

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

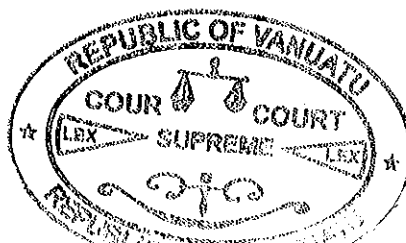
Criminal Case No. 130 of 2011

**PUBLIC PROSECUTOR  
V.  
WILKINS REYNOLD**

**Coram:** D. V. FATIAKI  
**Counsels:** Mr. G. Takau for the State  
Mr. B. Livo for the Defendant  
**Date of Decision:** 2<sup>nd</sup> August 2012

**JUDGMENT**

1. The defendant, **Wilkins Reynold** is charged with a single count of Sexual Intercourse Without Consent contrary to Section 91 of the Penal Code. The particulars of the offence alleges that sometime on 14 June 2011 at your house at Anaburu Port Vila you had sex with Betty Allan without her consent.
2. During the trial the prosecution called the complainant and her “*defacto*” partner and the defendant elected and gave sworn evidence in his defence. After the close of the evidence counsels were granted time to prepare closing addresses. When the trial resumed however, only defence counsel addressed the Court, the prosecutor failed to appear.
3. Be that as it may, to establish the offence the prosecution which bears the burden of proving the charge, must produce evidence that satisfies the Court beyond a reasonable doubt of 3 essential elements, namely:
  - (a) That the defendant had sexual intercourse with the complainant, Betty Allan;
  - (b) That Betty Allan did **not** consent to sexual intercourse with the defendant; and
  - (c) That the defendant knew Betty Allan did not agree to sexual intercourse with him or was reckless as to whether or not she agreed.
4. **Ingredient (a)** is admitted by the defendant in his own sworn testimony and need not concern the Court any further.



5. **Ingredient (b) and (c)** however, are very much in dispute and therefore the Court must carefully scrutinize the evidence before making a decision on either ingredient.
6. As to **ingredient (b)** the claimant testified that at **no** time did she ever consent to sexual intercourse with the defendant. Her evidence is that she started seeing the defendant after **May 2011** for traditional treatment for a condition she had at the time. She suffered from paralysis down her left side and pain on the backside and womb. She was pregnant at the time. She said the defendant had used traditional leaves and kava in his treatment of her and also massaged her body using oil. On several occasions he had spat kava on her and had even spoken in foreign tongues. She paid for her treatment with kava, cigarettes and cash.
7. On the day of the incident when she and the defendant had entered the massage room, the defendant sent some children out of the room and pulled the curtains. He then made her lie face-down topless and he proceeded to oil her body and massaged her on the shoulder and back. Then he asked her to turn around and face the ceiling and he proceeded to oil and massage her body on the chest and down to the legs.
8. The complainant testified that the defendant pushed her shoulders down and quickly removed her panty and proceeded to push his penis into her vagina and she felt him *"pump twice"* before he withdrew from her. In the complainant's words: *"Hi fuckem mi"*. After the defendant withdrew, the complainant, in her shock and surprise, said to him: *"hey, wanem fasin yu mek blong mi"* (hey what did you do to me?). The defendant got off her, pulled his trousers up and said: *"yu no panic, yu no shout, mo yu no harem nogud, from me treatment evri woman same"* (Don't panic, don't shout, don't feel bad because I treat every woman in the same manner).
9. The complainant quickly got dressed, left the room and rang her partner who came and took her home.
10. She told her partner what the defendant did to her and later that evening they returned to the defendant's house and her partner assaulted him and demanded a refund of the VT23,000 paid for her treatment. The defendant refunded VT10,000.
11. Later she and her partner lodged a police complaint against the defendant.
12. In cross-examination the complainant firmly denied that the defendant had asked her to have sex or that she agreed to have sex with him. To the question:  
**Q:** *"You did not struggle, or sing out or resist, you consented?"*

She answered:

**A:** *"I said what are you doing?"*

She admitted making 2 statements to the police after her partner had sought advice from a public prosecutor and because, in her own words: *"I know what the defendant did to me is not right and he is a 'law keeper'"*.



13. Defence counsel made much of the month-long delay in laying the complaint and the fact that the complainant had sought the advice of a public prosecutor before doing so. I am satisfied however that nothing untoward occurred nor is there anything sinister in seeking the advice of the public prosecutor given that the defendant was a serving senior police officer and the claimant had gone to the defendant's house and had followed his directions in the massage room.
14. The defendant in his sworn testimony frankly admits having sex with the complainant on two (2) occasions after *"she had agreed to us having sex"*. On the day of the incident which was allegedly the second time they had sex in his house she did **not** push him away or complain or *"sakem me"*. Instead, after they had sex they came out of the room and had some kava and the complainant paid him VT10,000. It was about 9.00 p.m. in the evening.
15. Later that same evening the defendant confirmed that the complainant returned with her partner who questioned him and punched him on the neck. When asked: **"Q: Why did he do that?"** the defendant answered **"A: I didn't know he was the complainant's friend. He was very upset and demanded a refund of the money I refunded VT10,000 I had received that same night"**.
16. Under cross-examination the defendant confirmed that he was a serving member of the **VMF** and that he had been treating the complainant for a complaint about her womb during the months of **May/June 2011**. The treatment included massaging her and *"blow on her body"* after drinking kava. He also used a leaf. The defendant accepted that sexual intercourse was **not** part of the complainant's treatment.
17. He claims he had sexual intercourse with the complainant on two (2) occasions but was unsure of when the first occasion occurred other than *"it was in June"*. He denied being aware that the complainant was pregnant at the time and he was adamant that on **both** occasions of intercourse the complainant had agreed to his request for sex.
18. He admitted that the way he touched the complainant *"was not right but he wanted to cure her"*. Although he professes to love his wife, he had sex with the complainant because *"there was problem at home and that's why I did it"*.
19. In the end, this case boils down to the evidence of the complainant against the evidence of the defendant *ie "she said, he said"*, and, more importantly, who the Court believes.
20. In this regard I have no hesitation in saying that I found the complainant a reliable and truthful witness who gave her evidence in a clear unembellished manner. She did not deny that she and her partner had sought the advice of the public prosecutor **nor** did she try to embellish the level of resistance and objection she offered towards the defendant's actions. I am also mindful that the complainant was pregnant at the time and suffered from paralysis.
21. Having said that, this was not intercourse over a lengthy period of time during which the complainant might have offered more physical or verbal resistance,




rather, I find that intercourse was sudden, opportunistic, and fleeting. Nor do I find it unreasonable for the complainant, in these circumstances, not to immediately complain to the other women patients who were present outside the room given that the defendant had just told her that he treated every woman in a similar manner.

22. I am satisfied that the complainant was taken by surprise by the defendant's completely unexpected actions and her immediate rhetorical question has a "*ring of truth*" and lends credence to her surprise and I accept her evidence that she did not consent or agree to have sex with the defendant.
23. The defendant on the other hand struck me as evasive and untruthful in his testimony. At first he admitted treating the complainant for her "*difficult pregnancy*" and then, in cross-examination he denied being aware she was pregnant. I find that the defendant purposely lied about having intercourse with the complainant on a prior occasion in June 2011 in an attempt to establish some sexual familiarity with the complainant.
24. I also find the defendant evasive and untruthful in his responses to questions about the subsequent assault on him by the complainant's partner and the reason for him not lodging a complaint about it with the police and for immediately refunding VT10,000 of the complainant's fees. The defendant did not strike me as an innocent man who was merely trying to appease an angry stranger who had come uninvited to his home and if the defendant is to be believed, had assaulted him for no reason at all.
25. I am satisfied beyond a reasonable doubt that the prosecution has proved its case and accordingly I convict you **Wilkins Reynold** of the offence of Sexual Intercourse Without Consent as charged.
26. You have 14 days to appeal against this conviction if you do not agree with the Court's verdict.

**DATED at Port Vila, this 2<sup>nd</sup> day of August, 2012.**

**BY THE COURT**

  
**D. V. FATIAKI**  
Judge.

