

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

Criminal
Case No. 22/2283 SC/CRML

PUBLIC PROSECUTOR

v

MATHEW NARUA

Dates of Trial: 22-23 October 2024 and 1 November 2024

Before: Justice V.M. Trief

In Attendance: Public Prosecutor – Ms M. Meltebury

Defendant – Mr T.J. Botleng; Defendant present

Date of Decision: 26 November 2024

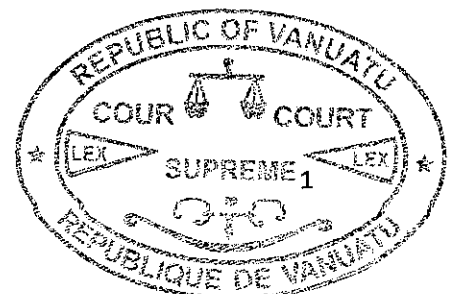
VERDICT

A. Introduction

1. The Defendant Mathew Narua is charged with 3 counts of sexual intercourse without consent contrary to para. 90(a) and s. 91 of the *Penal Code* [CAP. 135] (Charges 1-3).

B. The Law

2. Paragraph 89A(a) of the *Penal Code* provides as follows:



89A. For the purposes of this Act, **sexual intercourse** means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or

3. Sections 90 and 91 of the *Penal Code* provide as follows:

90. Any person who has sexual intercourse with another person –

- (a) without that person's consent; or
- (b) with that person's consent if the consent is obtained –
- (i) by force; or
- (ii) by means of threats of intimidation of any kind; or
- (iii) by fear of bodily harm; or
- (iv) by means of false representation as to the nature of the act; or
- (v) in the case of a married person, by impersonating that person's husband or wife; or
- (vi) by the effects of alcohol or drugs; or
- (vii) because of the physical or mental incapacity of that person;

commits the offence of sexual intercourse without consent.

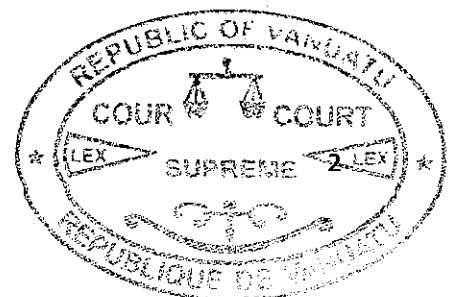
91. No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life.

4. The charge of sexual intercourse without consent has the following 3 elements or legal ingredients which must be proved in order for a conviction to be entered:

- That sexual intercourse took place between the defendant and the complainant; **and**
- Without the complainant's consent; **and**
- That the defendant knew that there was no consent or could not have had a reasonable belief that the complainant was consenting at the time that the intercourse occurred.

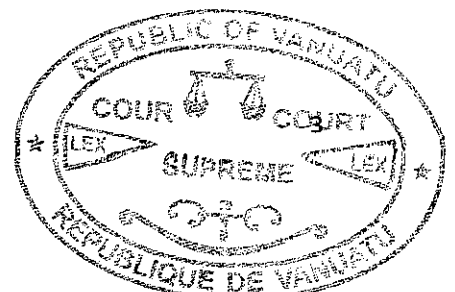
5. The Prosecution had the onus of proof and was required to establish the allegations beyond a reasonable doubt before a finding of guilt could be made in respect of the charges. The defendant was not required to establish anything.



6. As this was a case of alleged sexual offending, I warned myself of the danger of convicting the defendant on the uncorroborated evidence of the complainant.

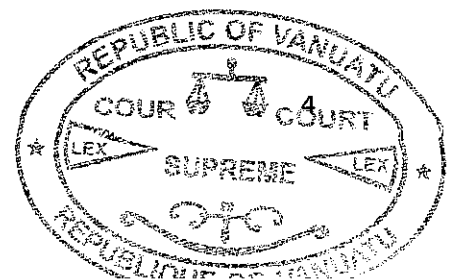
C. Evidence

7. The witnesses' demeanour was a small part of my assessment of each witness. I also looked for consistency within the witness' account; consistency when comparing the witness' account with that of another witness; and considered the inherent likelihood, or not, of the witness' account.
8. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if more than one inference was available, the inference most favourable to the defendant must be drawn.
9. The Prosecution called two witnesses – the complainant and her husband. The defendant elected to remain silent. I did not draw an adverse inference from his election to remain silent.
10. The complainant **Wendy Narwa** gave evidence that she is from Pentecost but lives with her husband Alickta Charley and three children at Tuwit village in Cook's Bay on Erromango island. She stated that in October 2021, her husband was overseas for seasonal work and she and her children remained at home in Cook's Bay with her parents-in-law. She knows the defendant Mathew Narua as her husband's cousin; she calls him 'tawi' (brother-in-law).
11. Mrs Narwa stated that one Sunday morning in October 2021, she decided to go fishing and walked down to the beach. On her way, she came across Mr Narua. He pulled her shirt and asked her to have sex with him. She told him they could not do that as he was married and so was she – her husband was overseas. However, he held on tight to her shirt and pulled her off the road. He told her to remove her clothes because he wanted to have sex with her. She said she would not remove her clothes because she did not want to have sex with him.
12. Mrs Narwa stated that Mr Narua was holding a long piece of wood and told her that he would beat her with the piece of wood if she did not have sex with him. He pulled his pants down halfway, pushed her down onto the ground and told her to remove her clothes. She was crying and told him that he was not her husband but he said that he would have sex with her or he would beat her with the piece of wood. He told her to remove her skirt or he would beat her. She was so scared of him that she removed her skirt and he had sex with her by inserting his penis into her vagina. She could not push him away as he was too strong for her. After the



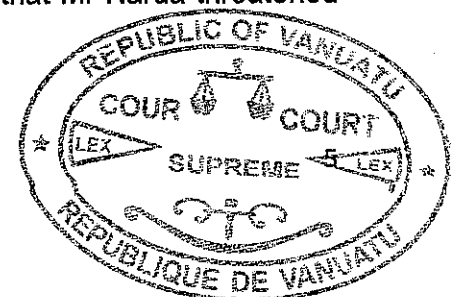
sexual intercourse, he told her not to report the matter to anyone or he would kill her, hide her body and no one would know.

13. Mrs Narwa also stated that one afternoon some days later in the same month of October 2021, she went to one of her gardens far from her house to collect pawpaws for her children to eat. She put pawpaws in her bag and left the garden. Mr Narua came up behind her and pulled her bag to the ground. He was holding a big bush knife and said that he would have sex with her again. She told him that she did not want to, then he showed her the knife and told her that she must have sex with him or he would cut her with the knife. She was crying and saying, "No." He grabbed her right shoulder tightly while holding the knife in his left hand, and told her to remove her clothes or he would cut her with the knife. She was so scared that she took off her clothes and he had sex with her by inserting his penis into her vagina. After the sexual intercourse, he again told her not to tell anyone what he had done to her.
14. Mrs Narwa stated that on a third occasion within the same month of October 2021, after the first two incidents, she was planting taro one morning in her garden far away from her house. Mr Narua came up to her and told her to have sex with him again. He was holding the same bush knife as before. She refused but he held the knife to her neck and told her that he would cut her if she did not have sex with him. He pushed her to the ground and told her to remove her clothes, then had sexual intercourse with her by inserting his penis into her vagina. After the sexual intercourse, he again told her not to tell anyone what he had done to her.
15. Mrs Narwa was scared by what Mr Narua had said to her and did not tell anyone what he had done to her. She finally told her husband in June 2022, at the time she gave birth to her youngest child, what Mr Narua had done to her. Her husband had been sick and was told by a woman who prayed over him that she had to confess something to him so he could be well again. He asked her and she told him that Mr Narua had had sex with her three times.
16. The matters put to Mrs Narwa in cross-examination included if she knew what day Mr Narua and his dad go to church on, that Mr Narua was not present on each of the occasions alleged, that she did not describe Mr Narua's clothing, that Mr Narua was not holding a long piece of wood with him on the first occasion, that he was not holding a knife on the second and third occasions, the type of handle the knife had, whether the knife handle was long or short, that the Police had not tendered the knife as an exhibit, that she continued to take the risk to go alone to a garden to get pawpaw and that Mr Narua did not have sex with her without her consent on three occasions. None of the cross-examination displaced Mrs Narwa's evidence. She maintained her account. I stopped Mr Botleng from continuing to ask questions about what risks or safety measures Mrs Narua took or did not take, in short,



victim-blaming. I reminded him that it was the defendant on trial, not the complainant, therefore questions about what risks or safety measures that Mrs Narwa took or did not take were not relevant and therefore not permitted.

17. Mrs Narwa admitted during cross-examination that she had sexual intercourse with her husband's little brother in Port Narvin one time and became pregnant. She only told her husband in June 2022 at Ipota, when she was about to deliver her baby, that Mr Narua had had sex with her three times without her consent. She stated that it was true that she had sex with her husband's biological brother was consensual. However, she maintained that the sexual encounters with the defendant were at all times not consensual on her part. I accepted Mrs Narwa as a witness of truth and accepted her evidence.
18. The complainant's husband **Alickta Charley** gave evidence. They have two children together. They reside in his village at Cook's Bay on Erromango. He stated that in October 2021, he was in New Zealand on seasonal work. His wife was looking after their children back home with his parents.
19. He returned to Vanuatu the following month and home to Erromango in December 2021. After his return, he fell ill. A woman prayed over him and told him that his wife must confess something to him so he could be healed. He asked his wife to confess and then she eventually told him in June 2022, at the time she gave birth to her youngest child, what Mr Narua did to her.
20. He stated that his wife told him that Mr Narua forced her to have sex with him three times and she did not consent to having sex with him in all of these three times. He stated that she was crying and told him about Mr Narua threatening her with the knife. He was furious and called Mr Narua on his mobile phone. Mr Narua then told him that his wife was not telling the truth and that she had sex with other men when he was away. He asked Mr Narua to name those men. He stated that Mr Narua fell silent and did not answer. He also stated that Mr Narua and their chiefs put much pressure on him and his wife to accept a custom reconciliation ceremony but they refused.
21. In cross-examination, Mr Charley confirmed that his wife became pregnant with a child outside of their marriage whilst he was away overseas. He also confirmed that on the day that his wife gave birth in June 2022, she told him that the child was not his and told him what Mr Narua did to her. .
22. The cross-examination was ineffective. Mr Narua's account remained unchanged. Mr Charley's account was consistent with that of his wife as to when she told him what Mr Narua did to her, and that Mr Narua had sex with her three times without her agreement to have sex with him. She also told him that Mr Narua threatened



her, including with a knife. I therefore accepted Mr Charley as a witness of truth and accepted his evidence.

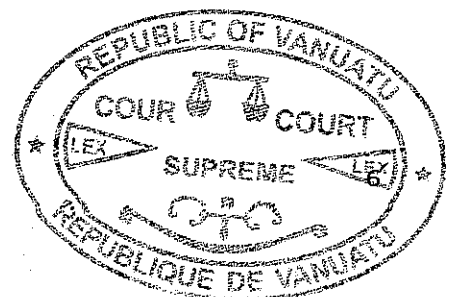
D. Discussion

Charge 1

23. I find on the evidence that one Sunday morning in October 2021, Mr Narua had sexual intercourse with the complainant Mrs Narwa by inserting his penis into her vagina in the circumstances which she described. I also find that Mrs Narwa did not consent to the sexual intercourse. Finally, I find that in the circumstances in which Mr Narua was holding a long piece of wood, he threatened to beat Mrs Narwa with the piece of wood if she did not have sex with him, he pushed her to the ground and told her to remove her skirt or he would beat her, and she was crying, Mr Narua could not have believed on reasonable grounds that she was consenting at the time that the sexual intercourse occurred. Put another way, I consider that a reasonable person in Mr Narua's position at the time that sexual intercourse occurred could not have believed that the complainant was consenting. I also find that after the sexual intercourse, Mr Narua told Mrs Narwa not to tell anyone what he had done to her.
24. Charge 1 has been established beyond reasonable doubt.

Charge 2

25. I find that on a second occasion, in the afternoon some days later within the same month of October 2021, after Mrs Narwa collected pawpaws for her children to eat from one of her gardens far from her house, Mr Narua had sexual intercourse with her by inserting his penis into her vagina in the circumstances which she described. I also find that Mrs Narwa did not consent to the sexual intercourse. Finally, I find that in the circumstances in which Mr Narua was holding a big bush knife and said to Mrs Narwa that he would have sex with her again, she told him that she did not want to, then he showed her the knife and told her that she must have sex with him or he would cut her with the knife, she was crying and saying, "No" and he grabbed her right shoulder tightly while holding the knife in his left hand, and told her to remove her clothes or he would cut her with the knife, that Mr Narua could not have believed on reasonable grounds that she was consenting at the time that the sexual intercourse occurred. In other words, I consider that a reasonable person in Mr Narua's position at the time that sexual intercourse occurred could not have believed that the complainant was consenting. I also find



that after the sexual intercourse, Mr Narua again told her not to tell anyone what he had done to her.

26. Charge 2 has been established beyond reasonable doubt.

Charge 3

27. I find that on a third occasion, during the same month of October 2021 but after the first two occasions, Mrs Narwa was planting taro in her garden far away from her house when Mr Narua approached her from behind then had sexual intercourse with her by inserting his penis into her vagina in the circumstances which she described. I also find that Mrs Narwa did not consent to the sexual intercourse. Finally, I find that in the circumstances in which Mr Narua was holding the same bush knife that he had during the previous occasion, Mrs Narwa told him that she did not want to have sex with him, he held the knife to her neck and threatened to cut her if she did not have sex with him then pushed her to the ground and had sexual intercourse, that Mr Narua could not have believed on reasonable grounds that Mrs Narwa was consenting at the time that the sexual intercourse occurred. In other words, I consider that a reasonable person in Mr Narua's position at the time the sexual intercourse occurred could not have believed that the complainant was consenting.

28. Charge 3 has been established beyond reasonable doubt.

E. Result

29. I return verdicts of guilty as to Charges 1-3. Mr Narua is convicted as charged.

**DATED at Port Vila this 26th day of November 2024
BY THE COURT**



Justice Viran Molisa Trief

