

PUBLIC PROSECUTOR

- v -

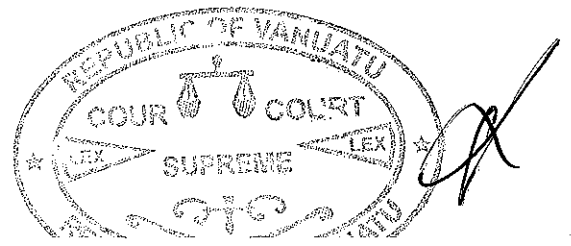
WILLIE KATAE

Coram: Lunabek Vincent CJ

*Counsel: Ms Betina for Public Prosecutor
Ms Pauline Kalwatman for Defendant*

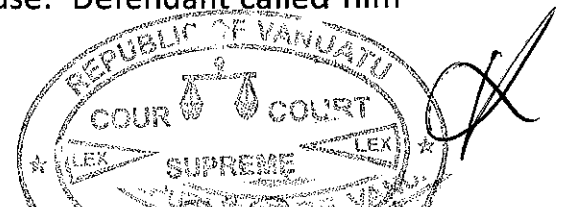
REASONS FOR NOT GUILTY VERDICT

1. Defendant Willie Katae is charged with three (3) counts of sexual intercourse without consent, contrary to s.91 of the Penal Code Act.
2. On 2 December 2015, he entered not guilty pleas on the offences as charged. A trial of 3 days was required. It was partly heard at Isangel, Tanna on 3 March 2016 and 4 March 2016 and partly heard at Port Vila, Efate on 16 March 2016.
3. The law is for the prosecution to prove all the essential elements of the offences charged against the Defendant beyond reasonable doubt.
4. The thrust of the prosecution case is that the Defendant had sexual intercourse with the complainant woman on 3 separate occasions without her consent, contrary to s.91 of Penal Code Act.
5. The complaint was lodged on 11 August 2015. In June 2015, the Defendant was separated from his de facto wife and went back to Tanna to the family of the complainant to take the complainant as his wife. The family of the complainant agreed for the Defendant to take the complainant as his wife. Defendant and complainant lived together as husband and wife. In July 2015, Defendant had affairs with other women. The complainant informed the chiefs of her husband's conduct. A fight arose out of this. The complainant and



Defendant were separated by the chiefs of the complainant. The complainant then lived with Nakou Jack and her husband.

6. On 27 July 2015, the night of incident, Defendant came, hold a knife, opened the door and forced the complainant to follow him. She took her son with her. She followed the Defendant to the Defendant's house. Defendant asked complainant for sex. She refused. Defendant forced her to remove her clothes and had sex with her by penetrating her vagina. He also had anal sex with her. He had oral sex again with her in the early morning of that day. Defendant pushes his penis into her mouth to suck. Complainant refused. Defendant assaulted her head until she sucked his penis. Defendant knew the complainant was not consenting but did it instead.
7. The next day, Defendant packed up his belonging and left his house and went back to his de facto wife who lived in Port Vila.
8. That is the case of the prosecution which happened on 27 July 2015. Sex occurred between Defendant and complainant in the night of 27 July 2015.
9. The prosecution called 3 witnesses. The first prosecution witness (PW1) is the complainant. The second prosecution witness is the examining nurse (Pw2). Nakau Jack is the last prosecution witness (PW3).
10. PW1 – gave evidence to the following effect. She gave her name – identified as M.P. She was 40 years old. She is from Port Resolution area. She lives at Mesory village. She has 4 children on her own and she had a child with the Defendant in 2006 who is 8 years.
11. In 2006, Defendant left his wife and lived with the complainant. In June 2015, Defendant came and brought kava at the nakamal to take her and her son to his village. The complainant's family agrees with this. This was in June 2015. But on 27 July 2015, the complainant did no longer live with the Defendant. They lived separately. The Defendant had affairs with different women. The complainant's chief asked young men to assault him and after that the chiefs separated them. They were separated for 1 week.
12. On 27 July 2015, in the mid-night, she said Katae came in the house she was staying with a knife. She and Nakau Jack slept in that house. She slept with her son and Nakou in the house. Defendant called him



loudly and she got up. She said he forced her to follow him. She said she told him. "You come wea mi no walked follem you" she also said she called out her son who got up. They went to Defendant's house which was about 300 meters away. No one saw them at that time. It was in the night. It was dark. She said it was about 11.30PM.

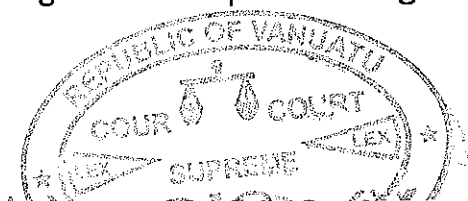
13. At the Defendant's house, she said Defendant asked her to put the child to bed. There are two rooms in the house. The child slept in the same room with them. Then she said Defendant forced her to remove her clothes by telling her to remove her clothes and they had sex. She said she was afraid she did not want to have decesases. She refused sex with him. Defendant told her that because the boys assaulted him he will have sex with her until daylight. Defendant came closer to her, held her and talked loudly and removed her dress. He forced her to lie down and forced her to remove her pants. She lay down and had sex with him. He told her to turn on herself and he had sex with her in her anus. She did not want but he forced her. Defendant penetrated her vagina with his penis and he also penetrated his anus with his penis and he ejaculated outside her anus. She said because Defendant forced her for sex, she agreed for the defendant to penetrate her anus. She said they slept together on a bed until early morning when the Defendant walked her up and pushed his penis into her mouth. She sat down. Defendant held her head and pushed his penis into her mouth. She followed what he said because he was still angry. He ejaculated outside her mouth. It was daylight. He told her to cook food, she cooked the food. While she cooked the food, she saw the Defendant was using his mobile phone and talked to his wife in Port-Vila. She saw the Defendant removed all of his belongings and went to stay with his daughter in another village.
14. The next day after the sex, she felt bad. She went and told her story to Nakou Jack. She talked about sex incident occurring in the previous night. She and Nakou came to the office of women to make a complaint against the Defendant.
15. PW1 was cross-examined. She confirmed that Defendant came to the house she slept in on 27 July 2015. She said he came in the house with a knife. She slept in a house with Nakou Jack and her husband. She said she called out but no one could hear her. She maintained Defendant came with a knife. It was put to her that in her statement to the police, she never mentioned that the Defendant had a knife when he came to the house she slept in. She just mentioned the knife for the first time today in court and she mentioned that in a



statement she makes today to the police. She did not answer. Then it was put to her again and she answered no.

16. She agreed that at that night, they walked to the Defendant's house. The Defendant forced her to follow him. When they walked to the house, Defendant held the hands of the little boy. It was put to her that when they arrived at the house, Defendant made the boy slept. She denied that. She said she made the boy slept. She was challenged with her first statement in which she said Defendant made the boy slept. She agreed to what she said in her first statement.
17. It was put to her that when Defendant made the boy slept, she did not take the opportunity to run away. She said no he talked loudly. She agreed that after Defendant made the boy slept, Defendant and her also slept. She agreed they slept on a mattress which was put on a mat. She said Defendant asked her for sex. Defendant removed her clothes on her. She said she loved the Defendant but he went out with plenty women.
18. Evelyne Aru is the second prosecution witness (PW2). She was the Nurse mid-wife working at Isangel Hospital. She examined PW1 some days after (15 days after). There was no injury found on her private part or on any part of her body. The complainant is a mother and had children. PW1 told her she was raped.
19. Nakou Jack was the third prosecution witness – (PW3). She was in Port Vila at the time the trial was conducted at Isangel, Tanna. Her evidence was taken at Port Vila on 16 March 2016.

She is married. She is 39 years old. She is from Port Resolution and she has 6 children. She said she knew the complainant because her husband looked after the complainant. She called her husband as "Daddy". In July 2015, PW1 lived with her at Louseganu village.
20. They took PW1 into her family to marry the Defendant. PW1 lived alone in one of her house.
21. PW3 slept in a separate house. She denied she saw anything on the night of 27 July 2015. She denied she saw anything in morning of 28 July 2015.
22. She denied PW1 came back to the house on 28 November 2015. She denied PW1 told her of anything happening to her the previous night.



A handwritten signature in black ink, consisting of a stylized, cursive script.

PW1 came to her house but she did not tell her of anything happening to her the previous night.

23. She was treated as hostile witness by the Prosecution.
24. She denied she went to the police with the complainant. She denied she was aware of these things. She said when the police took the paper (statement) to sign her husband was not there. He was in Port Vila. They asked her to sign the paper instead. She denied before PW1 made complaint to the police, PW1 told what happened to her (PW1). She said she was not aware that PW1 was raped. She denied she encouraged PW1 to lodge a complaint. She confirmed her signature was on the paper (statement) but she said they forced her to sign the paper. She said they held her hand to sign as she did not know how to read and write.
23. In cross-examination, she confirmed PW1 lived in one of her (PW3) houses but alone. She lived in a separate house. She said they lived in the same village but they slept in separate houses. PW1 lived with her son in a separate house. She confirmed she did not know how to read and write. She said she was forced by the police officers to sign the paper as her husband was in Port-Vila and she knew nothing.

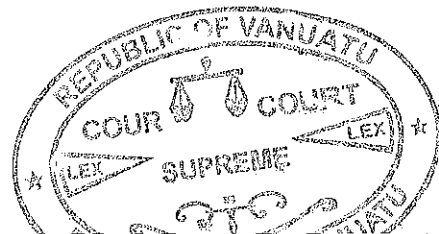
Discussion

At the end of the prosecution case, I stopped the trial of the accused on the basis of s.164 (1) of the Criminal Procedure Code Act (Cap. 136).

- The evidence of PW1 is not supported and not corroborated by the evidence of PW3 or any independent witness.
- The evidence of PW3 is in contradiction with the evidence of PW1.
- The evidence of Prosecution was made up of contradictions and inconsistencies of testimonies.
- The evidence of the prosecution is not safe to secure convictions of the Accused.

Conclusion

The prosecution failed to prove the charges made against the Accused beyond reasonable doubt.



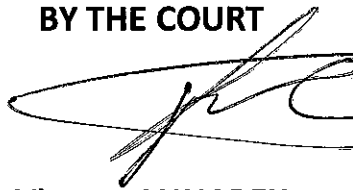
Decision

The Accused Willie Katae is found not guilty of the offences he was charged with. He was discharged of each and all the three (3) Counts of Sexual offences without consent accordingly.

These are the reasons of the oral verdicts of the Court on 16 March 2016.

DATED at Port-Vila this 18th day of August 2016

BY THE COURT



**Vincent LUNABEK
Chief Justice**

