

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

Criminal Case No. 39/03

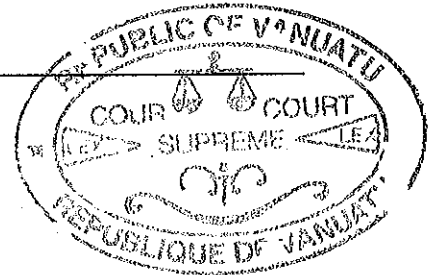
PUBLIC PROSECUTOR

v

FREDRICK BRYSTEN

**Counsel for the Public Prosecutor: Ms Kayleen Tavoia
Counsel for the Defendant: Ms Loa Damena**

DECISION



Mr Brysten faces three charges.

He is charged with indecently and forcibly assaulting Julie Savu under Section 98(2) of the Penal Code, she being a person not under the age of 13. That charge carries a maximum penalty of 7 years imprisonment.

He is charged under Section 97(2) of the Penal Code of unlawful sexual intercourse with Julie Savu, being a person at that time under the age of 15 years but over the age of 13 years. The maximum sentence for that charge is imprisonment for 5 years.

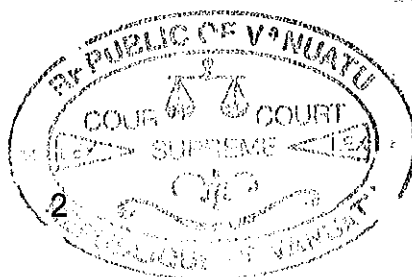
He is also facing a charge of kidnapping. Both counsel told me that the charge of kidnapping is in fact laid under Clause 92 of the Penal Code. Clause 92 says "No person shall, with intent to marry, have sexual intercourse with a female of any age, or to cause her to be married by or to have sexual intercourse with any other person, take her away or detain her against her will" The penalty for that is imprisonment for 10 years.

In my view the more appropriate charge is that under s118 of the Penal Code of false imprisonment. Clause 118 provides:

"No person shall, without lawful authority, arrest, detain or confine any other person against his (her) will and the penalty for that is imprisonment for 10 years".

I will return to this issue later.

Ms Savu gave evidence herself. She is a young person of 16 years of age. She told the Court that she lived with her grandparents and on Thursday the 30th January of this year she and some friends decided to go down to Port Vila to seek work. They left at about 7am in the morning. During the morning she met another friend who invited her to come to the movies with her. She had no money and so she went to see a relative who gave her 100 vatu. They then went back to the movies – the theatre is called 'Paradiso' and is operated by the defendant. When they were there her friend decided not to go in and so Ms Savu went in on her own.



There is no real indication about what time she entered the theatre. It is clear however on her evidence that the theatre is divided into two sections. There is a room where customers pay 200 vatu to watch blue movies and another room where customers pay 100 vatu to watch other types of movies.

Ms Savu went into the 100 vatu room.

She said that after the movie, when she was going towards the door Mr Brysten, whom she knew because she had worked there sometime previously for a short period, told her to go back inside and he would show her a free movie.

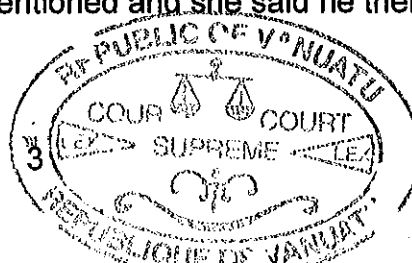
So she went back and watched a free movie.

After the free movie she said that the people who had paid the 200 vatu came out of the theatre and she was following them towards the door when the defendant came and locked the door.

She said there was no one else inside at that stage, just herself and Mr Brysten.

She said that he then picked up a big hammer, a sledge hammer, and he said that he was blocking the door and told her that if she went outside she would be hit with the sledge hammer. She said she was scared.

She said then that he pulled her by the hand into a small room which is a separate room from the two that I have already mentioned and she said he then sat by the



door to that small room with the hammer and told her that if she tried to get out he would hit her. So she sat there.

After shutting the door she said that, after he had closed the theatre for the day, he then went and picked up a double mattress and put it into the room where they show the 200 vatu movies.

She said he then got two pillows and put them with the mattress.

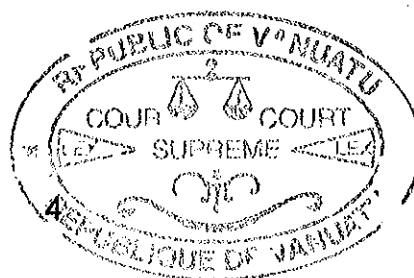
She said he then obtained a red bra and red panties and told her, "Here is your bra and panties".

She said he then took off her clothes and handed her a plastic bag with the bra and panties already rolled in a newspaper.

She said he put the mattress and the pillow down and then came and pulled her into the room where the 200 vatu movies were shown.

She said that inside that room he held her hand and pulled off her clothes although she did not want him to, and then she said he told her to put on the red bra and panties.

She said that she did not want to do this but he forced her to put them on.



She said that when she was in those clothes he pushed her down onto the mattress and then he took a bottle of green drink which he started to drink. He then tried to touch her on her breast and down on her hips and then "any kind of thing".

She said " he was licking my body".

She said she was trying to get away but she couldn't because he was holding her two hands down onto the mattress and doing these things.

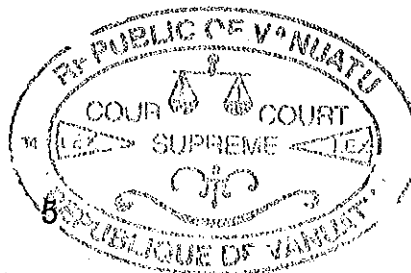
She said that while he was licking her he was taking off his pants and his clothes.

She said that he was then trying to take off her pants and although she did not want to, he forced them off her.

She said that he then told her he wanted to have intercourse with her and he was trying to have intercourse with her but she did not want it and she began screaming. She said that he then said to her "do you think I have big bananas".

She said that intercourse did not take place on this occasion because she screamed and he moved away from her.

She said at this time she put on her clothes and he told her that they were going to sleep there. She said she did not want to but he said this is where we will sleep. This was in the chamber of the 200 vatu.



She said that when he said that, he forced her to lie down there and again he tried to kiss her but she did not want to.

She said that night she slept at the movie theatre after he had shown her "bad" movies.

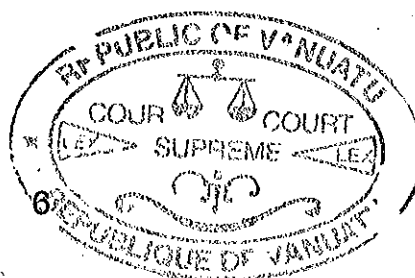
In the morning she said he took her into the small room and shut her in there. This is a very small room and the diagram which was subsequently tended in evidence shows that it is a small room opposite the entrance to the theatre as a whole. It is a timber room with a small movie screen inside it. She said there was an armchair on it and she sat on that.

She said that next day the movie theatre opened at 9am in the morning. She said that she was in the small room and that she slept there and spent the day there.

She said that he did not lock it but he sat just inside the door with the sledge hammer.

She said that when customers came in to the theatre to buy tickets he would get up and let them in and then would sit outside the door again.

She said he was showing movies on the little screen in the small room she was in.



She said that she stayed in there until lunch time and at lunch time he cooked some potatoes and kumera and brought it to her with fried eggs. She did not know where he cooked it but he brought it into her and she ate it.

She said she remained inside the small room and he blocked the door.

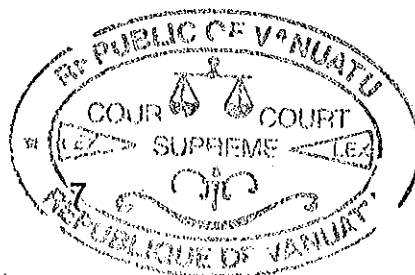
She said later on Friday he showed the movies again and when he put the movies on he came in and took off her clothes and then he faced her and said that he was then going to have intercourse with her. He went into the small room and took a basket and brought it back into the room where she was and then he took out of the basket a condom which he put on his penis.

She said that he then pushed her down on the mattress and forced her to have intercourse with him.

After intercourse had taken place she said he then took off the condom and threw it in the rubbish bin and then put on his clothes. She said she stayed that night in the room of 200 vatu.

Whilst she was there she said that he would get take-away food and that he would be back. He locked the door and went away. She said that she stayed inside.

She said she was inside the room when he came back with take-away food. He had locked the door from the outside with a key she said.



She said she would have liked to get out but he locked the area where they pay the entrance tickets.

She said he was away for about 30 minutes and he came back with rice and chicken and she ate this food.

On Saturday morning she said he gave her biscuits and coffee and she stayed inside the small room again.

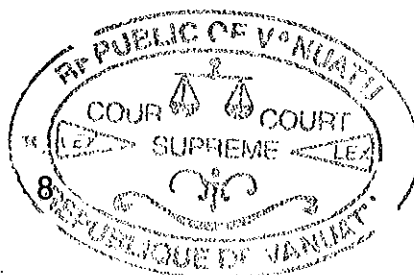
She said inside the small room there is a paid channel called Telsta and she was watching this. She said she watched it until lunch hour and at lunch he gave her only some bread which she ate.

She said that while she was staying there he was outside the door all the time and when people knocked he gave them tickets.

She said she stayed in the room until 7pm in the evening and then he put back the mattresses in the room and he went and got some take-aways which she then ate again and then "we sleep".

She said she again slept in the big room where they paid the 200 vatu.

She said on Sunday morning he gave her money to buy a little bottle of drink and she went out and brought it across the road and came back. She said this was about 9am in the morning.



When asked why she came back she said she came back because she was scared that if she left people would ask her about it all and how would she ever explain it?

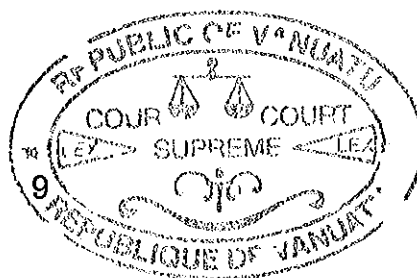
She said she went back into the small room. She said that he told her that if she wanted to watch a movie she could get a cassette and she did and he put it on for her.

She said there were two boys outside and they called to her to come out and if she did not they would come and have intercourse with her. "I said to them "Are you crazy."

She said when the two boys had talked to her they went away and then a grown-up came and asked her if she had been there long and whether she wanted to get the Police. She said that she had told the grown-up "I don't know".

She said one of the people told her Uncle Dennis and when he was told he came over. She said she was still in the small room and that she said one of the boys must have been on the shoulder of the other boys because they appeared over the top of the wall of the small room in a gap between the top of the wall and the roof.

She said that Mr Brysten brought food to her at lunch time and after lunch the boys came and talked to her but Mr Brysten told her not to listen to them.



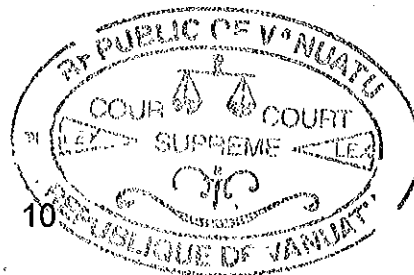
She said the next thing she knew the Police came over because they were making a noise and asking Mr Brysten if there was a girl inside and Mr Brysten was saying there was none.

She said she heard Mr Brysten being told to open the door and he would not. She said that he had told the boys they could stay and watch free movies but they were afraid.

She said a Police Officer came up then and the accused saw the Police Officer and asked him whether he was a Police Officer, but the Police Officer said "no". She said the accused opened the door and the Police Officer came in and this was an Officer called Aru. She said when the Police Officer came in the defendant opened the front door and people came in and they were wanting to kill Mr Brysten. She said the Police grabbed her and took her away; that she was happy that they had arrived.

She said she was wearing a blue shirt and short black skirt. She said she also had jeans with her. She said a week before she had been to a marriage and she had kept the clothes in a basket with her.

In cross-examination she adhered to her evidence in chief. She said that she gave a statement to the Police and it was her statement, although it was written down by a Police Officer, but she agreed with it. She said no one compelled her to say anything and that what she said was true.



She was asked whether she knew two people called Tony Laloyer and Michel John who were to be called to give evidence for the defendant. She said she did know them; that she had slept at their place in December last year.

She was asked whether she slept there on the 30th January through to the 1st February and she said she did not; she went there only in the month of December.

She said she did not later tell her family, she just told the Police what had happened and her family did not ask her anything further.

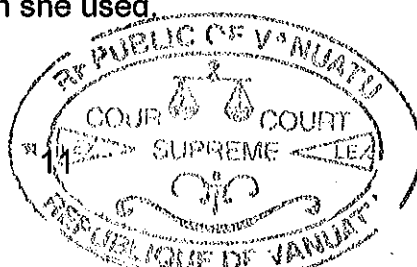
She was asked whether she did not think there was a risk going to a place like that and she said that she had previously worked there to sell tickets, she had never watched a blue movie before and she did not think that she should not do that.

She said that she had changed into her short skirt and shirt on Friday because she had these in a basket, a wool bag coloured purple and black.

She was asked when she was locked up why she did not attempt to fight back and she said because she was being threatened with a sledge hammer. When she heard other people there she did not call out because she had been told not to.

She said that when the defendant went out to get food or for other reasons there was no one left inside but herself alone.

She said there was a toilet inside which she used



It was put to her that she was not there at all on any of the days except on Sunday and she said that she went there on Thursday and that Silas Noah saw her on that day when she was there and that she stayed through that time.

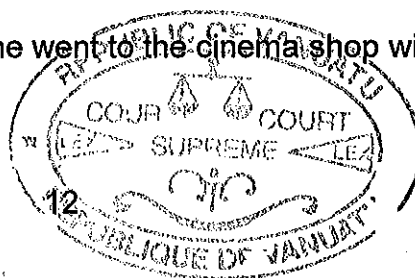
When it was put to her that she was in fact staying with Tony Laloyer and Michel John she said that was in December only.

It was put to her that she was running away from home because she was afraid of her parents because of a party the night before. She said that was true in December but not at this time. She said that when she did not turn up back at her grandparents' place they had looked for her but couldn't find her.

That then is the evidence of the complainant. Her grandmother gave supporting evidence that she had been away from their home from Thursday when she went off with friends until Sunday when she was found.

Silas Noah gave evidence. He said he had been at the pictures on Thursday and he saw her going to the toilet in the cinema between 10am and 11am on Thursday 30th January. He knew her well and recognised her when she went to the toilet. That corroborates what she said about that time.

Sergeant Marilynne George is a Police Officer who has served for 25 years and now works in the Sexual Abuse Unit. She said on Sunday the 2nd February she had been told of a girl in the cinema shop and she went to the cinema shop with another Police

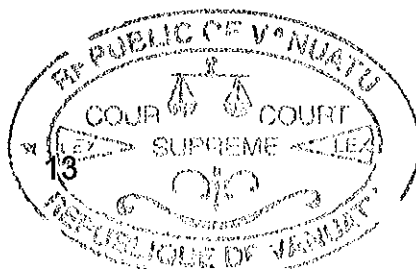


Officer. She said she knocked at the door and when Mr Brysten saw her she indicated with her hand that she wanted to see the girl inside the shop but he refused to open it. She said he then put notices on the door which had a glass panel and the notices said in Bislama, "I need peace". She said she knocked again to tell him to open the door but he refused and he put another notice which said "I play for everybody, Police are not forbidden". She then said that there was another notice put up by him saying "Police do not have a right to stop my business".

She then went and got her immediate superior who is a Police Inspector who also came and asked Mr Brysten to open the door but he refused. They then went and got the owner of the premises of which the cinema shop forms part. They arranged for the owner to open the door which provides access into the cinema shop.

They went into the shop and she said that she went to the front of the shop and found Mr Brysten who then opened the front door. She said she then went to the front of the shop and waited while others got the girl and she took her to the Police Station. She said that when Ms Savu came out "She did not smile and I saw she was frightened".

She said Ms Savu was wearing trousers and a shirt at that stage. She spoke to Ms Savu immediately at the Police Station and Ms Savu told her that she had been in the cinema shop from Thursday through till Sunday afternoon. The Sergeant then took a statement from her which confirmed in broad terms the evidence which I have indicated. She then arranged for Ms Savu to go and see a doctor.



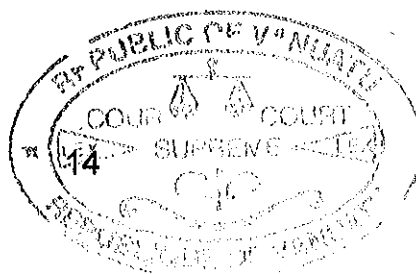
She said that on the 10th February she searched the cinema shop with other Police Officers. She said they could not find the actual pornographic cassette which was shown to Ms Savu. She said the shop was full of such cassettes. She said they found the bra and panties and the double mattress which had been used. She interviewed some other witnesses in this matter as well. She said that she did not force them to give any evidence.

She said that she had had no prior dealings with Mr Brysten.

She said she also collected the notices during the search which have been produced. These were the notices which Mr Brysten showed to the Police when they were trying to gain entry. She said that her impression was that he was making an excuse not to allow them in.

The Police Sergeant said that she thought the victim to be frightened and she thought that was because there were then so many people at the entrance to the shop. She said when she got Ms Savu to the Police Station she was no longer frightened and was able to tell what had happened. She said that in her long experience of victims they are not all the same. Some are upset and distressed and some are not. She said at the time she got Ms Savu out of the shop she could see she was really frightened and upset.

She said that Ms Savu went with them on the 10th February to search the place and she seemed a bit reluctant but was otherwise all right.

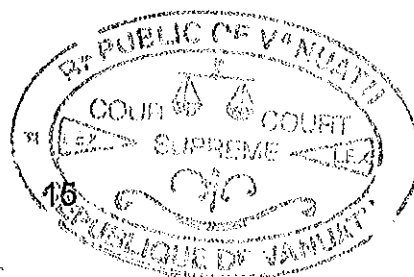


There is some other evidence which links in with this. I have already mentioned the evidence of Silas Noah. There is evidence of Alexis Cyske, who on the 2nd February, the Sunday, was at the cinema in the afternoon and looked over the top of the small room through the gap between the ceiling and the partition and said he saw a small girl in the small room watching a movie. He said that Peter, a friend of his, had previously seen the girl there. He said that he stood on a plastic stool and looked through the glass and saw the girl. He didn't know who she was.

His friend Peter, who I thought was an excellent witness, also gave evidence. He was at the movies in the afternoon of the Sunday. He said that others were there laughing at Mr Brysten because he had been hiding a girl in the shop. He said he hauled himself up against the wall and saw the girl watching the movie in the small room. He said he saw Mr Brysten take a food plate to her and he climbed up again to see whether she was eating it. It was chicken wings and sweet potatoes.

He said he asked her through the partition what she was doing but she didn't reply. He said she heard him ask and she looked at him and then looked back at the screen. He gained the impression that she was not at all worried or concerned.

They went then outside and told the Police about the girl and eventually the Police Officers came. He said before the Police Officers came he had said to Mr Brysten he was looking for a sister of his, and that when he said that Mr Brysten closed the door. He said that Mr Brysten said to him "There is no sister in here" and pulled the door and locked it.



He confirmed also that the Police knocked and asked to be allowed in but Mr Brysten would not allow that and that he placed the papers in the glass giving the messages to the Police and then he saw the Police going into the shop and opening the door.

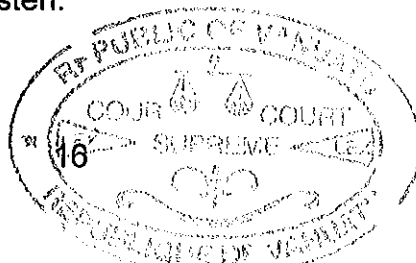
He confirmed that he had made a statement and that it was his own statement and no one forced him to make it and that he had asked them to write the statement down for him.

Significantly, he said that the girl he saw did not look scared at all and she did not look frightened. He did not hear her scream or shout at any stage. He had no suspicion that she was under any threat.

Evidence of the Police Officers is congruent with all of this. Corporal Malesu went to the cinema when he was told about the girl, tried on several occasions to get Mr Brysten to open the door, saw the notices which were put up, and was unsuccessful in gaining entry.

Chief Inspector Toomey was summonsed to the place, requested Mr Brysten to open the cinema shop, then he went and got the owner and went in the back way and arrested Mr Brysten. He said that when he went through the cinema area he could not find any evidence of a hammer. He said the young girl they found there seemed distressed and frightened when he found her but said that could have been because of all the people and the Police being there.

He also took a statement from Mr Brysten.



The statement which he took was read to the Court. It said:

"I want to tell you about the allegation that I held this girl. She only came to Paradiso at 11am yesterday (i.e. Sunday).

The girl did not come on the 30th, 31st or 1st, a Saturday. These three days I did not see her at the cinema at all.

I only saw her on Sunday the 2nd February.

Room 1 and room 2 videos were already showing when I served the girl. She selected three cassettes and wanted to see them. The only room available was MTV and I gave her that room and she started looking at the first and second cassettes.

All the time the door to the room was open. One man outside told me he was the brother of the girl. I informed Julie and she said she did not have a brother."

He said that the boy went and informed the Police. He said in his statement to the Police that he explained to the boys outside that he could not get peace inside. He said that Julie made this problem with his business. He told her to go out. He said Julie saw 2 ½ comedy cassettes only "and has not yet paid". He said he did not rape the girl inside the room.



"I only gave her free food and nothing more". She asked me if she could stay for the full night. I gave her no answer. The Police broke in the back of the cinema and came from behind me. The Police hit my body, hurt one finger, and took me to the Police Station. They hit my body over 30 times."

"The girl only came on Sunday. The other days the girl did not visit from the beginning of 2003 until Sunday."

The Chief Inspector was asked whether there was any Police questioning of the defendant's business operations and he said that there had been a complaint in 1994 only.

Police Constable Jeffery added something to this. He was also at the door trying to get it open. He wrote a notice in English and put it on the glass to show Mr Brysten and then slid it under the door. He asked if they could gain entry to see that the girl was alright. The defendant said that he would not let them in; looked at the paper and looked away.

The Police Officer said that after the arrest there was a small incident. When they were getting Mr Brysten outside he said a relative of the girl came from behind and slapped Mr Brysten. "We pulled Mr Brysten away but he still hit Mr Brysten." He also saw the girl and said she looked frightened but he was not sure why. He thought it may have been because of the Police and because there were many people outside.



The last Police witness was James Aru, a Corporal for 18 years. He produced the red bra and panties which were found in the theatre. He saw also a mattress but did not see any sign of a hammer. He said at the time of the search the defendant was there and they had taken Julie Savu along with them. At the time she told him that they had been sleeping on the mattress in front of the big screen and she said that she had slept there with the defendant.

The final evidence was given by the doctor. He saw Julie Savu on the 3rd February, the Monday. He said that she told him about the rape which she said had occurred in the theatre and that she had been held against her will for four days from the 30th January to the 2nd February.

The doctor was a qualified obstetrician and gynaecologist. He said that her physical examination was normal. He said there was no external evidence of bruising, lacerations or contusions and that at the time he examined her she was menstruating but her vulva and vagina were normal. In his opinion she was physically in a normal condition. His evidence really takes the case no further.

The defendant elected not to give evidence but called four witnesses who essentially established for him quite different stories.

Nawas Lapsen said that Julie, whom he had met once before in December 2002, came to see him at his place of work to his surprise and asked if she could stay with him for the night. Following that discussion he arranged for her to stay with his friend



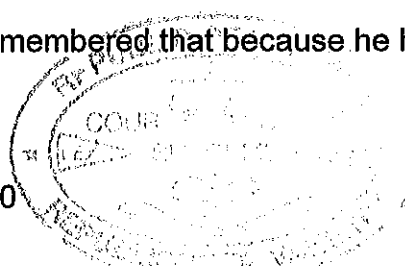
Michel Jean for one night only. He took her to Michel's place. Michel is a young man of the same age.

The next morning at about 6am he called in to collect Michel since they worked together and he saw Julie sleeping at Michel's place. This was Saturday morning. He said this was the night of 31st January.

Michel Jean gave evidence. He is aged 24 years. He said he gave Julie a bed for the night. He said he had never met her before. He said he was not alone in the house. He had two relatives with him whom he described as uncles. They were all young men of about the same age group. He said that he gave her a bed on the understanding that she was to be there for the night only. He then went off to work early in the morning and came back and she was there again for the Saturday night, that she stayed the Saturday night and left early on Sunday.

He said he had heard rumours about the defendant being accused of raping her over the days when she was with him and when he heard that he realised that he had evidence to give. He said he heard the rumours in about April. He was clear about the dates when she was staying with him. Asked about the wisdom of him having a young girl he thought about the age of 15 staying with him he said he did not give it any thought. If he had he would have thought he was only giving her a bed for the night, for one night only.

Tony Laloyer is one of the other young men who were staying there. He said that Julie stayed for those nights. He said he remembered that because he had returned



from New Caledonia on the 17th January and it was shortly after that when she stayed with them.

It was put to him that he had met Julie in December at a party and in similar circumstances and he denied that, saying he had been in New Caledonia during December and only returned in mid January. Again, he was a believable witness.

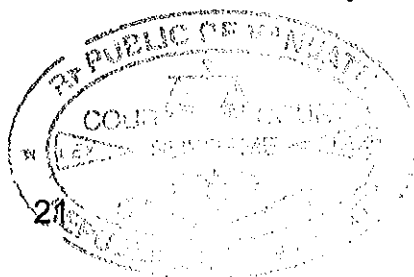
The last witness for the defendant was Noel Berry who is an older man and does maintenance work for the defendant.

Mr Berry described the accommodation in the cinema shop. Acting on instructions from the defendant he has recently changed some partitioning and in particular the small room where it is said that Julie was imprisoned. He has blocked in both the top and bottom so it is a complete room and he has extended it into a larger room.

He said he did that on the instructions of Mr Brysten when he visited Mr Brysten in prison shortly after these events.

His evidence is also significant because he said that he went on Friday 31st January to collect his wages at 5.30pm and was shown a movie then. He said that although there were others, there was no one in the small room.

He went back to work on Saturday at about 9.30am and worked through to 1.30pm and he said again no one was in the small room on the Saturday.

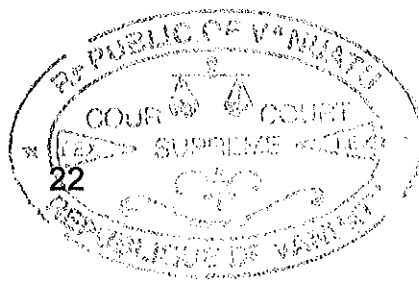


He also said that although he had a hammer amongst his tools he always took the tools home and never left them. Again, his evidence is worthy of belief.

I took a view of the cinema shop myself in the presence of counsel, the registrar and the defendant. At the time I did this, on a hot, sunny afternoon in Port Vila, there was a crowd of people outside and inside the shop and there was clear evidence of recent alterations. It was possible however to detect where the small room had been extended. It was also possible to see the larger room where the 200 vatu films were shown and the smaller room where the 100 vatu films were shown.

The toilet areas were also inspected and one could make sense of the diagram of the Police Sergeant which is exhibit P(2) in this matter. It is altogether a small and very crowded space. In my view anyone who is present in the small room would have been immediately discernible and detectable by patrons of the cinema going along the corridor past that small room to both the 100 vatu room and the 200 vatu room and to the toilet. The area of the ticket sales has now been changed so that the position of all the people and the rooms is even more crowded, although there is now significantly more room in what is an extended bedroom space containing a bed and the cassettes. In effect the bedroom has been merged with what was the small room previously.

In my view, in the crowded conditions which were both explained in evidence and given the proximity of the rooms to patrons, it is simply inexplicable that anyone could have been in what was described as then the small room without being noticed by



those who were attending and in turn being able to notice those persons. That is, indeed, what happened.

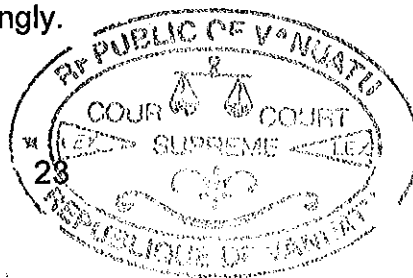
Having made that comment I turn now to the consideration of the evidence as a whole. I am grateful in pressed circumstances to counsel for their helpful submission.

I remind myself at the outset that of course it is not for the defendant to prove his innocence – it is for the prosecution to establish beyond reasonable doubt each ingredient of the charges against Mr Brysten.

There seems to me to be, on the face of it, no doubt that on Thursday the 30th January the complainant was indeed at the premises of Mr Brysten. I accept the evidence of Silas Noah about that. It confirms Ms Savu's evidence that she was present during some part of that day.

There is no other evidence which corroborates or supports Julie Savu's evidence about being present over the whole of the rest of the time until the quite dramatic events of Sunday afternoon, the 2nd February, when she is described as being seen in the small room by some of the boys, Peter and Alexis in particular, and then of course was eventually recovered by Police Officers entering the premises through the adjoining access.

There is of course no legal requirement for corroboration of Ms Savu's evidence and I am entitled in accordance with ordinary legal principles to satisfy myself as to her credibility and to make findings accordingly.



In this case there are worrying aspects about Ms Savu's evidence which disincline me from accepting her evidence without looking for congruent support in other evidence and supporting statements or circumstances.

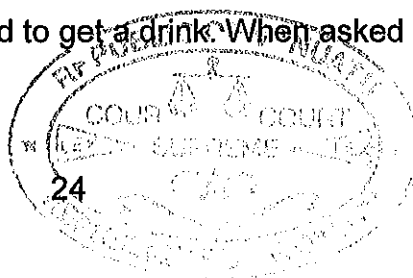
There is the strong evidence of Nawas Iapson, Michel John and Tony Laloyer that in fact she spent Friday and Saturday nights at the premises occupied by Michel and Tony at that time.

I have no reason to disbelieve the evidence of Michel and Tony when they say that she was there for that time. It is clear from the evidence and from the descriptions that this was the same person.

And there is further disquiet to be had I think from the comments in cross-examination by Julie that she had met both Michel and Tony in December when Tony's evidence was that he was then in New Caledonia. I mention that to show a further inconsistency.

And then there is the evidence of Noel Berry who was working on the premises, and did not notice her there on Friday, but particularly did not notice her there on Saturday when he was working there for some hours. In the small area involved it is simply not possible that he would have not known that she was there and conversely that she would not have known that he was there working.

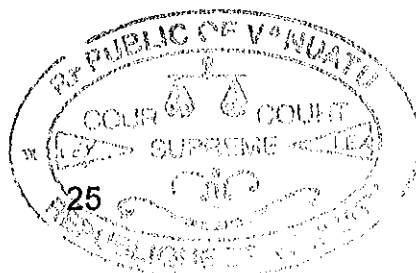
There are other worrying aspects. At one stage Julie gave evidence that she was given money and went across the road to get a drink. When asked why she did not



leave at that stage she said she would not know how to have explained the position. But if she was frightened and scared because of the things which she described as happening to her it would have been an easy opportunity for her to have gained some help.

Similarly, in what is a very small and crowded area, there were many opportunities for her to call out to others who were there. Her evidence is that others were there at the time. There was help to be gained by her at any time should she have needed to do so, if what she says is true. Of course I must bear in mind that she is and was then a young girl and that she might easily have been captured both physically and mentally by the circumstances she described. The defendant is a man of mature, even advanced years and the contrast in their age is marked. She may easily have been overwhelmed and found herself unable to cope with and think through the situation. But the circumstances are sufficiently concerning to require support for her evidence.

And yet two other worrying features are the fact no sledge hammer or large hammer as described by Ms Savu was found on the premises when one would have expected Police and others to immediately seize on that when they entered the place. And finally, there is the question about her own condition, having regard to four days of the sort of treatment which she described. I particularly have regard here to the evidence of Peter Tabimal who was one of the young men who hauled himself up the wall to look at Julie. He asked her what she was doing but she didn't reply although she looked at him. He said she did not look worried she just carried on looking at the movie.

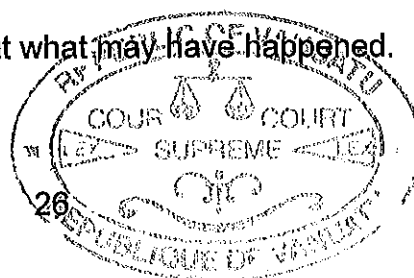


There are also of course other problems arising from the statement made by Mr Brysten to the Police Inspector. If none of what Julie said was true then how is it that the red bra and panties were recovered from the premises and how did she know about these?

And why would the accused not open the shop in response to Police requests. The requests were concerned and balanced – they did not appear at any stage to have been strident or brutal. As a law abiding citizen he would have had no reason not to comply with such reasonable requests. His adamant refusal to open is inexplicable. I do not accept the submission that he did not know what was being asked of him. Nor do I accept the submission that in some sinister way this whole business and the charges laid were a fabrication by Sergeant George aimed at closing down his business. I do accept that Sergeant George found his business unsavoury and unsatisfactory; others may also share her views; but she impressed me as a reliable and truthful witness and her evidence was supported in many material particulars by others. I expressly reject that submission.

And on his own statement, why would he get food for a customer on Sunday, particularly when she had not even paid for the cassettes he was showing with her; and that is clearly beyond what he would ordinarily do for anyone on his premises as a customer.

It is not the function of the Court in all these circumstances to try and reconstruct the scene or to indulge in speculation about what may have happened.



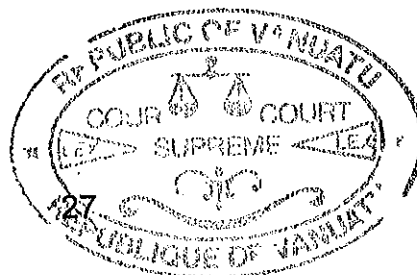
It is for the prosecution to prove their case beyond reasonable doubt.

It is of course perfectly possible that Julie spent the first night, Thursday night, at the cinema, that she left on Friday and went to stay with the others as has been described for Friday night and Saturday night and then returned on Sunday. It is also perfectly possible that some of the things that she alleged happened may have occurred over those periods.

But it is not for the Court to involve itself in speculation. All that has been proved beyond reasonable doubt in this case was that she was there on the Thursday, was there again on the Sunday, that she had opportunities to remove herself or to gain assistance and she availed herself of none. She appeared not to be worried or concerned when viewed in the small room, and did not seek help when it was available then either.

The congruities and inconsistencies in her evidence are such that the Court could not possibly come to the view that her evidence should be accepted without adequate independent support and there is simply none in this case.

One charge is of indecent assault against her and there is only her evidence of that. The other charge is that there was unlawful sexual intercourse between her and Mr Brysten, and again there is only her evidence about that. In addition Ms Tavoia concedes that the prosecution has a problem since there is no adequate proof of Ms



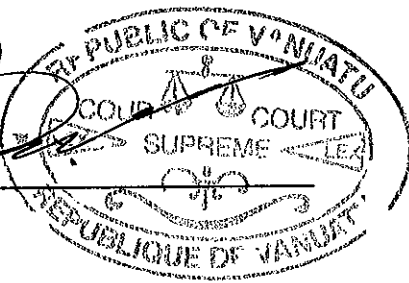

Savu's age. She herself said she was now sixteen years of age. The charge is that of sexual intercourse with a person under the age of fifteen years.

The last charge is that she was imprisoned, held or detained without her consent. Again there is only her word for that and it is denied in the statement made by Mr Brysten.

He is entitled not to give evidence and no adverse implications can be drawn from this silence despite the very many issues which call for explanation in this case and the puzzles which remain.

The fact of the matter is that there is not here satisfactory proof beyond reasonable doubt of the ingredients of all these charges and the law, supported by the Constitution of Vanuatu, is that the accused is entitled to the benefit of the doubt and the charges must be dismissed accordingly.

Orders accordingly.



DJ Carruthers
Judge

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