

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

**Criminal
Case No. 23/2342 SC/CRML**

BETWEEN: Public Prosecutor

**AND: Tom Lokin
Defendant**

Coram: Justice Dudley Aru
Counsel: Ms. M. Tasso for the Public Prosecutor
Mrs. K. Karu for the Defendant

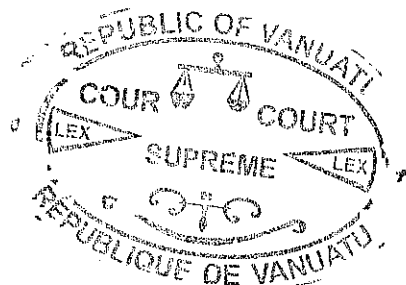
VERDICT

Introduction

1. Tom Lokin was charged with 5 counts of domestic violence (Counts 1, 3, 5, 6 and 8), 3 counts of threats to kill (counts 2, 7 and 9) and one count of sexual intercourse without consent (count 4). He pleaded guilty to count 1 and entered not guilty pleas to the remaining charges. The prosecution indicated they wanted to proceed with a trial.

Charges

2. The prosecution has the burden of prove and must prove the elements of each offence beyond reasonable doubt. The defendant has nothing to prove.
3. In relation to the four charges of domestic violence (counts 3, 5, 6 and 8), the prosecution must prove that: -
 - i) That Mr Lokin
 - ii) With intention
 - iii) Committed the act of assault, abuse, harassment, stalk, behave in an indecent manner, damaged property and made threats to or against another family member being the complainant, Ms Winnie Hapihabbat.
4. With regards to the three charges of threats to kill (counts 2, 7 and 9), the prosecution must prove that: -
 - i) Mr Lokin made oral or written threats to kill;
 - ii) To Ms Winnie Hapihabbat
 - iii) Causing her to fear for her life.



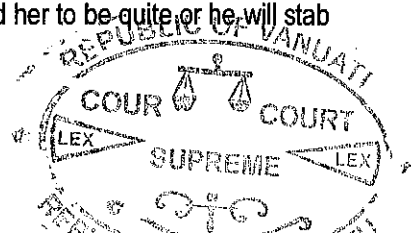
5. And for the charge of sexual intercourse without consent (count 4), the prosecution must prove that: -
- i) Mr Lokin
 - iv) Had sexual intercourse with Ms Winnie Hapihabbat
 - ii) Without Ms Winnie Hapihabbat's consent
 - iii) That Mr Lokin knew Ms Winnie Hapihabbat did not freely consent; and
 - iv) That Mr Lokin did not believe on reasonable grounds that Ms Winnie Hapihabbat freely consented to the sexual intercourse.

Evidence

6. The prosecution called 4 witnesses, Ms Winnie Hapihabbat , PC Samson Conelly, PC Johnson Natonga and Mrs Alice Sovey.

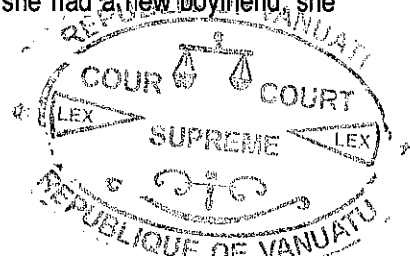
Winnie Hapihabbat

7. She gave evidence that she knew the defendant from 2015 when she was doing year 10 at Lakatoro. After their first meeting they started living together as a couple.
8. In 2018, she became pregnant with their daughter. She described their relationship as scary and she was not happy living with Mr Lokin. Around September 2022 they agreed she could join the RSE seasonal work scheme to work overseas and she travelled to Vila to prepare her paperwork. Mr Lokin remained behind on Malekula with their daughter.
9. After a while of being in Vila, Mr Lokin asked her to return to Malekula but she refused. Mr Lokin took a boat to Vila and went to see her at Fresh Wota at her brother's house before going to Erakor Bridge. Later Mr Lokin took her to Erakor Bridge to live with him.
10. Around October 2022 Mr Lokin's brother took their daughter to Vila. At that time Ms hapihabbat was already working. Sometime in November she slept at Fresh Wota after an argument. He went and assaulted and later said sorry to her families and took her back to Erakor Bridge. Around the same time, she stopped working and applied to Chuan Store.
11. In April 2023 she started working for Chuan Store. She said Mr Lokin continued to abuse her sometime in front of his parents and their daughter. So, she decided to leave him. She found a boyfriend from Tanna also called Tom and they communicated via Facebook as he was on seasonal work overseas. On the day of her boyfriend's arrival in Vila, she said he took some drinks which they drank after working hours and she did not go home. The next day she saw missed calls from Mr Lokin. He went to her work place and told her to follow him back to Erakor Bridge.
12. When they arrived, she went inside the house first. Mr Lokin left their little girl outside and locked the door. He took out a small knife and an electric cable and hit her with a "spout"/pipe on her back and legs and hit her with the electric cable on her back and hands. she identified the electric cable as the one in Exhibit "PE2".
13. He told her to remove her cloths and she removed her shirt and he hit her with the spout. She fell down and he had sex with her then took a small knife and told her to be quite or he will stab



her. He took a pair of scissors and told her he will cut her hair. She identified a pair of scissors as the one in Exhibit "PE3". He cut her hair after having sex with her. She was crying when he cut her hair. He put a knife to her neck and told her not to move.

14. After cutting her hair he hit her with the spout again and told her he will hit her until she is paralysed. He hit her on her back then she ran outside and he took a knife to cut her. She hid behind her brother and they removed the knife from Mr Lokin.
15. Mr Lokin took her to the house and hit her again with the spout and electric cable then told her to go outside and get water from the underground well for him to shower. He forced her to go or he will hang her by the neck. He forced her to get water then took a rock and wanted throw it at her. He took her home and hit her again she felt she could not stand up anymore. He hit her with the spout and electric cable. On the following day Friday, Saturday, Sunday, he would hit her with the electric cable each morning.
16. On Wednesday and Thursday, she asked Mr Lokin to take her to the hospital. He told her not to say anything to the nurse that he hit her. Mr Lokin spoke to the nurse before she went in. She told the nurse she wanted to see a doctor at the hospital as Mr Lokin hit her. He told the nurse to give her an injection then they went home. He hit her again with the electric cable and told her to returned the taxi fare. She said she didn't have money and he told her he will hit her until she is paralysed.
17. She took some tablets and it helped her. On Thursday 25 she told Mr Lokin she wanted to go and see her family at Fresh Wota. She took the electric cable and hid it in her basket then left. She took their daughter with her and left her at Fresh Wota then she went to the Police station to lodge her complaint.
18. The police took photos of her hair and marks on her body where he hit her which she identified as Exhibit "PE5". After leaving the police station she obtained restraining orders against the Mr Lokin to stay away for 30 days and she stayed at Fresh Wota. Mr Lokin went to Fresh Wota at night to see her in breach of the order. After residing at Fresh Wota for some time, in August she returned to Malekula and left her little girl with her parents.
19. She was cross examined. She agreed that they both agreed for her to travel to Vila to join the RSE scheme. She agreed that when she arrived in Vila, she was no longer faithful to Mr Lokin. She agreed that Mr Lokin has not found another partner until today. She agreed that when she came to Vila in September, she started a relationship with another man and never told Mr. Lokin. She knew that one day Mr Lokin will find out and he will be angry with her. On the day she went to Chuan Store to work she knew her boyfriend would go and see her and if she did not return home Mr Lokin would look for her because they have a daughter at home and she has duties at home. She agreed she failed to perform her duties.
20. She agreed that Mr Lokin hit her with a pipe on her left and right wrist and left and right thigh. He also hit her on her back with the electric cable. Then had sex with her for a long time. She agreed that people heard them arguing inside the house and around 3 pm they reconciled after their chief intervened.
21. She agreed she never told the Court about the reconciliation. It was put to her that her story was made to look very serious to get rid of the defendant because she had a new boyfriend, she agreed.



22. She agreed a protection order was issued on 25 May 2023, but was never served on Mr Lokin.
23. Under re-examination she said she decided to leave Mr Lokin by having an affair with another man because she was tired of how he treated her.

Samson Conelly

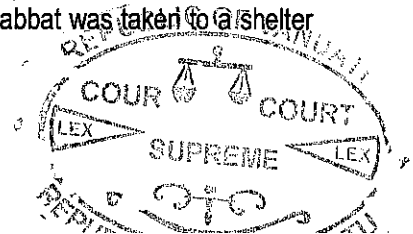
24. He gave evidence that he has been a Police Officer for 4 years. He is now a Police Constable with the Crime Scene Unit. His job is to speak with the victim then examine the scene and take pictures of exhibits and prepare a statement with an album. He said he was the Crime Scene Officer in this case. He took photos of the complainant at the Police Station on 25 May 2023. He also took pictures of the electric cable. He said there was only one electric cable. The electric cable was given to the Police by Ms Hapihabbat. He also provided the sketches of Ms Hapihabbat's injuries. He identified the album he prepared as Exhibit "PE6".
25. Under cross examination he agreed his role is to attend the crime scene, take photos and collect exhibits and prepare a report. In this case he agreed he did not visit the crime scene. He spoke to the complainant about her injuries and he took photos of them. He agreed he observed 5 injuries. There was only one rope. The complainant told him about other weapons but he did not investigate the crime scene although he know it was important to prove the case.
26. Under re-examination he said he did not visit the crime scene as Ms Hapihabbat was scared and did not want them to visit the crime scene. He did not visit the crime scene also as he had to attend to other crime scenes.

Johnson Natonga

27. He is also a Police Constable with the Family Protection Unit. He interviewed Mr Lokin at the Police Station for approximately 1 hour. He said Mr Lokin was informed of his rights and gave the answers he did to questions 27 and 31 to 50 in his record of interview. He identified the record of interview as Exhibit "PE7".
28. He was not cross-examined.

Alice Sovey

29. She gave evidence that she knows Mr Lokin. That he is her big sister's son.
30. She said when Mr Lokin hit Ms. Hapihabbat, she was in the kitchen cooking. She said the couple lived with them in a building divided into four separate flats. The couple occupied the first flat, then herself and her husband occupied the second flat, then Mr Lokin's brother in the third flat, then Mr Lokin's sister in the last flat. The kitchen was about 10 meters from the flat. She saw Mr Lokin and Ms Hapihabbat entering the yard and going into their flat. About 3 minutes after they entered the house, she heard Ms Hapihabbat crying then she ran outside with Mr Lokin following her. Their daughter was in the kitchen with her.
31. Ms Hapihabbat ran outside wearing the same clothes she wore earlier when entering the house. Mr Lokin followed her but did not carry anything. A chief took Ms Hapihabbat back to the house. She was walking properly with Mr Lokin following them. Ms Hapihabbat was taken to a shelter



near the kitchen and she appeared afraid of Mr Lokin. She did not see anything on Ms Hapihabbat's body. The chief said they will resolve the argument and Mr Lokin and Ms Hapihabbat said sorry to each other.

32. After that she went to the kitchen to prepare food for sale that evening, she was ready to go and sell the food when the defendant took the complainant outside and hit her again. She did not see them but heard Ms Hapihabbat crying. She did not check them. She did not hear any crying the next day or the day after. Sometime after she heard Ms Hapihabbat crying but she did not check.
33. Under cross-examination she agreed that her husband told her that Mr Lokin hit Ms Hapihabbat under the Samblong tree. She did not see anything and did not ask Ms Hapihabbat. Some days after she heard Ms Hapihabbat cry in the daytime and guessed that Mr Lokin was inside the room with her but she did not check.
34. She was re-examined and said Mr Lokin and Ms Hapihabbat came to Erakor Bridge to live with her mother. When the assault occurred, her mother was there. She is 80 years old. She was living in the same room with Ms Hapihabbat and Mr Lokin. After the meeting she heard Ms Hapihabbat crying loudly near the Sablong tree.

Discussion

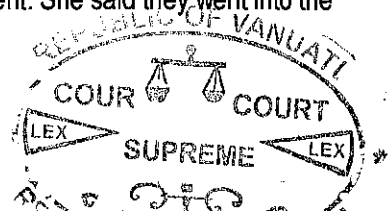
35. The defendant elected to remain silent and not give evidence and did not call any other witnesses.
36. Considering the evidence before me I do not accept Ms Hapihabbat as a credible witness. She admitted being unfaithful to Mr Lokin after arriving in Vila and began a relationship with another boyfriend. She admitted she wanted to leave Mr Lokin. Under cross examination she agreed that Mr. Lokin has not found another partner to this day. No evidence was called by the prosecution to confirm that Mr Lokin was an abusive partner or a terrible father.
37. Ms Hapihabbat's evidence shows she may have a motive for her complaint.
38. Ms Sovey gave an accurate account of what she saw which contradicted the evidence given by Ms Hapihabbat. PC Conelly's evidence also contradicted Ms Hapihabbat that there were two electric cables used by Mr Lokin to hit her. He said the picture he took of the cable identified in Exhibits "PE6" "PE2" and "PE4" is of a single cable not two.

Counts 2,7 and 9

39. In relation to count 2, 7 and 9 there is no other evidence confirming or corroborating Ms Hapihabbat's evidence that Mr Lokin threatened to kill her. Mrs Sovey is the only eye witness called who saw them on the day of the incident. She was in the kitchen and saw them entering their flat next to hers. She heard Ms Hapihabbat cry and after 3 minutes she came running outside. Mrs Sovey did not hear any threatening being made by Mr Lokin. In relation to count 2, there is no evidence of a small black handled knife either provided by the complainant or identified by PC Conelly in his photo album.

Count 4

40. In relation to count 4, Ms Hapihabbat said in her evidence that Mr Lokin had sex with her for a very longtime. This is contradicted by Ms Sovey who again was the only eye witness called who saw them entering the flat and coming out on the day of the incident. She said they went into the



house and after 3 minutes she heard Ms Hapihabbat cry and she came running outside fully clothed.

41. Similarly, the medical report Exhibit "PE1" does not identify any findings of sexual assault or that Ms Hapihabbat was a victim of sexual intercourse without consent.

Count 5

42. As to count 5 Ms Hapihabbat alleges that Mr Lokin cut her hair with a pair of scissors. The pair of scissors is identified by the investigating officer in Exhibit "PE 6" and the photo album also showed pictures of Ms Hapihabbat with very short cropped hair. In his record of interview, Mr Lokin admits cutting Ms Hapihabbat's hair with a pair of green scissors.

Count 6

43. In relation to count 6, Ms Hapihabbat's evidence is that when she ran outside the flat, Mr Lokin carried a big knife and followed her and blocked the road. Mrs Sovey said she saw Mr Lokin following her but he did not carry anything. Mrs Sovey's evidence contradicts what Ms Hapihabbat said. No evidence was produced of the big knife held by Mr Lokin and PC Conelly does not give any evidence of a big knife in his photo album.
44. I am satisfied that in relation to counts 2, 4, 6, 7 and 9 the prosecution has not proved its case to the requisite standard.
45. As to Counts 3 and 8 they are not sufficiently particularized as separate charges to count 1. Mr. Lokin pleaded guilty to count 1 "usum electric rop mo wipim hem long hem". Given that I have accepted that Ms. Hapitabath is not a reliable witness both these charges are therefore dismissed.

Result

46. I return the following verdict:-

Count 2- Not guilty
Count 4- Not guilty
Count 5- guilty
Count 6- Not guilty
Count 7- Not guilty
Count 9- Not guilty

DATED at Port Vila, this 16th day of February, 2024

BY THE COURT

Dudley ARU
Judge.

