and walked towards the bar bridge. Dorah took 3-4 beers out and some money out of cash register and she was yelling abuses and walked toward the conference room.

He said he waited for 30 minutes if Dorah would come back while he and Lisa were in the pool. He and Lisa got out of the pool, went to Lisa's room and had a shower together. They spent sometime kissing and bounding each other. He said they then had consensual sex on the bed shown in the photograph.

He denied he removed Lisa's underwear because he said she did not have any on her. He said they have just come out of the shower. She was naked and he was naked. He returned back to his bedroom that night. He said he saw Lisa again the next morning just before 9.00AM o'clock in the morning in her room. He said she was already dressed. They kissed each other. She got undressed. They



had sex again and he said at no time was there any resistance by Lisa. He said during the intercourse, he was not terribly drunk and Lisa was not overly drunk. On the next morning after sex, he left the room. At the time, the staff are already at work. He said he came along the conference room so that any staff who would be at work would see that he came from his bedroom. He saw Lisa at 11.00AM o'clock ready for work. Taly (Chef) and Rita (house girl) worked on Thursday. Lisa was to work in the bar and serve clients. He picked up Dorah at about 11.00AM at Dalcie's place and she was very angry. Dorah was very angry and slightly aggressive and by the time he drove the bus, Dorah was sleeping in the bus. He woke her up and told her to go to bed.

He said the people there were quite suspicious about what was happening at the beginning. He was asking where Dorah was at Dolci's place. After he said they saw there Lisa and why Dorah was not there was suspicious. He said he could hear something Dorah said to her sister. He said Rita finished work at 3.30PM o'clock and she went home. He saw Rita an hour later. Rita came back with Dorah's brother David, mother and father and several other of Dorah's family member who came back at the Beach Resort to find out what happened. He said they found out from anything from Rita. They asked Rita to explain to me, Dorah, Lisa and the group and what Rita saw. Rita said she saw me and Lisa have sex in the room in the morning.

He said Lisa was there when Rita told the story. He said Lisa was quite concerned if not embarrassed to go back to Epule to face the family. He said he did not bring Lisa to Vila. David instead drove Lisa back to Epule to explain to her relatives what she was doing at Beach Comber and why. He left David took the bus to drive Lisa to Epule. He said after Rita told what she saw to everyone, he admitted and Lisa admitted that they both had sex. A meeting was suggested to fix this. David suggested as a sorry gesture that Allan provide a bulluk at Epule. Then, another suggestion was to have 30,000 VT cash equivalent to a bulluk. They had a custom ceremony at the Resort, they cooked rice, chicken wings, kava at about 9.00PM that evening. Lisa left with David's truck. He saw Lisa again in the Court.

He said Solicitor Laumae rang him accusing him of raping Lisa and that Dorah was part of the plan unless he gave 2,000,000 Vatu as compensation for his



client, he would lodge a complaint for prosecuting Dorah and himself. He said he did not make any payment to Laumae.

He said Dorah's understanding was that Lisa would work at the Resort and she would arrive on 10 January 2007. He said it is strange when somebody arrive with so many bags.

He said when Dorah and Lisa were in the pool, he joined them in the pool. In the pool, he was between Dorah and Lisa. He and Dorah were kissing and Lisa was touching his backside. He denied that when he and Dorah were kissing, he was outside the pool and that Lisa did not go away from him and Dorah. He denied that Dorah performed oral sex on him. He explained that there were no people around and the pool's height is 1.4 meters and any one who walks pass will see what is going on.

He denied that Lisa saw Dorah doing oral sex on him that is where Dorah went to Lisa. He confirmed they had whisky after they finished in the pool.

He said Dorah got upset after she got more tuskers at that point in time she was upset and left.

He denied he sat on Lisa's laps and on the next morning when he was in Lisa's room, both Lisa and himself continue to bound each other after Dorah left. He said Lisa's parents were not aware of what had happened. He asked Molsule who knows Lisa's parents and Chief Titongoa to act on Lisa's parents' behalf to give the fine. He said after the fine of VT30,000 paid he was told by Molsule that he was forgiven by everyone according to custom.

Rita Jeffery is the second and last defence witness. She testified she lives at Takara and is employed at Beach Comber as a house keeper for 12 years. She said she was working at Beach Comber Resort on 10-11 January 2007. On 11 January 2007, she was clearing up in the kitchen for a short period of time. She identified and recognised the photographs of rooms shown to her as the rooms of Beach Comber. She recognises room marked A1. She said she checked that room to set towels. She pushed the door but it was locked. She went around to



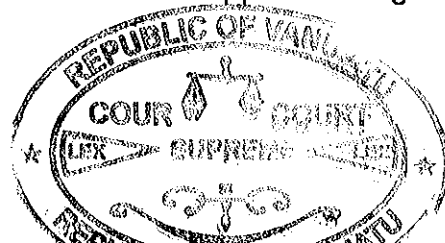
the door marked (D1). She said the big door was bit open. She pushed the big door open. She looked in. She said she saw her boss was sleeping inside with Lisa. She described the position of her boss and Lisa. She saw her boss laying down and Lisa was sitting on top of him. She said Lisa was naked and her boss has no clothing on. She said Allen Noppert was laying down on his back and Lisa was sitting on Allen's private part. They were whispering. Lisa was laying on Allen Noppert. She saw them for short time and then got back into the kitchen. When she went outside, shortly after she saw Allen Noppert getting out from the screen door toward his bedroom. Shortly after she saw Lisa got dressed and came outside. She said she saw Allen Noppert and Lisa came outside one after the other. Allen came outside first. Lisa came outside and went straight to work in the bar serving customers.

She was cross-examined but her evidence in chief was not disturbed.

I now proceed with short discussions on the evidence.

The complainant, Lisa, was the only person who gave evidence. There was no supporting witnesses. There was no medical evidence. There was no exhibit of clothing evidence. Her evidence on her knowledge and relationship with Defendant Allan Noppert was that Defendant Noppert was passing with his van and she has waved to him. In cross-examination, it turn out that she had on a number of occasions, spoken to Allan Noppert on the telephone. She met him in bars on two occasions and she met him at Centre Point Supermarket. She cannot be relied upon as a reliable witness. There are inconsistencies in her evidence.

Mr. Allen Noppert elects to give evidence. He admits that there is sexual intercourse between himself and the complainant on two occasions in the room but there were consensual intercourse. This version of facts was not challenged in the cross-examination by the Prosecution. There is nothing in Mr. Noppert's evidence that the Court could only rely on it and reject his evidence as a witness of truth. Further Mrs. Rita Jeffery gave evidence for the Defendants. She told the Court that she commences work on the morning of 11 January 2007 and at that time, when she looked in room A1, she saw Mr. Allan Noppert having sexual



intercourse with the complainant, Lisa. Lisa was sitting on top of Mr. Allan Noppert.

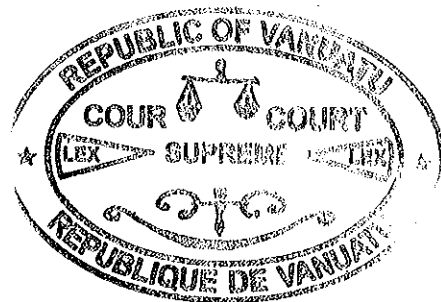
Mrs. Rita Jeffery could see nothing which suggested to her that sex between the complainant and Allan Noppert was anything else than consensual. Mrs. Rita Jeffery was not disturbed in her testimony and cross-examination. She is a reliable and truthful witness.

In respect to Defendant Dorah Noppert, she had left the scene sometime before any alleged sex took place. She had consumed alcohol and she was angry. She was affected the following morning by the alcohol.

In law for a conviction to be secured, it does not have to have corroboration. However, in sexual offence cases corroboration is required as a matter of practice.

Equally, in law for a conviction to be secured, it does not require a recent complaint. In the present case, the evidence shows that there was an opportunity to complaint just after the alleged offences. The evidence establishes that the complainant had a mobile phone. She had received a call and changed the mobile phone. On 11 January 2007, when she alleged that non-consensual sexual intercourse took place the second time, in a room, evidence which is supported by the exhibits from the bar, restaurant area of about 5 – 10 meters, that other staff were present and the complainant as in the evidence (Lisa, Allen Noppert and Rita Jeffery) show other members of staff were present and the complainant started work few minutes after the sex that morning.

There is no recent complaint. The allegations took place between 10–11 January 2007. On her evidence, the first person the complainant spoke to about the offences and right of compensation was a lawyer, Mr. Felix Laumae in January 2007. She spoke to the police about those events on 15 February 2007 some 5 weeks after the alleged offences took place.



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In conclusion, based on the above analysis and considerations, there is a reasonable doubt which exists in the evidence of the Prosecution. This must be interpreted in favour of the Defendants.

The Prosecution fails to prove the offences of sexual intercourse without consent, contrary to Section 91 of the Penal Code Act and of complicity to sexual intercourse without consent, contrary to sections 30 and 91 of the Penal Code Act respectively against Defendants Allan Noppert and Dorah Noppert.

Verdict

Defendants Allan Noppert and Dorah Noppert are found not guilty as charged. Both Defendants are discharged and acquitted of such offences accordingly.

DATED at Port-Vila this 13th day of December 2007

BY THE COURT

**Vincent LUNABEK
Chief Justice**

