

Unsigned

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Criminal Appellate Jurisdiction)

Criminal Appeal Case No.6 of 2002

BETWEEN: ANDERSON TOR
Appellant

AND: PUBLIC PROSECUTOR
Respondent

Coram: *The Honourable Justice Bruce Robertson
The Honourable Justice John von Doussa
The Honourable Justice Daniel Fatiaki*

Counsel: *Mr. Hillary Toa for the Appellant
Mr. Eric Csiba for the Respondent*

Hearing Date: *28th October and 1st November 2002*

Judgment Date: *1st November 2002*

ORAL INTERIM JUDGMENT

There was listed in the cases to be heard in this session of the Court, an appeal by Anderson Tor against his conviction in the Supreme Court of Vanuatu on 17th May 2002 after he pleaded guilty to one charge of rape and was sentenced to two and a half years imprisonment.

His appeal not surprisingly is in relation to his conviction on y. The sentence imposed was an extraordinarily lenient one even allowing for the circumstances which are outlined by Justice Coventry.

It became apparent at first call that the real crux of Mr. Tor's complaint was that although he entered a plea of guilty he did so on legal advice only because he had admitted to a police officer in the course of interview when he was apprehended in



the 16th April 2002, that there had been non consensual sexual connection.

He now says on oath that he kept telling the police sergeant that although he accepted that there had been three incidents of sexual intercourse between himself and the complainant, there had been no force used, that she was consenting and he believed on reasonable grounds that she was. Mr. Tor says the police sergeant kept badgering him until he gave up and said what she wanted him to admit.

The matter is further complicated from his point of view because he acknowledges he made a public admission in his church about his wrong doing. What he says about that is that he admitted to his family and the members of his congregation that he had committed adultery and that he was ashamed of his moral wrong, but he denied ever having forced sex which is the essence of rape. There is also an acknowledgment of custom apology and compensation having occurred but he says that that, too, was on the basis that it was wrong for him as a married man and a father of two small children to be having casual sex with someone who he met for the first time in his bus. He is adamant that there was no rape.

When the matter was first called on Monday 28th October 2002, (it having had to be postponed from last Friday 25th October 2002), we laid down a timetable which required any evidence in support of this appeal to be filed by 4 p.m. on Tuesday 29th October 2002. That meant there would then be 48 hours for response by the State and the matter could be ready for hearing this morning.

For reasons which have not been explained, the appellant's affidavit was not sent to the Court until 4.15 p.m. on Wednesday 30th October 2002 and then, totally unexplainably, it was not served on the State. Mr. Sciba first saw this document early this morning. The matter clearly cannot therefore proceed. On its face the affidavit raises an issue which the Court must conclude could be capable of being



the appellant's benefit if it were held to be the truthful version of events.

Because this is the last day of the session we are left with no option but to adjourn this matter to the next session which is six months away.

This man is serving a two and a half years term of imprisonment. Not without some reluctance the Court has concluded that the interests of justice require that because there is a possibility that he could succeed on his appeal, if granted a retrial and avoid a conviction altogether it would be wrong for him to be detained in prison for that length of time.

We are told this man has no prior relevant convictions. He is a married man residing with his wife (who appears to have forgiven him) and children. Therefore bail seems to be the only alternative.

Accordingly the appeal is adjourned for further hearing in the session which will commence on 5th May 2003. In the meantime the State will have to determine the evidence (if any) that they want to call in opposition to this appeal and to decide how this matter should proceed.

Mr. Tor is granted bail in the meantime. It will be a condition of his bail that he reside with his wife and family at Taga and at no other place without the written approval of a police prosecutor.

He will report to a police prosecutor in the Court building at Port Vila between 8 and 11 a.m. on the second and fourth Friday of each month. The first of those reports will be on Friday 8th November 2002.

Mr. Tor is not to leave the island of Efate without the written approval of a police prosecutor.



It is a condition of his bail that he has no contact either directly or indirectly with any person who gave evidence at the preliminary hearing.

It necessarily follows that the Court is suspending the current operation of the term of imprisonment to which Mr. Tor has been sentenced. He must understand that if his appeal fails then he will have to return to jail to complete the rest of his sentence.

He is now free, subject to the conditions which we have set out until he returns to the Court on the first day of the session in May 2003. A copy of this judgment will be available to Mr. Tor who is duty bound to provide a copy to his client immediately he receives it.

Dated at Port Vila, this 1st day of November 2002.

BY THE COURT

.....
Hon. Justice Bruce Robertson

.....
Hon. Justice John v. Deus

.....
Hon. Justice Daniel Fatiaki

