

**PUBLIC PROSECUTOR**

-v-

**JOHN TANGIAT**

*Coram: Vincent Lunabek, CJ  
Mr Leon Malantugun for Public Prosecutor  
Mr Andrew Bal for Defendant*

*Dates of hearing: 24-25 February 2014*

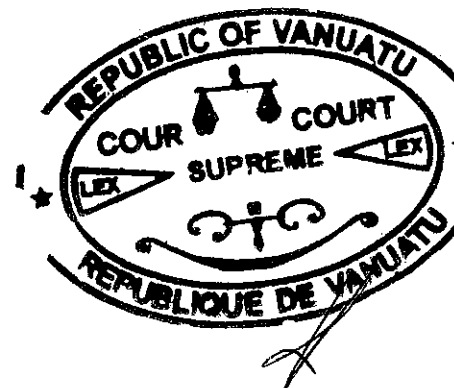
**ORAL VERDICT**

This is the Verdict of this case.

Defendant, John Tangiat of Iopuna Village, Epi is charged with three (3) counts:

- Indecent assault, contrary to s.98(a) Penal Code Act;
- Abusive or threatening language, contrary to s.121 of Penal Code Act; and
- Sexual Intercourse without consent, contrary to s.91 of Penal Code Act [Cap 135].

On 5 November 2013, he pleaded guilty to Count 1 of Indecent Assault in that on 1st September 2013 at Iopuna Village, West Epi, he intentionally indecently assaulted the complainant C.T. by touching her breast without her consent. He also entered not guilty pleas in respect to counts 2 and 3 in that he denied he intentionally used abusive or threatening language to complainant CT by standing at the door of his house, calling strongly on her and threatening her with the intention to have sexual intercourse with her on Monday 2 September 2013. Further, he denied that on Monday 2 September 2013, he had sexual intercourse with the complainant girl without her consent by using force at Iopuna, Epi.



The Defendant's sentencing on count 1 is adjourned pending the outcome of the trial of the Defendant on Counts 2 and 3.

The trial took place on 24 and 25 February 2014.

This is a criminal trial. The law is for the prosecution who brings the charges against the Defendant to prove each and all essential elements of the offence beyond reasonable doubt. If at the end of the trial, after assessing the evidence, there is a reasonable doubt I must apply that doubt to the benefit of the defendant by discharging and acquitting him of one or all offences.

When I assess the evidence, I consider the evidence of the Defendant on the same basis as I consider the evidence of the prosecution witnesses.

Elements of the Offence:

- Offence of Abusive or threatening language contrary to s.121 of Penal Code.

*s.121 reads:*

*"No person shall in a public place use threatening or abusive words, or threatening gestures, towards any other person or persons."*

For the Defendant to be found guilty of that offence, the prosecution must prove following elements beyond reasonable doubt.

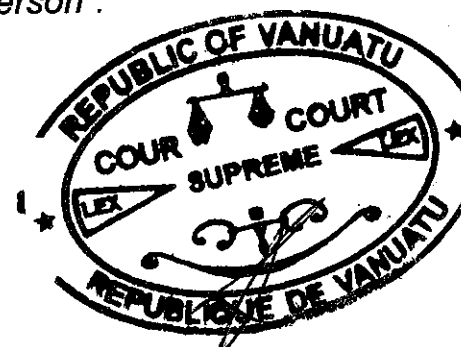
1. Defendant was in a public place on Monday 2 September 2013 at Iopuna village.
  2. Defendant use threatening or abusive words or threatening gestures, toward the complainant (CT).
- Offence of Sexual Intercourse without consent contrary to s.91 of Penal Code Act.

*s.91 reads:*

*"No person shall commit sexual intercourse without consent"*

Sexual Intercourse without consent is defined under s.90 as follows:

*"Any person who has sexual intercourse with another person":*



- (a) by Force; or
- (b) by means of threats of intimidation of any kind; or
- (c) by fear of bodily harm or
- (d) by means of false representation as to the nature of the act
- (e) by the effects of alcohol or drugs; or
- (f) because of the physical or mental incapacity of the complainant

commits the offence of the sexual intercourse without consent”.

For Defendant, John Tangiat, to be found guilty of the offence of Sexual Intercourse without consent, the Prosecution must prove beyond reasonable doubt the following elements.

1. That on Monday 2 September 2013, Defendant John Tangiat had sexual intercourse with complainant (CT).
2. That Sexual Intercourse occurred on Monday 2 September 2013 without the consent of the complainant (CT); or
3. That the consent of the complainant CT is obtained on 2 September 2013:

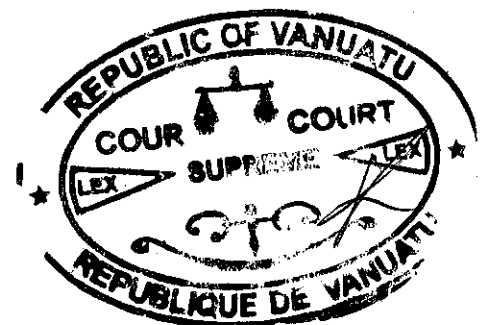
- (a) by Force; or
- (b) by means of threats of intimidation of any kind; or
- (c) by fear of bodily harm or
- (d) by means of false representation as to the nature of the act
- (e) by the effects of alcohol or drugs; or
- (f) because of the physical or mental incapacity of the complainant (CT)

**EVIDENCE:**

I have assessed the evidence of the prosecution witnesses and the evidence of the Defendant. The evidence of all other prosecution witnesses are not relevant to the issues at the trial.

The only relevant evidence is that of the complainant Carolyn Terter.

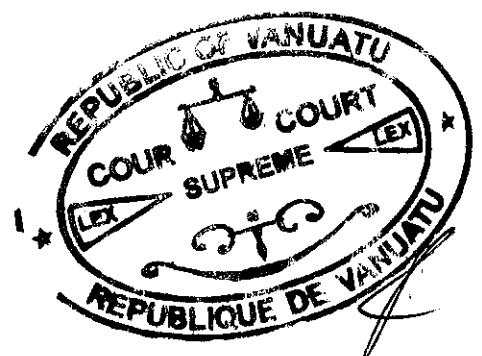
She gave evidence to the following effect. In the morning of Monday 2 September 2013, she and her younger brother and a member of her in law family (tawi) went to brush saucepan on the beach and they swam. On their return at home, she covered herself with a towel. Her brother and Tawi wore trousers and shirt. They went to rinse themselves at the water pump.



She went directly to the house to dress up. When she went to the house, she opened the door, closed the door and pinned the door from inside and she got dressed up. Her stepfather arrived, pushed his hand through a hole in the door and unpinned the door. She was surprised to see her stepfather there. He told her: "you stap mekem wanem?" She replied she got dressed up. He told her to remove the towel from her body. He threatened her to remove the towel. She refused. He asked her to remove the towel otherwise he will spear her with a small knife. She refused to remove the towel. He removed the towel from her. She was naked. He told her to lay on the bed. She refused. He pushed her on the bed. She felt on her right side on the bed. He asked her to lay properly. She refused. He used his right and left hands by holding the right side hip of her body and turned her body properly on the bed. He told her to open her legs. She refused. He opened her legs with his hands by force. She cried. He penetrated her vagina with his penis. She struggled to move out from him. He was too big and heavy. He ejaculated inside her. The complainant continued to cry. After sex, he dressed himself up and she also dressed herself up. He told her that what he did to her was wrong. He told her to report the matter to the police or her mother. He told her that she could go with her mother back to Ambrym but the two (2) children will stay with him on Epi.

In her cross-examination, she was challenged on the content of her written statement to the police dated 17 September 2013. In her statement she stated that when her stepfather had sexual intercourse with her, it was on 2 September 2013 when people of Iopuna built the youth house. In her statement, she stated that her stepfather came back to the house. He stood near the door. He called on her angrily and told her to go inside the house. She was afraid. She went inside the house. Her stepfather followed her and closed the door and locked the door. He asked her for sex. She was afraid. She wanted to call out for help. He blocked her mouth with his hands. He removed her panty and had sexual intercourse with her.

The Defendant, John Tangiat gave evidence himself after his right under section 88 of the CPC [Cap 136] was read and explained to him. He gave evidence to the effect that he was one of the people of the community of Iopuna who built the youth house. Before lunch time, he came back home to charge his mobile phone. At the house, he saw the complainant laying on his married bed watching video.



He went inside the house and asked her for sex. He had sexual intercourse with her. He denied any force or violence used. He denied he had a small knife. He denied he removed a towel on the body of the complainant. He accepted he removed the panty of the complainant and had sex with her. He denied he ever say anything else to the complainant after they had sexual intercourse.

### Findings of Fact

The present case presents an additional difficulty. The complainant provides two (2) different type of facts leading to the sexual intercourse with her stepfather on Monday 2 September 2013. A set of fact was contained in her statement to the police on 17 September 2013 and another set of facts was contained in her oral evidence in court.

I do not accept her explanation that she had told the police of all essential facts and that the police officer did not record the details of her evidence as he was busy with the telephone. The written statement taken by the police on 17 September 2013 was of three (3) pages.

There was no reference to her swimming at the sea as she was cooking the meals for these who built the youth house. There was no mention in her statement of her covering herself with a towel and that when her stepfather removed the towel on her, she was full naked.

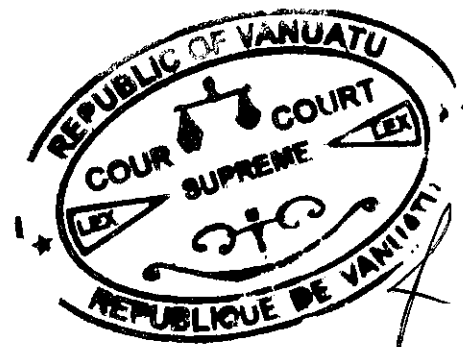
This part of evidence contradicts her statement in that she stated her stepfather removed her panty before they had sexual intercourse. There was no reference to a small knife and the threat to use a knife in the statement which is still fresh in her mind when she made the statement.

There are differences in some important details between the written statement of the complainant and her oral evidence in court.

The version of facts contained in the statement confirmed substantially the evidence of the Defendant.

I now deal with each offence.

- (1) Offence of abusive or threatening language, contrary to s.121 Penal Code.



1. Was the Defendant John Tangiat in a public place when he used abusive or threatening words or gestures on complainant on Monday 2 September 2013.?

The evidence of the complainant and the Defendant himself is that John Tangiat was at his house or door of his house. The question is: -Is the house of John Tangiat a public place: within the meaning of s.121 of Penal Code Act? I answer this question in the negative (no).

The prosecution fails to prove the first element of the offence in Count 2. This is sufficient to dispose of this count.

The prosecution fails to prove on beyond reasonable doubt the elements of the offence of abusive or threatening language contrary to s.121 of the Penal Code.

## (2) Offence of Sexual Intercourse without consent

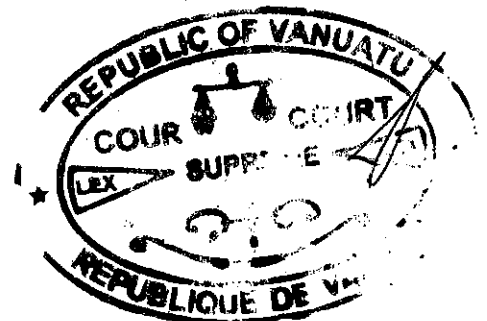
1. The prosecution has proved by the criminal standard of beyond reasonable doubt that: on Monday 2 September 2013, Defendant John Tangiat had sexual intercourse with complainant C.T.

The only issue is that of consent. The evidence of the complainant is not corroborated. I bear in mind that I must warn myself of the danger of convicting the Defendant on uncorroborated evidence of the complainant. I am mindful that I can do that in a case with appropriate factual circumstances. However, in the present case there is doubt - which is a reasonable one. It must be interpreted to the benefit of the Defendant.

Defendant John Tangiat is found not guilty of Sexual Intercourse without consent contrary to s.91.

However, on application by the prosecution pursuant to s.113 of the Criminal Procedure Code, I find that the prosecution has proved beyond reasonable doubt all essential elements of the offence of incest, contrary to s.95 of the Penal Code Act as an alternative verdict on a lesser offence to sexual intercourse without consent.

*s.113 of CPC [CAP 136] reads: "When a person is charged with a sexual offence and the court is of opinion that he is not guilty of that offence but that he is guilty of a lesser sexual offence, he may be convicted of that lesser offence although he was not charged with it".*



**VERDICTS:**

Count 2: John Tangiat is Not guilty on abusive or threatening language.

Count 3: He is Not guilty on sexual intercourse without consent.

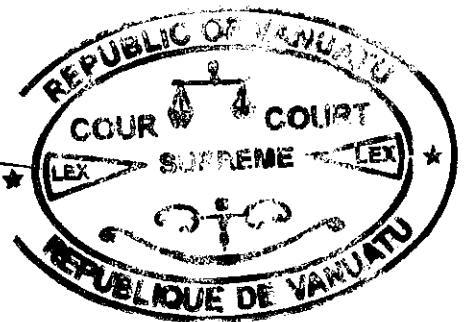
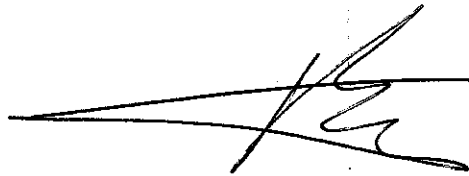
However, Defendant John Tangiat is found guilty of incest contrary to s.95 of the Penal Code Act as an alternative lesser sexual offence than the sexual intercourse without consent.

**ORDERS:**

The Prosecution and Defence Counsel are required to provide submissions on the sentencing of Defendant John Tangiat by Wednesday 26 February 2014.

Dated at Rovo Bay, Epi this 25<sup>th</sup> day of February 2014.

**BY THE COURT**



Vincent Lunabek  
Chief Justice