

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

Criminal  
Case No. 22/1890 SC/CRML

PUBLIC PROSECUTOR

v

MICHEL DO

*Date of Trial:* 7 December 2023  
*Before:* Justice V.M. Trief  
*In Attendance:* Public Prosecutor – Mr T. Karae  
Defendant – Mr M. Markward  
*Date of Decision:* 15 January 2024

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**VERDICT**

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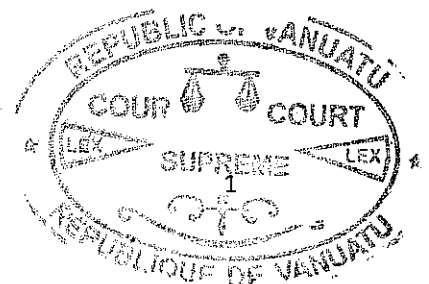
A. Introduction

1. The accused Michel Do pleaded guilty to act of indecency without consent (Charge 2) and intentional assault (Charge 3). This matter proceeded to trial as to the charges of unlawful sexual intercourse with a child under the age of 15 years but of or over the age of 13 years (Charge 1) and threat to kill a person (Charge 4).
2. This is the verdict.

B. Law

3. Mr Do is charged with unlawful sexual intercourse contrary to subs. 97(2) of the *Penal Code* [CAP. 135]:

97. ...



(2) No person shall have sexual intercourse with any child under the age of 15 years but of or over the age of 13 years.

*Penalty: Imprisonment for 15 years.*

4. The charge of unlawful sexual intercourse has the following legal ingredients which must be proved in order for a conviction to be entered:

- That sometime in 2016, at the Vietnamese Church near Vansec House, Port Vila, Mr Do had sexual intercourse with the complainant Lilly Tasarofa; and
- That Ms Tasarofa was under the age of 15 years but of or over the age of 13 years.

5. Section 89A of the *Penal Code* provides as follows:

89A. For the purposes of this Act, **sexual intercourse** means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

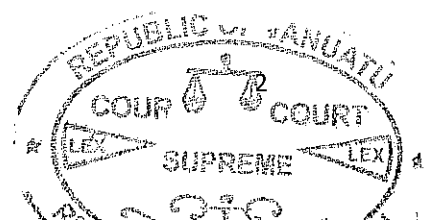
- (b) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- (c) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or
- (d) the introduction of any part of the penis of a person into the mouth of another person; or
- (e) the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or
- (f) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or
- (g) the causing, or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.

6. Mr Do is also charged with threatening to kill a person contrary to section 115 of the *Penal Code*:

115. No person shall, knowing the contents thereof, directly or indirectly, cause any person to receive any oral or written threats to kill any person.

7. The elements, having regard to this case, of threat to kill are:

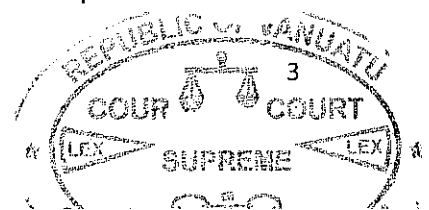
- Mr Do directly caused the complainant to receive an oral threat to kill her;
- Mr Do knew the contents of the threat; and
- Mr Do intended intended the complainant to receive the threat and to take the threat seriously.



8. 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 in respect of the charges. Mr Do was not required to establish anything.

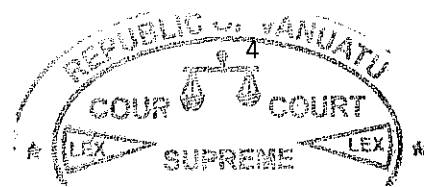
C. The Evidence

9. The Prosecution called one witness – the complainant. The witness' demeanour was a small part of my assessment of the witness. I also looked for consistency within the witness' account; consistency when comparing the witness' account with relevant exhibits; and considered the inherent likelihood, or not, of the witness' account.
10. 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. Adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if more than one inference was available, the inference most favourable to the defence must be drawn.
11. These factors all impacted on my findings of facts.
12. Exhibits P1-P8 were photographs taken by the Police Forensic Unit of the Vietnamese Church and its interior, which were tendered by consent.
13. Ms Tasarofa is 21 years old and Malaysian. She has just completed her first year at university in New Caledonia. Her mother is Valerie George and her step-father Gideon Tasarofa.
14. In 2016, she was 14 years old and in Class 6 at the French school at Anambrou area. She met Mr Do when he drove his truck to her house and her mum introduced him as a friend. She and her mum were living at Anambrou area and Mr Do at Bellevue area. At the time she took Mr Do to be her biological father as he had similar eyes to her and he was kind to her. Sometimes he bought things for her and brought them to her house. He focused on her rather than her sister.
15. She texted Mr Do that year to ask who her father was. He texted back that he did not want to make her confused and to wait at Anambrou Park where he would pick her up. She did not tell her mum where she was going. He picked her up and drove them to the Vietnamese church near Vansec House, named 'Bort du ciel' [photo of the outside of the church shown in **Exhibit P1**]. No one else was there. Inside the church is a red bar with a counter top curving round, and tables and chairs, and a stage.
16. He opened the door to go inside [view of the door in the **Exhibit P2** photo] and talked about what he would do to upgrade the church and the recent loss of his father. Mr Do turned on the light but it shone above the stage only. They were standing face to face just inside the door [photo of area through the door in **Exhibit P3**]. There was no light there. He talked about what boys and girls did in a relationship and started his



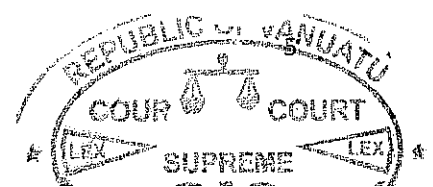
'actions'. He rubbed her breast through her shirt (demonstrating with her right hand on her left breast) then pushed his hand inside to touch her breast and sucked her breast. She was shocked and confused as she was young at the time and did not know what he was doing.

17. She was wearing pants and a top, and Mr Do was wearing jeans and a buttoned shirt. Then he took off his jeans and told her to suck his penis. She knelt down and sucked his penis. She was still shocked and confused about what she was doing. She performed oral sex on him for 5 minutes. Then Mr Do told her to go behind the bar [photo of the bar in **Exhibit P5** and of the entrance to the bar in **Exhibit P7**] and lie down. She went behind the bar and lay down facing the entrance to the bar, with her head towards the wall [photo of where she lay down in **Exhibit P8**].
18. Mr Do had told her to remove her pants; she still had her top on. Her mind was blank, she was not thinking. Mr Do knelt down by her legs. Before he put his penis into her, he pushed his fingers into her vagina. He unzipped his fly and then lay on top of her. She only felt his stomach and then he said, "OK, it has gone inside" ('OK, I go insaed.') In her head, she did not know what he meant by it has gone inside, then he started to move up and down while lying on top of her but she could only feel his stomach because he is heavy. When he started to move up and down on top of her, she felt pain in her vagina. He was moving up and down while lying on top of her for 5-7 minutes.
19. Then someone came to the front door of the church. They were Chinese. Mr Do fixed up his jeans, stood up and walked towards the door, telling her to put on her clothes. She put on her clothes and still felt pain in her vagina. She walked to the car and Mr Do drove her back to her house at Anambrou. She thought about what had happened and was still in shock. The next day she saw blood in her undies.
20. On 17 February 2022 morning, she dropped her sister at school then went to Mr Do's house at Bellevue as he had called her to go type and print a letter for the church. She joined Mr Do, her big sister Sylvia and a man from the church in the living room. Mr Do was standing by a chair, waiting for her. He asked her about her weekend and gave her the papers for her to type. Then he asked if she would spend the weekend with her mum at Eratap? She said no, she would go back to her mummy Emily Niras. He asked why and she said because her stepfather Gideon was at Eratap. She did not want to go to Eratap because Gideon was doing the same thing to her as Mr Do. Mr Do started to get angry and grabbed hold of her neck and pushed her up against the wall.
21. Her sister tried to remove Mr Do's hand from her neck as he had her up against the wall and told her to say sorry to Mr Do so he would not be angry anymore. He also told her to go fuck her friends, her dad and her family. She cried, she was frightened and angry. She feared that he would kill her inside that house. He told her that he would call his friends ('ol poison man') who would kill her by witchcraft. She was tired



of him saying that he would do so but he never did, so she told him to go tell those people to come and kill her by witchcraft.

22. Mr Do told her sister Sylvia to bring him a knife. He told the two of them that he had said he would cut them with a knife and had not, but now he would cut them with a knife. Sylvia cried and told Mr Do to remove his hands from her (Ms Tasarofa). He removed his hands then pulled a knife from his bucket of tools and pointed the knife at her and Sylvia's faces, telling them he would cut them with the knife. They moved backwards, Sylvia blocking her with her body so that if Mr Do struck them with the knife, Sylvia would be struck first. Mr Do asked about his church papers and she said yes, she would do them then he took the man from church to Seven Star. The same day she went to the Police and spoke with officer Johnson. She made two statements with the Police.
23. In cross-examination, Ms Tasarofa agreed that she made 3 statements to the Police (dated 18 February 2022 [**Exhibit D1**], 5 July 2022 [**Exhibit D3**] and 9 July 2022 [**Exhibit D2**]). She said that she typed one statement and two were by the Police. She was read out a passage from her 5 July 2022 statement that Mr Do came to her house at Eratap and asked her to go with him to the Vietnamese Church. She agreed that what her oral evidence that Mr Do picked her up from Anambrou Park was not correct. She agreed that she did not tell her mum where she was going because she was scared to.
24. When Mr Do touched her breast, she did not push him away because she was frightened, she thought he was her biological father, her mother had introduced him as a friend and she was small so she did not understand what he was doing. She was asked why she did not walk away from him. She replied that he had control in the situation, she did not call out for help. She agreed that Mr Do touched her vagina with his fingers, then told her to remove her clothes and lie down, and that she took off her clothes and lay down. She confirmed that she only felt Mr Do's stomach because he is heavy, that he heard her say that 'it' had gone inside, that she was confused and blanked out in her mind at the time, that she felt his heavy weight on her and that her vagina was sore. It was put to her that there was no penetration of Mr Do's penis into her vagina? She replied, "Si!" ('Yes!').
25. Ms Tasarofa agreed that in her oral evidence, she said that there was penile penetration of her vagina but that in her Police statement dated 18 February 2022, she said that there was no penetration. She stated that she saw some blood in her undies on the same day and the following day. She confirmed that she had already started menstruating in 2016. She was sure that the blood she saw was not menstrual blood.
26. She confirmed that on 17 February 2022, she went to Mr Do's house, he asked her to do some work and asked her about her weekend. She agreed she asked Mr Do if

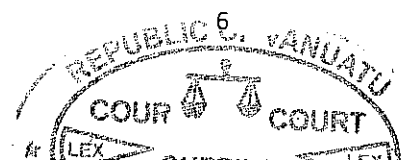


she could spend the weekend with Emily Niras who is her friend's mother and he said no. He told her to go to her mum's but she said no. Then Mr Do became angry with her because she did not agree and grabbed her neck, pushing her against the wall. She agreed that she was frightened. It was put to her that if she was frightened, why did she agree to do the church work that he requested. She replied, "To calm him down" (*'Blo coolum daon hem.'*)

27. It was put to Ms Tasarofa why she did not report Mr Do to the Police until 2022. She replied because she did not have anyone to tell because when she told her mum, her mum defended Mr Do more than her. Both her mum and Mr Do told her not to tell anyone. She could not tell Emily Niras earlier because she only came to know Ms Niras last year (2022).
28. In re-examination, Ms Tasarofa stated that on 18 February 2022, she told the Police about the sexual intercourse but they did not write it down in her statement.
29. Ms Tasarofa's account as to the subject of the charges remained unchanged in cross-examination from her original account. She confirmed in cross-examination what she had said happened in 2016 inside the Vietnamese Church and what occurred in the morning of 17 February 2022 at Mr Do's house. She readily agreed that what she said about Mr Do picking her up from Anambrou Park in 2016 was not correct as she had stated in her Police statement dated 5 July 2022 that Mr Do picked her up from her house at Eratap [**Exhibit D3**]. The difference in Ms Tasarofa's recollection is explained by the passage of time since 2016 and in any event, it is immaterial where she was picked up from. It was also pointed out to her and she agreed that there was no mention in her 18 February 2022 Police statement [**Exhibit D1**] of penile penetration. She explained in re-examination that she did tell the Police about that but they did not write it down in her statement. Ms Tasarofa also explained why it had taken 6 years to report the offending as she was young, did not have anyone to report to, was not supported by her mum to report, and both her mum and Mr Do told her not to tell anyone. Ms Tasarofa gave her evidence clearly and in a forthright manner, and readily conceded matters when she needed to. Her description of where the sexual intercourse occurred in 2016 was consistent with the photographs in **Exhibits P1-P8**. I accepted Ms Tasarofa as a truthful and accurate witness and accept her evidence.
30. **Mr Do** elected to remain silent. I did not draw any adverse inference from that.

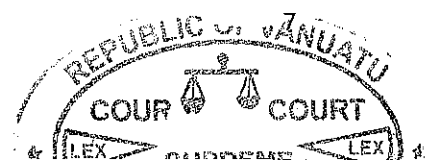
D. Discussion

31. There is no dispute that Ms Tasarofa turned 14 years of age in 2016. At all times during that year she was under 15 years old but of or over the age of 13 years.
32. It is proved from Ms Tasarofa's evidence that in 2016, inside the Vietnamese Church, Mr Do took off his jeans and told her to suck his penis. She knelt down and sucked



his penis. She was in shock and confused about what was happening. She performed oral sex on him for 5 minutes. That oral sex was sexual intercourse as defined in para. 89A(c) of the *Penal Code*.

33. Mr Do pushed his fingers into Ms Tasarofa's vagina when they were standing by the church door. Then he told her to remove her pants and lie down on the floor behind the bar, and again he pushed his fingers into her vagina. This digital penetration was sexual intercourse as defined in para. 89A(a) of the *Penal Code*.
34. It is also proved from Ms Tasarofa's evidence that that there was penetration by Mr Do's penis into her vagina. She described how before he inserted his penis into her vagina, he pushed his fingers in there. She stated that Mr Do pulled his zipper down and lay on top of her. She could only feel his stomach as he is heavy but he said words to her that 'it had gone inside' and then he moved up and down on top of her for 5-7 minutes which caused her to feel pain in her vagina. The same day and the next, she saw blood in her undies. She was sure that this was not menstrual blood.
35. Given the difference in their sizes, and that Ms Tasarofa was even smaller in 2016 than she is today, the inherent likelihood of the situation was as she described, that when Mr Do lay on top of her, she could only feel his stomach as he is heavy and she could not feel his penis. She heard him tell her that 'it' had gone inside which I infer were words to the effect that his penis had gone inside her vagina. She felt pain in her vagina when he moved up and down while lying on top of her. The words that Mr Do spoke, his lying on top of Ms Tasarofa and moving up and down on top of her, and the pain caused to Ms Tasarofa in her vagina all correspond with the act of Mr Do inserting his penis into her vagina. The penile penetration of her vagina was sexual intercourse as defined in paras 89A(a) and (e) of the *Penal Code*.
36. Charge 1 has been established beyond reasonable doubt.
37. I find it also proved beyond a reasonable doubt that on 17 February 2022 at his house at Bellevue, Mr Do directly caused Ms Tasarofa to receive an oral threat to kill her. He grabbed her by the neck and pushed her against the wall. This was the subject of the assault charge that Mr Do has pleaded guilty to (Charge 3). Then Mr Do told her that he would call his friends ('*ol poisen man*') who would kill her by witchcraft. This was an oral threat to kill her that Mr Do made directly to Ms Tasarofa. Ms Tasarofa said that she was tired of receiving such threats from Mr Do so she told him to tell those people to come and kill her by witchcraft.
38. While squeezing her neck with his hands, Mr Do told Ms Tasarofa and her sister that he had said that he would cut them with a knife and had not, but now he would cut them with a knife. Mr Do removed his hands then pulled a knife from his bucket of tools and pointed the knife at her and Sylvia's faces, telling them he would cut them with the knife. They moved backwards, Sylvia blocking her with her body so that if



Mr Do struck them with the knife, Sylvia would be struck first. These too were oral threats made directly to Ms Tasarofa which given the assault which Mr Do has accepted happened and that he was wielding a knife when he made the threat, I find were oral threats made directly to Ms Tasarofa to kill her.

39. There can be no doubt that Mr Do knew the contents of his oral threats to Ms Tasarofa.
40. I find it proved beyond a reasonable doubt that Mr Do intended Ms Tasarofa to receive the threats, and that she understood and took the threats seriously. She was tired of him threatening her like that so she told him to go tell the witchcraft people to come and kill her. With the knife in his hand, she feared for her life, fearing that Mr Do would kill her inside that house.
41. Charge 4 has been established beyond reasonable doubt.

E. Result

42. Mr Do is found guilty on both charges, and convicted as charged (Charges 1 and 4).

**DATED at Port Vila this 15<sup>th</sup> day of January 2024  
BY THE COURT**

  
Justice Viran Molisa Trief

