

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

Criminal Case No 18/907 SC/CRM

**PUBLIC PROSECUTOR**

**V**

**JOHN LEONA**  
**CLENCY QWITA**  
**ALEX TABEVA**

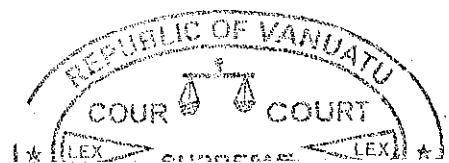
**Before: Chetwynd J**  
**Hearing: 19<sup>th</sup> and 20<sup>th</sup> June 2018 at Loltong Pentecost**  
**Counsel: Mr Boe for the Prosecution**  
**Mr Vira for the Defendant**

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**JUDGMENT**

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1. The defendants John Leona, Clency Qwita and Alex Tabeva are all charged with one count of sexual intercourse without consent and one count of an act of indecency. All three defendants have entered not guilty pleas.
2. I heard from two witnesses for the prosecution, the complainant and her mother. There is no dispute that the defendants had sexual intercourse with the complainant. They admit that is what happened. The only issue is whether or not the complainant consented to the sexual intercourse and the acts of indecency charged.
3. The complainant's evidence was sometimes difficult to follow. She was softly spoken and it was even difficult for the interpreter sitting next to her to hear what she was saying. Her evidence was also given in a very hesitant manner. She was clearly embarrassed in having to tell the intimate details of the incident to the court. I understand the pressures on a young woman giving evidence in open court about intimate sexual matters. This is especially so in a small community such as Loltong



where the complainant knows everyone in the court, bar the professionals, and everyone knows her.

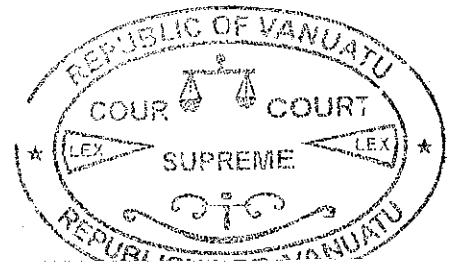
4. It is in such cases as this that a victim support adviser would be of great assistance. A complainant/witness in a case such as this could be given advice and information on the court processes and what to expect when giving evidence. Perhaps a victim support body is something that all court users might like to consider and/or they might like to make a contribution to the costs that would be involved.

5. In any event, in this case an application was made by the prosecution to clear the court. Whilst section 26 of the Criminal Procedure Code requires a court to be open and accessible to the public it also recognises that there are circumstances when the public should be excluded. I granted the application as I felt that in the interests of decency and to protect her this was a case where the complainant could give her evidence away from the pressures of doing so in public.

6. Even so, the complainant was still a difficult witness to follow. Although she what was said to be any class six school leaver there were language issues. Simple questions in Bislama posed no great difficulty but more difficult questions had to be translated from Bislama into language and the replies from language to Bislama.

7. What is clear from the complainant's evidence is that she was certain that at no time did she consent to sexual intercourse with any of the defendants. She said so in her evidence in chief and in answer to questions during cross examination. She did not deviate from her assertions that what happened, happened without her consent being asked for or given.

8. There is no evidence to corroborate the complainant's state of mind at the time of the alleged offending. However if I am satisfied that her evidence is truthful and reliable then there is no need for corroborative evidence. I bear in mind that if there is any of the complainant's evidence which I am uncertain about then I do need to find corroborative evidence to support that evidence, but only that evidence. Otherwise, I can accept the complainant's evidence as it stands.



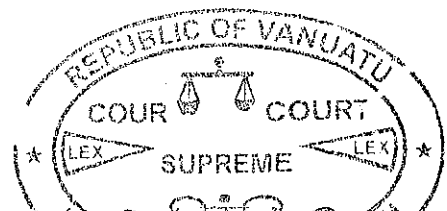
9. The complainant gave a detailed statement to the police. That statement was given in September 2017 some three months after the incidents. It is quite often the case that police officers will write out in their own hand the evidence of a witness or a complainant. There is nothing untoward in that but it can, as it did in this case, lead to problems when a witness says the statement was not read back to them. The defence have pointed out that there are discrepancies between what the complainant said in court and what it is said she told the police. The inconsistencies were about who was present at the defendant's home other than the defendants and whether she was raped on a bed or on the floor. I do not accept that these inconsistencies are so extensive or substantial that they render all of the complainant's evidence as unreliable. I find that the complainant's evidence was truthful and reliable.

10. All the defendants elected, as is their right, not to give evidence in court. However the records of their interviews under caution with the police were tendered without objection.

11. John Leona told the police that he had consensual sex with the complainant. He told them he left the house briefly after having had consensual sex and when he did so Clency went in and started having sexual intercourse with the complainant. John Leona says he told Clency at the time that that was wrong. Clency denies John said anything.

12. John Leona also told the police that when Alex Taveva went into the house the complainant did not want to have sex with him and tried to push him out. Alex says that is a lie.

13. All the defendants say they asked the complainant if they could have sexual intercourse with her and she agreed. They all imply that the complainant was or is sexually promiscuous and no more than a common prostitute. They implied that they and other men had had sex with her on previous occasions. It is very easy to make such allegations and that is why generally evidence about the complainant's sex life is not admitted. Even if what the defendants told the police was correct, she would still have the right to say no to them. That is what she said in her evidence, she did not consent to what they did to her.

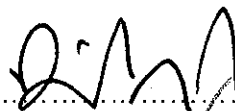


14. I do not accept one word of the defendants' protestations to the police. It seems to me that they were all saying is they had consensual sex but that the other defendants might not have. However, I am sure that the complainant's evidence is truthful and reliable. These three young men, probably drunk after consuming home brew and most certainly under the influence of alcohol, raped the complainant one after the other. They did not ask for the complainant's agreement, they simply did not care whether she agreed or not. I accept the complainant's evidence that John Leona and Clency Qwita used a degree of force so that she could not call out for help. They all knew that what they were doing was wrong.

15. They are all guilty of the offence charged against them that they each had sexual intercourse with the complainant and that at the time she did not consent to them having sex with her. There is no suggestion from any of the defendants that they believed she had given her consent.

16. As to the charges of indecent assault, I accept the prosecution's submission that there is compelling evidence of an indecent act by both John Leona and Alex Tabeva and I convict those two defendants of committing an act of indecency against the complainant, namely sucking her breasts. There was no evidence by the complainant of such an act by Clency Qwita and he is acquitted of that charge.

Dated at Lolong this 20th June 2018



D. CHETWYND  
Judge

