

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

Criminal
Case No. 17/1818 SC/CRML

PUBLIC PROSECUTOR

v

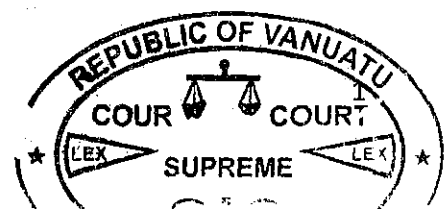
TOM RANO

Date of Trial: 25 February 2020
Before: Justice V.M. Trief
Counsel: Public Prosecutor – Mr K. Massing
Defendant – Mr J. Garae
Decision: 27 February 2020

VERDICT

A. Introduction

1. Mr Rano is charged with one count of sexual intercourse without consent and one count of act of indecency without consent.
2. At the conclusion of the prosecution case, Mr Garae made an application that there was no case to answer. I ruled that there was some evidence on which Mr Rano could be convicted and called upon Mr Rano for his defence. Mr Rano elected to remain silent.
3. Before delivering this verdict, I amended the charge in relation to act of indecency without consent as it was duplicitous. Every charge should relate to only one offence. I amended the charge by deleting the words, "long two different taems mo dates" and in the second line, the word "ol" and the letter "s" from the word, "taems".
4. Mr Rano pleaded Not guilty to this new charge. I read Mr Rano the statement of his rights under s. 88 of the *Criminal Procedure Code*. Mr Rano confirmed he understood it. Mr Rano was given the opportunity to bring evidence in relation to the charge as amended. He chose not to. As the Court had heard all evidence in this matter, I delivered the verdict orally that is contained in this decision.

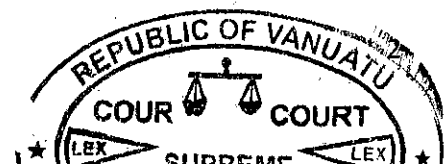


B. Law

5. The onus of proof was on the Prosecution to prove the charges. Mr Rano had to prove nothing.
6. The Prosecution had to prove each element of each charge beyond a reasonable doubt in order to achieve a conviction. If that was not the case, then Mr Rano would be entitled to be acquitted.
7. The charge of sexual intercourse without consent has 3 legal ingredients which must be proved in order for a conviction to be entered, namely that on the particular occasion alleged:
 - Sexual intercourse, as defined in section 89A of the *Penal Code*, took place between Mr Rano and Ms R [the complainant – name suppressed]; and
 - That Ms R did not consent; and
 - That Mr Rano did not believe on reasonable grounds that the complainant Ms R was consenting at the time that the sexual intercourse occurred.
8. The charge of act of indecency without consent has 2 legal ingredients which must be proved in order for a conviction to be entered, namely that on the occasion alleged:
 - Mr Rano committed an act of indecency upon, or in the presence of Ms R; and
 - The act was without Ms R's consent.

C. Evidence and Analysis

9. Ms R was the only witness for the Prosecution.
10. Having heard the evidence in this case, I am not satisfied that the Prosecution has proved that sexual intercourse took place between Mr Rano and Ms R. Section 89A of the *Penal Code* defines sexual intercourse. Ms R in her evidence stated that Mr Rano had had sex with her but did not describe what activity or activities that sexual intercourse consisted of. Accordingly, there is no evidence from which the Court can ascertain that sexual intercourse as defined in s. 89A occurred.
11. In the circumstances, I am not satisfied that the Prosecution has proved Mr Rano's guilt beyond a reasonable doubt that sexual intercourse occurred between him and Ms R.
12. In cross-examination, Ms R agreed that she made her complaint against Mr Rano because of the persistent questioning from her partner and his threat to leave her unless she reported Mr Rano to the Police. She then lodged her complaint, two months after the alleged offending. Ms R also gave evidence that Mr Rano admitted his offending to the Police only after the Police wanted to beat him up at No. 6. These factors also give me



comfort that it would be unsafe to find Mr Rano guilty of the charge of sexual intercourse without consent.

13. I find Mr Rano not guilty of the charge of sexual intercourse without consent. He shall be deemed to be innocent of that charge and is acquitted.
14. Ms R gave evidence that she and her partner, and Mr Rano, lived in the same house. She stated that their bedroom doorways faced each other. She said that neither bedroom had a door but that calico only hung in each doorway. She stated in cross-examination that her and her partner's mattress lay on the floor in such a way that when she lay down, she looked into Mr Rano's bedroom.
15. Ms R stated that Mr Rano had gone to swim in the creek and on return to the house, wore just his white underwear ('sportwear'). At his doorway he took his underwear off and entered his room naked. She saw him as he was naked and exposed in his room from where she was lying down on the mattress in her bedroom. When challenged in cross examination, she said that the house did not have doors hung so Mr Rano must know that when he removed his clothes others might see him naked. She said that when she lay on her bed she did not expect that she would see something like that.
16. I am satisfied that the Prosecution has proved beyond a reasonable doubt that Mr Rano exposed his naked body in the presence of Ms R and that this act was without Ms R's consent. He is convicted on that charge.

D. Verdicts

17. I find Mr Rano not guilty of the charge of sexual intercourse without consent. He is deemed to be innocent of that charge and is acquitted.
18. I am satisfied that the Prosecution has proved Mr Rano's guilt beyond a reasonable doubt on the charge of act of indecency without consent. He is convicted on that charge.

DATED at Saratamata, Ambae this 27th day of February 2020
BY THE COURT


V.M. Trief
Judge

