

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

**Criminal**  
**Case No. 21/1854 SC/CRML**

**PUBLIC PROSECUTOR**

**v**

**ALDONE RAU**

*Dates of Trial:* 2 November 2021 (at Pentecost) & 27 April 2022 (by video link)  
*Before:* Justice V.M. Trief  
*In Attendance:* Public Prosecutor – Mr D. Boe  
Defendant – Mr R. Willie  
*Decision:* 28 April 2022

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**VERDICT**

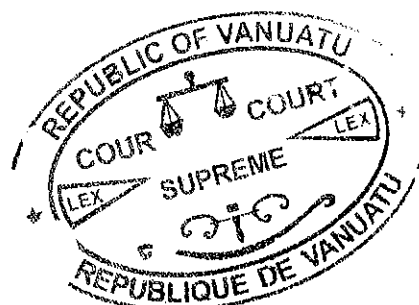
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A. Introduction

1. Aldone Rau is charged with act of indecency without consent.

B. Law

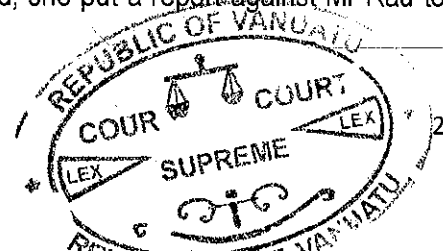
2. The Prosecution bore the onus of proving the charge. Mr Rau had to prove nothing.
3. The Prosecution had to prove each element of the charge beyond a reasonable doubt in order to achieve a conviction. If that was not the case, then Mr Rau would be entitled to be acquitted.
4. The elements of the charge of act of indecency without consent are that in April 2020:
  - Mr Rau committed an act of indecency upon the complainant Felista Dule;  
**and**
  - The act was without Mrs Dule's consent.



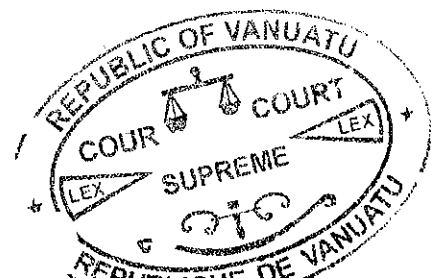
5. Only admissible relevant evidence should be taken into account in determining the outcome of the trial. The Prosecution and defence witnesses have equal value, and each witness is to be considered on his/her own merits.
6. Witnesses' demeanour was a small part of my assessment of the witnesses. I also looked for consistency within that witness' account; consistency with other witnesses' accounts; and considered the inherent likelihood, or not, of the witness' account.

C. Evidence

7. The Prosecution called 3 witnesses and then I heard from Mr Rau.
8. Mrs Dule gave evidence that she and her family went to sleep at their house. At about 3.30am on Easter Monday, she felt that someone was touching her. She felt along his hand, to his chest and to his head. At the same time that she felt his plaited hair, he pushed 2 fingers into her vagina. She called out strongly and slung the man off onto her husband. Her husband woke up disoriented but after she called him again for them to follow the man, they and their children (by now also awakened) rushed outside.
9. Outside, they found a mobile phone on the ground. Her husband and elder daughter went to charge the phone, and she sat down. Only then did she realise that her panty was down around her legs. She does not know how her panty was moved there.
10. Her daughter saw pictures of Mr Rau and his younger brothers on the phone. Her husband said he would go to Mr Rau's village to check who owned the phone. He found VT3,500 on the road at Mr Rau's village. On his return, she and her husband went to see Mrs Lolo of the women's centre at her house and then at 8am at her office at Lavatu. They reported what happened during the night.
11. She vehemently denied that she and Mr Rau had a sexual relationship. She said that Mr Rau's father paid a fine in custom to her husband involving a tusked pig and VT42,000 (with another VT8,000 not yet paid) because Mr Rau stole money from her and her husband's store.
12. In cross-examination, Mrs Dule denied that she had known Mr Rau before the incident, was seen speaking with him and had had a sexual relationship with him while her husband was away on RSE work. When pointed out to her that in her statement to the Police, she stated that when she flung Mr Rau away, her hand hit her husband, she stated that it was not her hand that hit her husband but Mr Rau after she flung him off. She said everything else in her statement was true.
13. Mrs Dule said that she, her husband and their children were asleep in the same room, with her husband by the door. She wore a skirt, singlet, bra and panty to sleep. The man who entered the room had to step over her husband to get to her. She denied that she had sex with the man; he pushed two fingers into her vagina. In answer to the last question put to her that out of fear of her husband, she put a report against Mr Rau to clear her name, she said, "Yes".

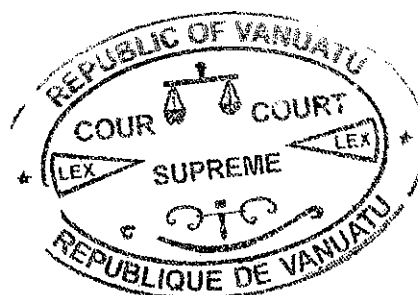


14. In re-examination, Mrs Dule stated that what was in her Police statement was true. When she flung Mr Rau off her, he was thrown against her husband. When asked to explain why she answered yes to Mr Willie's last question to her, she answered only, "No". Mr Boe did not press her further.
15. I accepted Mrs Dule as a truthful and accurate witness and accept her evidence. She quickly accepted that her evidence in Court differed in one aspect from her Police statement, and said without hesitation that what she said in Court that it was Mr Rau who fell against her husband was the truth. She was otherwise unshaken in cross-examination.
16. Johnford Dule is Mrs Dule's husband. At Easter 2020, he, Mrs Dule and their 2 children went to sleep in the same room. In the early morning, he heard his wife call out so loudly that he was disoriented. He had placed a chair across the doorway. He saw a man jump away, sending the chair sending flying. The man was moving so fast that he thought he could not catch him but prayed that he would be caught. They found a phone outside. After charging it, they saw photos of Mr Rau and his brothers on the phone.
17. On re-entering the house, they realised that they had not locked the door at night. They saw muddy footprints inside. They found that he had stolen money belonging to the Anglican Church Brotherhood held by Mr Dule. Mrs Dule told him that her panty was moved by the man who touched her, and that she realised it was not Mr Dule because she touched the man's top whereas Mr Dule sleeps without a top on and the man had plaited hair.
18. He took the phone to Mr Rau's village. Mr Rau's mother confirmed that the phone belonged to Mr Rau and the children. Mr Rau appeared and took back the phone. Mr Dule then showed Mr Rau's mother the muddy footprints into their house, into the store, into the room that they slept in and onto their mattress. They saw VT1,000 on the floor. He sent the children to look and they found another VT3,500 fallen on the road. After showing all this to Mr Rau's mother, she left.
19. In cross-examination, Mr Dule stated that he and Mrs Dule agreed to go the Police. He was with her when she reported the incident and at Court. When put to him that his wife reported Mr Rau because she was afraid of him (Mr Dule), he said that you say that but I work for the Brotherhood therefore everything must be revealed.
20. He was not re-examined.
21. Mr Dule was also a truthful and accurate witness in my assessment. His account was unchallenged in cross-examination, and it was consistent with that of Mrs Dule. His evidence constituted recent complaint evidence.
22. Rolenas Lolo is the Project Officer at the Penama Counselling Centre at Lavatu. She and Mrs Dule live near each other at Lamoru. In the morning of Easter Monday 2020, Mr and Mrs Dule came to see her at her house and then at her office. Mrs Dule related to her what had happened that early morning – that a man touched her in the vagina but she



felt he had plaited hair whereas Mr Dule does not. After she called out, the man ran outside. They found Mr Rau's phone outside.

23. Mrs Lolo told them that she could not deal with the theft but that Mrs Dule could report to the Police the attempted rape.
24. Mrs Lolo confirmed in cross-examination that Mr Dule was with Mrs Dule both times they spoke at Mrs Lolo's house and then at her office.
25. In re-examination, she said that Mr Dule did not speak as well.
26. Mrs Lolo was a truthful and accurate witness. Her account was consistent with that of Mrs Dule, also constituting recent complaint evidence.
27. Mr Rau elected to give evidence. He is 22 years old and lives at Pentecost. He gave lengthy evidence of being approached by Mrs Dule while her husband was away on RSE and he and his friends were passing her house to go and buy alcohol at Lamoru which led to their commencing a sexual relationship. He said he would go to Mrs Dule and have sex with her 2 or 3 times a week. This continued until her husband came back from RSE.
28. At Easter 2020, Mrs Dule saw him on his way to give kava to his father. She told him to come to their house that night – that she would get her husband to drink kava and sleep, so they would not be found out. That night he and his friends went to Lamoru to buy and drink alcohol. On the way back, he went to Mrs Dule's house. The store was open. He saw Mr and Mrs Dule asleep. He woke her, she removed her clothes, he removed his clothes and they had sex. Mr Dule heard them and sat up. Mrs Dule pushed him (Mr Rau) away and he was taken aback to hear her say that a man had indecently touched her. He put on his trousers and ran outside. His phone fell out outside. Later, he and his parents and chief went to the nakamal and he gave Mr Dule a fine of a tusked pig and VT42,000 (another VT8,000 not yet paid).
29. He thought Mrs Dule would tell the truth at trial about his and her sexual relationship. She had lied because she was frightened of her husband.
30. When asked if there was anything more he wanted to say, Mr Rau apologised to the Court, to the Prosecution, to his own lawyer and to 'his victim' for what he did. That this was the first and last time for him to behave like that.
31. In cross-examination, Mr Rau said that he knew that the complaint against him was about pushing his fingers into Mrs Dule's vagina, not about any sex they had had. He agreed that Mrs Dule had not reported him for any sex perhaps because that was consensual. So it was logical that she reported him for pushing his fingers into her vagina because she did not agree to that. He agreed that the purpose of the custom ceremony was to reconcile after the digital penetration. And that the purpose of his apology in Court was also for the digital penetration. He explained that he ran away after the adjournment of the trial on Pentecost because he was upset that Mrs Dule had not told the whole truth in Court.



32. In re-examination, Mr Rau stated that although he answered yes, that Mrs Dule's complaint was about digital penetration, it was not true that he pushed his fingers into her vagina. He answered yes about the purpose of the custom reconciliation ceremony because she had not told the truth about their sexual relationship but only reported the digital penetration but he performed the custom ceremony as she is married and to restore good relations.
33. For all of Mr Rau's lengthy evidence about his sexual relationship with Mrs Dule, he did not give any detail about what that sex entailed in the early Easter Monday morning. Only in cross-examination did he confirm that he knew the complaint against him was about digital penetration only, not sexual intercourse. Mr Rau's evidence therefore had a fanciful air about it as to his and Mrs Dule's sexual relationship. I determined that Mr Rau was an unreliable witness.

D. Discussion

34. I accepted Mr and Mrs Dule's evidence and that of Mrs Lolo. Mr Dule and Mrs Lolo's accounts of a recent complaint by Mrs Dule were consistent with each other, and consistent with Mrs Dule's evidence.
35. Mrs Dule awoke to Mr Rau pushing 2 fingers into her vagina. She had not been asked if she consented to him doing that and she did not agree to his doing so.
36. Any consent that may have been given on prior occasions is not relevant to the charge before the Court therefore I excluded those matters from my consideration.
37. I am satisfied that the Prosecution has proved Mr Rau's guilt beyond a reasonable doubt.

E. Result

38. Mr Rau is convicted as charged.

DATED at Port Vila this 28<sup>th</sup> day of April 2022  
BY THE COURT

*VM Trief*  
Justice Viran Molisa Trief

