

PUBLIC PROSECUTOR

V

MAXIM JEFFERY SAM

Hearing: Wednesday 27 to Friday 29 August 2014 at Isangel, Tanna
Submissions: Friday 5 September 2014 (prosecution)
Tuesday 9 September 2014 (defence)
Judgment: Tuesday 16 September 2014
Before: Justice Stephen Harrop
Appearances: Damien Boe for the Public Prosecutor
Pauline Kalwatman and (by arrangement, he not having been admitted to the Bar) Harrison Rantes (PSO) for the Defendant

JUDGMENT AND REASONS FOR VERDICTS

Introduction

1. Mr Sam is charged with two counts of having sexual intercourse without consent with the complainant, to whom I shall refer as Julie, and with three counts of threatening to kill her. All offences are alleged to have occurred between 9 and 10 am on Tuesday 18 March 2014 in the Middle Bush Area of Tanna.
2. In brief, Julie says that while walking along the road near Lenaken village she was confronted by Mr Sam whom she did not know. He was carrying a bush knife. Julie, who is 15, says that Mr Sam, who is 22, grabbed her by her hand, dragged her into the bush and forced her to have sexual intercourse without her consent; he threatened to cut her with the knife if she did not agree. She further says that, after being required to visit the house of Mr Sam's uncle, Napoleon Falah, on the way back there was a further request by Mr Sam for sexual intercourse which she declined. Again she says that he forced this on her under threat of being cut with the knife.

3. Mr Sam gave evidence in his defence. While he admits that sexual intercourse occurred twice, the first occasion within about one minute of the their meeting on the road, he says that this was entirely consensual, that Julie removed her own panties and that, while he had a knife with him throughout their time together, at no stage did he threaten to cut her with it.
4. The third threatening to kill count in the indictment (count 3) alleges such a threat made at the uncle's house. In his closing submissions Mr Boe accepted that there was insufficient evidence to convict Mr Sam on this count and that it is appropriate that he is discharged. I discharge Mr Sam on count 3 accordingly.

Section 81 of the Criminal Procedure Code

5. At the outset of the case Mr Sam confirmed his not guilty pleas to all five counts and I ensured prior to the prosecution case commencing that he had read aloud to him the statutory statement of the presumption of his innocence. This was translated into Bislama for him.

The Elements of the Charges

6. To succeed with the threatening to kill charges, in the circumstances of this case, the prosecution must prove beyond reasonable doubt that on each of the occasions immediately before sexual intercourse occurred, Mr Sam orally, intentionally and knowing the contents of his threat, directly threatened to kill Julie.
7. Julie says that such threats were made with a knife either being brandished or immediately available to be used. If her evidence is accepted as to each occasion then the prosecution will have readily proved the elements of these charges. However Mr Sam denies any threat of any kind. Accordingly if I reject Julie's evidence or if there is a reasonable opposability that Mr Sam's evidence

on this point might be true then clearly he must be acquitted of the threatening charges.

8. In relation to the charges under section 91 of the Penal Code of sexual intercourse without consent, parts of section 90 are relevant, on the prosecution case. This provides:-

“RAPE DEFINED

90. Any person who has sexual intercourse with a woman or a girl without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm,commits the offence of rape...”.

9. As the Court of Appeal decision in McEwen v. Public Prosecutor [2011] VUCA 32 confirms, the prosecution must prove beyond reasonable doubt the following essential elements of the charges of sexual intercourse without consent:

- “a) That on 18 March 2014, Mr Sam has sexual intercourse with Julie at Middle Bush, Tanna: and*
- b) That Julie did not consent to having sexual intercourse with him; and*
- c) That Mr Sam did not believe on reasonable grounds that Julie was consenting at the time the intercourse occurred”.*

10. In this case there is no dispute that sexual intercourse occurred, twice. The issue in the case is one of consent. Julie says she did not consent because her consent was obtained by means of threats of intimidation and fear of bodily harm which according to section 90 means that in effect there was no consent. The prosecution submits that in the circumstances Mr Sam did not believe on reasonable grounds that Julie was consenting because her consent was obtained by threats on each occasion to cause her bodily harm with a knife. Mr Sam however says there were no threats and that Julie willingly consented on each occasion to his request for sexual intercourse; she lay down and removed her own panties.

Rules applying to all criminal trials

11. The burden of proof rests on the Public Prosecutor and Mr Sam has no onus to prove anything. The fact that he chose to give evidence does not change this in any way. By giving evidence he does not take on any burden.
12. The standard of proof to which the prosecution must prove each charge and each element of each charge is that of beyond reasonable doubt, a very high level of proof which will only have been met only if after considering all of the evidence I am left sure that the elements and the charge in question is established.
13. Mr Sam chose not to make a statement to the police but to leave it until he was before the Court. This was absolutely his right. He had no obligation to make a statement to the police or indeed once he came to Court to give evidence in his own defence. An election not to speak to the police or not to give evidence at trial can never be held against a defendant and can never add to the prosecution case.
14. At the end of the prosecution case I was satisfied that there was evidence on which he could be convicted and I therefore called on him for his defence. I complied with section 88 of the Criminal Procedure Code by reading aloud the statement to him in English and arranging for it to be translated into Bislama. Mr Sam then elected to give evidence as indeed Ms Kalwatman had indicated at an earlier stage he would.
15. Where a defendant gives or calls evidence which provides an alternative explanation of what occurred, there are three possibilities:
 - a) I might accept what he says in which case of course he must be acquitted of all four charges since he says there were no threats and that on both occasions the sexual intercourse occurred with Julie's consent.
 - b) If I consider that Mr Sam's account might reasonably be true then again he must be acquitted because by definition I would have a reasonable doubt as to the proof of the prosecution case.
 - c) If I reject what Mr Sam says then even in that situation I may not leap to a conclusion of guilt because he has no obligation to provide any explanation or alternative version. In that situation I must put to one side

what he says and examine the evidence which I do accept to see whether that leaves me sure of his guilt on each charge.

16. There are four separate charges left to be determined and I am required to reach a separate decision on each of them. These may be the same or different but there must be separate and careful consideration. It does not follow that the verdict on one charge informs or determines the outcome on any other. Effectively I heard four trials within one and four verdicts are required.
17. Allegations of sexual intercourse without consent and of threatening to kill are serious and may give rise to feelings of sympathy for a complainant and prejudice against a defendant. I remind myself that these or any other feelings must be put to one side and must not influence the verdicts. I am required objectively and carefully to consider all the evidence in coming to my decisions.
18. In relation to the sexual intercourse without consent counts, the law in Vanuatu requires that a Judge consider warning himself about the danger of convicting an accused person on the uncorroborated evidence of the complainant. However being conscious of this warning, a judge may do so.
19. In Walker v. Public Prosecutor [2007] VUCA 12, where the defendant was charged with threatening to kill, the Court of Appeal said at paragraph 15:

“Applying the common law as part of the law in Vanuatu the position may be summarised as follows:

 - a) *There is no requirement of law that there must be corroborated evidence of a vital witness’s evidence before a judge can be satisfied beyond reasonable doubt an offence has been proven.*
 - b) *For some particular circumstances (e.g. child complainants, accomplices and sexual crimes) trial judges may need to warn themselves of the danger of convicting an accused person on the uncorroborated evidence of the complainant. However the Judge may do so, conscious of this warning.*

c) Where the offence is one which requires the judge to consider the corroboration warning, the judge must firstly decide if the evidence in law is capable of being corroborative evidence and it is then for the judge to decide its value in a particular case.”

20. I will proceed to consider Julie’s evidence in this case against this background. Her evidence must be considered along with all the other evidence including of course the important and adamant denials of any impropriety by Mr Sam.
21. The reality in the present case where there are such starkly different accounts of the events that this is an “all or nothing” case. If I am sure I can accept Julie’s evidence, which would mean I am sure I must reject that of Mr Sam, then clearly all four counts will have been proved beyond reasonable doubt. On the other hand if I am not sure I can accept Julie’s evidence or if I accept Mr Sam’s evidence in any event then clearly he must be acquitted on all four counts.

Summary of the Evidence

22. I do not propose to refer to every aspect of the evidence but rather to focus on the main points which in my judgment bear on the issues I need to determine.
23. Apart from Julie the prosecution called 4 witnesses, Julie’s father, to whom I shall refer as WH, Mr Sam’s uncle Napoleon Falah, Police officer Julienne Ben and a medical witness “Doctor” Ruben. I use the quotation marks because as I understood his evidence Mr Ruben is not a qualified doctor but rather assists doctors at the hospital on Tanna.
24. Julie said that on the morning in question she had gone to school but found there were no classes and was walking to see her mother when she saw Mr Sam on the road. He was a stranger to her. He grabbed her hand and pulled her into the bush. She cried and shouted but he said he would cut her with the knife if she cried or shouted. He was holding a bush knife when he said that. She said that he then pushed her and she fell to the ground. While still holding her with one hand he used the other to take off her lower clothes. He then had sex with her.

During the sex she said she was screaming and trying to move but he was threatening to cut her with his knife.

25. Julie said that when the sex had finished Mr Sam grabbed her hand and forced her to follow but she did not want to go and told him this. He threatened again to cut her with the knife. They went to a house where he told her to stay outside and he would then go inside and see his uncle.
26. Julie says that Mr Sam told her that the uncle was dead but when they went into the room he was laughing and obviously very much alive. She says that Mr Sam asked her to stand with him and to allow his uncle to take a photograph of them. She says she refused but she relented when he told her that if she did not agree then he would cut her with the knife.
27. The camera was not working and they went outside and a photo was taken on the uncle's phone/camera. Julie says that he told her to wait outside while he took the phone back inside.
28. They then began the journey back to where they had come from and Julie says Mr Sam asked her again to have sex, which she refused. She says he pushed her again, she fell to the ground and again there was threat that if she did not agree to sex he would cut her with the knife.
29. The second occasion of sexual intercourse then followed and again she says he took off her lower clothing. After that had finished she says that Mr Sam showed her a road and told her to go home. However he followed her and asked if he could take her back to her mother's place. Julie says she refused that offer and went back to get her bag but then ran away from him. She then went back to her village of Nazareth.
30. When cross-examining, Ms Kalwatman challenged Julie about the month during which the incidents had occurred putting to her that Mr Sam would say that it was February rather than March. She denied this.

31. Julie did agree that because her police statement was taken on 14 April it was some 3 to 4 weeks between the day of the incidents and the making of the complaint. However in her own mind her recollection was that she had told her parents what had happened about a week after the incidents and that it was after a further week or so that she went to the police with her father.
32. Julie was adamant that she had not consented to go with Mr Sam or to have sex with him. She would not have done so had it not been for the threats to cut her with the knife. She said that she wanted to run away but could not because he was holding her hand firmly. She also denied removing her own clothes. It was put to Julie that Mr Sam could not have been holding the knife in one of his hands, holding her hand as well and then taking her clothes off if as she said she was struggling. She was adamant that that was what had happened.
33. Julie denied assisting Mr Sam with completing the sexual acts and said that she was crying throughout both events.
34. Julie said that she did have some scratches on her leg as a result of the incident and some dirt in her hair.
35. In relation to the visit to the uncle's house Julie said the reason she did not run away when Mr Sam was inside the house was that he told her that if she did he would cut her with the knife. She was scared and did not run.
36. In relation to her contact with the uncle, Julie said in cross-examination that she had had a discussion with him about where she came from. She also said that she told the uncle that she was afraid of Mr Sam. When pressed she was adamant about this. She also said she was crying while she was in the house.
37. In relation to the second occasion of sexual intercourse, she rejected all of the suggestions made by Ms Kalwatman that she had consented, indeed assisted with the process. She was adamant that she tried to push him off but he was too heavy. She repeated that she was crying at that time.

38. In answer to a question from me Julie said that she did not tell her parents immediately about what happened because she wanted to tell her father and he was at Lenakel. However she did tell them within a week or so.
39. Mr Boe next called the uncle Napoleon Falah. Mr Boe had said in opening his case that the uncle would confirm that complaints had been made by Julie to him. He did not do so. He described his nephew Mr Sam and Julie as having talked for a while in his room where he was in bed. They were only there briefly but he said he had no discussion with Julie, only with his nephew. He was adamant that Julie did not tell him she was frightened or scared of Mr Sam. She said nothing at all. He said that she was not crying and that her clothes were dirty, as in not having been recently washed. He saw no indication of her having been forced to come to the house or of being scared or wanting to leave. He said she was not crying and that she was sitting down on the floor only about 2 meters away from him.
40. Mr Falah said that Mr Sam did not talk harshly to her or make any threats to her but agreed he did force her to be in the photograph; she did then stand up to be in it.
41. Mr Boe then called WH, who confirmed that Julie had told him that a boy had held her, taken her into the bush and had sex with her. He said he was not angry with her but felt sorry for her. She was crying when she disclosed this. As a result of their discussion he took her to the police station and a complaint was made on 14 April.
42. In cross examination WH accepted that while he believed what his daughter was saying he would not know if she was lying because he had not personally witnessed the incidents. She clearly told him that she had not agreed to have sex with the boy, that he threatened her with a knife and that there were two occasions.
43. Mr Boe then called the Police officer Julienne Ben, who spoke to Mr Sam. Other than agreeing that he had met Julie on her own he elected to exercise his

right not to say anything until he came to Court. She also took Julie's statement and confirmed that she had told her that she had had sex with him twice without her consent, that he was holding a knife and threatened that if she did not do what he said he would cut her with the knife. She said that she was not crying during the time she gave her statement.

44. Finally Mr Boe called the "doctor" Ruben Nambon. He examined Julie on 14 April but he found no abnormalities or indications which would assist on the question of whether the sexual intercourse was consensual or not. He thought that perhaps if he had examined Julie on the day of the incidents he might have found some evidence to assist on that key question but there were no indications so long after the event.
45. Mr Sam gave evidence and I have already outlined his account. He was adamant, and unshaken in cross-examination, that on both occasions sexual intercourse occurred with Julie's consent and that no threats were made to cut her with a knife or otherwise at any time during the one hour or so that they were together. He denied dragging her by the hand or pushing her to the ground and he said that she removed her own lower clothes. He also said that he did not force or threaten her to take the photos, she had agreed.
46. Mr Sam said the incident had occurred in February because it was during school time (I observe that this does not seem to prove which month it was since school would be open in March as well).
47. Mr Sam said he was returning from working in the garden on the morning of 18 March and he agreed he was holding his bush knife, a typical Vanuatu bush knife. He says that he asked Julie where she was going and that she answered to Tafea College. He asked her where she came from and she said Green Hill, North Tanna.
48. Julie had been walking in the opposite direction to Mr Sam. He asked her why she was going to Tafea College and her answer was to see her mother. He did

not think she was a student because she was wearing dirty clothes rather than a uniform. She did not say anything to him about being a student.

49. Mr Sam says that he asked Julie to follow him to get the mobile phone and that she agreed. The result was that they went back in the directions from which he had come. Mr Sam denied that he was holding her hand. He said that they left the road and followed a small path through the bushes and came to a banyan tree where he told her he wanted to have sex with her and she responded by standing up. She removed her lower clothing and agreed to sex. He made no threat.
50. He said she had sat down and opened her legs and when he lay on top of her she helped him place his penis inside her vagina. No force or threat was used. Julie did not cry or struggle. He said Julie had been lying when she said she did not want to have sex.
51. They then went to his uncle Napoleon's place and she was not afraid to do so. He walked in front and she was behind. When they reached the house he asked her to sit down outside and he would go inside and get the phone. She did so and no threat was made. When he came out he told her to come inside and she did that without fear or reluctance. The effort to have a photograph taken was a unsuccessful because the camera's battery was flat. However the photograph was taken on the phone outside. She agreed to this. That was taken in the form of a "*selfie*" by Mr Sam himself of the two of them.
52. I asked Mr Sam whether he still had that photograph but he said the memory card from his uncle's phone had been lost.
53. Following that he said they talked together as they walked towards the road again, although on a different path. He says he asked her if they could have sex again. She again said yes and took off her clothes and lay down. There was consensual sex with no threat made. She did not cry or struggle. His knife was laid on the ground beside them when they had sex. After that he says that she took one path to the main road and he took another but they ended up meeting again on the main road. He says he asked her if he could take her home and that

she agreed to this. After a while on the road towards Tafea College she asked him to wait and she would go back to get her basket. She left and never came back. He waited almost an hour for her to return but gave up. He said they made no plan to meet again. He went home.

54. In cross-examination Mr Sam was unshaken on the key points of his evidence.
55. In answer to a question from me Mr Sam said that the amount of time between their meeting on the road for the first time and the first occasion of sexual intercourse was only one minute or so. He said the only things they discussed before that were Julie's name, where she came from and where she was going. He denied telling her that his uncle had died or that there was a surprise when he sat up and was very much alive. He said that he wanted to take a photograph of Julie "for a memory".

Submissions

56. In Mr Boe's written submissions he said there was clear evidence from Julie which justified guilty verdicts on the four remaining counts. His submissions consisted of a recital of the evidence given by each of the prosecution witnesses. As to his summary of Napoleon Falah's evidence, I do not consider this was accurate. Mr Boe said that Mr Falah admitted that he had spoken with the complainant and that there was no response from her. As I heard his evidence, he did not speak to her at all, only with his nephew. Mr Boe also said that Mr Falah confirmed that there seemed to be force and threatening by the accused. That is only correct in relation to the taking of the photograph rather than directly reflecting on her condition and state of mind following the first occasion of sexual intercourse.
57. Ms Kalwatman submitted there was no corroborative evidence and that because this was a sexual case as to counts two and five and because Julie is also a child, I would need to act with additional caution before convicting Mr Sam.

58. Ms Kalwatman understandably highlighted the evidence of Napoleon Falah on the issues of crying, the photograph and Julie not being scared. Again in one respect it seems to me that Ms Kalwatman's statement that the uncle gave no evidence about a threat being made by Mr Sam in relation to the photo is not correct. My note of his evidence during cross-examination from Mr Boe was that he agreed that Mr Sam had forced Julie to be in the photograph though he did temper that in answer to a question from me as to whether she was happy to be in the photograph or not by saying that he did not know but she did stand up for the photograph.
59. Ms Kalwatman submitted that the uncle's evidence undermined Julie's credibility and his account of an important part of the sequence of events could not be rejected.
60. Ms Kalwatman also pointed out that Julie had not run away from the house when she had the opportunity. She added that Julie was confused and uncertain about the year she finished school and that she had given improbable evidence about Mr Sam holding the knife, holding her down, holding her arm and removing her clothes all at the same time while she was struggling. Ms Kalwatman submitted that while they walked along Mr Sam walked in front and that she followed behind rather than being forced. She also pointed out that Julie had agreed that after the second incident that Mr Sam have offered to walk her back to her mother's house, an offer which would surely not have been made by a double rapist.
61. Ms Kalwatman pointed to the three to four-week delay in complaint for which no good explanation was given.
62. Overall Ms Kalwatman submitted this was an "*oath on oath*" case where there was no basis for accepting Julie's evidence and rejecting that of Mr Sam. In these circumstances, the prosecution had not tipped the scales in the significant way required by the beyond reasonable doubt standard.
63. Ms Kalwatman submitted that verdicts of not guilty must be returned on all four remaining counts.

Discussion and Decision

64. I begin with the two threatening to kill charges. Even if I entirely accepted Julie's evidence and entirely rejected that of Mr Sam, I would still have to find these two charges have not been proved. That is simply because, on the evidence as it was translated to me, the threats made by Mr Sam were to *cut* Julie with his knife. That, if accepted, could amount to no more than proof of a threat to cause bodily harm to her. There was no evidence that she was threatened with cutting to the extent that she would die. At best from the prosecution viewpoint "cutting" is still ambiguous; it might mean fatally cutting or it may fall short of having that outcome. There was no clear evidence of a threat to kill, which is of course fundamental to proving the threatening to kill charges.
65. I therefore find Mr Sam not guilty on counts one and four.
66. As I have outlined earlier in this judgment, the correct approach where a defendant has given evidence and provided an alternative account of events is first to consider whether or not that account might reasonably be true. If so, he must be acquitted. Mr Sam may only be convicted if I am sure I can reject his account.
67. There are a number of reasons why that conclusion might be justified:
- a) The most compelling reason for rejecting Mr Sam's account and accepting that of Julie is the high improbability of a 15-year old girl, a stranger to him, meeting him on the road and consenting to have sex with him *within about one or two minutes* of their meeting. That is his own evidence. It is not unheard of or impossible, but close.
 - b) Julie has given consistent accounts of being raped and threatened to her father and to the police officer. While those other witnesses cannot prove the truth of her account they can and do through their evidence of consistency, support its credibility.

- c) There is no doubt that Mr Sam had his bush knife with him throughout. So the evidence she gave that he threatened to use it unless she did what he wished is at least supported in the sense that there is no dispute about his having the ready means to enforce such a threat.
 - d) Why would she lie? It is difficult to believe that a young girl such as Julie living a remote part of Tanna would bother to make this complaint and then pursue it all the way to a trial if all that happened was consensual. There is no reason to believe that she has any other motive to make this up.
 - e) There is corroboration of what Julie said happened in many respects. Mr Sam agrees in his evidence about the way they met, about there being two occasions of sexual intercourse and about the visit to the uncle's house in general terms. While of course he disputes the offending, her account of the context in which it occurred is corroborated by his own evidence.
 - f) Mr Sam also accepts that Julie made an excuse of going back to get her basket and then did not return which is consistent with her having undergone an unpleasant experience with him from which she wished to escape.
 - g) The details given by Julie about the "dead uncle" are so odd as to seem most unlikely to have been fabricated.
 - h) Although there was certainly a delay in complaint to the police Julie says she told both her parents on the first occasion when she had both of them together. In any event one must be cautious about attributing significance to a delay in complaint. Experience shows there are often good reasons for a delay in complaining other than fabrication.
 - i) Julie was unshaken in cross-examination on the key points of her evidence despite being strongly cross-examined by Ms Kalwatman. Although she preferred to give her evidence in whispers to the interpreter, she was clear in her answers.
68. On the other hand, the following are reasons why Mr Sam's account might be true and why Julie's account might be rejected:
- a) The evidence of Napoleon Falah. He is the only witness who saw interaction between the two on the morning and he saw them between the

two incidents of sexual intercourse. Although the significance of his evidence ought not to be exaggerated because he was not present during the incidents, he does dispute important aspects of Julie's evidence. He denied that she was crying and implied that he would have seen it if she were, given how close she was to him. He also denied that she spoke to him at all let alone told him that she was scared of Mr Sam as she was adamant she had. He was expected by the prosecution to confirm that there had been threats made in his presence but he did not do so. The only way in which he assisted the prosecution was when he said that Mr Sam had forced her to be in the photograph. Although he is the uncle of the defendant, which gives rise to some suspicion about his independence, his evidence was clear and there is no particular reason why it should not be accepted.

- b) While one can understand why she may have been reluctant to do so, she did have the opportunity to seek refuge from Mr Sam with the uncle's help, but she did not attempt to do this, at least according to both Mr Sam and the uncle.
- c) There was an opportunity for Julie to run away when Mr Sam was inside the house and she was outside. One might expect a recent rape victim to take any such opportunity. While she provides an explanation for not doing so, she found herself able to make an excuse to escape later on despite being in his presence.
- d) Because of the delay in complaint there is no medical evidence to support Julie's version of events, though even complaining immediately might not have resulted in medical evidence being available which would have assisted on the issue of consent. Julie's statement about scratches on her legs might have been supported by such medical evidence had the examination occurred more promptly.
- e) There were some aspects of confusion about dates and the year in which Julie finished school although this was not to an extent that would significantly weigh in the assessment of her credibility.
- f) There is undisputed evidence that after the second incident of sexual intercourse Mr Sam offered to walk Julie back to see her mother. I accept

Ms Kalwatman's point that that is not the kind of offer one would expect to be made by a double rapist.

- g) The taking of the selfie photograph is rather odd but it seems inconsistent with the rape allegations. If Mr Sam had raped Julie shortly before, then he was creating a digital record of their being together which would assist in his detection (she did not know him) in the event of a complaint.
- h) Mr Sam was equally consistent in his denials and unshaken in cross-examination.

69. When I weigh all these matters up, I think it is far more likely that Julie was telling the truth than that Mr Sam was. Comfortably preferring a complainant's account over that of a defendant and finding it very likely to be true is however not sufficient in a criminal case. I do not find myself in a position where I can safely reject what Mr Sam says. There are indications, notably from his uncle who despite his relationship with Mr Sam is otherwise an independent witness, which support his account. His undisputed offer to take Julie back to see her mother is a point which weighs with me in support of the conclusion that there is a reasonable doubt as to whether the two occasions of sexual intercourse were consensual.

70. Because I am not *sure* that Julie's account is true, because I am not *sure* that I can safely reject Mr Sam's account, I am obliged to, and do, find Mr Sam not guilty on both counts of sexual intercourse without consent.

71. I request that the police officer in charge of the case explain carefully to Julie that in reaching this conclusion I have not rejected her account, indeed I have concluded it is very likely to be true. However the law requires proof beyond reasonable doubt which means I can only convict Mr Sam if I am sure of his guilt. There is sufficient within the evidence here to leave me with such a doubt.

72. Having been found not guilty, Mr Sam is discharged on each of the four remaining counts.

BY THE COURT