

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

Criminal
Case No. 22/1559 SC/CRML

PUBLIC PROSECUTOR

v

KENSLY STEVEN

Date of Trial: 27 February 2023
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mr L. Young
Defendant – Mr L. Moli
Date of Decision: 22 March 2023

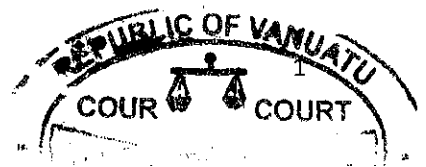
VERDICT

A. Introduction

1. The accused Kensly Steven was charged with act of indecency with a young person (a representative charge) involving his daughter SL (name suppressed).
2. This is the verdict.

B. The Law

3. The charge of act of indecency with a young person has 3 legal ingredients which must be proved in order for a conviction to be entered, namely that in 2019:
 - Mr Steven committed an act of indecency upon, or in the presence of SL;
 - The act must be deliberate, not accidental; **and**
 - At the time, SL was under 15 years old.
4. As in all criminal cases, the Prosecution had the onus of proof and was required to establish the allegations beyond a reasonable doubt before a finding of guilt could be made.



5. Mr Steven was not required to establish anything.
6. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.
7. As this was a case of alleged sexual offending, I warned myself of the danger of convicting the defendant on the uncorroborated evidence of the complainant.
8. I assessed the credibility and accuracy of a witness' evidence not only by how the witness appeared in Court but also by the consistency of accounts. I looked firstly for consistency within a witness' account. Secondly, I looked for consistency when comparing that account with the accounts of other witnesses, and also when comparing witnesses' accounts with relevant exhibits. I also had regard to the inherent likelihoods of the various situations then prevailing.
9. These factors all impacted on my findings of facts.

C. The Evidence

10. The **agreed exhibit** was SL's birth certificate [**Exhibit P1**]. It was common ground that in 2019, SL was between 13-14 years old therefore at the time, she was under 15 years old.
11. Accordingly, the remainder of the Prosecution evidence was directed to proving the other 2 elements of the offence.
12. I **heard** evidence from **Tau Bruno Leingkone**. He is a Member of Parliament. He is grandfather to SL, whose mother is Mr Leingkone's brother's daughter but was brought up by Mr Leingkone.
13. On 4 June 2022, they were at home and talking after their meal. SL started crying. Mr Leingkone knew of the tensions between mother and daughter and that SL's mother can be quick to anger therefore he sent SL's mother out of the room and then questioned SL. What SL might be scared of telling her mother, she could tell her grandfather (him). He spent 10-15 minutes asking SL to tell him what was wrong and to give her the confidence to talk to him. He told her to tell him what was troubling her, including if her mother had been cross with her or had beaten her. He said he had not asked after SL's dad but then SL told him that her father had indecently touched her ("*daddy blo mi l stap tajem nogud mi ia*").
14. Mr Leingkone called SL's mother back into the room and told her that SL had told him that her father had indecently touched her, spoiling her relationship with the family at Manples area. He told SL's mother that this must be reported to the Police to investigate. He said that in their family they did not have this kind of behaviour, it was not good and could not be left unreported – that she had to go to the Women's Centre and to the Police to help SL. He said that there was trust between him and SL which meant she could tell him what happened.
15. In cross-examination, Mr Leingkone said that he did not ask SL for details. As soon as SL told him that her father had indecently touched her, he called SL's mother back into the room.

He agreed that he did not see anything – he only knows what SL told him. He told SL's mum that it must be reported to the Police for the Police to investigate. It was put to him that he would believe SL even if she lied to him. He replied that she was his grandchild ("*bubu*") so he would believe what she told him in trust. He said it was the first time for something like this to happen in his family; he took it that it happened because he trusts SL.

16. In re-examination, Mr Leingkone explained that he trusts SL because she is obedient and does what she is told to do and so he has never suspected that she would tell lies like other children.
17. Mr Leingkone's evidence was supportive of parts of SL's testimony, which added to his credibility and reliability. Mr Moli submitted that Mr Leingkone's evidence was unreliable because he said he would believe SL even if she was lying. On the contrary, I considered that Mr Leingkone's honesty in that answer added to his credibility. He had explained the trust in his relationship with SL which was why he would believe her. I also took into account Mr Leingkone's evidence that he urged SL's mother to report the matter to the Police so that the Police could investigate what SL had told him. I accepted Mr Leingkone's evidence.
18. The second Prosecution witness I **heard** from was the complainant **SL** who is Mr Steven's biological daughter and grandchild of Mr Leingkone.
19. SL lives with her mother at Erakor. In 2019, she went to visit her father at Manples area in Port Vila at her grandmother's invitation. He and that grandmother live together at Manples. Her grandmother asked her to go in to see her father. She went into his room and saw him. It was the first time for her to see him since she was small so she burst into tears and cried then they sat on his bed. They were close to each other. She said that her father asked after her mother then started to touch her breasts with his hands, through her clothes, for a short time.
20. SL stated that on another occasion in 2019, her grandmother again asked her to visit her at Manples. She went to Manples on a weekend but does not remember the date. Again she saw her dad there, in his room. He touched her breasts again with his hands, through her clothes, for a short time. This made her cry. She said that she told her grandfather Mr Leingkone what had happened but not her mother as she was scared to tell her mum.
21. It was put to SL in cross-examination that the first time she visited at Manples, Mr Steven was sitting on the verandah. She said no, he was inside his room. She agreed that there were other people in the house. She agreed that she did not tell anyone in 2019, 2020 or 2021 but only in 2022. SL agreed that she did not shake hands with her father or hug her father when they met. It was put to her that he never touched her breasts. She replied, 'He touched them' ("*Hemi tajem.*").
22. She agreed that she visited her grandmother's house at Manples a second time in 2019. She agreed that there were other people in the house but she did not tell anyone. She agreed that if her dad had touched her the first time, that she would be scared to go back a second time but said that she went back because her grandmother asked her to. She said the second time her grandmother asked her to visit, so she visited, and saw her father again in his room.
23. It was put to her that she lied that her father touched her breasts on the first occasion. She said "*Hemi tru*" ('It is true'). It was put to her that she lied that her father touched her breasts

on a second occasion. She replied, "I tru!" ("It's true!"). She denied that her grandfather forced her to lodge a report to the Police.

24. In re-examination, SL stated that she did not tell anyone for years because she was scared to.
25. I accepted SL as a truthful and accurate witness and accept her evidence. She gave her evidence concisely and in a forthright manner. She was unshaken in cross-examination and did not deviate from her original account. Her account was consistent with Mr Leingkone's account in that Mr Leingkone was the first person that she told, in 2022, that her father Mr Steven had indecently touched her. Considering the inherent likelihood of the situation, I did not consider it unusual that SL was too scared to tell her mother. She trusted her grandfather Mr Leingkone to tell him what happened albeit 3 years later. It is also not unusual for victims of sexual violence to take time to tell someone what has happened to them so SL cannot be criticised for that.
26. **Mr Steven** elected to remain silent. That of itself cannot lead to an inference of guilt.

D. Discussion

27. In 2019, SL was under 15 years old [**Exhibit P1**].
28. Mr Leingkone's evidence was not corroborative as he did not witness what occurred. However, his and SL's accounts were consistent with each other that Mr Leingkone was the first person that SL told about what her father had done to her. This led to Mr Leingkone insisting that SL's mother refer the matter to the Police.
29. SL was clear in her evidence that on two occasions in 2019, while visiting her father at her grandmother's invitation, her father touched her breasts with his hands, through her clothes, for a short time. There is no possibility of those acts being anything but deliberate. A father touching a young daughter's breasts, albeit over clothing, is clearly indecent. She did not like him doing that. This made her cry on the second occasion. She did not tell anyone about her father doing so until 2022 when she told Mr Leingkone.
30. The charge has been established, on SL's evidence, beyond reasonable doubt.

E. Result

31. Mr Steven is convicted as charged.

DATED at Port Vila this 22nd day of March 2023
BY THE COURT


Justice Viran Molisa Trief

