

IN THE SUPREME COURT OF  
THE REPUBLIC OF VANUATU

*(Criminal Jurisdiction)*

Criminal Case No. 48 of 2014

Criminal Case No. 49 of 2014

PUBLIC PROSECUTOR

-V-

DANSON ARU

Coram: Judge Aru

Counsel: Mr. K. Massing for the Prosecutor  
Mrs. J. Tari for the Defence

ORAL RULING

SUBMISSION ON NO CASE

1. The defendant Danson Aru was charged with two counts in each matter as there were two different complainants but the charges were brought under one information. The offences charged are as follows:

- Count 1- sexual intercourse without consent contrary to s 90 (a) and s 91 of the Penal Code [CAP 135];
- Count 2 – unlawful sexual intercourse contrary to s 97 (2) of the Penal Code [CAP 135] ;
- Count 3 – sexual intercourse without consent contrary to s 90 (a) and s 91 of the Penal Code [CAP 135];
- Count 4 – abduction contrary to s 92 of the Penal Code [CAP 135];

2. At the end of the Prosecution case, defence counsel informed the Court they will make a no case submission on the basis of the Prosecution evidence. Section 164 of the Penal Code [CAP 135] provides :

- "(1) If, when the case for the prosecution has been concluded, the judge rules, as a matter of law that there is no evidence on which the accused person could be convicted, he shall thereupon pronounce a verdict of not guilty.
- (2) In any other case, the court shall call upon the accused person for his defence and shall comply with the requirements of section 88."

3. Similarly s 135 of the Criminal Procedure Code [CPA 136] provides:-

"If at the close of the evidence in support of the charge, it appears to the court that a prima facie case is not made out against the accused person so as to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him."

4. Defence counsel firstly submits that in relation to Counts 1, 3 and 4 there are inconsistencies in the evidence, the evidence is not corroborated, there was significant delay in reporting the matter and no medical evidence was called to support the charges.
5. In relation to count 2, defence counsel submits that the registration of birth of the complainant was based on information provided by the father but both parents were not called as witnesses to confirm the information provided as to the complainant's correct age. The evidence of Barry Worbur is that as the provincial administrator he is also responsible for registering births. That it was the complainant's father who gave him the information about the complainant's date of birth which he then entered into the register.
6. Under cross examination he agreed that the registration is based on information given by the complainant's father and agreed that if the information was wrong or right he cannot tell. He agreed that it's possible that Jessica is more than 14 and he would not know.

7. In relation to Count 1 it was submitted that the complainant gave conflicting evidence to what she told the Police in her Police statement. Under cross examination, she denied that she was lying.
8. In relation to count 3 and 4 it was submitted that the complainant gave conflicting evidence to what was in her Police statement when she was put under cross examination. Her oral evidence was inconsistent with what she told the Police in her Police statement.
9. Defence counsel submits that the lack of consistency in both complainants' evidence goes to show that their evidence is unreliable and it would be unsafe for the court to make a conviction on this evidence given that counts 1, 3 and 4 are very serious offences with penalties ranging from 10 years to life imprisonment.
10. The Prosecution acknowledged and conceded to these inconsistencies in their evidence.
11. Secondly defence counsel submits that the question of significant delay raises questions which again go to the credibility of the complainants as to whether they were telling the truth.
12. In relation to count 1, the complainant under cross examination agreed that she did not report or tell anyone in school that the defendant had sex with her and she did not want to tell anyone. She agreed that other people talked about her sexual encounter with the defendant. She agreed that the story reached her parents through others but she did not tell her parents.

13. In relation to counts, 3 and 4 the complainant under cross-examination agreed that after the incident she did not run to her sister to report the defendant although her sister was living close to her at that time at Varget but not her parents. She further stated that when she reached the school she did not report the incident to the headmistress and did not tell anyone.
14. Thirdly it was submitted by defence counsel that the complainant in relation to counts 1 and 2 in her evidence in chief said when she returned to school blood was running from her for 2 days and that she could not walk well. Under cross examination she said she felt pain during sex. No medical evidence was called to support the charge of sexual intercourse without consent.
15. Similarly the complainant in relation to counts 3 and 4 in her evidence in chief said during sex she felt pain in her private part and contracted a disease called "sore piss". Under cross examination she maintained her evidence yet no medical evidence was called to support the prosecution case. Further still she told the court that she was no longer teaching kindy at Varget because of the incident and felt bad when she was terminated. She was angry with the defendant because he made her lose her job and reported him as pay back for ruining her teaching career.
16. Defence submits that the Court cannot safely make a conviction based on the evidence of the complainants and Barry Worbur and she invited the court when making its ruling to consider what the court said in *Public Prosecutor v. Ahmed* [2003] VUCA 47.
17. I am satisfied that the Prosecution has not made out a prima facie case against the accused so as to require him to make a defence. I therefore dismiss this case and enter a verdict of not guilty. The defendant Danson Aru is therefore acquitted of the charges against him.

DATED at Gaua the 11<sup>th</sup> day of June 2014

BY THE COURT

.....  
D. Aru  
Judge

