

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Criminal Jurisdiction)
(Held at Gaua, Banks)

CRIMINAL CASE No.111 OF 2014

PUBLIC PROSECUTOR

- v -

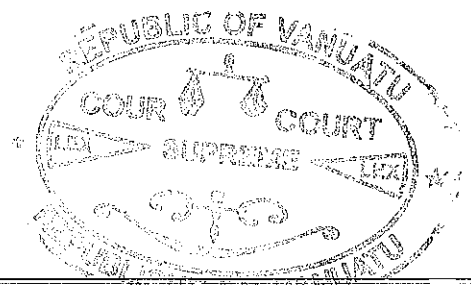
JANSEN FRAZER WELEGTABIT

Coram: V. Lunabek - CJ
Counsel: Mr Damien Boe for Public Prosecutor
Ms Jane Tari for Defendant
Dates of Hearing: 28, 30 August, 2, 3 and 4 September 2015
Date of Verdict: 22 September 2015

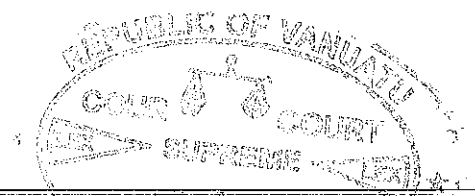
JUDGMENT ON VERDICT

I. Introduction : Nature and particulars of offences

1. This is the judgment in this case. Jansen Frazer Welegtabit is charged with two counts of sexual intercourse without consent (in counts 1 and 3), and in the alternative two counts of incest (in counts 2 and 4) and one count of Acts of Indecency without consent (in count 5).
2. The details of the allegations are these: On 21st December 2012, Jansen Frazer Welegtabit committed the acts of indecency on his daughter Franita Frazer by touching her breast and vagina inside her room at Gaua without her consent, contrary to s.98A of Penal Code Act.



3. In the night of 27 April 2013 at Gaua Island, Jansen Frazer Welegtabit had sexual intercourse with Franita Frazer Welegtabit without her consent, contrary to ss. 90 and 91 Penal Code Act; or
4. In the night of 27 April 2013 at Gaua Island, Jansen Frazer Welegtabit had sexual intercourse with his own daughter Franita Frazer and at that time, he knew that Franita is his daughter, contrary to section 95 of Penal Code Act.
5. On 25 June 2013, in the garden at Gaua Island, Jansen Frazer Welegtabit had sexual intercourse with Franita Frazer without her consent, contrary to ss.90 and 91 Penal Code Act; or
6. On 25 June 2013, in the garden at Gaua Island, Jansen Frazer Welegtabit had sexual intercourse with his own daughter Franita and at that time, he knew that she is his daughter, contrary to s.95 of Penal Code Act.
7. In the present case, Jansen Frazer Welegtabit is charged with two principal offences of sexual intercourse without consent and acts of indecency without consent. The offence of incest charged in counts 2 and 4 are alternative charges to sexual intercourse charged in counts 1 and 3. This means that if Jansen Frazer Welegtabit is convicted for sexual intercourse without consent in counts 1 and 3, he does not need to be convicted for the offence of incest (in counts 2 and 4). But if he is not convicted on the offences of sexual intercourse (in counts 1 and 3) he could be

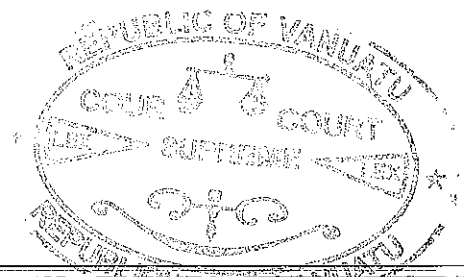


convicted of the offences of incest (in counts 2 and 4). Count 5 of indecency without consent is a stand-alone count in the information charged against the Defendant.

II. Burden and Standard of proof

8. This is a criminal trial. It is for the prosecution to prove the charges brought against the Defendant. The law is that the prosecution who brings the charges against the Defendant must prove each and all essential elements of the offences against the Defendant. Each charge must be dealt with separately on the standard of beyond reasonable doubt. This means that, I, as a judge of fact, I must be sure of the guilt of the Defendant on the facts in respect to each offence charged against him in this case.

9. If there is a doubt in respect to any offence charged against the Defendant and that the doubt in question is a reasonable doubt, I must acquit the Defendant on that offence. If at the end of the trial, I am not sure of the guilt of the Defendant or if I am left with a suspicion as to the guilt of the Defendant or if on the evidence I reach the conclusion that the offences probably occurred or are more likely than not to have occurred then I must find the Defendant not guilty of the offences and acquit him. But If I am satisfied beyond reasonable doubt of the guilt of the Defendant on the evidence of the prosecution in respect to each element of any offence or all offences charged against him, it is my duty to convict him on such an offence or all offences.



III. Elements of offences

10. For the Court to convict the Defendant Jansen Frazer Welegtabit, on the offences of sexual intercourse without consent, incest and acts of indecency without consent, the prosecution must prove each and all essential elements of these offences beyond reasonable doubt. I must be sure of the guilt of the Defendant on each particular offence charged against the Defendant. The elements of each offence are set out below :

11. Elements of sexual intercourse without consent:

1. That sexual intercourse occurred between Jansen Frazer and Franita Frazer in the night of 27 April 2013 and also that sexual intercourse occurred between them in the day of 25 June 2013 in the garden.
2. The complainant (Franita) at those times (27 April 2013 and 25 June 2013) did not consent to have sexual intercourse with the Defendant Jansen Frazer Welegtabit.
3. That the Defendant Jansen Frazer Welegtabit reasonably believes that the complainant did not consent to have sexual intercourse with him on 27 April 2013 and 25 June 2013.

12. Elements of Incest:

1. That sexual intercourse occurred between Jansen Frazer Welegtabit and the complainant Franita on 27 April 2013 and 25 June 2013.

2. That there is a relationship between the Defendant Jansen Frazer Welegtabit and the complainant Franita as Father and daughter respectively.

13. Elements of Acts of Indecency without consent

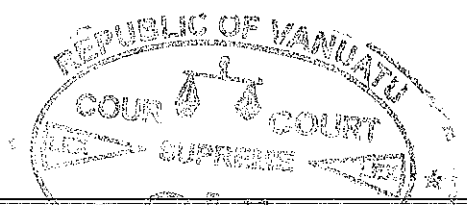
1. That the Defendant Jansen Frazer Welegtabit committed acts of indecency by touching the complainant's breast and vagina (and showed her pornographic movies contained in his mobile phone) on 21 December 2012.

2. That the acts of indecency were committed by Jansen Frazer Welegtabit on another person (Franita Frazer); and

3. That the acts of indecency were committed by Defendant Jansen Frazer Welegtabit on Franita Frazer without her consent.

IV. Prosecution case

14. The complainant of this case is Franita Frazer. She made complaints against her father Jansen Frazer Welegtabit. She alleged that on 21 December 2012, Defendant Jansen Frazer Welegtabit entered into her room at their house at Gaua, touched her breast and vagina when she was sleeping. She was awoken, she recognized her father who showed her pornographic movies in his mobile phone. She ran outside. Her father followed her outside and gave her 1000 vatu. She did not accept the money of



VT 1000 and she return the money back to him by putting it into his handbag.

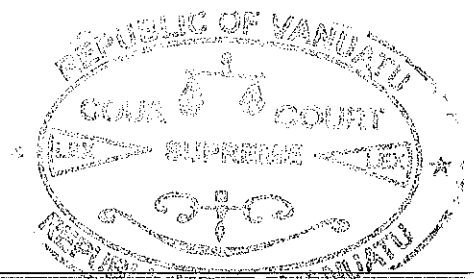
15. The complainant also alleges that on 27 April 2013 at about 10.00PM in the night her father Jansen Frazer Welegtabit searched for her and found her while she was with her boyfriend. He sent off her boyfriend. He pulled her into the bush, pushed her on the ground. He removed her trousers and underwear and had sex with her near the head of burao tree without her consent.
16. It is the prosecution case that after the sex incident of 27 April 2013, she ran away from her family home. She went and lived with one Kamuel Vavak and her wife Hilda Vavak at Tolo village.
17. The complainant says that on 25 June 2013, her father Jansen Frazer Welegtabit phoned her with his mobile phone and told her to go to the garden to see him and her mother there. The complainant Franita went to the garden. At the garden she found that the place was quite. Her father Jansen Frazer Welegtabit came behind her, blocked her mouth and took her to a bushy area in the garden, because the Defendant is her father, she was struggling as she refused to go with him. Her father insisted and forced her with a bush knife and threatened her with the bush knife to cut her. The complainant was crying and walked toward the bushy area in the garden. The Defendant came and forced her to lie on the ground. He positioned himself up down. He removed his clothes and removed the panty of the complainant and had sexual intercourse with the complainant. The complainant did not consent to have sexual intercourse with her father the Defendant.

V. Prosecution evidence

18. The prosecution calls Five (5) witnesses. The complainant gave her evidence on Monday as she was still in Luganville when the trial began at Gaua on Saturday 29 August 2015. Doctor Turnbull gave also evidence on Monday 29 August, although he is in Gaua on Saturday, he could not give evidence on the basis of his religious ground (Sabbath faith believer). The other three gave evidence on Saturday 29 August.

19. Tom Moses is the first prosecution witness. He testifies to this effect. He is the custom chief of the community of Navito at Gaua. He is also an appointed Justice of the Torba Island Court. He is married and has six children. He is an Anglican member. In 2014, he was aware of an incident involving Jansen Frazer Welegtabit with his daughter Franita Frazer.

20. He gave evidence of his involvement in this case. He says the father and mother of Franita sent him as chief, to take Franita back to their house as Franita was staying with Kamuel Vavak and his wife at their house. He says Jansen Frazer is the father of Franita. He says he went to Kamuel's house and asked Franita to return to her parent's house. He says Franita gave him three (3) responses:
 1. She refused because her father showed her pornographic movies which were in his mobile phone.

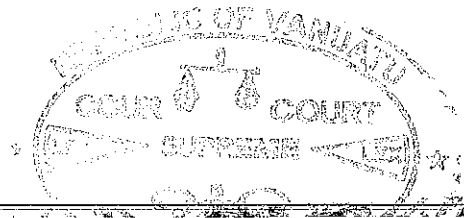


2. She told him that her father had sex with her near the area of their house.
3. She told him her father had sex with her in the garden. So she refused to return home with her parents.
21. He says he saw Franita was afraid and she did not want to return. Chief Tom returned back to his house and informed those who dealt with family violence to deal with this.
22. Tom Moses was cross-examined. He confirmed his evidence that he is the chief of Navito community. He knows of the girl Franita. He knows that Franita has two children and that they are looked after by Defendant Jansen Frazer and his wife. He knows Jansen Frazer and his wife. He knows Franita was with a man from Ambae. He also knows that when Franita came on Gaua Island she had relationships with another young man by the name of Branly. He says he knew before Franita run away to Kamuel's house, Franita's brother assaulted her because of Branly. He says he went to Kamuel's house asked Franita to return to her parents' house in 2014. He was asked and he says when he went to Kamuel's house to ask Franita to return to her parents' house, he did not know that Jansen Frazer and his wife and Kamuel and his wife Hilda were having dispute over a child named Mory. He says he went to Kamuel's house when he was asked to do so. He confirmed his evidence in chief that Franita gave him three answers. He says Franita told him of the three responses. First when he was alone with her and then he said Kamuel and his wife just came to listened to what Franita said happened to her. He was asked again

and he confirmed that at the time Franita gave the 3 responses to him. He was asked if Franita lied to him he would not know. He said he followed what Franita said. He further confirmed the 3 responses Franita gave him as the basis for her refusing to return to her parents' house when he was re-examined. He finally said he went to Kamuel's house to ask Franita to return to her parents' house because Jansen Frazer and his wife sent him as a chief to do so.

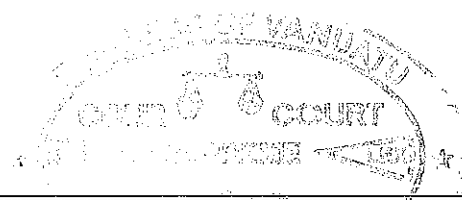
23. Kamuel Vavak is the second prosecution witness. He testifies to this effect. He is from Tolo village, Gaua. He is married to Hilda. He has business. He is a farmer. He plants peanuts. He has a shop. He knows Franita. The mother of Franita is his wife's sister. He says Franita is one of his children. Franita stayed with him and his wife because she was afraid of her father as he had sexual intercourse with her. He says Franita told him of this. He says he felt bad about this. It was not right. He says when Franita told him what her father did to her; he realized that Franita wanted to go away from her father.

24. Kamuel Vavak was cross-examined. He is married to Hilda who is the sister of Jansen Frazer's wife. He knows Franita. He was asked he says he knows Franita lived in Santo with a man from Ambae. They had two children. He was asked if he knew Franita was coming back to Gaua in 2012 and that she was pregnant. He says he knows Franita came back to Gaua but he does not know of the date. When Franita came to Gaua, he says she stayed with her father and mother. He knows Jansen Frazer as a family of his. He



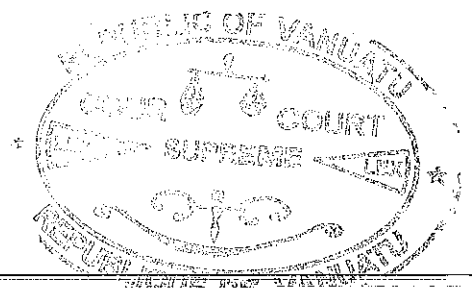
knows that when Franita returned to Gaua, she had relationships with another young man named Branly. He was asked if Branly's house was close to Jansen Frazer's house. He says it was not so close. He was asked he says he knew that at one night in April 2013, Franita's brother assaulted her because of Branly. He was asked and he agreed that shortly after Franita was assaulted by her brother, she came and stayed with him and his wife. He was asked and he says that when he heard the news about Franita and Branly he came to Jansen Frazer's house with his wife Hilda. He was asked if they discussed that he and his wife will take Franita with them for Franita to be away from Branly. He answered that he and his wife did not say that but it was Franita own thinking to go away from her father and she came and lived with them. He was asked if Franita told him of what her father did to her when he went to Jansen's house with his wife Hilda. He answered no. He confirmed he adopted one of Jansen Frazer's children, named Mory, a girl. When Franita stayed with them Mory was also with them. Today Mory was returned back to Jansen Frazer. He was asked and he confirmed that when they returned Mory back to Jansen, there were disputes between him and wife and Jansen Frazer and his wife. He was asked and he says at that time Franita was still with them. He was asked and he confirmed that after the disputes, his wife Hilda took Mory back to the house of Jansen. He was asked and he says his relationship with Jansen Frazer and wife was not in good terms.

25. He was asked that it was in these times that Franita told him of what her father did to her. He answered yes Franita told him of

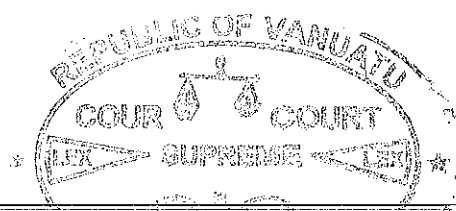


what her father did to her in the presence of Chief Tom Moses, himself and his wife Hilda. He was asked that when Franita told them of what her father did to her, they were crossed with Jansen Frazer and his wife. He answered yes. He was asked and he says Franita told them of what her father did to her in 2013 but did not know about the dates. He was asked he said at the time, the two children of Franita were not with Franita at his house. He confirmed that Jansen Frazer sent Chief Tom Moses to take Franita back to her parents' house but Franita refused to return to her parents' house. He was asked if Franita told him lies he would not know. He answered yes. He was asked if Franita was angry at that time. He answered he did not know about Franita's state of mind.

26. Hilda Vavak is the next witness. She is married to Kamuel and they have five children. They lived at Tolo village. She recalled when Chief Tom Moses came to their house in 2014. She testifies that the reason why Chief Tom Moses came to their house was to tell Franita to go back to her parents' house. Franita called her mother. She says when Chief Tom Moses arrived at their house, Franita told them of the details of what her father did to her. She says when chief Tom Moses arrived he told them that Franita's parents sent him to tell Franita to return back to her parents' house. She says Franita told them that her father had sex with her twice and showed her pornographic movies. She says as a mother she cried. She felt bad. She felt sad. She says after she told them of what her father did to her, then she moved back to stay with her man in Santo.

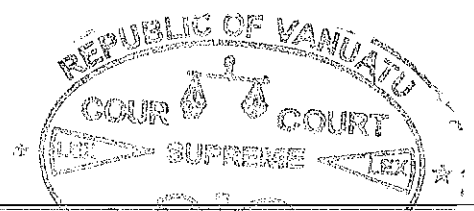


27. Hilda Vavak was cross-examined. She testifies to the following effect. Franita is the daughter of her sister. Franita has two children of her own. Her de facto husband is a man from Ambae. Her de facto husband is in Santo when Franita was in Gaua. She agreed that in April 2013, Franita went with another young man of Merelava who lives at gaua. His name is Branly. Franita's brother assaulted her because of her relationship with Branly. Franita told her and her husband of that. She agreed that 2-3 days after, she came to Jansen's house with her husband Kamuel. She was asked and she agreed that they discussed of the move of Franita to stay with her and her husband because Jansen Frazer's house was close to Branly's house. She was asked that Franita came to their house not because she was afraid of her father but because she would be away from Branlys' house. She answered yes because they did not know yet of what Franita's father did to her. She agreed that when Franita stayed with her and her husband, Franita did not tell them yet of what her father did to her or of the pornographic pictures showed to her. She was asked and she agreed she adopted one of Jansen Frazer's children. It was a girl named Mory. She was asked and she agreed that when Mory was with them, she and her husband had disputes with Jansen Frazer and his wife and she went and take Mory back to Jansen Frazer and his wife.
28. She was asked and she agreed she was angry when she took Mory back to her parents. It was put to her that when she went to Jansen Frazer's house to return Mory, she threw Mory's clothes and said words to this effect: "Kamuel istap helpem yufala be eyes blo yufala istap long hass blong yufala." She answered that this



was on a different time. When Franita told them of what her father did to her they were staying only at their house. They did not go to Jansen Frazer's house. She says she said these words on a different time. She was asked and she agreed that when she took Mory back to her parents, Lily, Jansen Frazer's wife responded to her with words saying words to this effect: "yufala istap helpem mifala lo wrong blong yufala nomo. Mifala ino olsem you we you stap sendem different woman igo look man blong you."

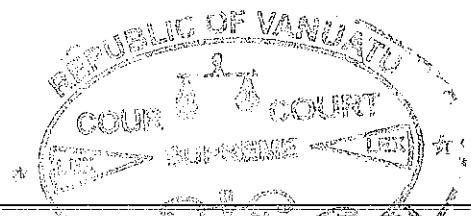
29. She was asked that Lily responded to her and said: "Bae mi reportem you from wanem you mekem long mi igo lo man blong yu" she answered that she thought that this case is a different case. She says Lily said those words but this present case is different from Lily's case. She was asked and she agreed that when they had disputes over Mory, Franita was with them at Tolo Village. She was asked and she agreed that after the disputes over Mory, they asked Chief Tom Moses to resolve their disputes but Jansen and Lily did not agree and they wanted to put their complaint through the Court. She was asked if she and her husband called Chief Tom Moses to take Franita's bag and mattress. She answered it was not her and her husband. It was Franita alone who sent Chief Tom for her bag and mattress. She was asked and she agreed that Franita stayed with them from April 2013 to 2014 about a period of over 9 months. She was asked and she answered they looked after her with their own children too. What food they prepared they had it with Franita. She was asked and she confirmed that the disputes over Mory preceded the fact



that Franita told them of what her father did to her. She was asked what Franita said her father did to her come short time after Lily said she will put a report against her. She answered Franita filed her report. It was different from what Lily wanted to do.

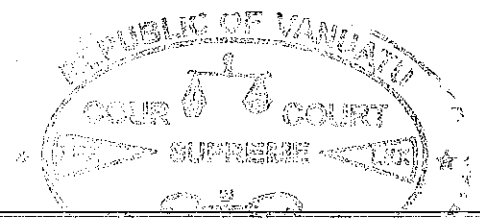
30. She was asked and she agreed that Franita's complaint against her father came after her mother Lily wanted to file a complaint against her. It was suggested to her that when Franita was with them, they talked. She answered when Chief Tom arrived at their house, then, Franita told them of what her father did to her. She said because Chief Tom Moses came to take Franita back to her parents' house, Franita refused to go back and Franita told them of what her father did to her. She was asked and she says she was not afraid when Lily said she was going to complain against her. She said she was not afraid of that. She was asked if she was cross toward Lily. She says she told Lily that if Lily wanted she can tell. She said she was cross because Lily through bad words to her. She agreed she told Kamuel and he too was not happy. She was asked if she, Kamuel and Franita were not cross and not happy. She answered they were cross and not happy. Jansen and Lily too were cross and not happy. She said Jansen and Lily were not happy because Franita was staying with them.

31. It was suggested to her that she, Kamuel and Franita were cross and not happy about Jansen and Lily about a story that today came out in court. She answered no. She denied that when Franita was with them at Tolo village, they were strict to her. She says Franita made her decision as to where she wanted to go. It is suggested to



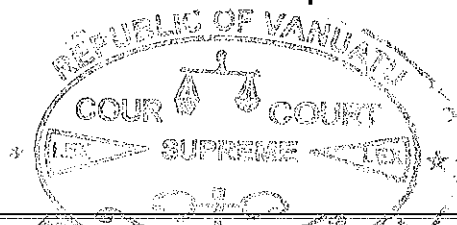
her that if Franita told lies to them, they will not know. She answered yes. It was suggested to her that her husband Kamuel, Franita and her were cross and not happy with Jansen and Lily so they made up the story. She denied this. It was suggested that the story told by Franita helped her and her husband and Franita to block Jansen Frazer and his wife Lily to file a report against her. She denied by saying no. In re-examination, she said she had heard that Jansen Frazer had sexual intercourse with Franita at the time where Chief Tom Moses came to her house.

32. The second last prosecution witness is Doctor Mark Turnbull. He gave evidence to the follow effect: He is from Queensland, Australia. He is 49 years of age. He is married and he has a child. He has a degree of Bio Medical Science. He has post graduate in Medicine on Surgery. He is a member of SDA church. He works under the Ministry of Health through a Memorandum of Understanding (MOA). He has already spent 10 years. He has signed another MOA for 10 years service. He bases himself at Gaua. He describes his work as a flying doctor providing medical services at Torba province. He looks after high medical cases. It depends on cases he has handled which are serious medical cases. He deals with men affected by hernia decease as Gaua is a coprah producing island. He also handles women having problems of delivering babies and some serious injuries. He deals with more than 100 cases. He describes the number of cases as plenty cases. He is aware of a patient Franita Frazer. He says he knows Franita Frazer. Franita is the sister of Asneth who was subjected to medical attention. Franita was with her sister Asneth at that time.



Franita came to see him as patient only once. He says when a doctor looks at a patient, the doctor looked at the history of the patient. He based his medical report on his observation of Franita Frazer. He says Franita Frazer told him of a lengthy story of abuse of sexual assault by her father. He says to his observation, a person who is abused sexually since she was small will have a lasting effect on her. It is hard to prevent the relationship with another person. He says he did not put this in report. He believes the personal history of his patient Franita Frazer is one of the serious cases. It affects the life of this patient emotionally. He tendered his medical report and findings dated 14 April 2014.

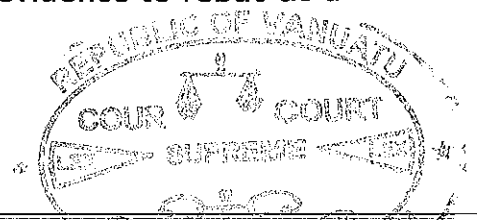
33. Dr Mark Turnbull was cross-examined. He confirmed that the case of the complainant Franita Frazer is a serious case. He was asked and he says there was no physical injury in the body of the patient. There is no evidence physically of any injury on the body. He says she did not report to him at the time of alleged commission of these abuses. He confirms that when he wrote in his report he put in the signs of trauma he saw on the patient Franita. They follow consistently with the sexual abuses. He says that medically speaking it is consistent with the list of sexual abuses. He was asked and he confirmed that when a woman was abused, many times, there is many possibility that any man can abuse her. The accounts of the complainant of what happened to her are complexed as the sexual abuses started when she is a small girl. He provided a medical report as evidence of his findings (dated 30 April 2014) (Exhibit P1). The Medical Report is factual information based on a Medical History taken from Franita Frazer on 29th April



2014. It is given from a medical perspective. Franita has had a very long history of sexual assault by her father on multiple occasions since she was 10 years of age. She was assaulted sexually on a weekly or more frequent basis with knife threats to enforce sexual submission for about 3 years before Jansen was sent to prison for sexually abusing his daughter. As part of her medical history, she informed the doctor that 10 years had passed since his imprisonment and that Franita was hoping that the sexual abuse was finished forever.

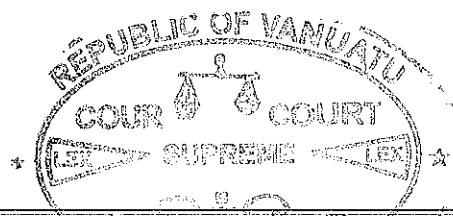
34. However, according to Franita, during 2013 Jansen again sexually assaulted Franita on two occasions, once in April 2013 and once in June 2013. Exact dates are not clear to Franita but the experiences of these two attacks are clear in her mind. The Doctor's examination shows no evidence of sexually transmitted disease or pregnancy from these assaults. Most of the damage to Franita from this sexual abuse is emotional in nature rather than physical. The Doctor concluded that his examination shows no lasting physical injury on Franita's body but Franita shows evidence that she has been emotionally traumatized by what she claims have been many repeated sexual abuse or violence.

35. Doctor Mark Turnbull was recalled by the prosecution toward the end of Counsel oral submissions to rebut the Defence evidence by Lily Welegtabit to the effect that "penis blo husband blo mi i ded" pursuant to section 169 of the Criminal Procedure Code Act [Cap 136]. I allow the prosecution to recall Doctor Mark Turnbull to rebut the defence evidence on this point of evidence to rebut as a



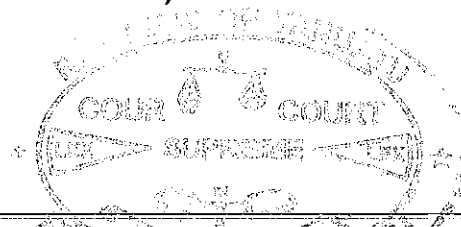
new matter introduced by the defence witness which the prosecution could not, with reasonable diligence, have foreseen (s. 169 CPC [Cap 136]). In his evidence in reply to rebut the defence evidence that the Defendant's penis was dead, the doctor gave evidence that the Defendant was circumcised as the penis healed rapidly, this could have been as recently as 3 months or 3 years. He also gave evidence that the medical evidence of impotence is definitely not conclusive evidence that a person has never sexually abused anyone. A person who is sexually impotent is quite capable of carrying out sexual abuse, rape or incest, as has been proven in many cases. The witness Doctor Turnbull provides another medical statement (exhibit P4) dated 4th September 2015.

36. Franita is the last but main prosecution witness. She gave evidence to the following effect. She lives in Santo at chapuis II. She lives with her husband Joseph Tari of Ambae. She has two children (two girls) of 9 and 5 years old respectively. Jessica Tari is attending the primary school at Santo East. Dalida Tari is in kindy. Her mother's name is Lily Wesur Welegtabit from Merelava. Her father is Jansen Frazer Welegtabit from Motalava. She has two brothers and four sisters. Her father and mother live at Gaua at Navito village. In the years 2012 and 2013, she was at Gaua. She testifies that on 21 December 2012 in the morning she was still sleeping in her bed because during the night, she went with her friends at the Christmas carol and she went to bed late and she got up late. On 21 December 2012, in the morning, she slept in her bed in her room. She was woken up by a man who held her by touching her breast and she lifted the blanket that covered her

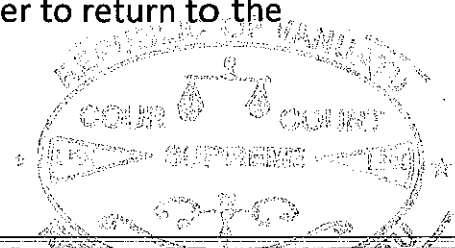


face then the man touched her private part. She recognized her father Jansen Frazer. He also showed her pornographic movies he has in his mobile phone. She says she got up she kicked him on his chest and pushed him. He fell on the floor. She run and went outside. She looked around but there was no adult around. Some children were at the church ground area playing. Then her father gave her an amount of vatu 1000 and told her not to tell anyone of what happened. She says she took the sum of vatu 1000 and she put it back inside her father's bag. She says she felt bad because this man who touched her is her own father. She says it meant to her that her father paid her for the bad things he did to her. So she says she returned the money 1000 vatu. Her father, then, left. She says she cried and followed the road to the garden. She felt bad. She says she did not think that something like this could happen to her. She met her mother on the half road and they returned home. She says she did not tell her mother of what happened to her. She was afraid of her father. Her father told her that if she told somebody of what he did to her, he will kill her.

37. She testifies that on 27 April 2013 at about 10.00PM o'clock, she went to see her boyfriend. When she was at Gaua she had a boy friend called Branly. She went to her boyfriend's house at the other side of the airport. She did not know that her father, mother, sisters and brothers looked for her. She says when she returned she followed a road. On her way back home she met her brother Lenny. Lenny slapped her after she told him that she came back from her boyfriend Branly's house. Lenny followed her to go to their house. When she arrived at Morman church area, she saw



her father standing there. Her father held her hands and sent Lenny to tell her mother that she (Franita) was found. After Lenny left, her father held her hands, forced her to a burao tree, asked her to lie down. She felt bad. She felt it was not right. She says she told him no he is her father. Her father slapped her on the left side of her head causing her to fall on the ground. He forced her to open her legs. She refused to open her legs. He forced her again to open her legs. Then he removed her panty and had sex with her that night. She felt bad because he is her father and she just came back from her boyfriend's house and she had sex with her boyfriend earlier she felt she was weak. She cried and returned to their house. She described that her father was wearing a short trousers. He pulled down the zipper of his trousers and had sex with her. On her way to the house, she cried, her father followed her and told her it was good she cried so that her mother will see that she cried as if her father whipped her. She says once at home, while she cried her father rubbed her backside with his hands then her mother, brother and sister came back home. She says she did not tell anyone of the sexual abuses because her father told her that she must not denounce him from what he did to her. He is her father she says she felt bad that her father had sex with her. She says after the incident of 23 April 2013, she moved and went to live with her step parents at Tolo village. She says she felt she could not live with her parents because of what her father did to her. At Tolo village, she lived with Kamuel and Hilda. When she moved and lived with her step parents, she says her father came to Tolo from time to time. He behaved well and he did not behave angrily toward her. Her father came and asked her to return to the

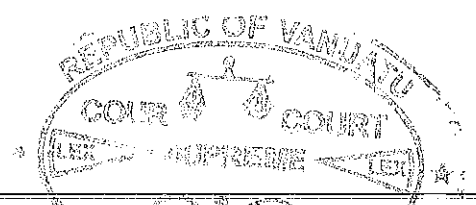


house at Navito. She says she refused. She says her father came back the next time. She said if her mother came for her she will follow her mother to the house. She says because her father came to take her back she did not feel safe to follow him on the road back to the house.

38. She testifies that on 25 June 2013, she stayed at home with her step parents. They wanted to go and planted peanuts in the garden. Then her mobile phone rang. She says she used a symcard and her telephone number is 5489704 and her father's phone number is 5541076. She says her father rang her with this mobile phone number (5541076). She says she answered the call and her father told her to go and meet her mother and him in the garden. She says she asked her father as to which garden. Her father told her the garden which is near the house. She says she thought what her father told her was true. She says she thought her father was with her mother at the garden. So she told her step mother Hilda to go to see her parents in the garden. Hilda agreed and told her to return after the garden. She says she went to the garden indicated by her father. When she arrived at the garden, it was quite. She did not see her mother at the garden. She says she saw her father was standing beside a head of banana. He was holding a sharp bush knife and pointed the knife to her for her to go to a small bush area. The bush area is on the side of the garden. She told her father what she was going to do in the bush. She says he cut the banana with the knife and stirred at her and told her to go hurry otherwise he will cut her with the knife. So she walked towards the bush area. Her father followed her and pointed the

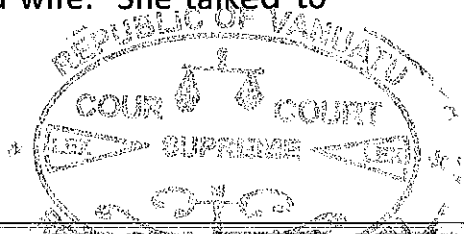


road she followed with the knife. She arrived at the bush area and she was standing there holding her head. He pushed her down. He opened her legs. She held on and resisted as she was afraid of him. He forced her and opened her legs and put the knife on his side. He pushed his hands and removed her panty. He removed his trousers and pulls the zipper of his trousers. He opened her legs and had sexual intercourse with her in the middle of the day. She also said that he gave her a custom leave and told her to bury it at the road of the garden of Kamuel and Hilda and also at their door so that they could not find out what had happened. She says she took the custom leave with her and she threw it away. She did not bury it at the road of the garden. She describes that she saw the penis of her father. She says the size of her father's penis is like her two (2) fingers. (She was emotional and cried when giving her evidence). She says her father is not circumcised. She says she felt sad when her father was doing this to her. So she did not tell anybody of what he did to her. She did not tell what her father did to her to her step parents because it was shameful to her because he is her father. She says it was difficult for her to tell. She says she just stayed at Tolo village. She says then her father and mother came to take her back home. Then she says she told them no she could not follow them to return back home. She says she said no because her father made problem with her. She felt bad because of this. She could not return to the house of her parents. She says, then, Chief Tom Moses came to her step parents' house at Tolo village and told her to return to the house of her parents. She told Chief Tom that she will not return to her parents' house. She says Chief Tom Moses asked her why she refused to return to



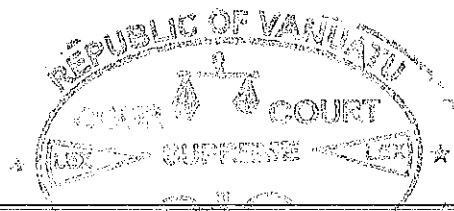
her parents' house. She says she told Chief Tom Moses, she could not follow him to return to her parents' home because her father will make problem to her again. She says that when Chief Tom Moses arrived at her step parents' house, her step parents were also at their house. Then she says she sent Chief Tom Moses to go and ask the woman on the side of violence to come and see her. She said she wanted to make a statement. She says Chief Tom Moses went and told Morida to come and see her. She says Morida is an aunt of her who is working to help them with violence against women. Morida came and took her statement and told her to take her statement to Santo. Then she asked her step parents (Kamuel and Hilda) to help her purchasing her way to Santo for her to file her statement there. Her step parents agreed and paid her way to Santo. So she travelled to Santo and stayed with one Keith Langon at Pangpang. She says Keith Langon took her to the office of Police CID in Santo. She says she made her statement to the police there. She says the police sent her to the Family Protection Unit. She stayed with Keith Langon and her husband came for her at Langon's house. She says her husband came and called her and Keith Langon and told her that he forgave her for what she did after he had heard of what her father did to her. Her husband took her back to his house at Chapuis II (Santo).

39. Franita went through a lengthy cross-examination. She was asked and she confirmed that she came to Gaua on 2012. She had a husband. She also says in 2012 she had her two children already with her husband Joseph Tari. She says Joseph came at Gaua in 2011. She agrees, they lived as husband and wife. She talked to



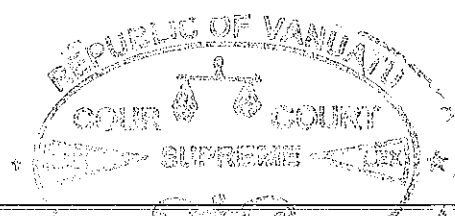
Joseph about their two children. She was asked and she says she also talked to one Branly. She was asked she agreed she had also sexual intercourse with Branly. She was asked and she says Joseph did not know that as he was back in Santo. She was asked and she says she told Joseph she had sex with Branly when she revealed the problem her father did to her. She was asked and she confirmed that she has hidden the sexual intercourse her father had with her because she was ashamed and afraid because her father will kill her.

40. In 2012 she stayed with her two children in the house of her parents with her parents. Her mother Lily helped her with the two children. She was in good terms with her mother but sometimes her mother did not want to talk to her. Her mother would turn her face away from her. She was asked and she agreed that when she was with her parents in 2012, she did not make a report. In 2012, she agrees that there were 11 persons who lived in the house with her including her father Jansen, her mother Lily, her 2 brothers (Lenny and Sheddreck) her sisters (Asneth, Alice, Alisan and Mory) and her 2 children. The house has 3 bedrooms and one sitting room. She slept in a room with her 2 children. There were masonites as wall around the room but a tissue (calico) hanged as the door. Her parents slept in a room and her sister Asneth with others used a room. Her brothers slept in the sitting room. She says that in the morning of 21 December 2012, when her father went to her room and touched her breast and vagina there was no longer the tissue (calico) wall. The masonite wall was already placed. She agreed that there was a door as the main door but the



tissue (calico) hanged in the inside doors as interior doors to the room. She agreed on 21 December 2012, her brother Lenny was still sleeping. She confirmed her evidence that she kicked her father on his chest when her brother Lenny was still in bed. She pushed her father causing his fall on the floor. She ran outside. She confirmed that her father gave her VT 1,000 and she says she did not like what he did to her she gave the money 1000 Vatu back to her father by putting it into his handbag. She says she was afraid of him because he indecently assaulted her (hemi holem mi nogud). She was cross to her father because he did rubbish things to her. It was suggested to her and she says that she could not tell her brother Lenny because if she told him her father will kill both of them. She says she did not wake up Lenny at the time. She ran outside. She walked and she met her mother and they came back to the house. She did not tell her mother of what her father did to her. It was put to her that her father never touched her. She responded "daddy blo mi i touchem mi", and she says no she does not agree with the suggestion.

41. It was put to her that in 2012, there was only one telephone in their house. It was a mobile phone for her father. She confirmed her evidence that her father has one mobile phone. Her father used his mobile phone to receive calls, and call out and also watch movies in the mobile phone. She also says that all of them in the house have each a mobile phone. She denied that the children at home watched movies in the mobile phone. She agrees that her sister Asneth used the mobile phone of her father but the boys in the village sent movies to her father's mobile phone. Her father



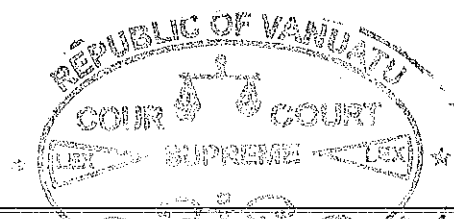
walked around in the village with his mobile phone and her father has pornographic movies inside his mobile phone. She also says that she was afraid of her father and her mother too.

42. On 27 April 2013, at about 10.00pm o'clock she agrees she met her boyfriend Branly and her two children were at home. Her second born child woke up and cried. Others in the house, she agrees, were sleeping. It was suggested to her that at that night, her father had drunk Kava and slept. She agreed. It was suggested to her and she answered she was afraid of her father because he had sex with her and her father told her that if she told someone of what he did to her he will kill her. However, she says that she was not afraid of her father to meet her boyfriend. She agrees that at that night, her mother and Asneth were looking for her and her father was in the house. She agrees that Lenny found her on her way to the house. She says Lenny slapped her and followed her to the road to the house until the Mormon Church. Then she says her father came down to the road to the church. She says Lenny also saw her father on the road to the church that was where she says Lenny left her with her father that night after he slapped her and then Lenny left. She was asked and she says the head of burao was not located at the house but the burao tree was in the yard of the church where she says her father made problem to her. She says there were 2 heads of burao which were already cut. She was asked why she did not call out for help. She answered: "Bae mi sigaot from wanem. Hemi blockem mi blo mi no mas singaot. Hemi treatem mi nogud ia." She was asked and she agreed that her brother Sheddrack carried her second born child but she

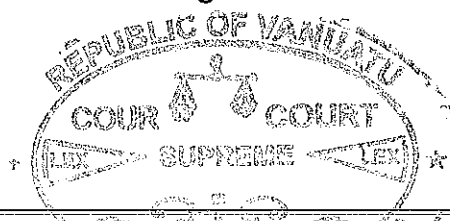


maintained that her father came down that night to the church. She agrees she did not mention her father had sex with her when her mother came back home. She was asked: "you talem se you no save hearem gud". She answered: "from se mi go gat sex wetem boyfriend blo mi Branly finish after dady too igat sex wetem mi too lo naet ia. Mi harem nogud mi no talemaot". She was asked and she says she was not happy that they found out that she was with her boyfriend. She was asked and she says Lenny was not the only one who slapped her that night. She confirmed her father pushed her to the head of a burao tree. She said the burao tree was already cut. The head of burao tree was there, she was on the head of the burao tree which was in the area of the church. It was not far from the house.

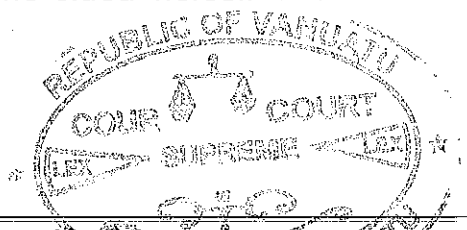
43. It was put to her that although she said her father had sex with her, she did not see her father's penis that night. She agreed that she did not see her father's penis that time because it was dark. It was suggested to her that her father could not have sex with her because her father had a problem with his penis. She answered she did not agree because her father had sexual intercourse with her that night. It was put to her that the reason why she did not call out for help and she did not tell her mother about what her father did to her was because sexual intercourse between her father and her never happened. She answered no. She did not agree. It was suggested to her and she agreed that shortly after the incident with Branly, Kamuel and Hilda came to her house. It was suggested to her that she went to Tolo village to stay away from Branly and her two children also stayed with her parents.



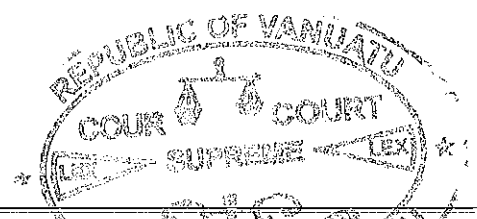
She said yes. She confirmed her evidence that when she was at Tolo, her father telephoned her on 25 June 2013. It was put to her if she was sure that her father called her that date. She confirmed by saying yes. She was asked she confirmed that her father called her on his mobile phone number 5541076. It was suggested to her that her father called her on 25 June 2013 at 11.00 am o'clock. She answered no but her father called her at about 10.00 am o'clock on that date. A letter from Digicel dated 26 August 2015 was shown to her and she was asked to read it. She read the content of the said letter which is to this effect: "as per request received on 24th of August 2015, this is to confirm that after our report search, number was active however there are no records for incoming or outgoing activity made to or from the number 5541076 on the requested date 25 June 2013." She answered she understood the letter but she confirmed and maintained that her father called her on that day. She was asked she agreed that the letter is from Digicel. She also says she understands Digicel looks after incoming and outgoing calls of Digicel calls. It was suggested to her that on the date of 25 June 2013, Digicel did not find a call from the said number. She responded she did not agree to the letter. She confirmed her evidence that after she received her father's telephone call, she went to the garden to meet her father and mother. She was asked she confirmed that chief Tom Moses asked her to return to her parents but she refused. She agrees she was asked to returning plenty of times. She was at Tolo village when her step mother Hilda came and returned Mory back to her parents. She was asked if she heard of the dispute between her step mother Hilda and her mother Lily. She did not agree. She



agrees she sent Chief Tom Moses to take her bag and mattress from her parents' house. She agrees that her parents told Chief Tom that if she wanted she could go herself to take her bag and mattress. She agrees she was cross when Chief Tom told her of this. It was suggested to her that she sent text messages to her sister Asneth and her mother; she says she did not agree. It was put to her that she sent text messages to her mother and sister Asneth before her step mother returned Mory to her parents, she did not agree. It was suggested to her that the text messages she sent in the phone was this: "youfala i hollem taet tufala pikinini from wanem. Tufala i came out lo can blo Asneth?". She says she did not agree. She agrees that she says that Lily is no longer her mother. It was suggested to her that she was cross to her mother too and she agrees but she says the reason for her being cross to her mother Lily was not because her mother wanted to report Hilda. She agrees that she revealed what her father did to her after the dispute between her mother Lily and her step mother Hilda. She agrees that she revealed what her father did to her after Hilda return Mory back to her mother Lily. She was asked and she agrees that Kamuel and Hilda looked after her properly. It was suggested to her that her steps parents gave her money that her own parents could not afford. She denies and says she does not agree. She agrees that the couple (Kamuel and Hilda) paid for her trip to Santo. She agrees that the couple does business and planted peanut and had store. She agrees that the couple looked after her since April 2013 to early 2014. It was suggested to her that when she heard that her step mother Hilda and her mother Lily were in bad terms with each other, she sided herself with



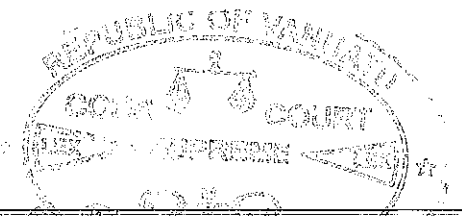
Kamuel and Hilda. She answered that she does not agree because she did not want to know of their business. She was asked as to why she was in bad terms with her mother she replies that her mother has her own characters (behaviours) too. She says her mother said strong words to her as if she is not her daughter. She says she had just accepted the bad words her mother used in respect to her. It was put to her and she says the strong words were not said in respect to her by her mother after she revealed the sexual abused perpetrated by her father on her, the words were said by her mother quite some time before. She did not agree that she was cross to her father and mother and Kamuel and Hilda too were cross. She did not agree that the Latest Day Saint gave the telephone to her father on September 2013. It was put to her that on 25 June 2013 when she said her father called her she did not know whether her father had the phone number 5541076 with him at that time. She says no she disagrees. It was put to her that on 25 June 2013 she says she came to the garden following her father's instruction was not true. She did not agree. She says if her father did not call her who was ringing her causing her to go to the garden, a devil, so she says she did not agree. She says she did not lie to court. God the Father saw her talking now. She is not a child. She has children of her own already. The garden was close to the house. The garden was on half of the land and the house was on the other part. People talking in the garden people at the house could hear them. She confirmed she did not call out because he held a bush knife. She was afraid he would cut her with the bush knife. Her father cut a banana tree. She was afraid. Her father had sex with her on the day. He threatened her with a



knife so how she will denounce him? She says her father held the bush knife for her in the garden.

44. On 27 April 2013, she confirmed her father threatened her to kill her. After 25 June 2013 incident, her father did not threaten her with the bush knife nor sent threatening words to her. She agrees her father threatened her on 21 December 2012, 27 April 2013 and 25 June 2013. She says she did not reveal them because if she did so her father will kill her dead so she did not say anything. It was suggested to her that even though she had opportunities to reveal what her father did to her, she did not reveal because the sex between the father and daughter was not true. She repeated she did not reveal the sexual intercourse of her father because she was afraid. If she revealed the sex he will kill her. So she says she is not a mad person. It was put to her that on 25 June 2013, her father never got sexual intercourse with her. She says she did not agree. It was suggested and she disagrees that her father did not side her panty to have sex with her. It was put to her that the allegations against her father were made after the dispute between the couple Kamuel and Hilda and Jansen – Lily. She says she did not agree. It was suggested to her that she put the allegations to court to stop her father and mother to lodge a complaint against Kamuel and Hilda. She again says she did not agree.

45. Franita was re-examined. She says when her father had sex with her she did not report him. She says she could not. She found it

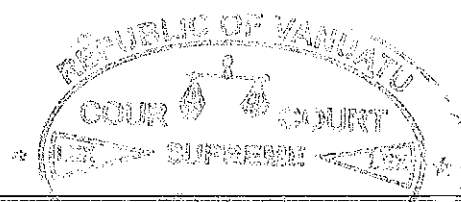


very hard to report him, the man who brings her to this world. In addition, she says her father told her not to tell anybody otherwise he will kill. On April 2013, she says she did not call out because her father assaulted her. He told her not to call out. If she called out he will kill her.

46. She says on 25 June 2013, in the garden she did not called out for help because her father had shown her a bush knife, he cut a banana head with his knife by threatening her. She was afraid. She confirmed that on 21 December 2012, her father touched her breast and vagina and showed her pornographic movies which were in his mobile phone.
47. That is the end of the Prosecution case.
48. The rights of the Defendant pursuant to section 88 of Criminal Procedure Code Act [Cap 136] are read and explained to him.

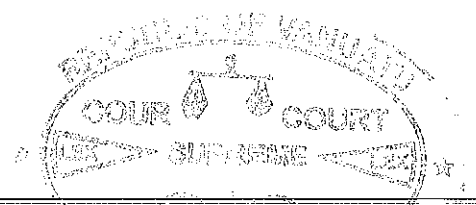
VI. Defence Case

49. The Defence case is that the story by Franita Frazer against her father is one of serious allegation. The story was told after an animosity arose between Franita, Kamuel and Hilda against Jansen Frazer Welegtabit and his wife Lily Frazer Welegtabit. The story arose when Lily has revealed a story that was hidden about a sexual assault that Hilda and Kamuel did against Lily Frazer. The story arose after the dispute over the adopted child called Mory, Hilda took her back to Lily and Jansen Frazer. The story arose



when there were angers, tensions between Franita, her father and mother. The story devised or is made up as a result of the cross or angers between the two families. The stories were lies aimed to put shame and disgrace on John Frazer and his wife. That Franita, Kamuel and Hilda hate them. The Defence will call five (5) witnesses. Defendant Jansen Frazer Welegtabit will give evidence himself. He will tell the court that on 21 December 2012, he did not indecently molesting Franita. He will tell the court that on 27 April 2013, and on 25 June 2013, he did not have sexual intercourse with Franita. He will also say that on 21 December 2012, he could not operate the only mobile phone at home to the extent that he could not show a pornographic movie. He will say that the mobile phone number 5541076 was not used until after the September 2013. He will say that he had never at any material time threatened Franita. He will say that Franita has been to Tolo village because she will be away from one Branly who was Franita's boyfriend.

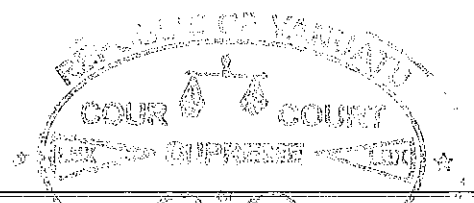
50. The second witness is Lenny Frazer. He will testify about the incident happening on 27 April 2013. He will say that he slapped Franita. He took Franita back to the house. The third witness is Asneth Frazer. She will testify as to how many mobile phone her father has. She will confirm that she also used the phone in question. She will say how she assisted her father to use the phone. The fourth witness is Lily Frazer. She is the wife of the Defendant. She will testify as to the disputes occurring between her and Hilda. She will say about some sexual features of her husband. She will also testify as to the story that Kamuel and Hilda



did to her. The Fifth witness is Ralvie Matariki, the customer care Manager of Digicel Company. She will testify that the Company made a research on the outgoing calls and the telephone number 5541076 on the date of 25 June 2013. She will say that Digicel number 5541076 was active. There were no outgoing calls made on the relevant times.

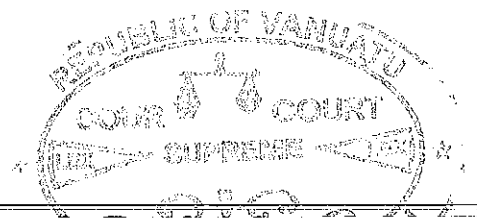
VII. Defence evidence

51. Jansen Frazer Welegtabit gives evidence to this effect. He is from Motolava. He lives at Gaua. He is married. Lily Welegtabit is the name of his wife. They had 7 children: Franita, Lenny, Sheddrack, Alisan, Mory, Alisa and Asneth. He lives in the village of Tinla near Navito. He is a farmer and leader of the church of Latest Day Saint (LDS). He describes his house as a 3 bedroom house with a sitting room. On 21 December 2012, the tissue (calico) was put around as wall between the rooms and also Masonites but Masonites were not complete. He does not know what he did on 21 December 2012. He has a Nokia mobile phone but it is not a touch screen one. He says he uses the phone. His wife and all of his children who can use a phone used that mobile phone. They used the phone to receive calls and call out, listen to the music and watch movies in that phone. He says in his phone the movies in his mobile phone were songs, movies, string band and movies on war. He says her daughter Asneth put these movies inside his mobile phone and also some of his church friends put some movies in his phone. He did not put any movie inside his phone. He does not know how to send a movie in the phone. He denies pornographic



movies were in his mobile phone. He says there are none. When he is not at home, his wife and children used the phone to receiving calls, watch movies and songs and photos with camera. He says if his wife or the children wanted to watch movies, Asneth will send movies in the mobile phone for them to watch not every time only when the battery of the mobile phone is charged. He has no charger so he charged the battery of his mobile phone outside his home. He says he never stopped the children to watch movies on his phone or use the mobile phone. He denies that on 21 December 2012, he touched the breast and private part of Franita in her room. He denies also showing her pornographic movies on the same date on his phone. He says it was not true because there was none in the phone and he says he does not know at all. He says it is not true that he touched her breast and private part as he believes that Franita is his daughter.

52. He clarifies his belief and says that "because fashion ia ino need blo mi makem." He says that on 27 April 2013, at about 10.00 o'clock pm, he was already at home. He drunk kava, had eaten his food and slept. He consumed 5-6 shells of kava. The kava he consumed had a strong effect on his body on 27 April 2012. At home, he was with his wife and children and his two grandchildren. His two grandchildren are the children of Franita. At that night, when they slept, the young child of Franita cried for some time. Her mother (Franita) was not with her. Then Lily (his wife) checked into the room Franita slept with her children. Lily found out that Franita was not there in the room. They were all awoken but still laid in bed. Lily took baby apu (a small girl) to

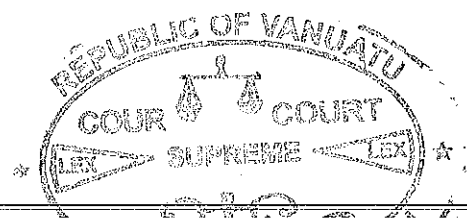


Sheddrack in the sitting room. He was awoken but still in his room. Lily called Asneth to follow her and to look for Franita. Lily told him to stay with the children at the veranda. He did not do anything. It was still soon after he drunk kava. He did not have the strength to go looking for Franita. He was with his other children sitting at the veranda of the house. Lily and Asneth looked for Franita. He sat outside at the veranda until Franita returned home. When Franita arrived she cried because her brother chased her when she arrived at home. Franita sat until her mother arrived with her sister Asneth. He says also that when they were at home, he stayed with the children. At the time, Lenny was not happy with Franita because of her actions causing her mother who was sick to go and looked for her. So Lenny too went looking for Franita that night. He explained that Lenny followed the road toward the church area and Lenny found Franita on her way to the house, Lenny slapped her. He said she saw Franita when Lenny came in the house with her.

53. He denies that on 27 April 2013, in the night he went to the church area, met with Lenny and Franita and sent away Lenny. He was asked as to why he says it was not true. He says he did not send away Lenny. He says Lenny did not go. Lenny stayed with them they were woken up. He denies that he pulled and pushed Franita to the head of burao tree. He explained that he did not go to the place she said he was pulling her. He denies that he shifted Franita's panty, removed his trousers half way and had sex with her. He explained it was not true because he did not do this. He also denies that he threatened Franita that if she told anybody of

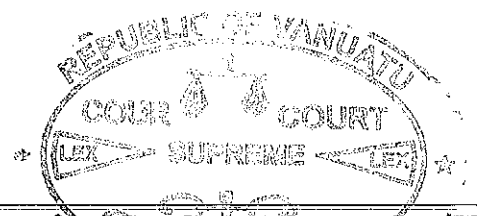


the sexual intercourse he had with her, he will kill her. He explained that it was not true because he did not know of the allegations she made against him. He denies that he slapped her on her face that night. He says he did know of what she said. It is not true. He does not do such things as she said. He said on the same night, Franita came home with Lenny. She sat at the corner of the house. They were all there waiting for Lily and Asneth. He says Franita went that night with a boy named Branly. He said when Franita arrived she sat on a bed but he did not do anything. Franita was crying. He says that after that time, Franita stayed with them. Franita went to Tolo village on the following next morning. He says Franita decides herself to go to Tolo village. Then he says "after some days ipass Kamuel and Hilda icome long house mo mifala igat discussion blo putum Franita igo stap wetem tufala out lo place we Branly istap lo hem." He says Franita was happy to go there. As to 25 June 2013, he recalls of the date but he did not know where he was at the time. He did not have a mobile phone at the time with the number 5541076. He says the number was given to him when he is the president of Latest Day Saint but the telephone number was given to him after. People from the church gave him that mobile phone number on September 2013. On 25 June 2013, Franita was staying at Tolo village. He denied he called Franita on 25 June 2013 at 10.00 o'clock am with the telephone number 5541076. He says it was not true because on that date he did not have the telephone number 5541076 as yet. He denies that he phoned her and told her to come to the garden to meet him and her mother Lily. He denied he forced her with a bush knife to go to a bushy area. He



denies he cut the head of banana with the bush knife. He says it was not true because he did not phone her to go to the garden so he did not know. He denied he followed Franita into the bush area. He denied he removed his trousers half way. He denied he removed one side of her panty. He denied he had sex with her. He says it was not true because he did not know of what she said. He denied that Franita saw his penis and that he denied he is not circumcised. He denied the 2 fingers size of his penis described by Franita. He says it is not true because Franita does not know of his body. He says he is circumcised. As to his 2 fingers size penis described by Franita, he says it is not true because he has a sickness that men can have which is that his bowls (testicles) are no longer strong and this is since 2010. He denied that on 21 December 2012 he gave 1000 Vatu to Franita after he touched her. He says he knows Chief Tom Moses. He denied he sent Chief Tom Moses to take her daughter Franita from Tolo back to his house. But he says people from Tolo village like Kamuel and Hilda also Chief Tom Moses and John Stand that came to his house and hold a meeting to resolve the case which is now before the court. He says he told them that if they wanted to resolve this case, they could not fix this at Tolo. They could fix this case only at Navito. But he says he did not send Chief Tom Moses to take back Franita to his house. He says when Franita was staying at Tolo, he asked her to come to the house to see her children. Franita never came.

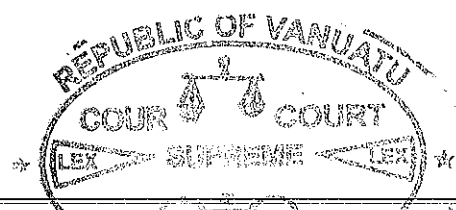
54. Jansen Frazer Welegtabit was cross-examined. He was asked and he confirmed he was remanded in custody spending 1 week and 2 days in jail before he is released on bail. He said that was before



this case and again because of stories from Franita. He confirmed he has 7 children. Franita is his first child. He was asked and he says his children respect him at home. He teaches them not to swear or say rubbish words to others. His children trust him. He was asked about Franita describing his penis like the size of her 2 fingers. He says he did not agree. He denied he was not circumcised. He agrees Franita did not respect him. He denied she did not respect him because he removed one side of her panty, pushed his penis inside her vagina and had sex with her. He says he did not have sex with her. He did not threaten her with a knife. He denied he touched her breast and vagina. It was put to him that Franita did not respect him because he did what Franita said he did to her. He says it is not true. He agrees that on 21 December 2012, Franita and her two children stayed with them at the house.

55. He agrees that Franita and her two children slept in a room of the house. He confirms that Franita and her two children only slept in that room. It was suggested to him and he denied that because Franita was with her two children in a room it was easy for him to enter the room and touched her breast, vagina and showed her pornographic movies in his mobile phone.

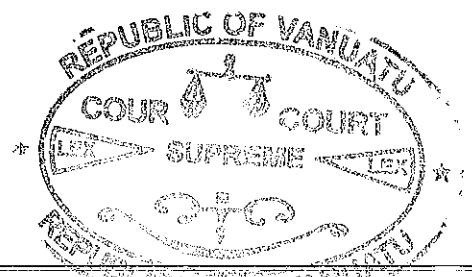
56. Lenny Blake Frazer gave evidence that he is 23 years old. He lives at the airport at his parents' house. Jansen Frazer is his father and Lily Frazer is his mother. On 27 April 2013, at about 10.00pm o'clock he was sleeping in the house. One of Franita's, children



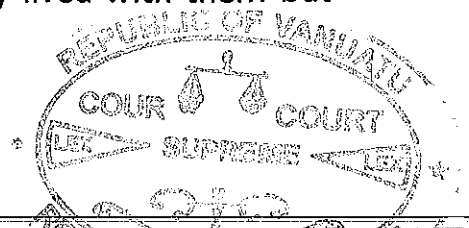
cried. He and others in the house woke up. His mother went into Franista's room to check whether she was there with her children. Franita was not in her room with her children. His mother and his sister Asneth went searching for Franita. He was at the house. Then he says he followed his mother and sister as it was raining and he was not happy because his mother got a sick and went outside in the rain and cold outside.

57. He followed his mother and sister and met Franita. He then slapped her because he says Franita caused his mother to go and look for her while his mother was sick. He says he slapped Franita and followed her to the house and he says he told her to sit and wait for their mother to arrive and say something to her. He says when he arrived at the house with Franita, his father was at the house with the children.

58. He was asked and he says he does not agree that his father met him and Franita at the Mormon Church. He denied that his father sent him to go and told his mother that Franita was already there. Lenny was cross-examined. He says he respects his father. He did not come to tell the court of what his father told him to say. He says he did not want his father to go to jail because he is his father. He says he saw his sister, Franita and slapped her because she left her children. He was asked that on the night 27 April 2013 if his father took Franita away, he would not know. He answered no. Lenny was re-examined. He was asked why he answered no. He says because he was at the house at the time.

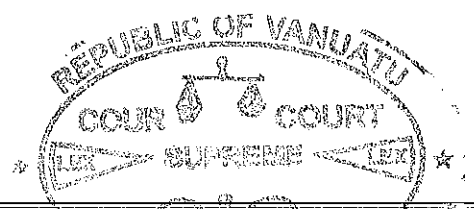


59. Asneth Frazer gave evidence that Jansen Frazer is her father and Lily Frazer is her mother. She is married. She is 22 years old. On 22 December 2012, she lived with her parents. There was a Nokia mobile phone they used at home. It is for her father. All of them, including her father, mother, brothers, other sisters and her used that mobile phone. They used the phone to watch movies and listen to music. She and her brother Shaddrack put the movies in the phone. Her father cannot put movies or songs in the phone. Her father used the phone to receive calls and make outgoing calls but she and Shaddrack sent into the phone movies and songs. She did not see any pornographic movies inside her father's phone.
60. Asneth was cross-examined. She denied that if someone sent in pornographic movies, they will not see them. She denied she lies to court. She says she likes her father. She does not want her father to be sent to jail, that is why she came and testify. On 22 December 2012, she was not with Franita at the house. She admitted that if her father showed a movie to Franita at that time she would not know. She answered yes.
61. She was re-examined and she says she did want her father to go to jail because the allegations of movies in the phone are not true.
62. Lily Welegtabit gave evidence that she is married to Jansen Frazer Welegtabit. She has 7 children. She lives at Navito village. Mory is one of her children. Mory now lives with her but at one stage Mory lived with Kamuel and Hilda. Kamuel and Hilda asked her to adopt Mory. She gave Mory to them. Mory lived with them but



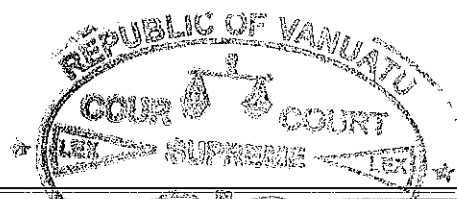
today Mory lives with her at the house. She says Hilda came and left Mory again in her house. She says when Hilda brought Mory back to her house, Hilda told her that her child will be returned back to her. Hilda said words to this effect to her. "Kamuel loves you and your family but your eyes were behind on her your buttock. Hilda is her sister. She replied to Hilda that her husband's love is for no good purpose. She told Hilda Mory is her child but not Hilda's. She told Hilda about something Hilda and Kamuel (her husband) did to her when she said at a time (date unknown) Hilda came with her husband (Kamuel) and Kamuel had sex with her at her house and she says she will report Hilda for that incident. She says she revealed this incident to her husband (Jansen). She says Jansen made noises that he will make a complaint against Hilda and her husband to Court. She says Jansen made noise that he will complain against this couple. Then she says Franita revealed what her father did to her.

63. She says her husband was circumcised. She denied that the size of her husband's penis is like Franita's two fingers as testified and showed in court. She says it is not true because her husband has a sickness with him. The sickness is that the private part of her husband "hemi ted" (is dead) since 2010 and it is still the situation now. She says she has never known about the allegations made against her husband. Her daughter Franita never told her of the allegations.
64. Lily was cross-examined. She was asked and she says Franita went to stay at Tolo village because of the event involving Mory. She



confirmed that Hilda told her to have sexual intercourse with her husband Kamuel. She could not remember the date and time. She says she was already married. she was asked and she answered she has all her mind at that time. She says at that time Kamuel was drunk. Hilda and her husband (Kamuel) came to her house. She was already in bed and her children too. Hilda held her hand and gave her to her husband at her (Lily) house. Kamuel had sex with her at her house. Her husband was not at home and her children were sleeping. She was asked and she replied that her case is not yet resolved. She said the chiefs did not take her case seriously they prefer to deal with the case of Franita and Jansen instead. She says she loves her husband and she does not want her husband to go to jail. She was asked and she says she came to court to testify for her husband. She testified because she did not know about the allegations of her daughter against her father. She was asked and she says her last born child is now six years of age. She confirmed her evidence that the private part of her husband "hemi ded". She denies that her husband had sex with her daughter. She was asked and she confirmed that her daughter Franita's case is different from her own case. She answered yes. Lily was re-examined; she confirmed her last born child is 6 years old.

65. One Relvie Matariki customer care Manager of Digicel (Vanuatu) Limited was expected to be the Defence last witness. The Defence counsel informs the court that this witness will not testify. The Defence and the prosecution agree that the letter of 26 August 2015 written by one Relvie Matariki be tendered as evidence of



the fact that it was made but it is not tendered to show the truthfulness of its content. That letter was tendered as evidence that it was made but not to the truthfulness of its content.

66. That is the end of the defence evidence.

Discussion on evidence: Findings of facts and credibility

67. This is a case where the strength of the prosecution case relies entirely upon one witness. It is the evidence of the complainant that must satisfy me beyond reasonable doubt of the guilt of the Defendant. As I say earlier, the burden of proving the case is squarely upon the prosecution, the Defendant bears no onus of proving his innocence or indeed of proving anything at all. In giving evidence, as he has chosen to do so, I must assess his evidence on the same footing as any other witness.

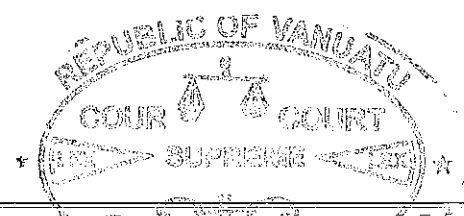
68. The standard to which the prosecution must prove its case is that of beyond reasonable doubt. I repeat what I say earlier that what that means is that if at the end of all the evidence, there remains a reasonable doubt of the guilt of the Defendant in relation to the two counts of sexual intercourse without consent, that he may be convicted of either or both of the sexual intercourse without consent or either or both of incest or indecency without consent.

69. In the present case, I exercise my discretion to reject the statement filed by Doctor Mark Turnbull on 4th September 2015 as a rebuttal evidence for the prosecution. I do so because, although,



section 169 of the Criminal Procedure Code Act provides for such rebuttal evidence to be given, the prosecution asked the Doctor to provide more than what was directed. Here the new matter for rebuttal is the evidence that 'private part of (the defendant) hemi ded". The statement provides also information that the Defendant is circumcised which is not a new matter raised by the Defence. It was raised by the prosecution. In considering and assessing the evidence in this case, the court is not going to rely on the statement of Dr. Turnbull dated 4 September 2015 and the corresponding oral evidence to that effect. But the court will rely on the statement (medical report) of Dr. Mark Turnbull dated 30th April 2014 (Exhibit P1).

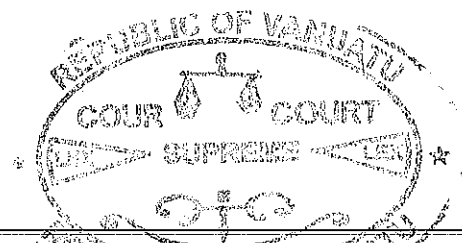
70. The defence submit that the complainant has concocted her whole story. Her allegations are false in their entirety and they submit that on 21 December 2012, the defendant did not go inside the complainant's room in the morning of that date, he did not touch her breast and vagina and did not show her pornographic movies in his mobile phone. They say that the description of what happened in the room on 21 December 2012 is a fabrication. The mobile phone was used by all members of the family to receive call and to call out, to watch movies and listen to the music. They say that the Defendant cannot enter movies into the mobile phone. They say that Asneth and Sheddrack put the movies inside the mobile phone. They say that there were no pornographic movies in the mobile phone of the Defendant. The evidence is that on 21 December 2012, the complainant occupied a room and slept in that room with her two (2) children. In 2012 the interior wall of



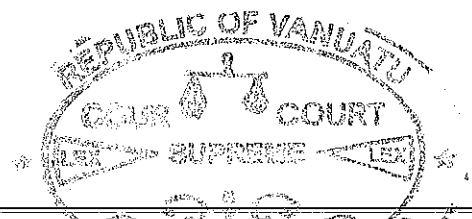
the house which divided the rooms inside the house was of masonite and calico. The wall of the room occupied by the complainant is made of masonites. A tissue (calico) hanged as the door of that room. Her parents occupied a room, her sisters used another room. Her brothers slept in the sitting room. The mobile phone belongs to the Defendant. The Defendant charged his mobile phone outside his house. He walked around with his mobile phone for charging, receiving calls and making calls and watching movies and listening to the music. Some of his friends also put movies and music inside his phone (Defendant).

71. Asneth accepted that on 21 December 2012, if her father got into the complainant's room and showed her pornographic movies, she would not know.

72. It is also a fact that on 27 April 2013, at about 10.00pm o'clock in the night, the complainant left her two children in the room and went to see her boyfriend Branly in his house at the other side of the airport. She admitted she had sex with her boyfriend that night. Her younger child (girl) cried. She continued to cry. Lily, her mother, went into her room (Franita's) to find out whether Franita was there. Franita was not there. Lily took the child and gave it to Sheddrack to look after. Lily and Asneth went and looked for Franita. At the time, the Defendant and others were awoken by the cries of the child. Franita met her brother Lenny on her way back home. Lenny slapped her because she left her children alone and also because she caused her mother who was sick to go out in the night and look for her.



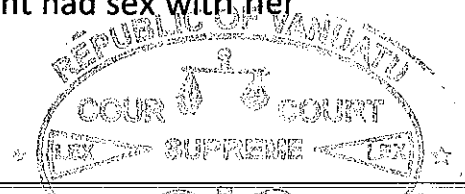
73. It is a fact that after Lenny slapped her, he followed her on the road leading to the house. On the road leading to the house, near the Mormon Church, the complainant testified that, she met her father (the Defendant) on the road near the Mormon Church. Her father held her hand. Her father told Lenny to go and inform her mother and Asneth that the complainant was there.
74. The Defence challenge this evidence and say that Lenny's accounts of this is that after slapping the complainant he followed her to the house. I reject the version of fact provided by Lenny as not truthful. Lenny says he loves his father and he does not want his father to go to the jail. I accept the version of the complainant that when she met her father (Defendant), Lenny also saw their father there who talked to him on the road near the church.
75. The complainant gave a detailed description of what her father did to her on the night of 27 April 2013. She was weak because after she had sexual intercourse with her boyfriend, her father also had sexual intercourse with her. She cried after the sex with her father when she returned home. Her father told her that it was good she cried because her mother would think that he punished her and her father also rubbed her backside once she returned home.
76. On 25 June 2013, the complainant received a phone call from her father while she was at Tolo village. The Defendant told her to go and meet her mother and him at the garden. She asked as to which garden, he replied the garden which is near the house. The



complainant provided detailed accounts of what her father (Defendant) did to her on the day of 25 June 2013.

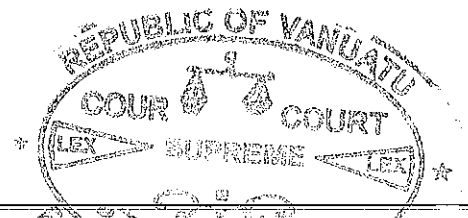
77. The Defence submit in essence that the complainant has concocted her whole story. Her allegations of 25 June 2013 are false in their entirety and they submit that there was no sexual intercourse occurring on 25 June 2013. They say that the description of what happened in the garden is a fabrication. They say that the complainant cannot be believed because a letter of 26 August 2015 by one Relvie Matariki, customer care Manager of Digicel (Vanuatu) Limited shows that the mobile phone No. 5541076 which is in the mobile phone of the Defendant, was active but however, there are no records for incoming or outgoing activity made to or from the number 5541076 on the date of 25 June 2013. This letter of 26 August 2015 was admitted only for the fact that it was made but not to the truthfulness of its content. I reject the content of the said letter of 26 August 2015.

78. The Defence attack the credibility of the complainant and point to the differences in the complaint's evidence that the Defendant is not circumcised while the Defendant says he is circumcised. The sexual intercourse alleged to have happened in the garden on 25 June 2013, was described to be committed with threats of a sharp bush knife. The knife was used to threaten and pointed to a bushy area, in which she was directed to go. A head of banana was cut to threaten the complainant. In the bushy area, the complainant cried, put her hands on top of her head, she was afraid, she was terrified, she was struggling before the Defendant had sex with her



and before the sex, the Defendant put the knife beside him. It is rational to infer although, she could see her father's penis and the size of it as her two fingers, it is more likely that she was so traumatized that she could not properly see whether he is circumcised or not circumcised as she was afraid, struggling and crying at the time of intercourse. It is not substantial to the element of the offence.

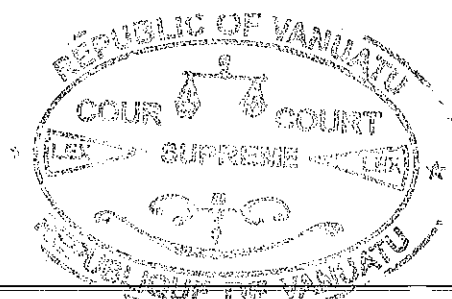
79. The prosecution say that the complainant is a witness who should be believed, that she was truthful and reliable. Her complaint made to Chief Tom Moses, Kamuel Vavak and Hilda Vavak demonstrates the consistency of her conduct. This consistency of her complaint led her to travel to Santo to file her complaint with the assistance of the woman who is responsible for violence against women. She filed her statement reporting the matter to the police against her own father. The evidence of Dr. Mark Turnbull shows a history of lengthy sexual abuses and violence on her. The history of the sexual abuses of the complainant revealed that she is traumatized and emotional. She was also very emotional (cried) when she testified (in court) against her father and when she described what her father did to her and especially when she described the features of the private part of her father.
80. The complainant gave her evidence in a manner that showed her to be articulate and intelligent if not a little verbose and intense. She explained in considerable detail the events of the morning of 21 December 2012 in her room while she was still in bed after a long night of Christmas Carol; the night of 27 April 2013, she left



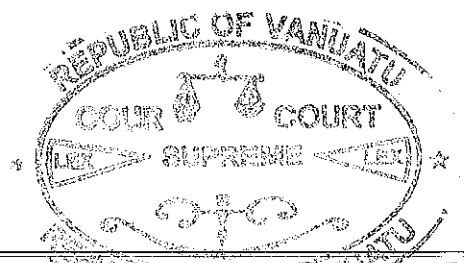
her children and went to see her boyfriend they had sex. On her way to the house, she met her brother Lenny. Lenny slapped her and followed her on the road to the home. On the road, near the house at the area of Mormon Church, the complainant and Lenny met with the Defendant. The Defendant held her hands and sent Lenny away to go, find her mother and tell the mother that the complainant is there. She gave accounts of the cloths her father wore, what he did and she was pushed to a burao tree. The burao tree was already cut when the sex occurred; the incident of 25 June 2013 with the threats of a sharp bush knife, the cutting of a head of banana and the bushy area where the sex occurred.

81. If her evidence is to be believed, she tried to run away from her home where her father (Defendant) lives. It was an attempt for her to avoid and stopped what happened to her. She says she refuses to go back to her parents' house where her father lives. In Court, she says she is not a child. She is a woman and she has children herself. She says she tells the truth to the court in her testimony.

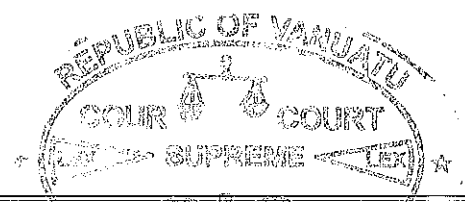
82. The details and complexities in the complainant's narrative were quite extraordinary and although of course a dishonest witness can invent a complex story as well as a simple one, her evidence was delivered in a positive unwavering way suggestive of an authenticity of which I have to be sure beyond reasonable doubt that her evidence was truthful, reliable and credible.



83. The Defence submission is that I cannot be so satisfied because the complainant moved from her house to Tolo village with her step parents to be away from her boyfriend and that the Defendant and his wife Lily and Kamuel and his wife Hilda agreed that the complainant will stay with the Kamuel's at Tolo village. I reject this suggestion or proposition as not factually based. The evidence is that few days after 27 April 2013, the complainant ran away from her parents' house alone, leaving her two children at her parents' house and moved to live with her step parents at Tolo village from 27 April 2013 to when her step parents paid her travel to Santo to file her complaint against her father (Defendant). The Defendant also gave evidence to the effect that few days after 27 April 2013, the complainant moved herself to Tolo village. That was her own thinking (idea) not her parents or her step parents. This was what she told Chief Tom Moses. She gave Chief Tom Moses the reasons for not going back to her parents' house until she went to Santo to file her complaint against her father (Defendant). Before she left her parents' home, Lenny was the person who slapped her on the night of 27 April 2013. She made no complaint against Lenny. But she made complaints against her father of what he did to her that night of 27 April 2013, 21 December 2012 and 25 June 2013 in very detailed and precise descriptions.
84. I reject the Defence submission or suggestion that the complainant made the complaints against her father because of the disputes her parents have with her step parents over the child Mory. It is a theory of the defence case but it has no factual foundation.

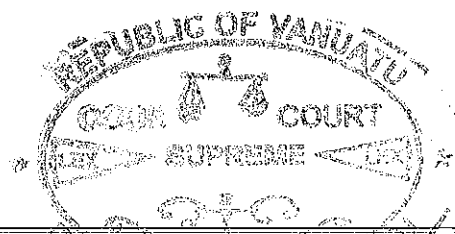


85. I also reject the Defence submission that the complainant made allegations against her father to prevent her father from making a report or a complaint against her step parents of the matter Lily alleged had happened to her involving her step parents.
86. I accept the evidence of the complainant that she does not want to know of what her parents and step parents were involved in. It is not of her business. Lily also recognizes that her case is different from the case of Franita involving her father.
87. I have considered the evidence of Lily Welegtabit to the effect that the private part of her husband "hemi ded". I have also considered the evidence of the Defendant to the effect that he has a sick on his body to the effect that "bowl blo hem hemi nomo strong".
88. I note that they are not about the same part of the body. I reject the evidence of Lily Welegtabit on this aspect of her evidence because she says she did not want her husband to go to jail, she came to court to give evidence against the complainant because what she says was not true and she did not know. Lily also gave evidence that her problem is different from the complaints of the complainant in this case.
89. I have considered the discrepancies identified by the Defence, both individually and from the view of their possible cumulative effect, and find that none of them were of sufficient significance either individually or cumulatively, to impact upon my assessment.

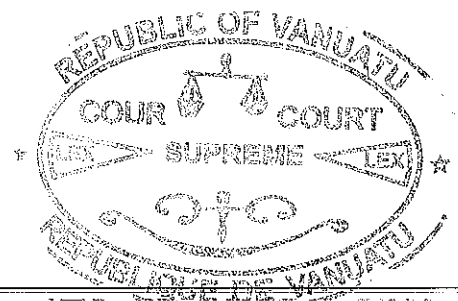


of the complainant's credibility. I found her to be a verbose, but credible and truthful witness.

90. I find the complaint's evidence as to the occurrence of:-
- the indecency without consent alleged on 21 December 2012; and
 - the sexual intercourse without consent alleged on 27 April 2013 and 25 June 2013
- to be clear and convincing.
91. I note that the complainant alleged that the Defendant did what she described in full detail in evidence to her on 21 December 2012, 27 April 2013 and 25 June 2013 but she did not report any or all at the time. I accept her evidence that it was very difficult for her to report or call out. She says it was painful for her. The defendant is her father as she says the man who "mekem mi lo wol ia". It was very shameful to her. They were traumatizing experiences for her. I accept that she was traumatized as she was subjected to sexual abuses or violence when she was a child. It is difficult for her to tell what her father did to her on 21 December 2012, 27 April 2013 and 25 June 2013.
92. The only way for her to escape her father is to ran away to Tolo village where she could feel that she was safe. The Trigger for her to tell what happened to her was when Chief Tom Moses asked her to return back to her parents' house. She refused and she revealed her reasons for not going back to her parents' house. The time taken for her seems to be a liberalization for her to say what her father did to her as she alleged.



93. I found Defendant Jansen Frazer Welegtabit gave a completely improbable account of events. Both the manner and the content of his evidence was such that I could not accept him as a witness of truth. I also find it improbable that he can accurately recall the precise day and months of the year.
94. I warn myself of the effect of time or the absence of corroboration which could constitute a risk of convicting the Defendant as an innocent person without being sure of his guilt beyond reasonable doubt.
95. In the present case, I am satisfied beyond reasonable doubt that the prosecution have satisfied me on the criminal standard of proof on each elements of the offences of sexual intercourse without consent, contrary to s.91 of Penal Code, indecency without consent, contrary to s.98A of Penal Code. I make no findings in respect to the offences of incest, contrary to s.95 of Penal Code Act.
96. As a result of these findings, the verdicts of the court are as follows:
- i Count 1. Guilty
 - ii Count 3. Guilty
 - iii Count 5. Guilty
 - iv Count 2. Acquitted -Not Guilty
 - v Count 4. Acquitted -Not Guilty



ORDER

97. The order of the court is that the Defendant is convicted of two counts of sexual intercourse without consent and one count of Acts of Indecency with consent, contrary to sections 91 and 98A of Penal Code Act respectively.

DATED at Port Vila, this 22nd day of September 2015

Vincent LUNABEK
Chief Justice

