

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

**Criminal  
Case No. 24/1156 SC/CRML**

**BETWEEN: The Public Prosecutor  
Prosecutor**

**AND: Edwel Yoan  
Defendant**

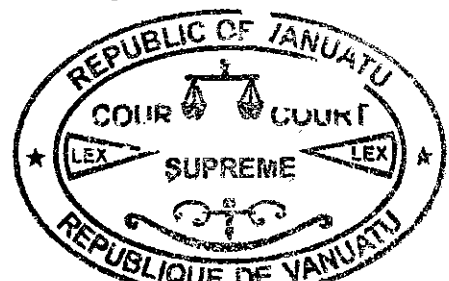
**Coram: Justice Dudley Aru**  
**Counsel: Mr. L. Young for the Public Prosecution**  
**Mr. H. Vira for the Defendant**

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**REASONS FOR ORAL VERDICT**

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1. This morning, I returned a guilty verdict on a single charge of sexual intercourse without consent with written reasons to be provided. I now provide my reasons.
2. Before the trial began a number of applications were made by the prosecution, namely to have a closed court when the complainant gave her evidence, a screen to be placed between the complainant and accused when the complainant gave her evidence and lastly for the complainant's name to be suppressed and she be referred to as LL. There being no objection from the accused the applications were allowed and the trial progressed accordingly.
3. The accused is charged with a single count of sexual intercourse without consent contrary to s90 (a) and 91 of the Penal Code [CAP 135]. The particulars to the said charge are:  
  
"Edwel Yoan sometimes long manis July 2023 long Epi Island, yu bin gat sexual intercourse wetem girl ia LL, olsem yu bin pushum penis blong yu igo inside long vagina blong hem, wei long time ia hemi no long tingting blong hem."
4. The maximum penalty for such offending is life imprisonment.
5. The accused pleaded not guilty to the charge on 24 May 2024 in Vila and the matter was referred for trial at Rovo Bay, Epi. In this trial the accused was informed of his rights as required by s 81 and s 88 of the Criminal Procedure Code.
6. The burden of proof rests with the prosecution and they are required to prove the accused's guilt according to law beyond reasonable doubt by means of evidence properly admitted. The accused has nothing to prove.
7. The prosecution must prove the following three elements of the offence charged:
  - i. that Edwel Yoan had sexual intercourse with LL;



- ii. that LL did not consent to having sex with Edwel Yoan; and
- iii. that Edwel Yoan did not believe on reasonable grounds that LL consented to the sexual intercourse.

8. Before the trial two Police witness statements were tendered by consent. First was the medical examination report by Anne Ruth Pakoa tendered and marked as **Exhibit 'PP1'**. Next was the Record of Interview of Edwel Yoan tendered and marked as **Exhibit 'D1'**. The prosecution called five witnesses. The complainant LL, Jack Tari, Sam Lui, Nancy Peter, and Samson Oli. At the end of the prosecution case I ruled there was a case to answer and the defendant opted to give evidence himself.

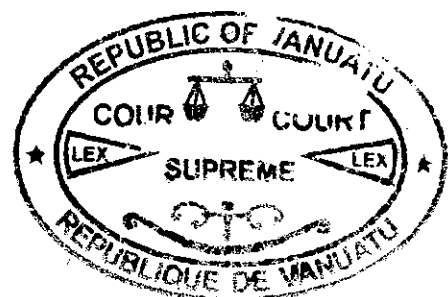
#### The evidence

##### **LL**

9. Her evidence is that she is now 16 years old. In July 2023 she was staying with her father Edwel Yoan at Moriu and because of the incident she went back to her uncle. On the day of the incident her mother Lucien the accused's wife told her to go inside the house and make up the bed. Edwel Yoan then followed her and closed the door and told her he wanted to have sex with her. She refused and told him he was her father and it was not right for him to have sex with her. He removed her skirt and trousers and pushed her onto the bed. She was lying down and he removed his private part (penis) and inserted in into her private part (vagina). She felt pain in her body and saw blood but could not move.
10. After the sex which only lasted a short time, she went to cook. Later they went to Pinky and Edwel Yoan dropped her half way and returned to Moriu while she went back to Pinky and told her aunty Mary of what Edwel Yoan did to her. Her aunt who has since passed away informed Jack Tari. He is one of LL's fathers.
11. Under cross-examination she disagreed, she was in Pinky in July 2023 and disagreed that Edwel Yoan did not do anything to her in July. She also denied that other men had had sex with her before and maintained that only Edwel Yoan had sex with her. That was her only cross examination.

##### **Jack Tari**

12. He gave evidence that he is also from Pinky and LL calls him daddy. In July 2023 he said LL was living with her father Edwel Yoan at Moriu. Following the incident LL returned to them at Pinky. Edwel Yoan brought LL and left her halfway to Pinky and he returned to Moriu. LL upon arriving at Pinky told a girl about the incident and she took LL home to LL's uncle and reported the matter to LL's uncle. He (Jack Tari) took LL to the hospital and the Police at Rovo Bay to report the incident. It was around 28 August 2023. He knew LL was with Edwel Yoan at Moriu as he saw her at Edwel's house when they visited him in July 2023. He confirmed that Edwel Yoan is his brother and Edwel's wife is Lucien.
13. Under cross examination he denied that when he took LL to the Police station at Rovo Bay he had with him a list of names of men who had had sex with LL. He denied the list and also denied that Edwel Yoan's name was not on that list. He also denied that Edwel Yoan's name came up at the last minute when he wanted to report the matter.



**Sam Lui**

14. He gave evidence that he is also from Pinky. He is married and his wife's name is Nancy. LL calls him uncle. In July 2023 he said LL was living with her father Edwel Yoan at Moriu. He knew because LL told his wife that she was accompanying Edwel Yoan's wife, Lucien down to Moriu. He denied that he and his wife Nancy saw James having sex with LL. He confirmed that James has passed away.
15. He was not cross examined.

**Nancy Peter**

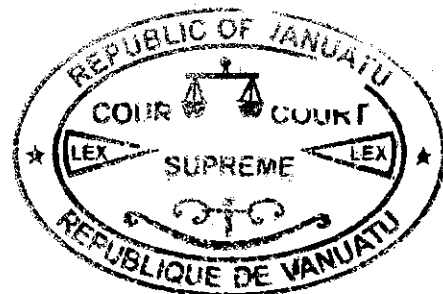
16. She gave evidence that she is from Ruo but now resides in Pinky after marrying Sam. She denied that she and Sam saw James having sex with LL.
17. She was not cross examined.

**Samson Oli**

18. He gave evidence that he is from Pinky. He knows LL and confirmed in July 2023 LL was staying with his father Edwel Yoan at Moriu.
19. He was not cross examined.

**Edwel Yona- defendant**

20. The defendant said Jack Tari who reported the matter had other names with him but only gave his name to the Police and hid the others. In July 2023 he was at Moriu with his father, mother and brother. He denied he asked LL in July 2023 to have sex with her. He said there were allegations made against others and LL was punished but those people were still around.
21. He said in July 2023 LL was in Pinky and came to Moriu and stayed with them before returning to Pinky and making the allegations against him.
22. Under cross examination he agreed LL came and lived with them before returning to her village. He agreed she stayed with them at Moriu. He agrees LL was staying with them in July and they were looking after her as their own daughter. He agrees LL was living with him and his wife Lucien. He agreed that LL called him father but denied that in July 2023 he followed LL into the room closed the door and forced LL to remove her clothes.
23. He also denied that LL did not want to remove her clothes and denied he removed LL's trousers and skirt. He denied putting his private part into LL's private part. He denied that LL did not agree with him because he was her father.
24. He denied that after sex he told LL to go and cook.
25. He said later LL left by herself he did not accompany her.
26. He agreed that after the problem LL returned to Pinky. He agreed that after the matter was reported by LL to the Police the Police spoke to him.
27. He denied that he was lying in Court in his evidence.



## Discussion

28. The complainant in given her evidence despite her age was confident and maintained her composure in detailing her story of what the accused did to her. She maintained that Edwel Yoan was her father and that it was wrong for him to have sex with her. Immediately on returning to Pinky she reported the matter to her relatives who took her to the hospital for medical check up before reporting the matter to the Police. I accept her evidence as honest and truthful. She was not cross examined on her evidence of how Edwel Yoan proceeded to have sex with her. Therefore, that evidence remains unchallenged as to the truth of what she told the Court. Edwel Yoan agreed that in July 2023 LL came and lived with him and his wife Lucien and they looked after her as their own daughter. He admitted under cross-examination that after the incident LL returned to Pinky.
29. The medical Report **Exhibit PP1**, which was tendered by consent, is consistent with LL's evidence. The findings of the medical examination were that LL was raped. The findings also revealed that she had a tear of the hymen and there was discharge inside and around the cervix. This again is consistent with LL's evidence that nobody had had sex with her before. Only Edwel Yoan had sex with her.
30. I also accept the evidence of Jack Tari, Sam Lui, Nancy Peter and Sam Oli as consistent with LL's evidence. Jack Tari denied under cross examination that there were others who had sex with LL, the remaining prosecution witnesses were not cross examined. Their evidence remains unchallenged.
31. I find that in July 2023 Edwel Yoan had sexual intercourse with LL without her consent. Edwel Yoan did not believe on reasonable grounds that LL consented to the sex. I find that the prosecution has proved all three elements of the offence of sexual intercourse without consent beyond reasonable doubt.

## Verdict

32. I find the defendant Edwel Yoan guilty as charged.

DATED at Rovo Bay this 21<sup>st</sup> day of May, 2025  
BY THE COURT

Dudley Aru  
Judge

