

PUBLIC PROSECUTOR

- v -

AMOS TELUKLUK

Coram: V. Lunabek -Chief Justice

Counsel: Mr Lenry Young for Public Prosecutor
Ms Lynda Bakokoto for Defendant

Dates of Trial: 28-29 August 2017

Date of Verdict: 13 September 2017

REASONS FOR VERDICT

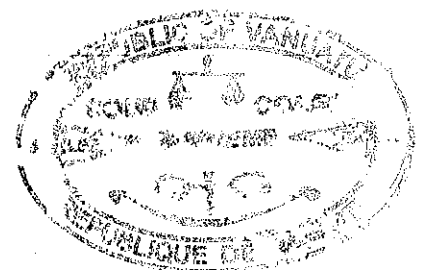
1. Accused Amos Telukluk is charged with (2) counts of sexual intercourse without consent, contrary to s.89A, 90 and 91 of Penal ("the Act") and one count of indecency without consent, contrary to s.98 (a) of the Penal Code Act.
2. The particulars of the offences charged against Amos Telukluk are these:

Count 1:

Accused Amos Telukluk, sometime on 11 February 2016 at night in the house at Norsup, Malekula, you had sexual intercourse with the complainant when you digitally penetrated the complainant's vagina with one of your fingers when you pushed your finger inside her trousers and directly inside her vagina, without her consent.

Count 2:

Accused Amos Telukluk, sometime on 12 February 2016, at night in the house at Norsup, Malekula, you had sexual intercourse with the complainant when you digitally penetrated the complainant's vagina with one of your fingers, when you pushed your finger inside her trousers and directly inside her vagina, without her consent.



Count 3

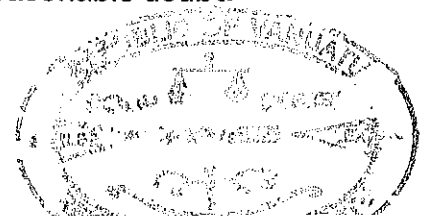
Accused Amos Telukluk, sometime on 13 February 2016 in the late afternoon, in the house at Norsup, Malekula, you indecently touched the vagina of the complainant through her cloth, without her consent.

3. On 28 August 2017, you entered not guilty pleas in respect to each count as charged against you. A trial was required.
4. Before the prosecution began its case, the court read and explained the rights you have pursuant to s.81 of the Criminal Procedure Code (CPC) Act [Cap 136]. You accepted you have understood them.
5. The trial was conducted for 2 days from 28-29 August 2017.
6. This is a criminal trial. The law is for the prosecution who lays the charges against the accused to prove them on the standard of beyond reasonable doubt. Section 8 of the Penal Code defines generally the onus of proof in the following way:

"(1) No person shall be convicted of any criminal offence unless the prosecution shall prove his guilt according to the law beyond reasonable doubt by means of evidence properly admitted; the determination of proof of guilt beyond reasonable doubt shall exclude consideration of any possibility which is merely fanciful or frivolous.

(2) In determining whether a person has committed a criminal offence, the court shall consider the particular circumstances of the case and shall not be legally bound to infer that he intended or foresaw the natural or probable consequences of his actions.

(3) If the prosecution has not so proved the guilt of the accused, he shall be deemed to be innocent of the charge and shall be acquitted forthwith"
7. To secure the accused's convictions, the prosecution must prove each and all essential elements of one or all of the offences in Counts 1, 2 and 3 as charged against the accused on the standard of beyond reasonable doubt.



8. The prosecution has to prove on the above standard the following elements of the offences:

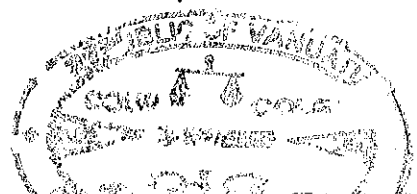
In counts 1 and 2

1. That accused Amos Telukluk had sexual intercourse with the complainant by way of digital penetration of her vagina at Norsup, Malekula on 11 and 12 February 2016.
2. That the complainant did not consent to the said digital penetration with the accused on 11 and 12 February 2016.
3. That accused Telukluk had no reasonable belief or knowledge that the complainant had consented to sexual digital penetrations on 11 and 12 February 2016.

In Count 3

1. The accused Telukluk committed the acts of indecency by touching the complainant's vagina over her clothes on 13 February 2016 in the house at Norsup, Malekula.
2. That these facts of indecency were committed by Accused Telukluk on the complainant without the complainant's consent.

9. The thrust of the prosecution case is this: At the material times of the offending, that is, 11, 12 and 13 February 2016, the complainant lived together with the accused Telukluk and her mother. Accused Telukluk rented a house at Norsup, Malekula. They all lived in that house.
10. On 11 February 2016, at night time, the complainant was laying down on a bed in the sitting room of that house. Accused Telukluk went away drinking kava and then returned to the house he lived together with the complainant and her mother. He sat down on the bed the complainant was laying down on it. Accused Telukluk pushed his finger inside the complainant's trousers and pushed his finger inside the vagina of the complainant. She felt pain at the



time of digital penetration of her vagina. She did not consent to that digital penetration of her body. The bed was in the sitting room of the house. The complainant is related to the accused she called him her step father as her mother lived together with the accused as husband and wife.

11. On 12 February 2016, the accused went drinking kava and on his return, went back to the same bed in the sitting room. The complainant was sleeping there on the bed. The accused did the same thing on the body of the complainant. He digitally penetrated the complainant by pushing his finger inside her vagina. The complainant did not consent to that digital penetration of her body. At that time, the mother of the complainant was inside the main bed room of that house.
12. The next day, 13 February 2016, somewhere in the late afternoon, the mother of the complainant was still at work. The complainant was in the same house at Norsup, Malekula. The complainant was folding clothes in the main bed room of the accused and her mother. Accused Telukluk came inside the room. He asked the complainant what she was doing. The complainant responded that she had folded the clothes. The accused sat close to the complainant, touched the complainant's vagina with her cloth. He wanted to kiss the complainant. She cried. The accused told her to stop crying. He did no longer kiss her. He took 200 vatu note and gave it to the complainant. The complainant refused to take that 200 vatu note.

The Prosecution evidence

13. The prosecution called two (2) witnesses. The first prosecution witnesses is the complainant. She gave evidence to the following effect. The complainant gave her name – she is from Norsup, Malekula. She is catholic. She attended Norsup School at year 10. In 2017, she slept at Tautu Village. Her mother is Marie Malapa. Her biological father is Guy Tu Malapa. In 2016, she slept at Norsup with her mother and her step father Amos. She did not know of her step father's surname. They were living and sleeping in the rented house. Her step father Amos rented the house. She lived in that house with her mother and step father Amos.



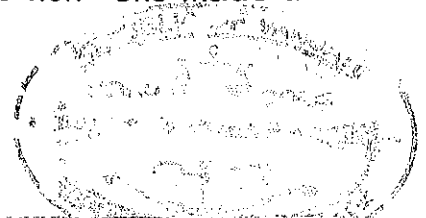
14. On 11 February 2016, she was laying on bed in the sitting room. Her step father Amos came in after drinking kava. It was night time. He came and sat down on the bed she was laying on. He then pushed his finger into her trousers and inside her vagina. When she was laying on that bed in the sitting room, she was laying on her belly. When he pushed his finger inside her vagina, she turned on her right side. He pushed his finger, through her trousers, into her vagina. She felt pain and she turned herself on her right side. He pushed only one finger inside her vagina. When she turned herself, she saw her step father Amos sitting on the table and ate food. Before he sat on the table, she saw him sitting on the bed near her. She wore a Nylon trousers that night. Her step father Amos did not say anything at that time. She did not say anything either. She recalled it was in the night but she could not recall about the time. Her mother was taking her bath in the bathroom. Before the incident, she sat on the bed in the sitting room alone. No one else was there with her. She did not know or hear that her step father came inside the sitting room. No person or man came in at that time. He pushed his finger through her trousers and his finger went into her vagina. She thought what her step father did to her was not right. She called him daddy Amos. He looked after her and took care of her.

15. On 12 February 2016, she was sleeping on her bed in the sitting room. It was about 9.30pm o'clock. Her mother was with her in the house. Her mother was laying down on the bed in the main room where her step father Amos and her mother slept. When she was sleeping, her step father came in and pushed his finger again inside her vagina. He pushed it only one time. She felt pain and she turned herself on her left side. She saw her step father only who sat there. She knew it was her step father who pushed his finger inside her vagina because at the time, there were just the two of them in the sitting room. The mother was in the main room. Her step father did not say anything. He pushed only one finger inside her body' She was wearing a Nylon trousers. He pushed his finger through her nylon trousers and her finger went inside her vagina. She felt painful and turned herself. She felt pain because a finger was inserted into her vagina. Before she slept, her step father Amos went drinking kava at Norsup nakamal. He did not say anything to her. She did not say anything to him. She thought the action of her step father on her was not right. She explained that he looked after her when her mother run away from



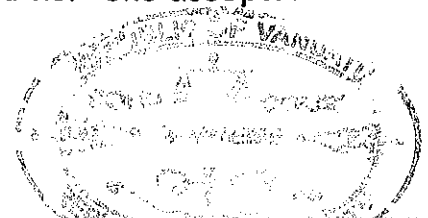
her daddy, Guy Tu. She further said he took care of her. She called him step daddy. She never thought that he would do anything of this kind to her.

16. On 13 February 2016, sometime in the afternoon, her mother was still working, she was in the main room of her step father and her mother. She had folded the clothes in that main room. This was still in the same house at Norsup. She was alone in the house. Then her step father Amos came inside the room when she folded the clothes. He asked her what she was doing. She replied she was folding the clothes. He touched her vagina with her clothes. He touched her vagina when her clothes were on. He did not push his finger inside her vagina. He moved closer to her and wanted to kiss her. He put his hands on her, moved closer to her and tried to kiss her. The complainant cried.
17. When she cried he pushed his hands into the pocket of his trousers and pulled out an amount of 200 vatu note and tried to give it to her. She refused that 200 vatu note. She did not want it. When she was crying he told her to stop crying otherwise the neighbour will hear her. He told her to stop crying. He would not kiss her. He run away. She cried because she did not like what her step father did to her. She did not like that her step father touched her vagina and wanted to kiss her.
18. The incident happened about 6.00pm in the evening. Her mother was still at work. She works in a store at Tautu Village.
19. She told what her step father did to her mother on 26 February 2016. She said she told her mother about everything her step father did to her on 11, 12 and 13 February 2016. She said she told her mother on 26 February 2016 when they both went to the house at Norsup to remove all their clothes from the house her step father rented at Norsup. They went and removed their clothes from the house at Norsup because her step father Amos chased her mother out of that house. Before she told her mother of what her step father did to her, she cried to her and she told her of what her step father did to her. They went to get their clothes out of that house because her step father Amos chased her mother from that house. It was at that time that she cried to her mother and told her of everything her step father did to her. She made a



complainant to the police. Currently, she lives with her mother at small Tautu village after the incidents. She went to lodge a complaint against her step father because she was not happy with what her step father did to her.

20. The complainant was cross-examined. She confirmed her evidence in chief that on 11 February 2016, 12 February 2016, the defendant digitally penetrated her vagina in the sitting room when she laid down on her bed. She confirmed she felt pain when her step father digitally penetrated her vagina with his finger. She did not call out or cried out. She was asked and she said what her step father did to her was not right. She accepted that she did not mention to her mother straight away after the incidents of 11 February 2016 and the incident of 12 February 2016 occurring.
21. It was suggested that if she called out her mother would have heard her and assisted her. She accepted. She was asked and she accepted that her mother was not far away from her on 11 February 2016 and 12 February 2016. She did not call her mother for help. On 13 February 2016, she did not call her mother for help. She was asked and she confirmed her evidence that she told her mother of what the Defendant did to her on 26 February 2016. She accepted it was more than a week after the first, second incidents of digital sex occurring and the incident of indecent acts without consent. She confirmed her evidence that she told her mother of what her step father did to her on 26 February 2016 when they both went to the house at Norsup to remove their clothes from the house. It was put to her that these incidents had never happened. She responded "si".
22. It was put to her she made up the story. She denied and confirmed her evidence that these incidents happened. It was put to her that she felt bad because her mother removed their clothes from the house of her step father. She agreed. She confirmed her evidence that she cried to her mother when she told her of what her step father did to her. She confirmed that the incidents she told her mother about happened. She denied she made up the story.
23. It was put to her that she lied. She denied she lied. It was put to her and she denied that it was because she felt bad because her mother and her step father separated that she made up the stories. She said no. She accepted



that when her step father chased her mother from the house, her mother went and lived at Tautu Village. She accepted it was before 26 February 2016. She confirmed at the times of the incidents, she lived at Norsup house with her mother and her step father Amos. It was put to her that she and her mother went to remove the clothes before the time of the incidents. She denied and said no. She accepted that when she and her mother went to the house to remove the clothes, another woman lived in the house with her step father. It was put to her that the woman came and lived with her step father Amos before 26 February 2016. She accepted that and said yes. It was suggested she came and lived with her step father before 11, 12 and 13 February 2016. She denied and said no. It was put to her that the woman who now lives with her step father Amos, moved in the house after she and her mother moved out of the house at Norsup. She answered yes. It was put to her again, the woman moved in the house at Norsup. She answered yes. It was put to her again, the woman moved in the house at Norsup before 11, 12 and 13 February 2016. She answered no.

24. The following last question was asked:

“ Q. So lo taem we ol dates we you talemaot fashion we daddy Amos ibin make lo you inever been happen from se lo taem ia youfala imove out finis”.

A. Yes”

25. The complainant was re-examined. She confirmed that the first incident happened on 11 February 2016; the second incident happened on 12 February 2016 and the third incident happened on 13 February 2016. She confirmed she told what her step father did to her on 26 February 2016. She confirmed these incidents happened to her at the house at Norsup when she slept with her mother and her step father Amos.

26. She explained she told her mother of what her step father did to her because they were not right. She confirmed she and her mother moved out from the house at Norsup in the night of the same month of February 2016. She could not recall about the exact date. She confirmed she cried to her mother because of what he step father Amos did to her, were not right.

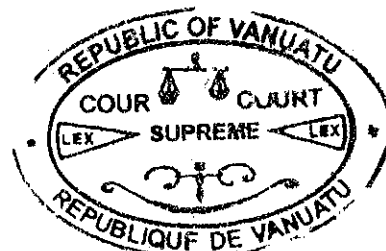


27. The second prosecution witness is Marie Malapa. She is the mother of the complainant. She is from Tautu village. She works at a shop as the shop keeper. She testified to the following effect. Toward the end of February 2016, she lived at Tautu village with her three children (Cires Malapa, Silo Malapa and the complainant). Before she moved to Tautu village, she lived at Norsup with Defendant Amos Telukluk. She lived at Norsup with Defendant Amos Telukluk and the complainant. She had a good relationship with Defendant Amos Telukluk for 10 years. After 2016, he was involved with a different woman. Disputes began between each other. Defendant Amos Telukluk told her to leave the house he rented at Norsup. She moved out and then he came and took her again. In the first time when he sent her out of the house at Norsup, she was the only one leaving the house. The complainant stayed in the house at Norsup with the defendant. Before 26 February 2016, she and Defendant Amos Telukluk had a dispute. He sent her away from the house. She returned to live at Tautu village. She testified that when she and her daughter (complainant) decided to go and remove their belongings, the complainant told her the following:

"Mama youtufala istap raorao be mi wantem talemaot se daddy Amos itraem blo makem wan rubbish fasin lo mi. Hemi makem 3 times. No.3 time mi cry after hemi takem 200 Vatu note mo givim lo mi blo mi stop cry sipos no ol family naraside bae oli hearem."

28. She testified that when the complainant told her of what Defendant Amos did to her, she told her daughter (complainant) to go back with her and remove all their clothes at the house at Norsup.

29. She said they went and removed their clothes the next day after the complainant told her of what her step father Amos did to her. When they went and removed their clothes at the house at Norsup, Amos Telukluk was there. At the time, she said she told Amos of what the complainant (her daughter) said he did to her on these different dates. She said Amos tried to explain himself. She told Amos it was alright, they must move out from the house. Defendant Amos Telukluk said the complainant lied to her. Then they reported the matter to the police at Lakatoro.



30. Marie Malapa was cross-examined. She confirmed that the complainant told her of what Defendant Amos did to her on 26 February 2016. She was asked at the time she and Amos already separated she answered not yet. It was explained to her that she was living at Tautu village when she decided to remove their clothes from the house at Norsup. She accepted that on 26 February 2016, she and defendant Amos were already separated. She said they had a dispute and he sent her away from the house and on 26 February 2016 she decided to remove their clothes from the house. She confirmed that it was on 26 February 2016 that the complainant told her of what her step father Amos Telukluk did to her. She confirmed her evidence in chief of the dates of incidents being 11 February 2016; 12 February 2016 where the defendant digitally penetrated the vagina of the complainant with his finger when the complainant was at home. She confirmed also that on the third occasion on 13 February 2016, the complainant told her that Defendant but the complainant refused that 200 vatu note. She said there was a neighbour house near the house rented by Defendant Amos Telukluk She said the defendant runaway from the house. She said there was 1 house close to the house rented by Defendant Amos Telukluk. She maintained there was a house near the house rented by the Defendant. If the complainant said that there was no house close to that house rented by the defendant, it was not true. She confirmed when she was asked that she knew that a woman lived with Defendant Amos Telukluk in the house at Norsup. That woman moved in the house with Defendant Amos Telukluk after they moved out from the house. She was asked she confirmed that a woman moved in the house with defendant Amos Telukluk sometime in the month of February 2016. She confirmed they lodged a complainant to the police not on 26 February 2016 but on 11 march 2016. She accepted they did not lodge the complaint on the 26 February 2016. She was challenged and she responded some days had passed and they came to the police station and lodged a complaint. She explained they needed to go to the hospital and the school. She accepted they took some time to lodge the complaint to the police she was re-examined. She was asked:

“Q. Why you putum 1report lo police

A. Mi putum 1 report from se mi no glad lo fashion we istap.

Q. Fashion?

A. mi no glad lo wanem we Amos imakem lo mi mo smol girl.



Q. Wanem hemi makem lo smol girl?

A. Hemi abusum hem. Olsem hemi traem blo makem 1 fashion we ino stret lo smol girl makem se mi no glad."

31. She said after 26 February 2016, she took time to lodge the complainant because the complainant attended school and she needed to inform her teacher about the situation. She said there was one big house which was near the house they lived in at Norsup.

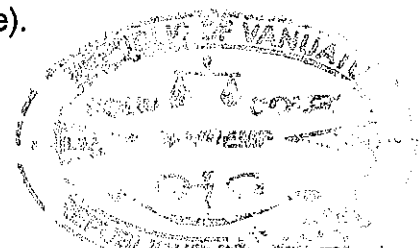
32. That is the end of the prosecution evidence and the end of the prosecution case. At the end of the prosecution case, the Court ruled that there was a prima facie case made out against Defendant Amos Telukluk. He was required to put forward his defence pursuant to s.164 (1) of the CPC [Cap 136]. Before the defence case started, the Court read and explained to the accused Amos Telukluk of his rights under s.88 of the CPC [Cap 136]. The Defendant understood those rights.

The Defence Case

33. Defendant Amos Telukluk pleaded not guilty to the two counts of sexual intercourse without consent, contrary to ss.89A, 90 and 91 of Penal Code Act [Cap 135] (Counts 1 and 2). He also pleaded not guilty to one count of indecency without consent, contrary to s.98 (a) of Penal Code Act (count3). In this case, Defendant Amos Telukluk exercised his rights to remain silent pursuant to s.88 of the CPC [Cap 136]. He also decided that he will not call any other witness to his defence. That is the end of the defence case.

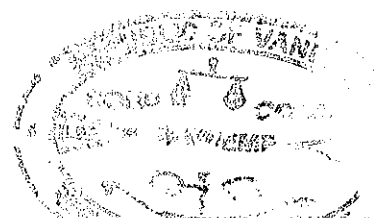
Discussion on evidence

34. In this case, the Defendant exercised his rights to remain silent and not to give evidence. I note that it is his right and he should not be criticized of doing so. I note that this case will be judged in some respect on circumstantial evidence. So when adverse inferences, are to be drawn, the court is entitled to draw inferences from proven facts that are consistent with the guilt of the accused person. Peter Harold Swanson –v- Public Prosecutor [1998] is the authority to be relied upon on this point (if need be).

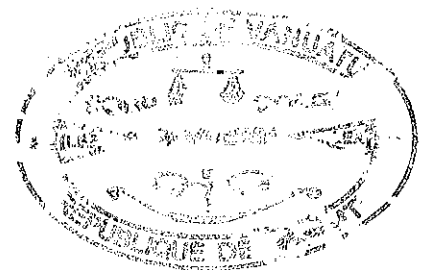


35. In this case, I listen to the witnesses. I consider their demeanour in the witness box, I make the following findings on behalf of the Court:

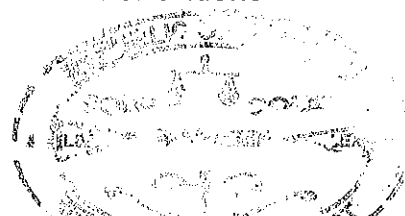
- On the totality of evidence presented coupled with the oral testimonies of the two witnesses, it is a fact that on 11 February 2016, 12 February 2016 and 13 February 2016, Defendant Amos Telukluk lived with Marie Malapa as husband and wife in the house Defendant Telukluk rented at Norsup.
- At these material dates (11, 12 and 13 February 2016) Defendant Telukluk lived in that rented house with Marie Malapa and the complainant at Norsup.
- There were occasional couple disputes between Defendant Amos Telukluk and the mother of the complainant (Marie Malapa).
- On one instance, Defendant Telukluk sent Marie out of the house. At the time Defendant Telukluk lived alone with the complainant. Defendant Telukluk took care of the complainant. The complainant called her step daddy Amos.
- Defendant Telukluk, then, took Marie Malapa back into his house at Norsup and they lived again as a family.
- Sometime between 13 February 2016 and 26 February 2016, Defendant Amos Telukluk had a dispute with Marie Malapa (couple dispute). Defendant Amos Telukluk told Marie Malapa to get out from his house at Norsup.
- Marie Malapa moved out from the Defendant's house at Norsup and lived at small Tautu with her daughter (the complainant).
- It is a fact that between 13 February 2016 and 26 February 2016, a woman come and lived in the defendant's house at Norsup with the Defendant.
- On 26 February 2016, Marie Malapa and the complainant decided to go and removed their clothes from the Defendant's house at Norsup.



- It was at that time that the complainant told her mother (Marie Malapa) of what her step father Amos Telukluk did to her on 11 February 2016, in the sitting room while her mother (Marie Malapa) took her bath outside; 12 February in the sitting room while the complainant's mother was in the main room of the house; and 13 February 2016 in the main bedroom in the house while the mother of the complainant was still working as a shop keeper.
- The next day, that is, 27 February 2016, Marie Malapa and her daughter (the complainant) went and removed their belongings at the Defendant's house at Norsup.
- On 27 February 2016, Marie Malapa told Defendant Amos Telukluk of what the complainant alleged he did to her on 11, 12 and 13 February 2016.
- Defendant Amos Telukluk tried to explain himself and told Marie Malapa that "smol girl ikiaman".
- Marie Malapa and her daughter (complainant) removed their belongings to the defendant's house at Norsup on 27 February 2016.
- Marie Malapa testified that the complainant informed her that on 13 February 2016, the Defendant touched the complainant's vagina and tried to kiss her. The complainant cried and the Defendant gave her a note of 200 vatu to stop her from crying and to avoid others hearing her crying. The defendant ran away from the house.
- It is a fact that on February 2016, the complainant was 13 years of age. On 11 February 2016, she was laying on the bed in the sitting room. She was laying on her belly. She did not see the Defendant Telukluk when he came inside the sitting room. Defendant Amos Telukluk sat on the bed beside the complainant. He digitally penetrated the complainant's vagina by pushing one of his finger into her nylon trousers and pushed his finger inside her vagina. She felt pain. She turned herself on her right side. She did not call out; she did shout; she did not called her mother. Her mother was having her bath outside. She did not tell her mother until the 26 February 2016.



- It is also a fact that on the next day, 12 February 2016, the complainant was sleeping on the bed in the sitting room of the house at Norsup. Defendant Amos Telukluk came in the sitting room and sat beside her. It was in the night after he drunk kava. The Defendant pushed a finger inside the complainant's vagina. The complainant felt pain and she turned herself to her left side. She saw the Defendant alone there in the sitting room with her. The Defendant sat on the table and ate his food. After the incident she did not call out, shout, or mention to her mother of what the defendant did to her. The mother of the complainant (Marie Malapa) was in the main room of the house. She was sleeping there
- On the following day, that is, 13 February 2016, it is a fact that the complainant was in the house at Norsup. It was late in the afternoon. She was folding the clothes in the main room of the Defendant and her mother.
- The defendant entered the main room which was his bed room with the complainant's mother. He saw the complainant in their bed room. He asked what she was doing. She replied she folded the clothes. The Defendant indecently touched the complainant's vagina through her clothing. The Defendant moved closer to her. He put his hands on her and wanted to kiss her.
- It was a fact the complainant cried. She did not shout she did not cry out loudly but she cried.
- The defendant gave her 200 vatu note to persuade her to stop crying otherwise the neighbour will hear her crying. She refused the 200 vatu note.
- The defendant run away.
- The first incident of 11 February 2016, the second incident of 12 February 2016 and the third incident on 13 February 2016, occurred successively. (one after the other) on the same week of the month of February 2016.
- It is a fact that 15 days from the 11 February 2016, 14 days from 12 February 2016 and 13 days from 13 February 2016, the complainant told her mother of what the defendant did to her as testified in her evidence.



- I found the complainant is a creditworthy witness. I sense there may be one or two inconsistencies in her evidence as opposed to her mother (Marie Malapa). For example in respect to the house or neighbour living near the house they lived in at Norsup, those inconsistencies are of minor types and do not go to the substantial essential element of the offences charged against the Defendant. They may be relevant for the credit assessment but in this case, apart from this example, I find the complainant's evidence as truthful in all the essential elements of the offences charged in this case in counts 1, 2 and 3.
- I also find and accept the evidence of Marie Malapa as truthful.
- I find 13, 14 or 15 days constitute a short period after the alleged incidents occurring on 11, 12 and 13 February 2016 when the complainant made the statement to her mother on 26 February 2016 that the Defendant had digital sex with her and indecently touched her vagina respectively on these dates.
- I find the statement made by the complainant to her mother on 26 February 2016 was unassisted and unvarnished statement of what happened to her on 11 February 2016, 12 February 2016 and 13 February 2016.
- I accept that the complaint was made to her mother shortly after the alleged occurrences and they are consistent with the conduct of the complainant with the story told by her in her oral testimony.
- It is finally accepted that the dominant part of the facts (evidence) coupled with the rational or motive to lodge the complaint against Defendant Amos Telukluk was because of what he did to the complainant on 11, 12 and 13 February 2016 were not right (evidence of the complainant) and the defendant abused the complainant (evidence of the mother Marie Malapa). I reject the defence submissions to the contrary as based on hypothetical questions or theory without material facts.

36. I now apply the law to the facts as found by the Court.

Application of law to facts



37. Sections 89A and 90 of the Penal Code Act are the relevant provisions . of the law. They provide as follows:

“89 A SEXUAL INTERCOURSE

For the purposes of this Act, Sexual intercourse means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

- a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- c) the introduction of any part of the penis of a person into the mouth of another person; or
- d) the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or
- e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or
- f) the causing, or permitting of a person to perform any activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.”

SEXUAL INTERCOURSE WITHOUT CONSENT

90. Any person who has sexual intercourse with another person –

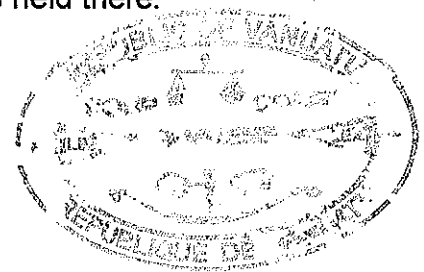
- a) without that persons consent; or
- b) with that person’s consent if the consent is obtained –
 - (i) by force; or
 - (ii) by means of threats of intimidation of any kind; or
 - (iii) by fear of bodily harm; or
 - (iv) by means of false representation as to the nature of the act; or
 - (v) in the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

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

- (vi) by the effects of alcohol or drugs; or
- (vii) because of the physical or mental capacity of that person;”

commits the offence of sexual intercourse without consent.

38. In this case, the statement of the complainant to her mother on 26 February 2016 made respectfully 15, 14 and 13 days after the alleged occurrences, constitute a recent complaint in a sexual type case. I accept the prosecution submissions that the period of 13, 14 and 15 days after the alleged occurrences constitute a short period. I reject the Defence submissions to the contrary effect. I accept that *R –v- Lillyman [1896] 2QB. 167* is the persuasive authority for this proposition. I apply it in this case. It was held there:

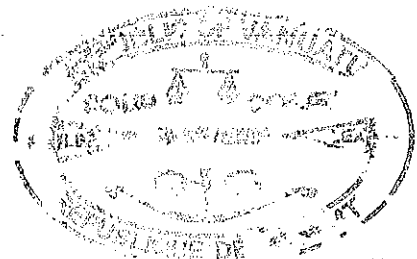


" that upon the trial of an indictment for rape or other similar offences against women or girls (including indecent assault and sexual intercourse with girls under 13 and between 13 and 16) the fact a complaint was made by a prosecution shortly after the alleged occurrence, and the particulars of such complaint may, so far as they relate the charge against the defendant, be given in evidence by the prosecutrix; not as being evidence of the facts complained of but as evidence of the consistency of the conduct of this prosecutrix with the story told by her in the witness box, and as tending to negative her consent. [see also Public Prosecutor –v- Mereka [1992] VUSC 20; [1980 – 1994] Van LR 613.

Further in R –v- Osborne [1905] 1 K.B. 551, where the Court explained the rational of Lillyman case in the case of R –v- Norcott [1917] 1 K.B.347, & Cr. App. R. 166, affirming the following:

"The court is concerned to see that in the present case the statement made by the girl was spontaneous in the sense that (it was) her unassisted and unvarnished statement of what happened. The Court rejected the statements made as a result of a threat or promise but its tolerance of leading questions."

39. The evidence of the complainant's mother as a recent complaint, does not constitute corroboration of the facts as alleged in the information against the defendant. But it is evidence of its consistency with what the complainant said her step father did to her on 11, 12, and 13 February 2016 at the house at Norsup and also constitute evidence to negative the complainant's consent of the digital sexual intercourse on 11 and 12 February 2016 and also in respect to the indecent assault incident on 13 February 2016. [See PP v Mereka [1992] VUSC 10; [1980-1994] Van LR 613 and case authorities referred therein].
40. In this case, there is no corroboration of the evidence of the complainant. The nature of the complaint is of sexual offences types. I accept the position to follow is that envisaged in DPP v Hester [1973] A.C. 296, 57 Cr.App.R.122. (See PP v Mereka [1992] VUSC 10). I do so in this case. I am required to heed the warning of the danger of convicting on the uncorroborated evidence of the complainant. Here, on the strength of the totality of the evidence, I am satisfied beyond reasonable doubt that the complainant, as a witness, is telling the truth in her evidence before the Court.



In Count 1

41. There is overwhelming evidence in respect to each and all three essential elements of the offence charged in count. I warn myself of the danger to rely solely on the evidence of the complainant. However, I believe she is telling the truth. I am satisfied beyond reasonable doubt that on the strength of the evidence, the prosecution has proved the first, second and third elements of the offence of digital sex against the Defendant Amos Telukluk on 11 February 2016 on beyond reasonable doubt.

In Count 2

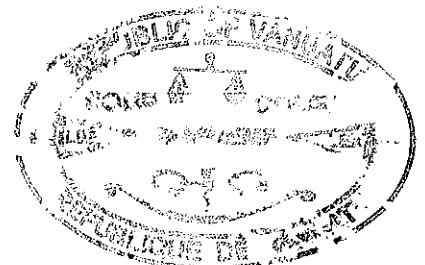
42. There is overwhelming evidence in respect to each and all three essential elements of the offence as charged in count 2. I make the same warning of the danger to rely on the complainant's evidence alone leading to the conviction of the defendant. But in this case I believe she says the truth. I am satisfied that the evidence is overwhelmingly against Defendant Amos Telukluk that he had digitally penetrated the vagina of the complainant with his finger on 12 February 2016 as testified on the evidence. The prosecution has proved elements 1, 2 and 3 of this offence beyond reasonable doubt.

In Count 3

43. There also overwhelming evidence in respect to each al two essential elements of the offence as charged in count 3. I warn myself of the danger of relying solely on the evidence of the complainant that Defendant Amos Telukluk indecently touched her vagina on 13 February 2016. In this case, I believe the complainant that she says the truth. The prosecution has proved the two (2) elements to this offence beyond reasonable doubt.

VERDICT

- Count 1 - Guilty
- Count 2 - Guilty
- Count 3 - Guilty



Dated at Lakatoro, Malekula this, 13th day of September 2017.

By the Court



Vincent Lunabek
Chief Justice

