

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

Criminal
Case No. 20/3471 SC/CRML

PUBLIC PROSECUTOR
v
VALERIEN KOREH RAPOUL

Date of Trial: 13 October 2021
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mr D. Boe
Defendant – Mr R. Willie
Date of Decision: 14 October 2021

VERDICT

A. Introduction

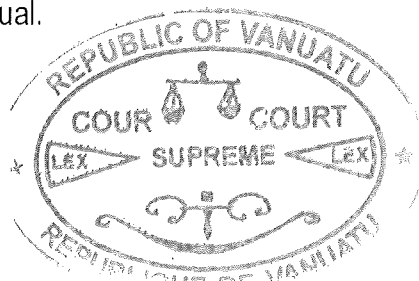
1. The Defendant Valerien Koreh Rapoul is charged with one count of sexual intercourse without consent. The Prosecution called two witnesses. Mr Rapoul elected to remain silent. This is the verdict.

B. Law

2. The Prosecution must prove the following 3 legal ingredients for a finding of guilt to be made and conviction entered:

- That on 8 October 2020, Mr Rapoul and the complainant had sexual intercourse; **and**
- That the complainant did not consent; **and**
- That Mr Rapoul did not believe on reasonable grounds that the complainant was consenting at the time that the sexual intercourse occurred.

3. It is not disputed that on 8 October 2020, at Malau, Big Bay, Santo, Mr Rapoul and the complainant had sexual intercourse. Accordingly the trial centred on whether it was proved that the sexual intercourse was not consensual.



4. The Prosecution bore the onus of proof to establish the lack of consent beyond reasonable doubt. If that was not the case, then Mr Rapoul would be entitled to be acquitted. He was not required to establish anything.

C. Evidence and Analysis

5. The following documents were tendered by consent:

- a. Mr Rapoul's Police record of interview dated 13 October 2020 [**"Exhibit P1"**];
- b. Complainant's medical report from Saramauri Health Centre, Big Bay Inland dated 9 October 2020 [**"Exhibit P2"**]; and
- c. Complainant's Police witness statement dated 10 October 2020 [**"Exhibit D1"**] – I had regard only to the parts of the statement put to her as being inconsistent with her evidence to the Court.

6. I heard from 2 Prosecution witnesses. I assessed their credibility and the accuracy of their evidence in a number of ways. How the witness appeared in Court played only a small part in the process of evaluation. I placed more significance on consistency of accounts. I looked first for consistency within a witness' account and where there was inconsistency, the explanation given. Secondly, I looked for consistency when comparing that account with the accounts of other witnesses, and also when comparing the accounts of witnesses with relevant exhibits. On that basis I formed certain views as to the reliability and veracity of the witnesses.

7. I also had regard to the inherent likelihoods of the various situations then prevailing.

8. These factors all impacted on my findings of fact.

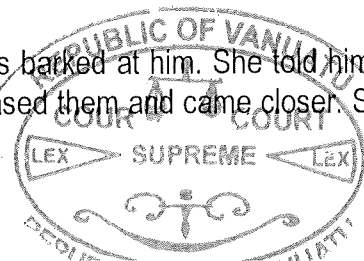
9. Mr Rapoul elected to remain silent. I drew no inferences from his doing so.

10. I heard evidence from the complainant Rossie Morris and her sister Rebecca Livo.

11. Rossie Morris She is from Malau, Big Bay and married with three children. She lives at Malau Sector 1. Mr Rapoul is her brother-in-law as he is married to her sister Isabelle.

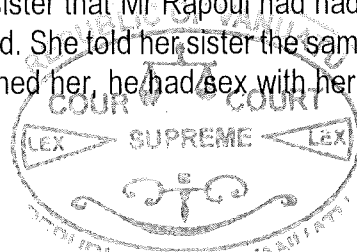
12. On 8 October 2020, Mrs Morris and her husband went to their coconut plantation, and husked green coconuts for sale at their S.D.A. Church fundraising that day. Her husband took the coconuts to sell but as there was still time, she went on to weed their garden. Their garden is on land belonging to Mr Rapoul's family. Some time after she had her lunch, her 2 dogs barked alerting her that someone had come to the garden. She saw it was Mr Rapoul. He said to her in language, "Mopohi nao" which means 'It's the afternoon now'. She answered, "Yes. I've been weeding but will go back now" ('Si. No, mi weed smol after mi go bak nao'). She asked him if he was going to move his bullock and he answered yes. She then hurried to dig kumala so that on his return, she would give some for his baby. With kumala heaped up next to her, she continued weeding.

13. Mr Rapoul returned and again her 2 dogs barked at him. She told him to chase them as they were too small to attack him. He chased them and came closer. She thought he was



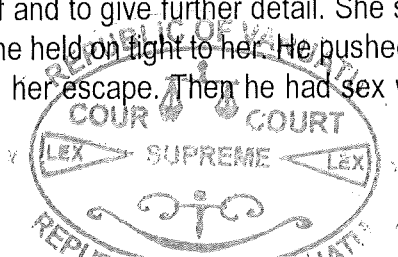
approaching to harvest snake bean. She continued weeding but then felt that he had come close to her and saw his legs next to her. He grabbed her neck, pulled her and said he wanted them to have sex. She replied, "What is this? You married my sister – who am I? Who is she?" ('Be olsem wanem, yu tekem sista blo mi. Mi whu? Sista blo mi whu?'). He said, "I want us to have sex today. Today" ('Mi wandem se yumitu gat sex, tedei ia nao, tedei ia nao'). She said, "No. I've just gotten married in church. I have 3 children. I don't want you to touch me" ('No. Mi jes maret lo church. Mi gat 3 pikinini. Mi no wandem bae yu tajem mi'). She was pushing him away but he held her tightly, pushing her skirt down.

14. Mrs Morris said to Mr Rapoul, "Let me go. My body is not right. I have been working all day, my body is not right" ('Yu lego mi. Body blo mi I no stret. Mi wok full dei, body blo mi I no stret'). She tried her best to stop him saying, "I have my period. Don't touch me" ('Mi sik mun ia. Yu no tajem mi'). He said, "I said today, today it will be" ('Mi talem se tedei, tedei ia nao'). He said he would see whether or not she had her period ('Ale, mi traem luk'). He pushed her skirt down and at the same time, pushed her down to the ground. She tried to stand back up but he strongly pushed her down. She tried to call out but no one heard her.
15. Mr Rapoul said to Mrs Morris, "Jesus will return soon, we are in a world of sin" ('Klosap Jisas I kam, wol blo trabol ia'). She said, "In that case, go do this to another woman, not me" ('Sapos yu wandem olsem, yu go mekem lo nara woman, I no long mi'). He replied, "This is a world of sin" ('Hemia wol blo trabol ia'). Mr Rapoul placed his knife next to her which frightened her. She cried and struggled but could not get away from him. He lay on top of her and had sexual intercourse with her.
16. After that Mrs Morris was crying, hurried to put her clothes back on and gathered up the kumala that she had dug up. She felt she could not tell him anymore to take some for his baby and packed it all to take home herself. While she dressed herself and packed her things, Mr Rapoul weeded next to where she had weeded and said, "This is a world of sin. But will you report me?" ('Hemia wol blo trabol ia. Be bae yu ripotem mi?'). She said, "Yes, I will report you. Because what you have done is not right" ('Yes, bae mi ripotem yu. From yu mekem fasin ia I no stret'). He said, "If you want to report me, report me. I am tired of my woman at home. She scolds me every day" ('Yu wandem ripotem mi, yu ripotem mi. Mi taet lo woman ia lo haos. Oli toktok evri dei, evri time nomo'). He also said, "I want to be fed rice by the Government. If you want to report me, report me. Quickly. I want to eat some rice from the Government" ('Mi wandem kakai rice blo Gavman. Yu wandem ripotem mi, yu ripotem mi. Kwik time. Mi wandem kakai rice blo Gavman smol'). She felt he said these things in a mocking manner ('Hemi talem lo mi, I talem lo jik nomo').
17. Mrs Morris shed tears all the way home. She reached home at about 4.30pm. Her husband was out fishing or she would have told him what had happened. So she sent her boys to go to church and walked to her mother's house at Sector 4.
18. At her mother's house, her mother was preparing coconut milk for nalot (a laplap dish). So she did not call her but stood outside and remained silent which was unusual for her. Her big sister Rebecca asked her twice what was wrong and if she and her husband had had a row. After her sister asked her the second time, she still didn't answer but broke down in tears. She cried and cried, then told her sister that Mr Rapoul had had sex with her at the garden. Listening to her, Rebecca too cried. She told her sister the same story that she told the Court – what Mr Rapoul said, he pushed her, he had sex with her. Rebecca told their



mother and then their mother went for their uncle Kilion who is the chief of Sector 4. Chief Kilion said what had happened was not right and they would go to the Authorised Person. After that there was also a report to the Police.

19. Mrs Morris was questioned that Mr Rapoul's evidence would be that she agreed to sex with him – what would she say to that? She replied, "No!" When asked why, she said while shaking her head that "He is not her husband" ('Hemi no man blo mi').
20. In cross-examination, it was put to Mrs Morris that she had agreed to have sex with Mr Rapoul but changed her story because she was afraid of being beaten by her husband. She replied, "No!" It was put to her that she had agreed to have sex with Mr Rapoul but changed her story because she did not want to be frowned on by the Church. She disagreed. It was put to her that she had agreed to have sex with Mr Rapoul but changed her story because she loved her children and did not want to upset them. She also disagreed with that.
21. Mrs Morris was challenged in cross-examination about inconsistencies in her evidence. She responded as follows:
 - a. It was put to her that her evidence in Court was that Mr Rapoul pushed her then had sex with her whereas her Police witness statement said that they struggled around the garden – Mrs Morris replied that they struggled in a small area only of the garden, not round the whole garden. She stated that both what she told the Court and what she said in her Police statement were true. I accept Mrs Morris' explanation that what was said in Court and in the Police statement are consistent with each other as in the statement, it sounded as if they struggled round a far greater area. However, as Mrs Morris explained, it was a smaller area in which this occurred.
 - b. It was put to her that there was no mention in her evidence in Court of meeting Lorna on her way home whereas she said that she did in her Police statement – Mrs Morris stated that she had forgotten that she met Lorna on the road but that she did not relate the full story to her. Mrs Morris was undeterred in cross-examination and answered that both her evidence in Court and her Police statement were true (as to who she met on the road and who she told the full story to). It is understandable that Mrs Morris focused in her evidence on how and who she told the full story to, but overlooked that she had made a passing comment to Lorna when they passed each other on the road home.
 - c. It was put to her that she did not tell the Court that she and her 2 boys arrived at her mum's house together whereas her sister Rebecca's evidence would be that the 3 of them arrived together – Mrs Morris responded that her 2 boys went to church and she left for her mother's house. She was crying as she walked so it could have been that she did not see the boys also making their way to her mother's house.
22. Many questions in cross-examination gave Mrs Morris the opportunity to repeat what she had said in evidence-in-chief and to give further detail. She stated that Mr Rapoul pushed her, she tried to escape but he held on tight to her. He pushed her down, removed her skirt and laid across her blocking her escape. Then he had sex with her. She agreed that the



sex lasted only a short time ('Yes, ating I filim se I kam tumas'). It was put to Mrs Morris that she had an opportunity to run away. She said she tried to escape but could not. She would have run if Mr Rapoul had let go of her but he held onto her and she just could not escape ('Spos hemi leko mi, bae mi ron. Be hemi holem mi, mi no naf blo ron'... 'Mi traem blo ron be mi no naf'). She said that after the sexual intercourse, she rushed to pack the kumala because she knew there was no food at home for her children. She said that Mr Rapoul put his tongue to her body which she did not want as her body was not right. She pushed him away but he just carried on. She did not want it ('Mi no wandem').

23. Mrs Morris' evidence about Mr Rapoul placing his knife next to them which frightened her was consistent with the medical report, ["Exhibit P2"], which contained a reference to Mrs Morris being threatened with a bush knife.
24. Mr Willie submitted that besides the inconsistencies in Mrs Morris' evidence, she had several motives to lie. I have dealt with the inconsistencies pointed to. As to the alleged motives to lie, Mrs Morris firmly denied in cross-examination that she had agreed to sex with Mr Rapoul but then changed her story due to fear that her husband would assault her, that the Church would look badly on her, and that her children and family would be disappointed with her. There was no evidence otherwise that Mrs Morris had motive to lie. I reject those submissions.
25. I accepted Mrs Morris as a truthful and accurate witness and accept her evidence. Her evidence was detailed. She was undeterred in cross-examination and did not deviate from her original account. She explained without hesitation the inconsistencies put to her. Her evidence had the ring of truth to it.
26. Rebecca Livo is Mrs Morris' older sister. She is married to a man from Maloweta, Big Bay, Santo. She was at their mother's house when Mrs Morris and her two boys arrived. She was preparing a fire to boil water and asked Mrs Morris twice what was wrong and if she and her husband had had a row. She went close to Mrs Morris who then told her what had happened. Mrs Morris was crying while telling her; she too began crying while listening to Mrs Morris. Like Mrs Morris, Mrs Livo's evidence was also detailed. She related what Mr Rapoul and Mrs Morris said to each other in much the same words and order as Mrs Morris stated in her evidence. She cried with Mrs Morris because she felt sorry for her as they are close ('Mifala wan nomo').
27. In cross-examination, Mrs Livo confirmed that Mrs Morris and her 2 boys arrived together at their mother's house. She agreed that Mrs Morris was crying but she cannot say exactly why she cried.
28. I accepted Mrs Livo as a truthful and accurate witness. Her account was also full of detail. Her account as to what Mr Rapoul and Mrs Morris said to each other almost mirrored what Mrs Morris stated in her evidence. Mrs Livo was clear that Mrs Morris cried when telling her the story because Mr Rapoul had had sex with Mrs Morris although she is married to another man. Mrs Livo was a credible recent complaint witness, and Mrs Livo and Mrs Morris' accounts were consistent with each other. Mrs Livo did not change her account in cross-examination.



D. Discussion

29. I accepted Mrs Morris' evidence. Her account was materially unchanged throughout cross-examination. She explained easily the 3 inconsistencies in her evidence in Court. She did not accept that she had any motive to lie. She was clear that she did not agree to sex with Mr Rapoul, saying no to him, that she did not want him to touch her, that her body was not right, that she had her period and for him to find another woman to have sex with but not her.
30. Mr Rapoul used force in grabbing her neck, keeping a tight hold of her and once he had forced her to the ground, lying on her to prevent her escape. He placed his knife next to them which frightened Mrs Morris. She cried and struggled to get away from him but could not.
31. No reasonable person could have believed in these circumstances that Mrs Morris was consenting to have sexual intercourse with Mr Rapoul. I consider that the Prosecution has established that Mr Rapoul could not have believed on reasonable grounds that Mrs Morris was consenting at the time that the sexual intercourse occurred.
32. I consider that the inherent likelihoods of the various situations then prevailing is that Mr Rapoul had sexual intercourse with Mrs Morris despite knowing that she did not consent. This is reiterated by his comment that she could go ahead and report him as he wanted to eat rice from the Government. That is, that he did not mind being imprisoned as it would mean being fed by the Government. Mrs Morris and Mrs Livo both gave evidence of Mr Rapoul saying this. There was also a reference in the "Exhibit P2" medical report to Mr Rapoul saying that he did not mind being fed rice by the Government for what he did. I consider it more inherently likely that Mr Rapoul said this knowing that it was wrong to force Mrs Morris to have sex, than that she made this up.
33. Mr Boe submitted that Mr Rapoul's record of interview, ["Exhibit P1"], also supported the finding that the sexual intercourse was non-consensual. He pointed to Mr Rapoul's early answers saying that the sex was consensual but then in answer to question 9, saying that his actions were because he was angry about what Mrs Morris and her mother had said about him. I agree. Mr Rapoul's answers to questions 9 and 10 were to the effect that his actions against Mrs Morris was due to his anger at her and her mother.
34. The Prosecution has proved Mr Rapoul's guilt beyond a reasonable doubt.

E. Result

35. Mr Rapoul is convicted as charged.

DATED at Luganville this 14th day of October 2021

BY THE COURT

.....
Justice Viran Molisa Trief

