

**IN THE SUPREME COURT OF**  
**THE REPUBLIC OF VANUATU**  
**(Criminal Jurisdiction)**

Criminal Case No 17/1939 SC/CRM

**PUBLIC PROSECUTOR**

**V**

**BOB TEVI**

**Before: Chetwynd J**

**Hearing: 18<sup>th</sup> and 19<sup>th</sup> June 2018 at Loltong Pentecost**

**Counsel: Mr Boe for the Prosecution**  
**Mr Vira for the Defendant**

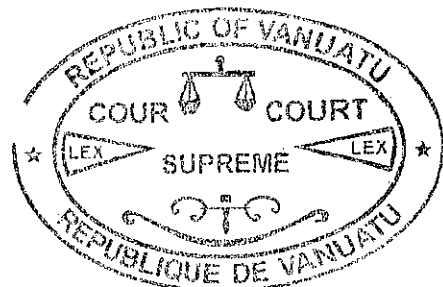
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**JUDGMENT**

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1. The defendant Bob Tevi is charged with two counts of sexual intercourse without consent, one of an act of indecency and one of abduction. He has entered pleas of not guilty to all charges. The facts are not much in dispute but what the defendant does say, in answer to all the charges, is that the victim consented.

2. The alleged offending took place in 2014 and 2015. I heard evidence from the victim about it. She gave evidence that she was living with her grandmother and grandfather at the time in 2014. She was sent to go shopping. It was in the evening. On her way back home from the store the defendant blocked her way. He grabbed hold of her hand and pulled her into his house. He forced her to the ground, removed her clothes and had full penile intercourse. Afterwards he told the victim not to say anything to her parents or anyone else and if she did he would beat her. She was also so ashamed of what had happened, because the defendant is her uncle, that she did not tell anyone what had happened.



3. The victim told the court about another incident in 2015. It was after a football tournament. The victim saw Bob Tevi in front of the church. He told her to get some matches from the store. When she came back with the matches the defendant moved to the rear of the church and told the victim to follow him.

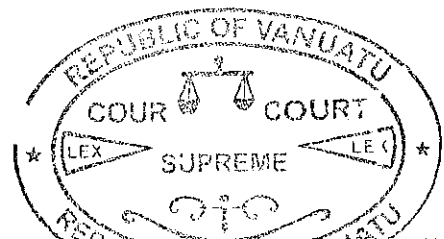
4. As she was going to hand over the matches to him the defendant pulled her close to him and told her to be quiet. He then removed her panties and had penile intercourse with her against the wall of the church. She did not cry out because she was afraid. Again she felt very ashamed about what had happened because he was her uncle. She did not tell anyone about the rape in 2015.

5. She was adamant that on neither of those occasions did she consent to the sexual intercourse taking place or indeed any of the defendant's actions involving her.

6. When cross examined the victim was more reticent. Some of her answers were unclear and she clearly looked embarrassed. This was consistent with her evidence of being ashamed. She was asked if she would have agreed to have sex with the defendant had he not been her uncle. I allowed the questioning believing it to be laying the groundwork for questions about her knowledge of the defendant's relationship to her. However, that line of questioning was not pursued or followed up.

7. The victim was cross examined about the 2014 incident. She said she was pulled into the house. The defendant had hold of her hand and pulled her in by the hand. She confirmed the rape occurred inside the house. There were questions about the statement the victim made to the police. It was not actually put to the victim that her evidence in court was inconsistent with what she had told the police in 2016. It was implied in some questions but that line of questioning was not really pursued either.

8. The victim was then asked about the kissing. She told the court she was forced to kiss the defendant. She was asked how that could be and it was put to her



that she was a willing partner in the kissing and the sexual intercourse. The victim responded by saying she was not willing to kiss the defendant and although he did not have his hand over her mouth she was frightened to cry out because of the threats to cause her harm made previously.

9. She agreed that despite being frightened of the defendant, when he told her to get the matches she did so. When she did so she said she thought he was asking her for matches and not for something else. I took the answer to mean she did not think the defendant had ulterior motives for asking her to go and buy the matches.

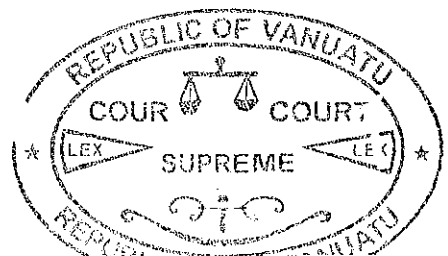
10. She was asked again if she was willing to have sex. She confirmed, no she was not willing to have sexual intercourse with the defendant. He was her uncle. Unfortunately the victim became pregnant after the last incident of rape. That was how the matter came to light. It was put to her that the baby was not the defendant's. She said she was sure it was. She was asked if she was pregnant before having sex with the defendant. She said she was not pregnant at the time of the 2015 incident.

11. There were then questions about the victim's previous boyfriends and her sex life. I did not allow that line of questioning to continue.

12. She was asked again about her of consenting to the sexual intercourse and again she said she was not willing to have sex with the defendant. It was put to her that the police were only involved because she discovered she was pregnant. She replied that whether she was pregnant or not she felt must report the incidents to the police.

13. I heard from two other witnesses. I mean no disrespect to them by saying they could offer very little assistance about the issue of consent. Their evidence was not challenged.

14. No evidence was called by the defendant. I accept that section 88 of the Criminal Procedure Code protects the fundamental right of a defendant to remain



silent. I accept that the burden of proof is always on the prosecution and they must prove their case beyond reasonable doubt. However, there are times when a failure by a defendant to give evidence and to answer questions can lead to an inference of guilt. There are times when an explanation from a defendant is required. Justice Sey in her decision involving the politicians in 2015<sup>1</sup> handed down a judgment which contained a full discussion of the circumstances and the situations where that might be the case.

15. I bear in mind as well that when the defendant was interviewed under caution his reply to the police was, I will tell my story in court. He has now chosen not to do so. The situation in this case is that I cannot find the defendant guilty just because he chooses not to give evidence but I can draw adverse inferences when it is clear there is a *"failure to provide an innocent explanation to contradict a 'clear' or a 'strong' prosecution case"*<sup>2</sup>.

16. As in many cases where a consent is an issue there is only evidence from the victim on the question of consent. If I accept her evidence as truthful and reliable than I can convict. I do not need corroborating evidence as long as I am satisfied her evidence can be relied on. There was a discussion about corroboration in the case of *Kombe*<sup>3</sup>.

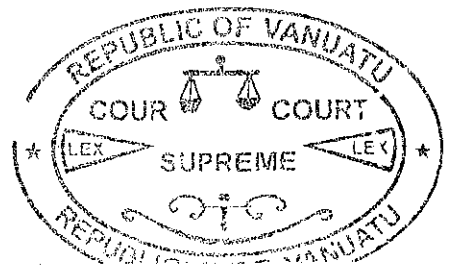
17. There is no evidence of a relationship of any kind between the defendant and the victim. I accept her evidence that she knew a sexual relationship between her and her uncle would be totally unacceptable to the rest of the community. Such a relationship would be tabu in custom. One would have to ask why a young girl would embark on such a ruinous and unpopular relationship. It just does not make sense that she would chose voluntarily to have a sexual relationship with her uncle.

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<sup>1</sup> *Public Prosecutor v Kalosil* - Judgment as to verdict [2015] VUSC 135; Criminal Case 73 of 2015 (9 October 2015)

<sup>2</sup> See the cases cited by Sey J in *PP v Kalosil*

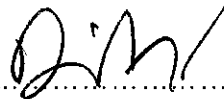
<sup>3</sup> *Public Prosecutor v Kombe* [2015] VUSC 51; Criminal Case 100 of 2014 (20 May 2015)



18. I accept the victim's evidence that after the first incident she was too frightened but more essentially too ashamed to speak out. I accept that is why she found it difficult to give her evidence in public. I accept her evidence that she did not consent to having sexual intercourse with the defendant at any time.

19. I find the defendant guilty of rape in 2014 and again in 2015. As for the charges of indecent assault and abduction, they are subsumed into the more serious charge of rape. They were part of the rapes.

Dated at Lolong this 19th June 2018



D. CHETWYND

Judge

