

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

Criminal  
Case No. 20/1231 SC/CRML

**BETWEEN:** Public Prosecutor

**AND:** Victor Chu Van  
Defendant

*Date of Hearing:* 21 July 2021  
*By:* Justice G.A. Andrée Wiltens  
*Counsel:* Mr P. Sarai for the Public Prosecutor  
Mr C. Leo for the Defendant  
*Date of Reasons for Verdict:* 5 August 2021

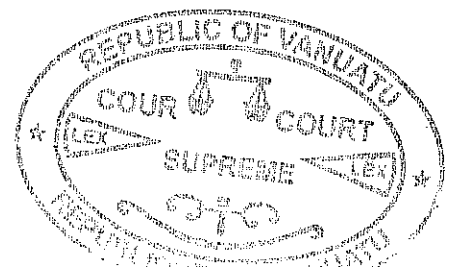
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**Reasons for Verdicts**

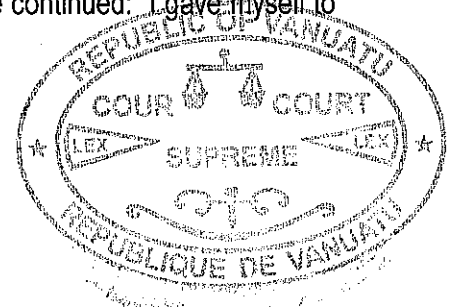
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1. Mr Chu Van was charged with:

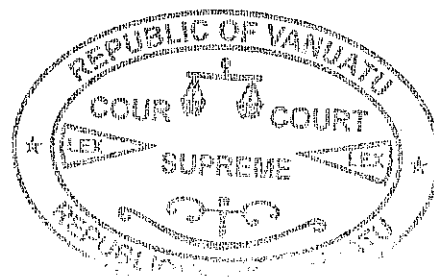
- 1. Domestic Violence – slapping his young baby son;
- 2. Domestic Violence – holding his baby son upside down and throwing him into the air;
- 3. Domestic Violence – refusing to let his partner and mother of his baby son breastfeed the son;
- 4. Intentional Assault – punching his partner in the stomach 3 times;
- 5. Sexual intercourse without consent, the consent being obtained by force; and
- 6. Sexual intercourse without consent, the consent being obtained by fear for bodily harm.



2. Mr Chu Van pleaded not guilty to all the charges.
3. The prosecution relied on one witness, Mr Chu Van's partner, Ms Manuela Karten. She was previously Mr Chu Van's house girl. After giving details of their living arrangements, she related that on 1 May 2020, Mr Chu Van had collected numerous persons and got them to a safe place due to the imminent arrival of Cyclone Harold. After Mr Chu Van had returned from delivering Ms Karten's elder child and her younger sister to a safe place, there was an altercation between them as Ms Karten was concerned that Mr Chu Van was having sex with her younger sister amongst others.
4. That evening at around 9pm, Ms Karten said that baby Scott was crying. She related that Mr Chu Van slapped the baby. She said he was apparently of the view that the baby should only have his eyes open when breast-feeding, and the baby should otherwise be asleep. She said he blew on the baby's nose, which made the baby cry.
5. The next morning, they were bathing the baby after breakfast. Mr Chu Van was said to have held the baby upside down and he blew on the baby's nose again. Mr Chu Van was laughing. The baby cried.
6. The next day was a Sunday. At around midnight, the baby woke up and wanted to feed. He again did the same thing, was her evidence. Mr Chu Van had said the baby must open his eyes only when breast-feeding. Mr Chu Van took the baby off Ms Karten and threw him onto the bed. He then told Scotty to stop crying and blew on his nose. He rolled the baby over. The baby cried. Ms Karten wanted to feed the baby, but Mr Chu Van said that she was not allowed to touch the baby. He said: "This is the last time you touch the baby. If you touch him again I will slap you."
7. Mr Chu Van then grabbed Ms Karten by her leg, and by her hand. He was, she said, trying to make her laugh. But then he punched her stomach 3 times. Ms Karten did not explain why this occurred.
8. Ms Karten ran off into the living room. Mr Chu Van was fully naked and he pulled her back to the bed, removed her bra and sucked on her breast. That hurt Ms Karten. Then he removed her trousers and underpants and had sex with her. She said that she "surrendered". Afterwards he lifted up his thumbs at her and twice asked if he had given her "a number one"? Ms Karten told me that meant that he'd given her another baby, made her pregnant. She told me that he would look after Scott and she would look after the new baby when it arrived. This had occurred when baby Scott was just one month old, and Ms Karten was bleeding heavily. She said her private part hurt.
9. Ms Karten next told me that on 10 May 2020, in the morning, she went to the toilet. When she returned Mr Chu Van said to her: "Do you know I want to have sex with you?" Ms Karten said to the Court that she did not want to have sex. It was unclear whether she expressed that to Mr Chu Van. She then said that by looking at Mr Chu Van's face "...he looked like he wanted to have sex with me. He pulled a very strong face. I surrendered myself to him." She said she was scared of him, as in her mind, she thought he might assault her. There was no explanation given as to why that thought had occurred to her. She continued: "I gave myself to him. We had sex. He ejaculated." She said her private part hurt.



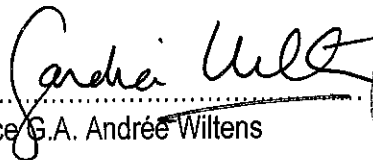
10. Ms Karten finished her evidence in chief by telling the Court that after 10 May 2020 Mr Chu Van "did not do anything else". She concluded that that was all she had to say.
11. She was not cross-examined.
12. Instead, Mr Leo made a submission of no case to answer on charges 2, 3, 5 and 6.
13. Mr Sarai supported the charges by referring to the evidence given.
14. However, I considered that Ms Karten was a very poor witness, such that she had no credibility. There was no other evidence to take into account.
15. Accordingly, there was no possibility of the prosecution proving any of those charges.
16. Section 164(1) of the Criminal Procedure Code requires a verdict of not guilty to be pronounced if "there is no evidence on which the accused person could be convicted". I also had regard to *PP v Suaki* [2018] VUCA 23.
17. Not only did Ms Karten have no credibility, her accusations in respect of these matters were inherently unlikely. For example, apparently while attempting to make Ms Karten laugh at his preposterous statement that she could not again touch her child, he suddenly, for no reason punched her 3 times to the stomach as a prelude to having sex with her. I did not accept that evidence.
18. Ms Karten also seemed to consider that holding a baby upside was objectionable, as was blowing a baby in the face. The Court is well aware that these acts can occur in a number of different circumstances: to please the child, to distract the child, or to do so in an aggressive manner. The evidence given by Ms Karten did not distinguish between those possible scenarios, although I noted that at one stage Mr Chu Van was said to be laughing while doing these acts, which I took to show that Mr Chu Van was simply playing around.
19. Ms Karten did not make plain in her evidence that the sexual intercourse on the two occasions alleged was without her consent. It could be inferred that she was initially reluctant, but her evidence of "surrendering" and "giving herself" to Mr Chu Van was very strong evidence that she was consenting at the relevant times.
20. Accordingly, I returned verdicts of not guilty in respect of charges 2, 3, 5 and 6.
21. Mr Chu Van gave evidence in relation to charges 1 and 4. I accepted his explanation that he did not punch Ms Karten. I also accepted his evidence that Ms Karten had forgotten/neglected to burp the baby after breast feeding, so he did that and then put the baby down and rolled him onto his side so that there was no possibility of choking. In the course of doing this, he of course patted the baby's back – the only aspect of assault that he accepted. Such conduct is not criminal.
22. He agreed he had blown onto the baby's face. However his explanation for that precluded the possibility of any aggression, and I accepted his evidence.



23. Accordingly, at the conclusion of all the evidence, I also returned not guilty verdicts in respect of charges 1 and 4.

Dated at Port Vila this 5th day of August 2021

BY THE COURT



Justice G.A. Andrée Wiltens

