

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

**Criminal
Case No. 19/2945 SC/CRML**

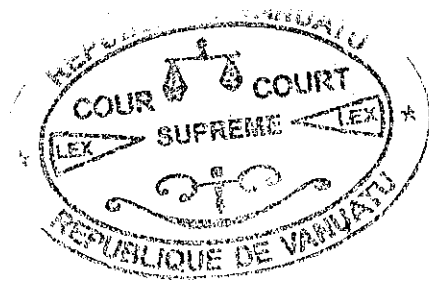
BETWEEN: Public Prosecutor

AND: Epon Jeremiah Judah
Defendant

Date of Plea :
Date of Hearing : 26th -27th February 2020
Before: Justice Oliver.A.Saksak
In Attendance: Damien Boe for Public Prosecutor
Rollanson Willie for the Defendant

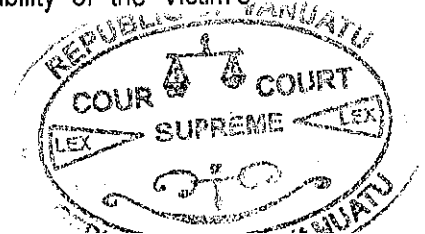
RULING ON NO-CASE SUBMISISON

1. The accused, Epon Jeremiah Judah stood trial on 2 charges of unlawful sexual intercourse, contrary to section 97 (1) of the Penal Code Act [Cap 135] (the Act).
2. The prosecution called 8 witnesses namely Lalita Vinia, (victim), Majorie Vinia (the mother), Alban Moffet (Grandfather), Nicholas Tabi , Madelaine Shem (Police Officer and corroborator), Kalulang Kalorib (Police Officer, Investigator), Joe Eldads (Police Officer, Corroborator) and Philip Sabrina (Teacher). Mr Sabrina's statement was tendered by agreement without cross-examination and Dr Thomas Sala's medical report was tendered by agreement without cross-examination.
3. At the close of the prosecution case, Mr Willie made an oral application for a no case to answer. Counsel submitted that on the prosecution evidence of the victim, her mother's and grandfather's evidence, there was no prima facie evidence to require the accused to make or put up a defence. Counsel further submitted the evidence by Nicholas Tabi had no relevance and that the medical report did not assist the prosecution case. Counsel submitted Alban Moffet did not see the acts complained of but merely suspected the alleged acts had been committed.



4. Mr Boe submitted the prosecution had produced overwhelming evidence to show there was prima facie case made out against the accused.
5. Section 135 of the Act states:

" Acquittal of accused person when no case to answer.
If at the close of the evidence in support of the charge, it appears to the Court that a prima facie case is not made out against the accused person so as to require him to make a defence the Court shall dismiss the case and shall forthwith acquit him."
6. The relevant test is whether on the evidence thus far produced a reasonable tribunal might safely convict the accused (see DPP v Thirpathi Gounder and Another (1971) 17 FLR 118.
7. The evidence of Alban Moffet only contained suspicions. He never saw the accused in the act of kissing the victim either on the mouth or on her vagina. He saw an incident in 2018 in the kitchen which he described as " the accused pushing the victim away" but only thought he had been kissing her. Furthermore had he been so concerned about it, no complaint was made about that earlier incident until the August 2019 incident. Then the 2019 incident he had suspicions. When he saw the victim's flip-flops outside of the accuseds door. When he called her by name, she answered from the inside and when she came out to see him, she acted in an unusual manner different from other times. When he inquired from her she hesitantly answered him by saying the accused had been kissing her on the mouth. Only then he told her to tell her mother about it. But she did not do so immediately until about the third demand when the mother overheard their conversation and asked what they were talking about. Even then the victim did not tell after her mother had asked her more than twice.
8. The mother, Majorie Vinia told inconsistent stories from what she stated to the police in her statement. She gave wrong dates. She did not see anything.
9. There is the medical report showing the incident occurred on 19th August 219 but the victim was examined only on 5 September 2019 some 17 days later.
10. Nicholas Tabi's evidence was not relevant and Philip Sabrina's evidence bears little or no weight without cross-examination if his evidence was to go to credibility of the victim's evidence.



11. Excluding all those evidence all we are left with is the victim's evidence. At her age her evidence alone without any corroboration is dangerous and unsafe for any reasonable tribunal to convict the accused on.
12. In light of the victim's unwillingness to report the 2018 alleged incident and the 2019 incident immediately to her grandfather Alban Moffet when he asked her more than twice, and even to her mother when directed by Alban Moffet, it is unsafe to convict on her evidence standing alone.
13. For those reasons I accept Mr Willie's submissions that no prima facie case has been made out against the accused.
14. Accordingly I dismiss the case and acquit the accused of the two charges against him.
15. Mr Epon Jeremiah Judah, you are free to leave the Court.

DATED at Luganville this 27th day of February, 2020

BY THE COURT

