

BETWEEN: Public Prosecutor

AND: Christian Vahirua

Defendant

Date of Trial: 4th and 5th July 2018
Before: Justice G.A. Andrée Wiltens
Counsel: Mr D. Boe for the Public Prosecutor
Mrs M. Vire for the Defendant
Decision: 5 July 2018 (orally). In writing 10 July 2018

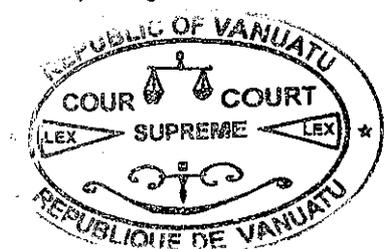
VERDICT

A. Introduction

1. I will give you oral reasons for my decisions now, which I will perfect and reduce to writing and provide at a later date. There will be no material difference between what I say now, and what I record in my judgment.

B. Charges

2. Mr Vahirua was charged with 7 charges of Aggravated Sexual Assault on a Child under 15 years, laid contrary to section 97A (2)(d) of the Penal Code Act [Cap 135], and 6 alternative charges of Unlawful Sexual Intercourse, laid contrary to section 97(1) of the Penal Code Act.
3. The complainant, MS (name suppressed), was Mr Vahirua's 7 year old step-daughter.

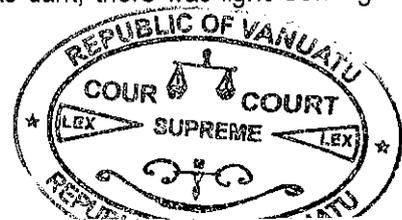


C. Law

4. I set out here the legal ingredients of the main charges. I do not deal with the legal ingredients of the alternative charges for reasons that will become obvious.
5. The prosecution need to establish all the following matters in order to achieve convictions for the main charges; namely that at the relevant time and place:
 - MS was a child, under the age of 15 years;
 - Mr Vahirua had sexual intercourse with MS, as that term is variously defined in section 89A of the Penal Code; and
 - The sexual intercourse took place in circumstances of aggravation, namely that MS was, at the time and generally, under the authority of Mr Vahirua.
6. The prosecution must establish these matters beyond reasonable doubt.
7. There is no onus on Mr Vahirua to give evidence or to call witnesses; or indeed to prove anything.

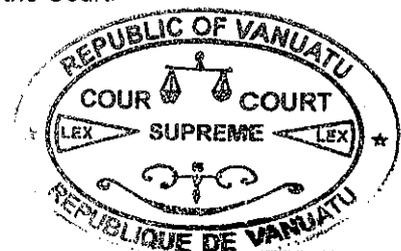
D. Evaluation of Evidence

8. I ignore the last 2 paragraphs of the statement by KM Bani, which was tendered to me as an agreed statement. It's for me to determine whether I believe what Monica alleges, not for the counsellor to tell me what she believes to be the case. She is entitled to her opinion, but it is in no way of assistance to me.
9. The other agreed statements do not really advance the prosecution case. At best, it is circumstantial evidence only as to Mr Vahirua's opportunity to commit these offences.
10. The crux of this case is whether what MS said is true and reliable. I believe her. I do not consider it likely that a 7 year old child would be able to consistently relate adult sexual behaviour if it had not occurred to her. Not only that, but the details MS provided are really very telling - they convince me that she is doing her very best to tell me the truth; and that her account is reliable.
11. The drawings that MS has produced are compelling support for her allegations. They are not drawings that young 7 year old girls should ever want or have to draw. The fact again that there is so much detail is indicative that she saw what she said, and that she endured the conduct she complains of.
12. MS's mother, Maurizia, gives evidence of "*recent complaint*", namely what MS related to her. It is consistent with MS's allegations. The mother's account is also supported by the various photographs produced which show where certain events are said to have occurred, and which are footnoted by the mother with her version of what MS related to her regarding each event.
13. Faiamete's evidence is also good support for what MS alleges. She says she twice saw Mr Vahirua abuse MS by inserting his fingers into her private part while MS was asleep just an arm's reach across from where Faiamete was. Although it was dark, there was light coming



from the kitchen and she could see what Mr Vahirua was doing to her sister. Although she was challenged as to that, I was satisfied that she could see what was occurring.

14. I am satisfied that MS's account is true and correct. I am comforted in that assessment by the supporting consistent evidence of MS's mother Maurizia and her elder sister Faiamete. I also believed those latter 2 witnesses were telling me the truth, and that each was reliable.
15. I am unconcerned about the delay in MS reporting these events. There can be any number of reasons why there was such delay, and those reasons do not necessarily mean that her allegations are untrue. AND MS has given a credible explanation for her delay – namely fear. MS told me that Mr Vahirua consistently threatened her with the kitchen bread knife to cooperate and not to reveal what he did with her.
16. Mrs Vire has submitted there are inconsistencies both within MS's account and when comparing it to that of other witnesses. I agree, but they are minor discrepancies easily understood when taking into account MS's tender age. If anything, the fact that there are discrepancies enhances the prosecution case and demonstrates the witnesses have not simply got their heads together to recite the same story. Such circumstances as Mrs Vire pointed to are insufficient to demonstrate either a lack of veracity or unreliability on MS's part.
17. The defence case, as gleaned from Mr Vahirua's testimony, is based on 3 scenarios:
 - (i) As Christian Vahirua has 2 marbles inserted into the shaft of his penis, he would not have been physically able to penetrate MS's small vagina without causing significant injury – as he put it, she would have ended up in hospital
 - (ii) All the allegations have been manufactured and are untrue. Christian did not perpetrate any of the acts alleged
 - (iii) His wife didn't want Christian to work. When he got a job, despite her not filling out the application forms, she scuppered the job by inventing this story.
18. All 3 scenarios are inherently unlikely.
19. The marbles are under the skin, and while they may protrude slightly, there is no sharp protuberance that would cause injury to such a flexible part of a female's body as her vagina, even that of a 7 year-old. The scenario would have been improved if MS had alleged complete penetration – but from her 7 year old view point, there was only half insertion of Christian's penis. I note from exhibit 4 that the outer of the 2 marbles is 35 mm from the tip of the penis. MS's allegation is therefore not impossible due to this new evidence – raised from the first time during the defence case. As well, this evidence has no effect at all on MS's other allegations of licking, touching, and oral sex.
20. The defendant explained that because Maurizia, his partner, "*might have a new boyfriend*" she wanted to have him imprisoned, rather than just separate from him. As a result, she instructed 2 of her daughters to lie on numerous occasions to implicate Christian in the most serious of crimes that he hadn't committed but which would certainly guarantee a lengthy spell in prison. Having given those instructions, Maurizia further directed MS to anatomically correctly draw the exhibits depicting the various allegations. AND Maurizia then had to ensure that both daughters would in fact go through with her plans and again lie to the Court.

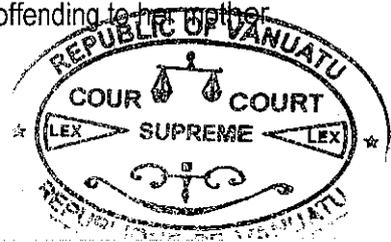


21. The third scenario regarding his employment is also incredible. Having helped Christian get work in September there is no good reason why Maurizia would not also want his additional income in 2018. Further, this "explanation" is wholly insufficient to justify such gross fabrication as the defence alleges.
22. These explanations are arrant nonsense, and inherently incredible. I dismiss all three defence scenarios as being either plausible or even possible explanations for the wrongs perpetrated on Mr Vahirua by his step-daughters, and his former partner who told me she was still on good terms with him.
23. I am satisfied that Christian's evidence is unreliable and incredible. I reject it, in it's entirety; and I set it aside. There was no other defence witness.

F. Findings

24. On that basis, I am satisfied the prosecution has established the following beyond reasonable doubt, that:-

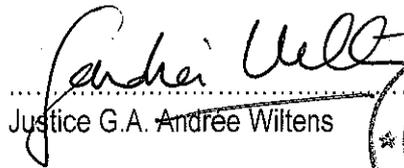
- MS was born on 1 October 2010
- Christian become her step-father from about 2012
- MS was, between January 2017 and March 2018, and generally after 2012, under Christian's authority
- During that period Christian Vahirua:
 - On several occasions, inserted his finger(s) into MS's vagina
 - On several occasions, licked MS's vagina
 - On at least one occasion, forced MS to perform oral sex on him by inserting his penis into her mouth
 - On several occasions, inserted his penis into MS's vagina
 - On one occasion,, he both licked MS's vagina and inserted his penis into her vagina
 - All of those acts come within the definition of sexual intercourse, as set out in section 89A of the Penal Coda Act
 - On several of those occasions Christian perpetrated those acts to the point of ejaculation
 - On various, if not every occasion, Christian Vahirua threatened MS with a breadknife that if she would not comply with his wishes, she'd be killed dead and never see her mother again; and he also similarly threatened to do that is she reported his offending to her mother.



G. Verdicts

25. Looking at the prosecution case to see whether the necessary ingredients have been proved to the required standard, namely beyond reasonable doubt, I am satisfied that charges 1, 3, 5, 7, 9, 11 and 13 have been proved. I enter convictions against Mr Vahirua accordingly.
26. I do not need to return verdicts in respect of charges 2, 4, 6, 8, 10 and 12, as they were laid in the alternative.
27. Christian Vahirua you are remanded in custody until sentencing, which will be at 8:30 am 25 July 2018 by way of video – link. You will be here in Luganville, and I will be in Port Vila; and we be able to communicate via the large television screen in Court.
28. Sentencing submissions are to be filed by the prosecution by 4 pm on 16 July 2018, and by the defence by 4 pm on 24 July 2018. A pre-sentence report is required, and a Bislama translator will also be required at the sentencing.

**Dated at Port Vila this 10th day of July 2018
BY THE COURT**


Justice G.A. Andree Wiltens

