

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

Criminal Case 38/ 2015

PUBLIC PROSECUTOR

V

EILON MASS

*Hearing: 29 and 30 June, 1 and 29 July, 6 and 7
August and 2 September 2015*

Submissions : 2 September 2015

Date of Judgment: 4 September 2015

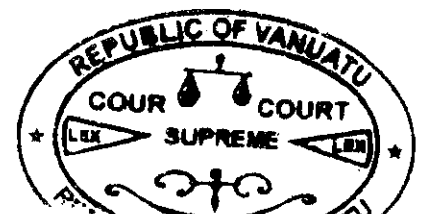
Before: Justice SM Harrop

*Appearances: Damien Boe and Betina Ngwele for the
Public Prosecutor
Daniel Yawha for the Defendant*

JUDGMENT AS TO VERDICT

Introduction

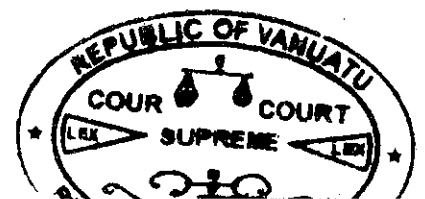
1. Eilon Mass ("EM") faces one count laid under section 91 of the Penal Code of having sexual intercourse with LH without her consent on 24 July 2014 at a house where he was then living in the Nambatri area of Port Vila. He denies the offence and says that there has never been any sexual contact between him and LH.
2. The defence however is not merely one of denial but includes an assertion that the complaint and the evidence given by LH have been not merely fabricated but orchestrated and paid for by or on behalf of a businessman, Ronan Harvey ("RH"), with whom EM has fallen out. As well as giving detailed evidence himself EM called nine other



witnesses. While there was some evidence given about the circumstances surrounding the alleged rape, the majority of it was directed at providing a basis for the assertion of a conspiracy against EM.

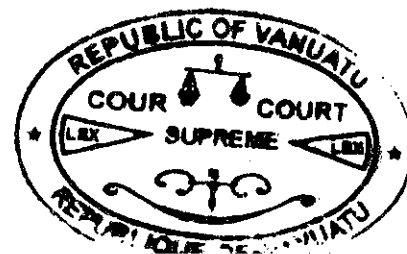
The correct approach where a defendant has given and called evidence advancing an affirmative allegation of fabrication of the complaint.

3. Before discussing the evidence, it is important to record the correct approach to determination of a criminal case in which the defence is a denial supplemented by an affirmative allegation of fabrication, with reasons proffered.
4. It is of course fundamental that regardless of whether or not a defendant in criminal case gives or calls evidence there is never an onus on a defendant to prove anything. He is presumed to be innocent unless and until found guilty. An election to call defence evidence does not change that or involve his taking on any burden.
5. Regardless of whether a defendant's evidence includes an assertion of fabrication and reasons why there may have been one, the starting point of the Court's analysis must be the defendant's explanation or account, considered in the context of the case as outlined by the prosecution.
6. There are three possibilities:
 - a) The Court may accept the defendant's account and denials in which case of course he must be acquitted.
 - b) The Court may be unsure whether or not the defendant's explanation or account is true and ought to be accepted. If so, he



again must be acquitted because by definition the Court must have a reasonable doubt as to his guilt.

- c) The Court may reject the defendant's explanation. Even then a finding of guilt does not necessarily follow. The Court must put aside the defendant's evidence and carefully consider the prosecution evidence, or the parts of it which it accepts. An assessment must then be made as to whether or not that evidence leaves the Court sure of guilt i.e. satisfied beyond reasonable doubt that each of the requisite elements of the charge are proved.
7. These fundamental principles were recently reaffirmed by the Court of Appeal in *Apia v. Public Prosecutor* [2015] VUCA 30.
8. Where, in addition to a denial of offending, there is an assertion of fabrication of the complaint it is particularly important for the Court constantly to keep in mind that there is no onus on a defendant to put forward such a motive, let alone to prove it (to any standard). Especially where there is a good deal of evidence called to support such a contention there is a real danger that the focus of the case shifts to an examination of the truth or otherwise of that assertion. There is a risk that if it is doubted or rejected by the Court that this, even subconsciously, may wrongly be held against the defendant. The true position is that if it is rejected then the defendant is in no worse a position than if he had not called evidence or if he had given evidence simply denying the complainant's account as false without having advanced an explanation of why that might be so. That is simply a reflection of where the onus lies, and always remains.

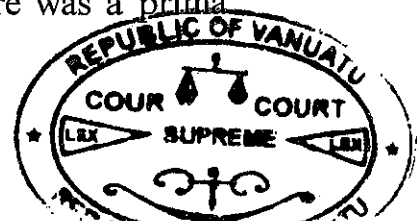


Issue

9. Because of the way this case has been presented, the key issue I have to decide is whether, taking into account all of the evidence (if any) which I accept as supporting the allegation of fabrication and the reasons for it, and EM's consistent denials of any sexual contact with LH, I am satisfied beyond reasonable doubt that he had sexual intercourse with her on 24 July 2014?
10. I will refer to the complainant throughout as LH to protect her identity; others who feature often will also after first naming be referred to by their initials.

Standard and Burden of Proof

11. I have already noted that because this is a criminal trial it is for the prosecution to prove each and all essential elements of the offence of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code [Cap. 135]. There is no burden on the defendant whatsoever and as required by section 81 of the Criminal Procedure Code [Cap. 136] the appropriate statement was read and explained to EM before the start of the prosecution case. Proof beyond reasonable doubt is a very high standard of proof; it means that before I may convict EM I must be sure he is guilty. It is not sufficient for me to be satisfied that he is probably or even very likely guilty. I must be sure. If there is any reasonable doubt about EM's guilt then he is entitled to the benefit of that doubt and must be acquitted.
12. EM made a statement to the Police denying guilt and elected to give and to call evidence. He had no obligation to do either and in doing so he assumed no burden whatsoever. Having found there was a prima



facie case against him at the close of the prosecution case I read to him the statement from section 88 of the Criminal Procedure Code which conveys this message, and as required recorded that I had done so.

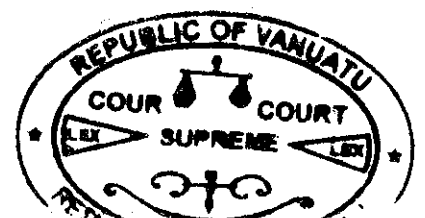
13. There are three elements of the offence of having sexual intercourse without consent, as the Court of Appeal confirmed in *McEwen v. Public Prosecutor* [2011] VUCA 32: (i) that sexual intercourse occurred, (ii) that the complainant did not consent and (iii) that the defendant did not believe on reasonable grounds that the complainant was consenting. In this case the focus is on the first of these elements because EM says no sexual intercourse occurred; accordingly on his account the questions of consent and belief in consent do not arise. However, in the event that his account is rejected, I must still be satisfied beyond reasonable doubt of the second and third elements as well as the first.

Corroboration

14. As a sexual crime is alleged, this is one of those types of cases where a trial judge must be conscious of the danger of convicting a defendant based on the uncorroborated evidence of the complainant, though a judge may nevertheless do so as long as that danger is borne in mind: *Walker v Public Prosecutor* [2007] VUCA 12. I bear it in mind accordingly.

Amendment of the count

15. After the close of the prosecution case it was evident that the allegation was of offending on 24 July 2014, rather than 23 July as originally alleged. Without opposition from EM an amendment of the date was

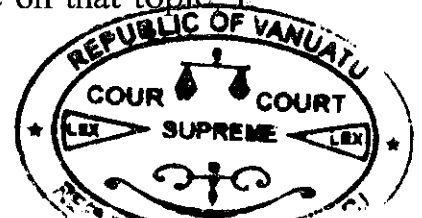


made. EM immediately and unsurprisingly pleaded not guilty to the amended charge.

16. Unfortunately, for a combination of good reasons, it was necessary to hear the evidence on four occasions with quite large gaps between them: 29, 30 June and 1 July; 29 July; 6 and 7 August and 2 September 2015. Submissions were made at the end of the evidence on 2 September.

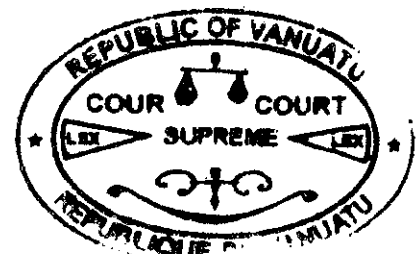
Prosecution evidence

17. Five witnesses were called by the prosecution: LH, Berry Kaloran, Chris Carlo, Phine Hosea and the police officer in charge of the case, Davis Saravanu.
18. LH said she is 17 years old, her 17th birthday having been on 31 December 2014, so that at the time of the alleged offence she was about 16 ½ . She lives at Ohlen with her parents. She came to know EM through his girlfriend Beverly Fred ("BF") whom she met at a computer course at Wan Smol Bag. She said on 15 July 2014 she and BF went over to the house in Nambatri where EM was living. BF introduced EM to her as her boyfriend. At one point BF went to the toilet. LH says EM asked her if she would have sex with him. She said no because BF was her best friend. She said she had dinner with them that night and that the defendant and BF were smoking marijuana.
19. I record that even if it is correct that he was smoking marijuana, I do not hold that against EM as it has no bearing on the case I am dealing with; I am required to determine this case without feelings of sympathy for, or prejudice against, anyone involved in it. While on that topic I



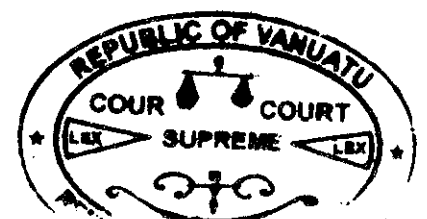
am aware that EM has recently been convicted by Justice Saksak of two offences relating to an incident at Velit Bay in September 2014. I understand these charges were inciting and soliciting unlawful assembly and inciting and soliciting theft. I further understand that EM still faces a cannabis-related charge. Again, these matters have no bearing on the present case. I put them to one side.

20. LH said that on 24 July, Pikinini Day, she was at home. Her cell phone rang but she did not answer because she did not recognise the number of the caller. Another call came from the same number and she decided to answer. The caller said it was Eilon i.e. EM and that BF really wanted to see her. She said she would get on a bus and come. She did so under the impression that that she would find BF at EM's house when she arrived but when she got there she saw only EM.
21. When they went inside he shut the door, told her to take off her clothes and to get onto the bed. She did not want to do that and made it clear. She said she did not wish to give herself to him. She repeated that he was already seeing BF and that she was her best friend. She said she was not willing to have sex with him and noticed he was smoking marijuana. He had a small knife in his hand. He walked up, pushed her against the wall and told her that if she did not remove her clothing he would slit her throat. She refused and he cut her clothes off, her shorts, bra and shirt and threw her on the bed. He held her body and removed his own pants. She struggled but he said that if she kept struggling he would slit her throat. He touched her private parts and inserted his penis into her vagina. She tried her best to get him off but could not. After he had finished having sex with her, she picked up her

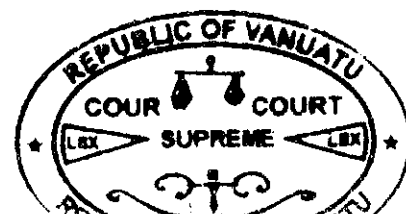


clothes but they were unwearable because of the cuts. She saw a curtain nearby and used it to cover her body.

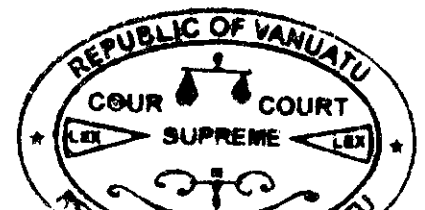
22. EM told her that if she told anyone what he had done he would kill her and her family. He then locked the door and left.
23. A short time later two young men came looking for BF and LH asked them to unlock the door. They asked her what had happened and she did not know what to tell them. She asked them for some bus money but then did tell them that EM had had sex with her. She caught a bus back home.
24. LH said she did not complain until 22 January 2015 because of EM's threat to her and her family. However, in January, Annie, a friend of BF's, told her that EM had said she should "*go to him*" because he had already seen her body. He had also said she should stop showing off. She felt bad about this and ultimately went to the police.
25. When cross-examined she acknowledged that the way in which the statement to the police came to be made was that she was collected by someone whose name she knew as "*Mr Talas*" from Tongoa ;it appears from other evidence this was Moise Kaloris ("MK"). He collected her in a taxi after Annie said there was a man who wanted to see her. She was taken to Fatumaru Bay and was told that she was to make a statement about what had happened in July. She said she had already forgotten what had happened in July and did not wish to make a statement but was forced by MK and Annie to do so. She was promised Vt 100,000 if she made a statement. She said she did not wish to make one and refused the offer.



26. There was a second occasion when they pressed her to make a statement, this being on 22 January; she was taken to what appears to have been the office of the Police's Family Protection Unit near Central School and made a statement (in fact, two) complaining of the rape by EM.
27. LH said that she was telling the truth about EM raping her but because of his threats she had had no intention of going to the police. If Annie and MK had not forced her to make a complaint she would not have done so. She was however adamant that she did not want and did not accept any money from them. She asked MK why he would give her Vt 100,000.He said it was to help her and her family but she did not think it was proper to accept money and did not do so.
28. She denied that the contents of the statements made to the police and her evidence in Court were false or the result of pressure placed on her (or any incentive offered or given to her) by Annie and MK. The making of the statement was forced but its contents were true. She emphasised that MK had not told her anything in particular to say to the police, but rather she just had to go to the police and tell them the truth about the July incident. That is what LH says she did.
29. I will discuss my findings on the credibility and reliability of LH's evidence later in this judgment: these need to be made in the context of all of the evidence I accept, and the submissions, rather than in isolation.

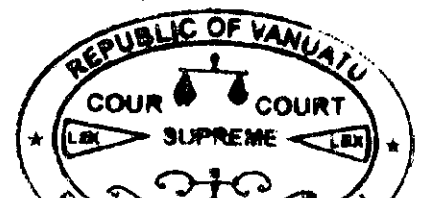


30. The second prosecution witness was Berry Kaloran. In July 2014, he was living at EM's house along with Armand and Yannick, whom I have already mentioned. He said he had known EM for quite some time as they had both lived in the Manples area. On 24 July he was out on the road next to EM's house with friends called Chris (Carlo) and Leon. They heard a girl screaming from inside the house. The house was close to the road. They tried opening the doors of the house but found they were locked. The girl was screaming, "*help, help*" and he tried opening the sliding door but it was hard to do so. Because he lived there he knew how to open it and did so by using his foot to push it open. He said the door was locked and the girl did not know how to open it. As I understood him, the door into EM's room itself was not locked, it was the outer sliding door that was locked.
31. He did not immediately see the girl and called out for BF because BF lived there and he assumed it was her screaming. The girl replied, "*no, it's not BF, it's L*". When he saw her she was standing with a brown curtain wrapped around her body. He had not seen her before. He asked her what happened. She asked if they could help her, then said that Eilon raped me, locked the door and went into town. She was scared and crying and asked if they could give her money for the bus home. The three of them took her to the main road, gave her money and put her on a bus.
32. In cross-examination Mr Kaloran emerged as a somewhat unreliable and unimpressive witness being inaccurate as timing and forced to concede some errors in his earlier evidence. In particular, he seemed very confused about whether subsequent discussions about the incident had occurred shortly afterwards or in January 2015. A statement made



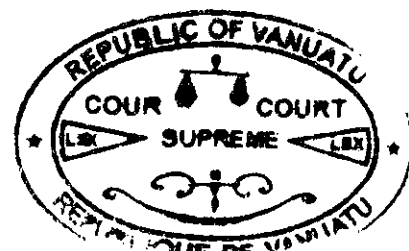
by him but written by BF on his behalf was put to him. He thought this had been made on 29 January 2015, at the same time he made a statement to the police about EM using marijuana. He later agreed that if BF said she had done that for him in August 2014, she would be correct.

33. He denied the suggestion that he had been offered or had received any money for making a statement against EM or for giving evidence against him. He did say that he had been given Vt 300 simply for his bus fare to go to the Police Station to withdraw his complaint against EM by way of a letter of 4 June 2015 written for him by his uncle; I understand from later evidence that this was Macoy Kalo. Mr Kaloran said he was pressured and ultimately forced by him to sign it . He confirmed he cannot write and can only read "*smol*".
34. In summary, while in several respects Mr Kaloran was an unreliable witness, he did provide important evidence corroborating key aspects of LH's evidence: her screaming, her being locked in, her wearing of a curtain wrapped around her body, her asking for help, saying she had been raped by EM and her being scared and crying. He also confirmed she had asked for money for the bus fare home which was given to her.
35. The next prosecution witness was Chris Carlo who went to see Berry Kaloran in Nambatri on 24 July 2014. He accepted he had been drinking alcohol before going there and that his recall was limited but he gave clear evidence about seeing LH with a curtain wrapped around her; he could not recall what colour it was. He also confirmed that the girl was crying and that she said she had been raped by EM, someone he did not know at that time. She was crying and he said the boys told

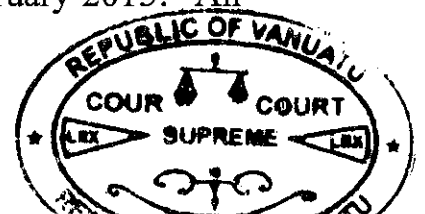


the bus driver to drop her off at the police station or at home. She said she wanted to go home but we told her she should go to the police. All of this is important corroboration of LH's account.

36. Mr Carlo did not appear to be exaggerating or attempting to fill in gaps in his knowledge. For example, he did not attempt to say what colour of the curtain was. His statement to the police was put to him and it was noted he had used the word "calico" rather than curtain. He said it was the same thing and he meant it was a curtain. He denied any agreement with the other boys to come to Court to lie; he was adamant he was telling the truth even though he had forgotten some of the details because he had been drinking. He said that when they got near the house, he had not heard a girl screaming but had heard a noise like a girl crying; if his evidence had been concocted with Mr Kaloran, they would surely both have mentioned screaming. He denied that he had given false evidence or been offered or received money to give his evidence.
37. Overall, while Mr Carlo's recollection was impaired by alcohol he was clear on the important corroborative details I have mentioned. There is no reason not to accept those parts of his evidence.
38. The next witness was Phine Hosea. He said that in 2014 he drove a bus on weekends but on 24 July, being a holiday, he was driving his bus. He said he knew EM well and where he lived at Nambatri. He had been there to see Armand, who is his uncle. He met EM through Armand and had EM's phone number because they had hung around together.



39. In the phone call EM asked him to go to Ohlen to pick up a girl. He did not say her name but said she was a girl who wanted to see BF. When he went to Ohlen, he saw a girl standing and thought it would be her. He asked her if he was supposed to pick her up for EM and she said yes. She got onto the bus and he took her to the gate of EM's house. He saw EM; he came out of the door of the house and out to the gate. The distance from the house to the gate was only a few metres. EM came out alone. The bus fare was paid by the girl, not by EM.
40. Although I found Mr Hosea a somewhat garrulous witness, he was unshaken in cross-examination on the key points. Clearly he corroborates important parts of LH's evidence. He is adamant that he knows EM, had received the phone call from him, dropped the girl off as EM had asked him to and saw EM on arrival. He does not know LH and describes himself as knowing EM well, having hung around with him and he had his phone number; there is no reason why his evidence should not be accepted. Despite EM's later denials of even knowing Mr Hosea, I do accept it.
41. The final prosecution witness was the officer-in-charge Senior Sergeant Davis Saravanu. He is an experienced officer having been in the Police for some 22 years. He works in the Family Protection Unit investigating sexual assaults and domestic violence. He handles all of the cases involving allegations against expatriates.
42. The officer considered the statements obtained from LH and others in January 2015 and was satisfied there was a case to answer. He asked EM to come in and make a statement but first he decided to re-interview LH; that resulted in her statement of 20 February 2015. All

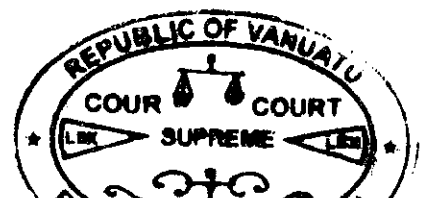


three of her statements were produced as defence exhibits during her cross-examination by Mr Yawha.

43. When he was interviewed on 27 February 2015, EM said the complaint by LH was false and that he had never had sexual contact with her or ever invited her to come to his house.
44. During cross-examination, the Senior Sergeant acknowledged there had been some attempts from his superiors to influence his investigation but he was adamant they had had no effect and that he had wanted to, and did, make his own decisions about the case; for example after reviewing the file he decided to re-interview LH. I found the Senior Sergeant to be a clear and straightforward witness and I am satisfied I can rely on his evidence.

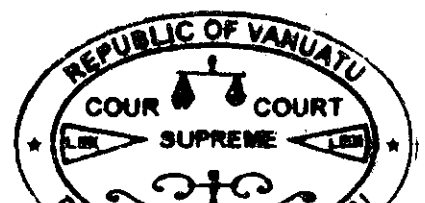
Defence Evidence

45. After finding there was evidence on which EM could be convicted I called on him for his defence and complied with section 88 of the Criminal Procedure Code as earlier noted. Although the usual rule, as confirmed by section 90 of the Criminal Procedure Code, is that the defendant is the first defence witness, in this case on the application of Mr Yawha for practical reasons (his imminent departure overseas) I permitted Peter Alick to give evidence before EM.
46. When it became apparent that Mr Alick was not answering questions in the way that was expected, Mr Yawha made application for him to be declared hostile which, after a voir dire during which EM gave evidence, I granted. Essentially EM explained that Mr Alick had made certain statements helpful to his defence, which he had recorded on his

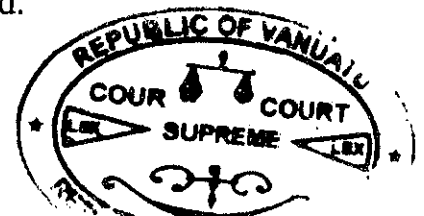


cell phone, as to events that had occurred in the back of his bus. There were allegedly payments made by MK to a girl, believed by EM to be LH, when it was parked outside a Chinese restaurant in the Nambatri area.

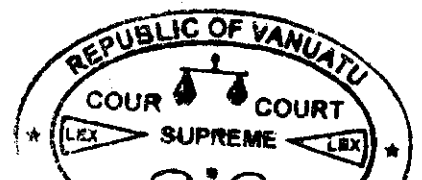
47. After the witness was declared hostile Mr Yawha was permitted to cross-examine him but Mr Alick consistently denied that he had had any such conversation with EM and repeatedly denied that it was his voice on the recording when it was played to him. I emphasised to the witness that it was important to tell the truth, that EM had said on oath that the recording was of him during a discussion in his bus with EM outside the Magistrate's Court. He had gone to the trouble to record what was said and to bring the recording to the Court because he was sure it was him. Mr Alick insisted that he did not know EM, that it was not him to whom he had spoken and that it was not his voice on the recording.
48. Overall then, although it is clear that EM expected it that the evidence given by Mr Alick would advance the defence case nothing he said did so.
49. EM was a garrulous and long-winded witness who typically gave very lengthy answers to short questions and repeated himself a good deal. However he clearly stated his firm belief, with reasons given, that this case is solely the result of a conspiracy against him involving a business partner with whom he has fallen out, RH and someone working for him, MK, also known as Talas. In addition, EM adamantly denied that he had ever had any sexual contact with LH and rejected all of the key parts of the prosecution case against him.



50. EM explained that he and his wife came to Vanuatu to establish a business. After initially visiting Port Vila and Santo in 2010, they came to Port Vila for six months in 2012 and met RH who offered him a job.
51. RH is someone about whom EM is now extremely bitter. RH is British, apparently wealthy and came here about eight years ago on a yacht. EM described him as unique man and "*not in a good way*". They got to know each other quite well working alongside each other at Velit Bay, East Santo. The property there is owned by RH's company, Western Pacific Cattle Company Limited.
52. RH was having difficulties in his business. The workers were fighting each other, and him, and he had problems with the chiefs of the surrounding ni-Vanuatu communities.
53. EM said that Paul Dalley, a New Zealand pilot, was then engaged to replace EM in the role that he had had in RH's business.
54. EM then introduced to the story MK, whom he had known from Port Vila. Ironically, as matters have turned out (according to EM), it was at EM's suggestion that RH arranged for MK to work at Velit Bay. In October 2013, an agreement was reached with the local chiefs signed by RH, EM AND MK.
55. Tension developed between EM and MK. EM said that MK had physically and verbally threatened his life on 4 December 2013 at a Christmas party in the presence of 150 people. He was threatened with a piece of metal being held within one metre of his head.

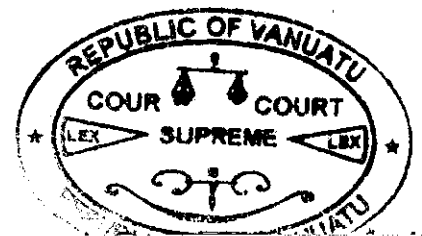


56. In an email on 13 December 2013 EM was told in no uncertain terms by RH to leave Velit Bay.
57. EM said he did not know what to do after he had been kicked out. He was not allowed back to Velit Bay to see his wife and son. Ultimately the couple separated and, in July 2015, they divorced.
58. EM emphasised that he has never had sex with LH at any time, with or without her consent. He said the only reason he was before the Court was because RH wants to get back at him for the problems he has caused him and because he wants to get him out of Vanuatu.
59. One of the problems EM says he has caused for RH is a civil case he has taken against the Western Pacific Cattle Company for compensation for the loss of machinery which was installed at Velit Bay. He says RH thinks that if he is forced to leave Vanuatu then that case will disappear.
60. He says that RH has tried to kill him twice through his agents, once at Police Headquarters. He said that these people either want him in jail or to force him to leave Vanuatu because he is too scared to stay.
61. Turning to the facts more closely relating to the case, EM said he began dating a young girlfriend, BF, following the separation from his wife. He said he was staying at the Sportsman's Club in Nambatu when he first met BF. Through a friend called Armand, EM ended up staying at a house in Nambatri from about April 2015 onwards. It was a large house and a number of people were coming and going although he had

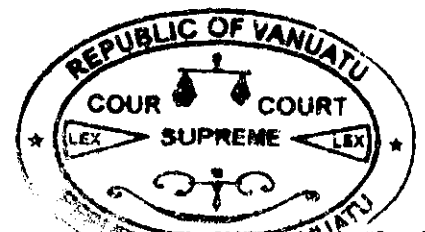


his own bedroom. There was another permanent occupant called Yannick who was the main caretaker. He met Berry Kaloran who was staying there too.

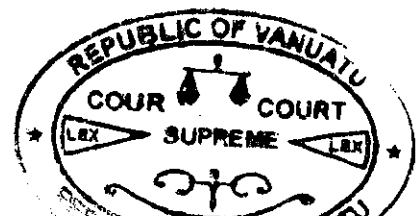
62. The relationship with BF began after she had an argument with her father and moved into his room in late May 2014.
63. EM met LH, he thinks it was in the middle of June 2014, when she came back with BF and friend Annie from a night out clubbing. Those girls slept in another room that night.
64. EM recalls that LH stayed two or three times overnight but in a different part of the house. He thought she might be a girlfriend of Yannick's as she slept in his room. He noted that there were no beds, only mattresses, in the house.
65. EM said there were a number of girls coming and going but he had no sexual contact with any of them except BF.
66. EM explained that the doors were open during the day and so the house was not secure. Also some handles were broken. Sometimes a door would fall down at night time. It was not possible to lock anyone in from the outside. You could only lock doors from the inside.
67. Yannick moved out on 3 August 2014, a day which EM recalls because there was an incident. EM said that they always got on well with their neighbours. One neighbour in particular was always there because they had small babies.



68. As to 24 July, EM thinks he was in the house for part of the day but in the mornings he typically was working with the police down at the police station on the complaint he had made about RH. He had filed two complaints against him, one relating to the email threat and the other to his production of cannabis oil.
69. EM could not recall whether or not LH was at the house that day because he was very stressed dealing with the police at that time. He does not think she was but he could not be certain because it is over a year ago.
70. EM denied ever calling a bus driver to collect Lily and said he did not know the driver, Phine Hosea. He said as far as he knows he had never seen him until he gave evidence in Court. He certainly had never called him as a taxi driver.
71. In discussing the condition of the house, he confirmed that the owner had put curtains up although sometimes having hung them she would take them away. He also said the house was filled with clothes which, if LH needed, she could have put on. I do not believe that suggestion was put to her.
72. The first EM heard about action being taken against him was when he found out from a rather cryptic email sent to him by RH that "*some trouble was coming his way*"; that was in an email of 8 January 2015. There was also an email sent by RH to EM's brother which confirmed EM's belief that something bad was going to happen to him and that RH and MK would be behind it.

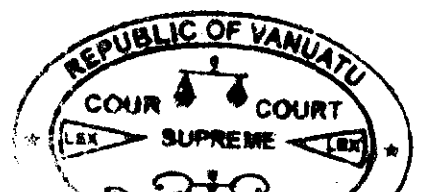


73. In March 2015, he was up in Santo dealing with one of the Court cases he faced there. He said he was arrested on his return to Vila. Officer Davis Saravanu was waiting for him at the airport gate but also present were Mr Dalley and MK. MK effectively escorted him to the Police car although the officer told him to stay away. He was told there was a rape case and he gave an interview acknowledging that he knew a girl called L, but did not know her last name.
74. EM said that on 30 July 2014, RH was arrested for threatening him and in connection with the cannabis oil; the incident that happened on 3 August was somehow in connection with this. While there was no rape allegation in respect of LH at that time, EM was aware of an alleged sexual assault by him on BF. BF told him (and she later confirmed in her evidence) that MK and Berry Kaloran had come to pick her up to get her to make a false complaint of rape against him. BF did not admit to EM at that time that she had indeed made one. Apparently she and MK are from the same island.
75. EM noted, effectively making a submission later emphasised by Mr Yawha, that the details of the complaint made by BF were very similar to that later given by LH.
76. EM reiterated the account that he had tried to put to the witness Peter Alick and which he had recorded; although EM is not in a position to give evidence as to the truth of what if anything may have happened in Mr Alick's bus, certainly in his own mind the picture was becoming clearer of the conspiracy against him. He therefore put together a



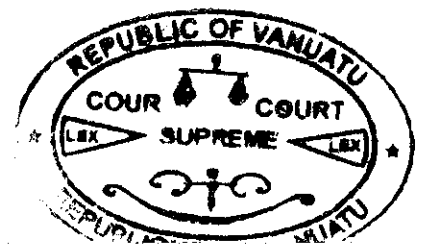
complaint to the police to allow them to investigate the conduct of MK and Mr Dalley. This was filed on 8 April 2015.

77. EM said he has been pushing the police to investigate this complaint for some time without success.
78. EM also said he had made complaints (a copy was produced) to the police about a senior police officer called Taleo and about MK relating to the events of 30 July to 3 August.
79. Turning to the incident on 24 July, he reiterated his denial of there having been any sexual contact with LH. He said neighbours would have heard any screaming, it is not possible to lock the house from the outside and in any event if LH had truly been there she would have known how to open the doors. He said that he does not own a knife such as she described.
80. EM concluded by saying that none of the complaints he has made to the Police have resulted in anyone being charged and that his side of the cases has not been investigated, so he says there has been no balance.
81. When cross-examined EM was unshaken about all of this. Ms Ngwele put to him that none of the business problems personal issues with RH or anyone else had any direct relevance to the rape case but EM was adamant that there is a connection.
82. When he was asked about Mr Hosea seeing him when he dropped LH off, he said that was not true and generally denied any challenges to his



denials. He said all of the witnesses were lying and had all been paid by MK. He accepted that he was not in a position to say from personal observation that money had been paid to witnesses or even offered to them, but he is sure that happened based on the other information he does have.

83. EM suggested that LH's statements and evidence about the incident and about the property were prepared for her by MK who has never been to the house which is why there are mistakes such as the "locking out" issue.
84. Overall, EM was adamant that the complaint is false and solely the result of the conspiracy against him by RH and MK.
85. The next witness was Fred Pakoa, BF's father. He came across as a pleasant man and a reliable witness but he was not able to add much to the defence case. He accepted he knew nothing about the rape allegation. He knows MK very well. He described him as going in and out of jail and that he was worried when he came to see his children, including BF whom he sent away to Tongoa at one point in August 2014. Around that time, MK came to the house and talked strongly to Mr Pakoa to the effect that he should not have EM around and to tell him to stay away from his family. Mr Pakoa told MK he had never had any problem with EM.
86. There was another occasion when MK came with a police officer and told him that he had to make a statement to the police. He did not know what he was to make a statement about but it was apparently to

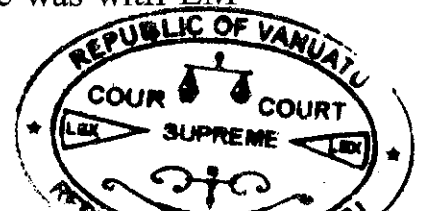


be something against EM. MK said that if you make a statement I will give you Vt 500,000. Mr Pakoa did not make a police statement.

87. The next witness was BF. I proceed with caution in considering her evidence because she remains EM's girlfriend. I did not find her a credible or reliable witness. There were several inconsistencies in her evidence. She did not always appear to be taking things seriously though that may just have been nervousness or her particular manner. She also acknowledged having made a false rape statement against EM in return for money.
88. She confirmed that she had met LH at Wan Smol Bag, that they later, in approximately July 2014, met up at a club and that they went back to the Nambatri house together with another girl called Sevarine. She said that at least on one occasion Lily had stayed overnight with Sevarine and Yannick in Yannick's room. She said she had seen LH twice at the Nambatri house.
89. In July or perhaps August, MK came to the Nambatri house with Berry Kaloran. She and Yannick followed them in a truck to the Le Lagon area by the Erakor Wharf. MK asked her if she was dating Eilon and she said yes. He told her that EM was a bad person and they should go to a restaurant to make a statement against him. They did that and he gave her a rape complaint statement for her to write out and sign; a copy was produced as an exhibit. I asked her directly, "*So you were happy to write something false about your boyfriend just because MK told you to?*" She said yes, but that she did not really know what she was doing.

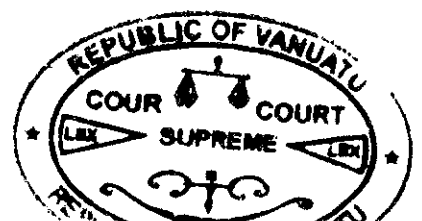


90. The restaurant was a Chinese one behind the police station. She also said that MK paid her Vt 5,000 and each of the boys Vt 2,000. A statement was also made by Berry Kaloran but BF wrote it for him because he cannot write. Yannick also made a statement.
91. After these statements were made they were given to MK and he then took a video of all three of them saying bad things about EM.
92. I asked her again directly: "*For Vt 5,000 you were happy to sign a false statement of rape against your boyfriend?*" Again she said yes but she did not know what she was doing. She knew her statement was important and would be given to the police. This alone gives her a serious credibility problem. Her evidence in Court in favour of her boyfriend EM might well be just as false as the statement against him which she gave to MK.
93. Later she told EM and they went to the Police station to change her statement.
94. She acknowledged that if EM told her to say something in evidence then she would say it but added that she had been told by him to tell the truth in Court.
95. BF confirmed that she did not have a cell phone last year but instead used EM's when she needed to. She confirmed she had used his phone to call LH and that her phone number was listed in that phone.
96. As to the 24 July rape allegation, she initially said that she did not know where she was on that day but later said that she was with EM

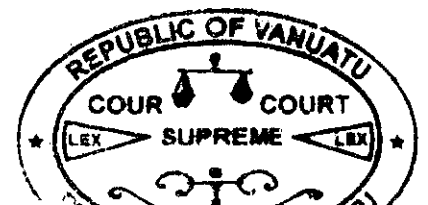


and they went to the Pikinini Day celebration together. This was not consistent with her earlier evidence or with what he said. He did not recall there being any celebration or being part of it, but rather that he was probably preoccupied with dealing with the Police at that time.

97. I am not prepared to rely on most of what BF said given her willingness for a small payment of Vt 5,000 to lie on a very serious matter against the interests of her boyfriend. Nevertheless I accept she provides some support for the defence as she confirms the efforts by MK to get EM into trouble.
98. The next witness was George Twomey, a Chief Inspector of police and officer-in-charge of the Criminal Investigation Department (CID). He knows EM because of complaints which have been lodged by him, notably the complaint against RH alleging cannabis offending on Santo. This was investigated and RH was arrested and charged, but ultimately the case was withdrawn.
99. He was aware of a complaint by BF of rape by EM which had been supported by MK. That was lodged when the case between EM and RH was current and he said MK had "*switched sides*" to supporting RH after he had been arrested.
100. The officer confirmed meeting EM and BF in September 2014 at the Chinese restaurant. EM was very scared and said MK was after him. He confirmed MK had interrupted the meeting and EM and BF got up and walked out. There is no reason not to accept his evidence.

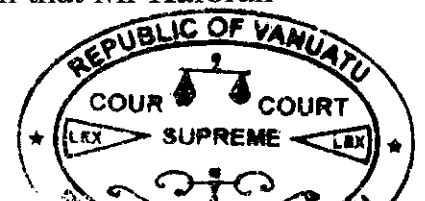


101. Next was Sevarine Jackson who met EM on the street sometime in 2014. He asked her if she would be his friend. She said that they had become friends and that “*we hang out all the time*”. She is also a friend of EM’s girlfriend BF. Accordingly caution is required in considering her evidence.
102. She confirmed that on a weekend in July 2014, she, BF and LH had met at a club and gone back to EM’s house at Nambatri. She had met LH before but did not know her well.
103. She confirmed she and LH slept together with EM’s friend Yannick in Yannick’s room. This supported what BF said and is in conflict with LH’s evidence. She confirmed that she was not at EM’s house in Nambatri on 24 July.
104. Inspector Andrew Kalman did not add much to the case but confirmed he had met EM several times as a result of complaints he had made, including the one against MK regarding the threats made to EM and his wife. He was not aware of the outcome of that investigation because it was handled on Santo.
105. As to the complaint against RH regarding cannabis oil, Mr Kalman says he was not involved in that case though aware of it. He acknowledged that EM had been unhappy with the way his complaints had been investigated. EM had come to see him about this current case complaining about “*perjury*” referring to MK.
106. He said the reason the case against RH had not been pursued was because he was no longer in the country. He was aware of difficulties



between EM and other police officers. There is no reason not to accept his evidence.

107. The next witness was Alastair Kalo, who lives with his parents in a house "one yard away" from EM's place at Nambatri. Mr Kaloran is his cousin. He did not hear from him anything about a rape at EM's place. That evidence does not advance determination of the key issues; there may be many reasons why Mr Kaloran did not discuss this with Mr Kalo, it is only one of the possibilities that it was because no rape occurred.
108. His father, Macoy Kalo, was next. He has a close relationship with EM, describing him as like a brother. While EM was living at Nambatri, he visited his house almost every day. Accordingly caution is required in assessing his evidence.
109. He said that if LH had been screaming at EM's house on 24 July he either would have heard it or his children (aged 22, 20 and 13) would have, and they would have told him about it. However he accepted there was noise coming from the celebrations at the nearby park and from the neighbours in the yard between his property and that of Mr Mass. I do not consider this kind of "negative" evidence is of much assistance; it is perfectly possible that there was screaming that the witness did not hear or was not told about despite his belief that this means there was none.
110. Mr Kalo also said that Mr Kaloran had on 4 June 2015 asked him to write for him a letter (which was produced) withdrawing the January statement he had made to police and giving the reason that Mr Kaloran

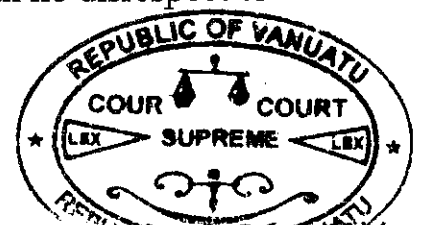


had not been paid. After Mr Kaloran signed it, Mr Kalo was asked to take this to the police and did so.

111. The evidence of Mr Kaloran on this issue was very different (see paragraph 33 above). While there were issues of reliability with Mr Kaloran's evidence, I accept his evidence about the letter and reject that of Mr Kalo. It is far more likely that as the trial approached (the letter was dated 4 June and the trial date was 29 June, having been set at a plea hearing on 2 June, only two days before the letter) EM's close friend Mr Kalo tried to get an important prosecution witness - his nephew- not only to withdraw his statement but also to say the reason was non-payment of money promised by RH and MK. It is a letter remarkably supportive of EM's conspiracy defence dictated by a semi-literate witness to a close friend of EM, not to a police officer.
112. The last defence witness was Merelyn George, a police officer who since February 2015 has been the head of the serious crime unit. She confirmed EM's denials and accepted he may have told her MK had set him up. She denied having said to Mr Saravanu that it was a "*kiaman*" case that should not be pursued. On the contrary she said he told her he was not satisfied with the level of detail in LH's initial statement and he wanted to re-interview her, as he later did. She had advised him to release EM while further inquiries were made, and he did so.

Submissions of counsel

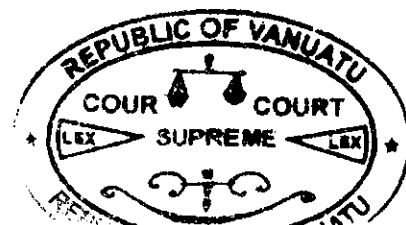
113. I received helpful and detailed oral submissions from Ms Ngwele and Mr Yawha at the conclusion of the evidence on 2 September, supplemented by written submissions. I record my gratitude for these and for counsel's presentation of the case overall. With no disrespect to



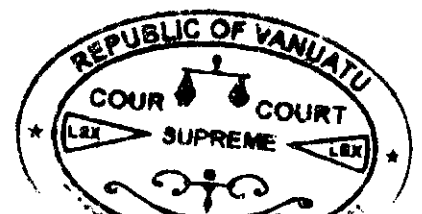
the quality of the submissions, I will not recount them here, but rather refer to important points in discussing my assessment of the evidence.

Discussion

114. EM's defence is both a complete denial of any sexual contact with LH and an affirmative allegation of a conspiracy, involving at least RH and MK, to see him falsely convicted of this charge.
115. The starting point of the analysis of the evidence must be an assessment of the "*conspiracy evidence*". As to that it is important to record the basis on which I proceed to comment on the conduct of RH and MK. I am acutely conscious that neither of them has appeared as a witness and that neither has been convicted of any offence. I have only heard EM's side of the story and RH and MK may be, have a very different view. Indeed it would be surprising if they did not, given the extent of the mutual animosity. RH and MK are not on trial and I do not know what they might say about EM's evidence and that of other defence witnesses.
116. Accordingly any comments made in this judgment adverse to RH or MK are made solely for the purposes of this judgment and have no effect for any other purpose.
117. The evidence given by EM and other defence witness about the conduct of RH and MK is unchallenged. The Public Prosecutor might have sought to bring rebuttal evidence under Section 169 of the Criminal Procedure Code but had no obligation to and did not do so. I therefore proceed on the basis that for present purposes the following is accepted to be correct:



- (a) That EM and RH had a serious falling out in connection with their businesses operated at Velit Bay, Santo in the latter part of 2013. A good deal of mutual antipathy arose and remains.
- (b) EM has made both a civil claim and two criminal complaints against RH (the latter leading to his being arrested and charged) giving RH a particular incentive to get back to EM.
- (c) RH is a wealthy man with the means to pay people substantial sums in an attempt to influence them and to achieve his goals.
- (d) MK, whether as agent for RH or personally, also has antipathy towards EM demonstrated for example by his various threatening conduct towards him at the Christmas party at Velit Bay in December 2013.
- (e) EM has made a complaint to the Police about that threatening conduct thereby giving MK also a reason for retribution towards him.
- (f) Although veiled and general, RH made a threat to EM in his email of 8 January 2015.
- (g) There were further indications of threats in an email RH sent to EM's brother.
- (h) MK and Mr Dalley were present at the time of EM's apprehension (he was not in fact arrested) by the police at Bauerfield Airport in March 2015 on his return from Santo.
- (i) MK arranged for a false rape complaint against EM to be made by BF and he paid her Vt 5,000 (which she accepted) to make a false statement, the contents of which he provided. He also paid the two young men Vt 2,000 for supporting statements. There are indications that at the time he was in immediate contact with RH.

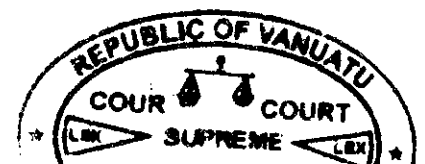


- (j) MK offered Fred Pakoa, Vt 500,000 to make a false statement to the Police about EM.
- (k) LH herself was placed under pressure to make a statement to the police complaining of rape by "*Annie*" and by MK. However, I note that, by contrast with BF's false complaint, there is no evidence that LH was told what to say other than that she should tell the truth to the police. Nor was LH asked to make a statement to MK himself, only to the police.
- (l) When LH declined to make a statement she was further encouraged to do so by an offer of Vt 100,000 made by MK, which she declined.
- (m) EM's belief that this whole case is a conspiracy against him orchestrated by RH using MK as his agent may be seen as corroborated by Chief Inspector Twomey's observation that he was scared and he stated that MK was "after him".
- (n) Although no details were given, EM also says that RH has twice attempted to have him killed.

118. I turn now to assess LH's evidence in the context of all of the evidence and the submissions made.

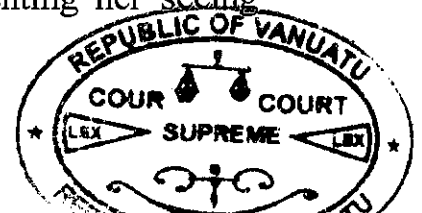
119. Even looking at her evidence in isolation, I found LH to be a clear, consistent and credible witness. There were a number of aspects of her evidence which gave it "*the ring of truth*".

120. LH gave considerable and credible detail as to the events of 24 July. She was clear that EM had procured her attendance at his house at Nambatri on a false pretext, that BF really wanted to see her. She explained that she did not immediately answer her phone because she



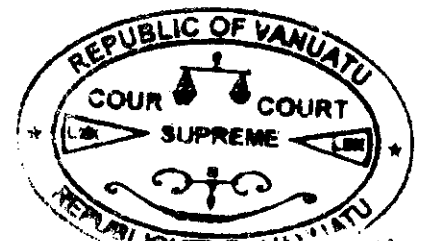
did not recognise the number but only did so, on the second call. There is an explanation as to how EM had her number, through BF's friendship with her.

121. LH described about the incident itself in detail. She described the small knife in his hand and his cutting off her clothes following his threat that if she did not remove her clothing he would slit her throat. Her evidence about cutting her clothes is distinctive and unlikely to be fabricated. Importantly too, she said she could not wear her clothes after he had had sex with her and to cover herself she had to use a curtain which she saw nearby. She mentioned that the bed was on the floor, in the sense that it had no legs.
122. Her evidence about the details of the incident were consistent as between examination-in-chief and cross-examination. She did not exaggerate in the way that a false complainant probably would have. She said she had not suffered any bruising or skin damage but that the skin around her neck was swollen because of EM's tight grip. She said there had been no accidental cut on her neck and while giving evidence she placed her hand on her neck to demonstrate the way in which EM had held her. She described the knife as small and said she did not see what colour it was because EM was holding the handle. There was no exaggeration in this nor an attempt to fill in gaps.
123. She explained how EM got his pants off and was able to describe what kind of trousers they were: nylon trousers which finished at the knee. She was asked whether when EM opened her legs he had put his leg or foot on top of her. She said she could not see what he was doing because one hand was gripping her neck and preventing her seeing



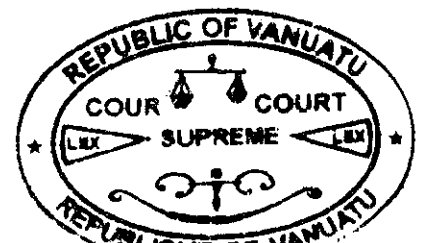
what was happening. She also said she could not scream because her voice was prevented by his grip on her throat. She was asked if she had observed EM's penis but she said that after he removed his penis she turned her head away and did not want to see his face or any part of him so she was leaning against the wall facing away from him. All of this struck me as credible detail.

124. She was asked why she did not show the police the curtain which she had taken to cover her but she said she asked her mother to burn it and when she did not do so she had thrown it away because every time she thought of it made her remember what had happened. Again this seemed to me a credible detail, unlikely to have been made up on the spur of the moment in cross-examination had the complaint been fabricated.
125. After EM left the house, reiterating the threat to her and her family, LH described how the sliding door was unable to be opened because the handle had a rope and some chains around it. She said that the rope or cord tying that door had been tied through the holes and there was a socket near the wall. She said the cord was plugged in but there was no electricity. She described the thickness of the cord and its colour. Again, this kind of detail is most unlikely to have been fabricated.
126. LH also explained what had happened on the earlier occasion, which she believed was on 15 July, when she went to EM's place with BF. She said while BF was in the toilet EM asked her if she would have sex with him. She declined because BF was her best friend. A witness fabricating the events of 24 July would have had no need to fabricate

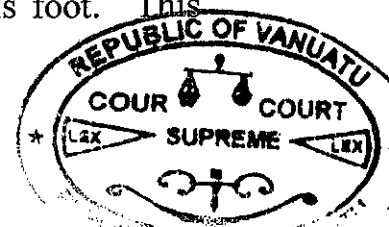


this further occasion and it had the ring of truth about it. It also “internally corroborates” EM’s sexual interest in her.

127. LH gave a clear explanation for her delay and her reluctance to complain. She was quite open about the fact when it was put to her in cross-examination that she had been offered the Vt 100,000 to make a statement about EM raping her. While she did not mention this in evidence-in-chief or to the police, there was not necessarily any obligation or occasion for her to do so – she was simply asked to say what had happened in relation to the incident itself.
128. LH was adamant that she did not accept any money and that what she told the Police was true. She candidly accepted that if Annie and MK had not come to her to pressure her into making a complaint she would not have done so. I found her explanation for her delay and reluctance in complaining to be understandable given the threat made by EM who after all according to her evidence had had a knife with him at the time of the rape and had used it to cut her clothing.
129. I do not accept that her delay in complaining has any impact on her credibility. On the contrary, based on her evidence, it was understandable.
130. Another credible detail was the description of the bed being on the floor. While I accept that she had been to the property before and may have known this detail, it is again a point which a false complainant is unlikely to have included.

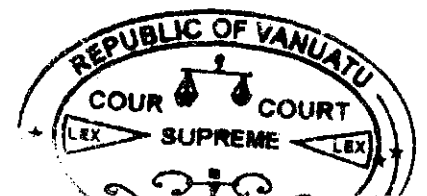


131. In cross-examination LH was adamant that she was telling the truth and provided further details without hesitation. Her ready acknowledgment of the fact that she would not have made a complaint without the pressure put on her by Annie and MK and her ready acknowledgment of the offer of payment, I also found credible. A false complainant would likely have denied even the offer of payment.
132. During cross-examination and re-examination I noted that LH was able to respond without hesitation to questions she may not have been expecting. For example, she was asked why she had not told her mother or her sister about the incident; she provided an understandable explanation that she simply did not want to tell her mother and that she did not tell her sister because she would talk about it to friends, they would gossip about her and think badly of her.
133. She also said she would not recognise again the two boys who came to rescue her because she was scared and not thinking properly. She said she had not even said thank you to them, just asked if they had money for the bus. Because she was scared she had forgotten to take her damaged clothes home with her. I also noted when she gave evidence that she was at times distressed in recounting what had happened to her.
134. Apart from those impressions formed on consideration of LH's evidence in isolation, there is considerable corroboration of it, in important aspects, from three other prosecution witnesses.
135. Mr Kaloran confirmed that it was hard to open the sliding door, but because he lived there he knew how to open it using his foot. This



corroborates LH's evidence that she thought it was locked, or tied shut. Most importantly he confirmed that LH was standing there with a brown curtain wrapped around her body. He remembered both its colour and the fact of the curtain being wrapped around her. He confirmed she asked for help, that she said that EM had raped her, locked the door and gone to town. That is recent complaint evidence consistent with the evidence LH gave in Court.

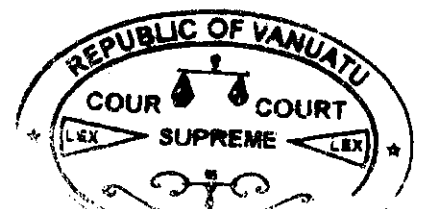
136. He described her as being scared and crying and confirmed that she asked if they could give her money for the bus home, which they did. All of this detail is entirely consistent with LH having told the truth. Mr Kaloran was apparently (if I were to accept BF's evidence) paid Vt 2,000 to make a false statement in connection with the false complaint by BF, so I must and do approach his evidence with some caution.
137. However, some of the details he gave were credible and consistent with LH's evidence. I accept that there were also aspects of unreliability about Mr Kaloran's evidence especially as to timing but I am entitled to accept some parts of his evidence and reject others and I do so. It is one thing to have made a false statement to MK and quite another to have given one to the police, then come to Court and provided important details orally and maintained those when challenged under cross-examination.
138. Mr Carlo also corroborated important details of LH's evidence. He confirmed that she complained of being raped by EM. He also clearly recalled her upset state and was able to describe not only her being wrapped in a curtain but the rings on top of it. He could not recall the colour but did not attempt to fill in that detail, as a false witness may



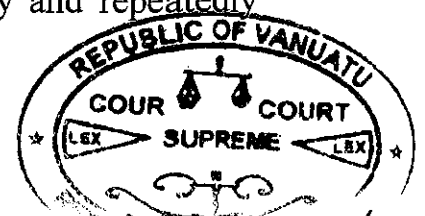
have done. He also confirmed putting LH on the bus and that she wanted to go home but because of what she had told them they had encouraged her to go to the Police to make a rape complaint. Again, he is a witness whose evidence needs to be treated with some caution because he accepted he had been drinking and his recollection was impaired by alcohol. However I found the parts of his evidence corroborating LH's account to be credible and reliable.

139. The bus driver, Mr Hosea is an important corroborating witness. While at times I found him garrulous, he was adamant that he knows EM, that he had been phoned by him on the morning of 24 July and asked to go and pick LH up. He also confirms that when they arrived at EM's house, EM came out to the gate, again corroborating what LH had said. He was entirely unshaken on this important evidence and rejected the suggestion that he did not know EM and had never received a phone call or dropped LH off that day. EM's evidence was of course to the contrary but I find no reason why Mr Hosea would not have told the truth about these events; this alone provides a clear basis for doubting EM's denials about the whole incident. He provided important details which are consistent with LH's account.

140. Mr Yawha submitted that Mr Hosea was not credible and had been "coached". He pointed to his dubious ability to recall EM's phone number a year after the event but his inability to recall his own. I do not accept the evidence about phone numbers gives cause for doubting Mr Hosea's evidence, which I accept. He has more than one cell phone and unsurprisingly was unsure which one he was using on the day in question. As to the number he recalled as being that of EM it was a readily-remembered landline number: 56000.

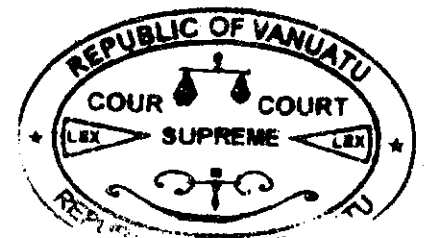


141. A key submission made by Mr Yawha was that one can tell the complaint by LH is false because of the similarity of detail with the false complaint made by BF, which MK had authored. He submitted MK was clearly involved in promoting both complaints and that the similarity showed he was the author of LH's as well. He was, as Mr Yawha put it, the common denominator.
142. While I accept MK was involved in both complaints, I do not accept the similarities are such as to justify the conclusion that LH's complaint was therefore also false, or indeed to cast doubt on LH's evidence. She gave statements - more than one - to the police, not to MK. She said MK only told her to tell the police the truth about what happened to her in July, rather than told what to say what he told her had happened in July.
143. If MK did tell LH what to say then she would have had to remember all the details of his false story when speaking to the police on each occasion and when giving evidence throughout a full day in Court nearly a year after the incident and four or five months after her police statements. The details she gave to the police and in Court were consistent. I do not accept she was recounting a false story provided by MK; I accept she was recounting what had actually happened to her; had it been otherwise I am sure her lies would have been exposed.
144. In any event I do not consider the details are similar in any distinctive way. A rape with the offender wielding a knife is hardly unusual. BF described being detained by Mr Mass for six months at Emily's takeaway, forcing her to smoke marijuana every day and repeatedly



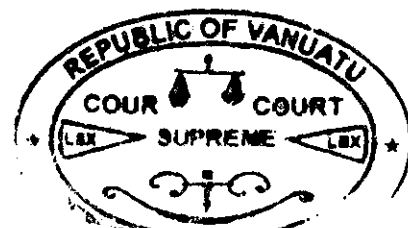
having sex with her using a knife to force her to do so. By contrast LH described a one-off incident and there was no suggestion that she was forced to smoke marijuana.

145. Mr Yawha noted that LH had denied sleeping overnight at EM's house, in Yannick's room. Both Ms Jackson and BF had said she did, as indeed did EM himself. I accept there is a conflict in the evidence which is difficult to resolve. There is no obvious reason why any of these witnesses would lie about that peripheral detail, though both BF and Ms Jackson are closely associated with EM. Accepting however that they may be correct and LH may be incorrect, it is not a point which is such as to cause me to doubt LH's evidence on the important issues.
146. Mr Yawha also submitted that if events had occurred as LH said with the knife to her neck during a struggle, an injury and a scar would have been unavoidable. I do not accept that necessarily follows at all. The purpose of placing the knife at her neck was no doubt to prevent resistance which might lead to serious perhaps fatal injury.
147. He also pointed to the evidence of several witnesses about the likelihood of LH's screaming- had there been any- being heard by someone other than a person associated with MK, Mr Kaloran and Mr Carlo (though he did not say he heard screaming). I do not accept this gives rise to doubt about LH's account. It was Pikinini Day, there were people around and there was noise. While that means there were more people than usual who might have heard, the noise means they may not have. It is perfectly conceivable that any screaming by LH, especially

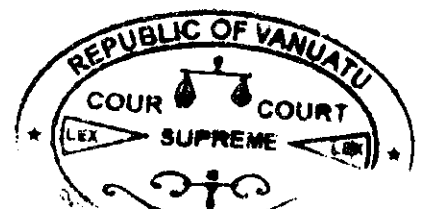


if not prolonged, was not heard until Mr Kaloran, who lived there, came along with his two friends.

148. Mr Yawha made a number of criticisms of the police investigation. This is not an inquiry into that; my task is simply to decide whether on the evidence which has been presented the charge is proved beyond reasonable doubt. I am not concerned and may not speculate about evidence I might or should have had but do not have.
149. Mr Yawha submitted that LH's explanation of being prepared to complain in January 2015, but not earlier, because she had learnt of adverse comments about her being generated by Mr Mass did not make sense and that her delay in complaining was a further indication of the falsity of her complaint. The truth he suggested was that the only reason for her complaining was the pressure and financial incentive from MK and "Annie". I accept there would have been no complaint but for the pressure, but do not accept this undermines her credibility. LH was and remained in January a reluctant complainant. She candidly accepted she would not have gone to the police without the impetus provided by MK and Annie. There are no doubt many legitimate rape complaints that are never brought to police attention. I do not accept that the circumstances which led up to LH going to the police mean that what she then told the police was not true. She found herself in the position of having been threatened by EM at the time of the incident and then months later pressured by MK and Annie more immediately and persistently. She says she decided to tell the police the truth. I accept that evidence.

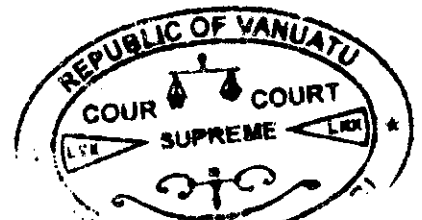


150. My conclusion, having assessed LH's evidence in context, and taking into account the defence challenges to her credibility, is that it was clear, consistent and corroborated. I found it credible and I accept it.
151. The question on which my decision turns is whether or not it is reasonably possible that that conclusion may be wrong given the "*conspiracy*" evidence which I also accept and EM's adamant denials.
152. The "*conspiracy*" evidence is troubling indeed and on the face of it amounts to serious criminal offending on the part of at least MK if not RH. MK's conduct involved persistent attempts to pervert the course of justice, arguably both in relation to the complaint by BF and the one by LH. In the one case money was paid and in the other a substantial sum was offered if not accepted to procure what MK knew or believed, at least in relation to BF's complaint, to be false testimony. If MK was indeed, as EM says he strongly suspects, acting as RH's agent in these matters then both of them ought to be charged with conspiracy to defeat justice contrary to section 79 of the Penal Code and/or with wrongfully attempting to interfere with or influence a witness in a judicial proceeding contrary to section 82 (1) (f), those offences respectively carrying maximum terms of imprisonment of seven and five years.
153. But the existence of the conspiracy and pressuring LH go to the police does not mean that her complaint was false. It is perfectly possible that, on learning in January what had happened to LH in July, MK and RH seized on this as a way of achieving their wish for retribution against EM. I find that this is what happened. MK and Annie were



trying to ensure LH's true complaint was made, not arranging for her to make a false one.

154. I find therefore that the facts she had to be forced to go the police about the matter in January 2015 and the fact that she was offered a substantial sum of money to do so, do not mean that her complaint as made and her evidence in Court are not true. She has explained why she delayed and was reluctant to make any complaint. I accept that explanation and her denial of receiving money to give her statement.
155. I am satisfied having seen and heard LH give evidence, and having heard the corroborating evidence from several other prosecution witnesses, that whatever led her to the police and to Court did not influence or tarnish her evidence as given. She made two statements to the Police and gave evidence throughout an entire day. She was consistent throughout.
156. In the end, while MK and RH may be delighted to see EM convicted, that does not mean that their efforts towards achieving that end had any causative effect in the sense of influencing what she said. I do not accept their efforts did have that effect.
157. I have of course considered the possibility put forward by EM that not only LH but all of the corroborative prosecution witnesses have been influenced, perhaps with the payment of money in the face of any reluctance, to give false evidence. I reject that possibility. I have already explained why I do not accept that LH gave false evidence. In addition, the corroborative details provided by Mr Kaloran, Mr Carlo and Mr Hosea are in my view most unlikely to have been fabricated



given the content of their evidence and the significant consistency between their accounts as well as its consistency with that of LH. Also, where their evidence was on the same issue, as in the case of Mr Kaloran and Mr Carlo, there were some differences, which enhances their credibility. They did not come to Court with precisely the same stories.

Result

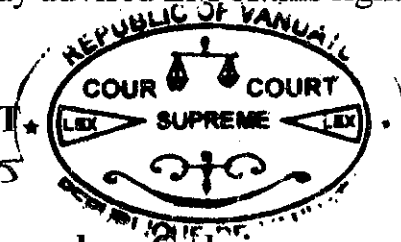
158. Standing back and looking at the evidence overall, while the conspiracy evidence is troubling, it does not give rise to a reasonable doubt in my mind that LH was telling the truth. Nor do EM's repeated denials. I am sure that EM had sexual intercourse with LH in his room at Nambatri on 24 July 2014. I further find, based on my acceptance of her evidence, that LH did not consent and the circumstances she described mean EM cannot have had a reasonable belief in her consent; on the contrary he knew very well she was not consenting and had to threaten her with a knife to achieve intercourse.

159. I therefore find the charge proved beyond reasonable doubt. EM is accordingly convicted.

160. EM has a right of appeal against this verdict. Any such appeal must be lodged with the Registrar of the Court of Appeal within 14 days from today. By signing this judgment I record pursuant to section 94 of the Criminal Procedure Code that I have today advised EM of this right.

BY THE COURT

[Handwritten signature]



Signed pursuant to s.95(1) of the Criminal Procedure Code in open court
at ^{3.32} pm on Friday 4 September 2015

[Handwritten initials]