

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

Criminal
Case No. 24/1408 SC/CRML

BETWEEN: PUBLIC PROSECUTOR

AND: PAKOA SAMUEL SANDY

Date of Trial: 28 October 2024
Date of Verdict: 16 December 2024
Before: Justice M A MacKenzie
Counsel: Ms F Sewen for the Public Prosecutor
Mr H Vira for the Accused

VERDICT

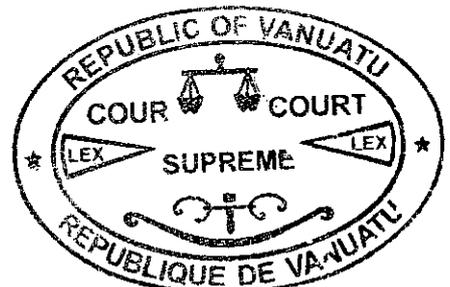
Introduction

1. Mr Sandy faces two charges:
 - a. Sexual intercourse without consent contrary to ss 90(a) and 91 of the Penal Code [CAP 135]; and
 - b. Domestic Violence contrary to s 4(1)(a) of the Family Protection Act.
2. Each charge must be considered separately, as though each charge had its own separate trial.

Brief background

3. The charges arise out of an incident that took place on 28 July 2023 at Teouma.
4. In July 2023, the complainant, JP was living with the defendant, Mr Sandy and his family. JP was aged 20 years at the time. Mr Sandy was aged 33 years.¹

¹ As per the memorandum of agreed facts filed on 21 October 2024



5. They are related. Mr Sandy is JP's maternal uncle. It is an agreed fact that JP and her sister went to live with Mr Sandy at Teouma on 27 July 2022 and lived there until 28 July 2023, the day of the alleged incident.
6. On 28 July 2023, there was an incident involving JP and Mr Sandy, which took place at their home in Teouma. There was no one else at home. It is alleged that Mr Sandy was angry about his wife's perceived infidelity while he was away in the island. The prosecution case is that Mr Sandy was angry with his wife and took it out on JP. This led to Mr Sandy and JP having sexual intercourse without JP's consent but not before assaulting JP by dragging her along some bricks outside.
7. The defence case is that while Mr Sandy did drag JP inside, and have sexual intercourse with her, it was consensual. The sexual intercourse took place to pay Mr Sandy's wife back for her poor behaviour.
8. Immediately after the incident, JP went and spoke to her mother. She also spoke to her aunt later in the afternoon. The matter was reported to the police. Mr Sandy was interviewed by Officer Alick on 18 September 2023 under caution. He said that he and JP did have sexual intercourse. He said that JP consented to the sexual intercourse. Mr Sandy confirmed that he blocked JP and dragged her along the concrete outside and that JP got caught on some bricks.

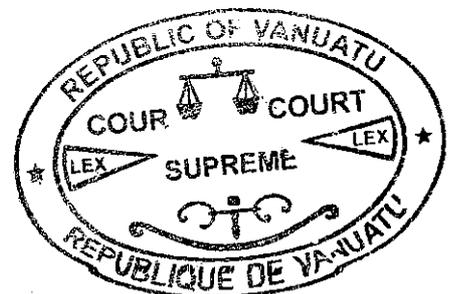
Submissions

9. At the conclusion of the evidence, counsel requested time to file written closing submissions. I granted the request. I have read and taken into account their submissions.

Burden and standard of proof

10. The Prosecution has the onus of proof and is required to establish the elements of each charge beyond reasonable doubt before a finding of guilt can be made in respect of the charges. This excludes consideration of any possibility which is merely fanciful or frivolous.²
11. Proof beyond reasonable doubt is a very high standard of proof which the Prosecution will have met only if, at the end of case, I am sure that Mr Sandy is guilty. What then is reasonable doubt? Reasonable doubt is an honest and reasonable uncertainty about Mr Sandy's guilt after giving careful and impartial consideration to all the evidence.

² s 8 of the Penal Code [CAP 135]

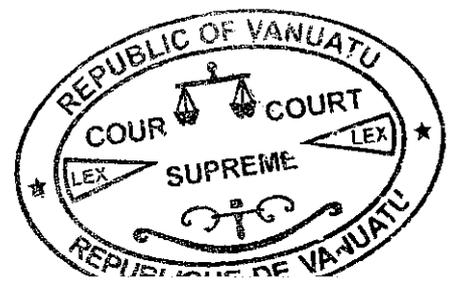


12. Mr Sandy is not required to establish anything. He is presumed innocent. The presumption of innocence means that he does not have to give or call any evidence and does not have to establish his innocence. If at the end of the trial, any reasonable doubt exists as to his guilt, he will be deemed to be innocent of the charge and will be acquitted.
13. This was confirmed to Mr Sandy prior to the prosecution opening its case. I read the statement required by s 81 of the Criminal Procedure Code out to Mr Sandy in English. It was translated into Bislama.

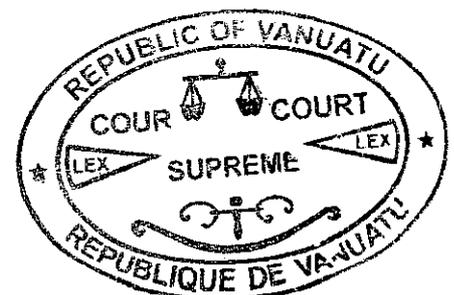
Approach to assessing the evidence

14. This case turns on the credibility and reliability of the witnesses, and in particular JP who is the key prosecution witness. Three prosecution witnesses gave evidence in person; JP, her mother Annie Kethy and her aunt, Dorah Tau. The statements of two police officers were admitted by consent, as was Mr Sandy's interview with police under caution and a medical report.³
15. The prosecution case stands or falls on JP's evidence. Prior to the trial, I made a direction that JP's evidence would be given via a screen. At the outset of the trial, I made an order closing the Court while JP gave evidence.
16. There are various alternative ways for a witness to give evidence, including closing the Court. Others are the use of a screen or an AVL link. The purpose of these types of measures is to ensure that a vulnerable witness is able to give the best quality evidence they can. Such measures say nothing about a defendant and no adverse inference is to be drawn against Mr Sandy because JP gave her evidence in this manner.
17. Currently the Civil Procedure Rules provide for alternative ways of giving evidence. Yet the Criminal Procedure Code does not. That is curious given that vulnerable complainants in criminal trials are required to give evidence re-living traumatic experiences often of a very personal nature. In making the direction to close the Court during JP's evidence, and for her to be screened, pursuant to s 28(1)(b) and s 65(1) of the Judicial Services and Courts Act [Cap 270], the Supreme Court has jurisdiction to administer justice in Vanuatu, and such inherent powers as are necessary to carry out its functions.
18. I considered that alternate means of giving evidence were appropriate, given the family relationship and the personal nature of the evidence she would be giving. I did not regard the fact that JP was aged 20 years to be a disqualifying factor in relation to the use of a screen. Her age would not change the personal nature of the evidence.

³ PC Bonie Valia's statement is exhibit P1, PC Kathleen Alick's statement and Mr Sandy's police interview is exhibit P2, and the medical report is exhibit P3



19. The prosecution case is that JP is telling the truth. The defence case is that JP is lying. It is therefore important to distinguish between credibility and reliability. Credibility is about truthfulness. So, credibility is about whether a witness can be believed? Reliability is about the accuracy of evidence which is honestly given. The first involves an intention to mislead or lie. The second involves error or mistake. Even the most honest witnesses capable of being mistaken, particularly when being asked to recall events which occurred many years ago. But a witness who sets out to give false evidence is an entirely different position. All of what is said may be called into question if the witness is setting out to be dishonesty in some or all respects.
20. I may accept everything a witness has said. On the other hand, I may reject everything a witness has said. There is a middle ground, which is that I can accept some parts of what a witness has said and reject other parts.
21. It is important that before relying on evidence, I am able to conclude that it was honestly given, but also that it is reliable.
22. In assessing the evidence given by the witnesses, there are a number of factors which assist with considering whether the witnesses gave truthful and accurate evidence. In considering the evidence of all the witnesses who gave evidence during the trial, I have considered the reasonableness, probability and coherence of the evidence. Sometimes conflicts or differences in the evidence can be caused by mistakes and misinterpretation; sometimes witnesses can see and hear things that were not seen and heard by other witnesses. This does not mean one of the witnesses is necessarily not telling the truth. Sometimes conflicts are not able to be explained away.
23. The witness' demeanour is a small part of my assessment of the witness. I prefer though to look at what the witness actually said, and take into account;
 - a. consistency within the witness' account and over time? If there is an inconsistency, it does not necessarily mean that the evidence in court cannot be relied on. The mere fact that a witness is inconsistent on a particular topic does not mean that person is generally untruthful or inaccurate. Inconsistencies can happen even when someone is telling the truth. I must consider whether that inconsistency is a significant one or a minor one and any explanation given for the inconsistency;
 - b. consistency when comparing the witness' account with relevant exhibits;
 - c. consistency with the evidence of other witnesses whose evidence I have accepted.



- d. whether there is supporting evidence. As this was a case of alleged sexual offending, I warned myself of the danger of convicting Mr Sandy on the uncorroborated evidence of JP.⁴
 - e. the inherent plausibility and coherence, or not, of the witness' account. Does it make sense?
24. It is important that I consider each witness' evidence in the context of all the evidence in the case. Also, witnesses can be inaccurate or may not remember secondary, marginal or important facts for various reasons, including that they were not seen as important at the time. However, their evidence may be accurate about essential matters, but not about details. Essential matters are matters which relate to the elements of the charges.
25. I reminded myself that if I am to draw inferences, they cannot be guesses or speculation but had to be logical conclusions drawn from reliably accepted or properly established facts. As was said by the Court of Appeal in *Swanson v Public Prosecutor* [1998] VUCA 9, inferences may be drawn from proved facts if they follow logically from them. If they do not, then the drawing of any conclusion speculation not proof. Speculation in aid of an accused is no more permissible than speculation in aid of the prosecution. Inferences need not be irresistible.

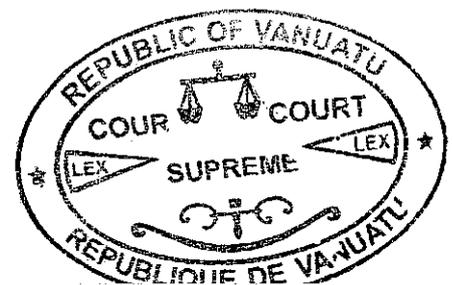
Mr Sandy's position

26. Mr Sandy was arrested by Officer Alick on 18 September 2023. He made a statement to police under caution, and after speaking to a lawyer. As I set out later in the judgment, Mr Sandy agreed with parts of JP's narrative. Where they diverge is in relation to consent.
27. Once the prosecution case concluded, the s 88 statement was read to him in English and then translated into Bislama. Mr Vira confirmed that Mr Sandy elected to remain silent. That is his right. Mr Sandy's election not to give evidence, does not of itself lead to an inference of guilt against him.

Charge 1-sexual intercourse without consent (rape)

28. There are three essential elements of rape: *McEwen v Public Prosecutor* [2011] VUCA 32. They are:

⁴ As was held in *Tabeva v Public Prosecutor* [2018] VUCA 55 at 34 "...The corroboration rule does not prohibit a Judge from accepting the evidence of a complainant in a case of alleged sexual assault without corroboration. It simply requires Judges to remind themselves of the dangers of convicting on the uncorroborated evidence of a complainant". See also *Keimit v Public Prosecutor* [2017] VUCA 12.



- a. That there was sexual intercourse.
- b. That JP did not consent to the sexual intercourse.
- c. That Mr Sandy did not believe on reasonable grounds that JP was consenting at the time that the intercourse occurred.

The issues

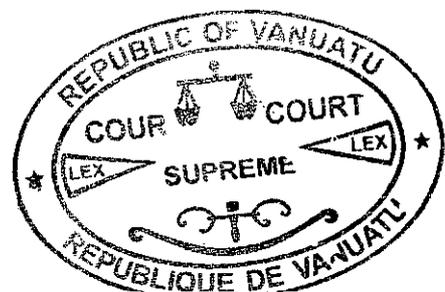
- 29. It is not in dispute that JP and Mr Sandy had sexual intercourse.
- 30. The issues are:
 - a. Whether I am sure that JP did not consent to the sexual intercourse.
 - b. Whether I am sure that Mr Sandy did not believe on reasonable grounds that JP was consenting at the time that the intercourse occurred.

Am I sure that JP and Mr Sandy had sexual intercourse?

- 31. Sexual intercourse is defined in s89A of the Penal Code:

“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*
- (b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorized by law; or*
- (c) the introduction of any part of the penis of a person into the mouth of another person; or*
- (d) the licking, sucking or kissing, to any extent, of the vulva, vagina, penis or anus of a person; or*
- (e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d); or*

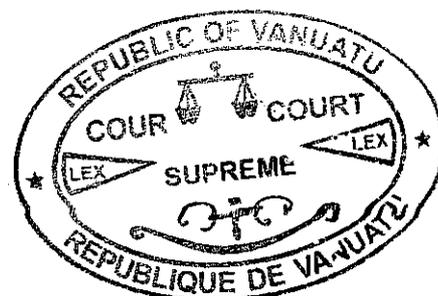


(f) *the causing, or permitting of a person to perform any of the activities defined in paragraph (a), (b), (c) or (d) upon the body of the person who caused or permitted the activity.*

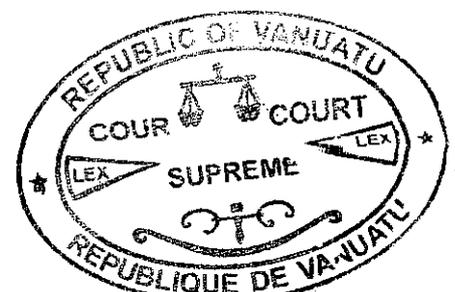
32. It is not in dispute that JP and Mr Sandy had sexual intercourse. In her evidence, JP confirmed that she was pushed or pulled into Mr Sandy's bedroom. They had sexual intercourse, and afterwards she saw his sperm on her leg. At the time, Mr Sandy covered her face with a blanket. JP's narrative is that the sexual intercourse was nonconsensual. I will discuss consent in detail shortly.
33. Under caution, Mr Sandy told police that he and JP had sex. He told police that JP laid down and he pushed his penis into her vagina. However, he disagreed that the sex was without consent. He said that JP was lying.
34. Therefore, I am sure that JP and Mr Sandy had sexual intercourse.

Am I sure that JP did not consent to the sexual intercourse with Mr Sandy?

35. *Consent means true consent, freely given by a person who is in a position to make rational decisions, A person does not consent to sexual activity just because she does not protector offer physical resistance to the activity. A person does not consent to sexual activity if she allows sexual activity because force is used or there is a threat or fear of force. Consent is to be considered is at the time the sexual connection actually took place. JP's behaviour and attitude before or after the act may be relevant to that issue, but it is not decisive. The real point is whether there was true consent, at the time the sexual intercourse took place.*
36. The issue of consent requires context. JP said that that on 28 July 2023, she and Mr Sandy were the only two people present in their home at Teouma. She said that Mr Sandy started asking her questions about his wife, Esther, and if she was behaving "properly" when he went to the island. JP's response was that that she did not know, Esther is his wife. Mr Sandy then told her he was upset. He then held onto her hands or arms and said "This is *payback time because I am upset*"
37. JP described Mr Sandy holding both of her hands. She said she tried to kick out and move away. She managed to crawl under his hands but then Mr Sandy caught hold of her shirt. She fell, and tried to regain her balance but he was holding her hands too tightly. JP tried to support herself on the bricks. Mr Sandy then started dragging her to the sitting room. JP said that she called out to her parents, and then Mr Sandy pulled her into his bedroom, saying they were going into the room and have a discussion.

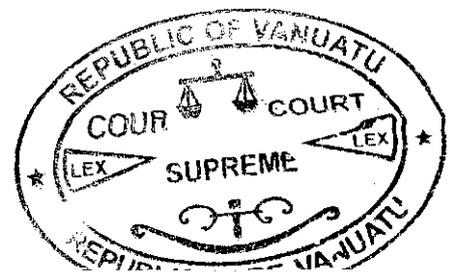


38. JP said she did not want to go into the room, but she was pulled in there. Mr Sandy then told her he would have sexual intercourse with her. She told him *"No, you are my blood uncle"*. The conversation did not finish there. Mr Sandy then told her that he must have sex with her because he felt comfortable. JP told him to go and find another girl. Mr Sandy replied and said *"No, it's you only. It's just you"*. JP was told to remove her clothes. She started crying and told him not to do this kind of thing to her. Mr Sandy then told her to hurry up before her aunty came back. When Mr Sandy persisted about her removing her clothes, JP did so. She candidly acknowledged in cross examination that she removed her clothes and lay down on the bed. In her evidence in chief, JP explained that she became scared. Mr Sandy had been dragging and pulling her about. She got scared about what Mr Sandy might do to her.
39. JP's evidence is that prior to the sexual intercourse she made it clear to Mr Sandy three times that she did not want to have sex with him. She said *"no"*, then she told him to go find another girl but not with her. Then finally, she started crying and said *"don't do this kind of thing to me."*
40. JP said Mr Sandy then covered her face with a blanket and had sex with her. She was crying. She rejected the suggestion put to her in cross examination that she did not cry when they were having sex. Her evidence is that her face was covered with the blanket while Mr Sandy had sexual intercourse with her. At one point, JP saw sperm on her leg. When JP got dressed, she was crying and walked outside. Mr Sandy told her that she was not to tell anyone what had happened. She said she walked away and went to see her mother.
41. JP remained firm in her evidence when cross examined. She did not accept that she made comments to Mr Sandy about the way her aunt was behaving, or that she had seen the way his wife had affairs with others. She denied that Mr Sandy had grabbed hold of her hand as she was walking past him and asked JP to give him the names of the men.
42. JP rejected the proposition that she suggested to Mr Sandy they had to get back at her aunty but she must never find out, and that Mr Sandy asked her how they were going to pay the aunty back. JP also disputed that she and Mr Sandy talked about having sex together and that they both enjoyed themselves while having sex. JP also denied that she reported the incident because she felt guilty about having sexual intercourse with her uncle.
43. When Mr Sandy was interviewed by police under caution, he chose to explain to police what he said happened. He was not required to do so, as it is not for Mr Sandy to prove anything. Mr Sandy confirmed that he and JP had sexual intercourse on 28 July 2023. He did not accept the allegation that the sex was nonconsensual. He said JP was lying. He told police that JP told him that her aunty had not been behaving well while he was back in the island in 2022 and had been sleeping around (having sex) with other men.



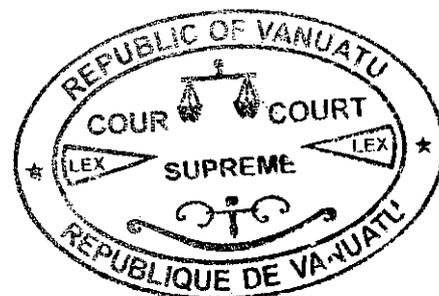
He said he held her hand and pulled her inside, but she stood firm so that he dragged her along the concrete into the house, but JP got caught on a line of bricks.

44. Mr Sandy told police he blocked the main door of the house and asked JP the names of the boys she had mentioned. He said he kept asking so JP told him the names. He said that JP could see that he was too aggressive and became frightened so she suggested to him that they would pay aunty back, but not tell her.
45. Mr Sandy's narrative is that JP asked him where they should go, she walked ahead into the bedroom, pulled down her trousers and told him not to get sperm inside. When asked, he confirmed that JP consented to having sex with him.
46. The defence case is that the sexual intercourse was consensual. That is what Mr Sandy told police under caution. Therefore, it is surprising that JP was not squarely challenged about consent. It was put to her that she was not crying and that she enjoyed the sexual intercourse. However, it was not directly put to her that she consented or that she was lying about saying no. Mr Sandy told police that the sexual intercourse was consensual and that JP was lying about the sexual intercourse being without consent. As was held in *Fisher v Wylie* [2021] VUCA 5, the fact that JP was not cross examined on her evidence that she said no leaves it specifically unchallenged, and so in the normal course it would be accepted.
47. The issue of whether JP did not consent turns on JP's evidence and whether it is both credible and reliable. I acknowledge that it is uncorroborated and so remind myself of the dangers of convicting Mr Sandy on the uncorroborated evidence of JP.
48. I assess that overall JP's evidence is both credible and reliable. Credibility is about the truthfulness of evidence. Reliability is about the accuracy of evidence honestly given. JP's evidence was a plausible, matter of fact and coherent narrative about what happened to her. It was not embellished or exaggerated. JP was candid. She acknowledged that she took her clothes off and lay on the bed herself. She gave a plausible explanation as to why. JP said that she got scared as Mr Sandy had been dragging and pulling her about. She got scared about what her uncle might try to do to her.
49. JP's evidence was internally consistent. She remained firm in her evidence when challenged in cross examination about whether having sex was her idea and whether she enjoyed the intercourse. She did not step back from what she said in evidence in chief.
50. JP has been consistent over time that there was an incident between she and Mr Sandy, including that she had been dragged by Mr Sandy. JP immediately told her mother and then her aunt that there had been an incident involving Mr Sandy. The details given to her mother were sparse. Ms Kathy, JP's mother, said that JP came to see her and said that she had come to report uncle. Her mother asked her, what? JP told her mother that

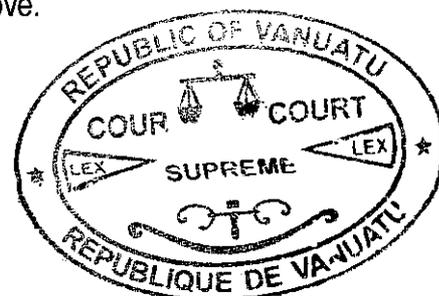


Mr Sandy had behaved badly towards her. Her mother repeated the question and asked what Mr Sandy had done. Ms Kethy said that JP just cried, and then showed her mother the injuries she had. She told her mother that her uncle had dragged her across the cement or concrete, and she had bruises or contusions to her body. Ms Kethy formed the impression that she had not been given all the details. In cross examination, Ms Kethy said that she saw the injuries to JP's body and concluded that she had been raped. She confirmed that was her belief. I place no weight on Ms Kethy's belief that JP had been raped. It is opinion evidence that does not assist in understanding what Ms Kathy either heard, saw or otherwise perceived. I put that aspect of her evidence to one side.

51. JP gave her aunt more detail. JP's aunt is Dorah Tau. She said that JP called her that afternoon asking her to come over and see her. Her aunt was concerned that it was getting late in the day. JP told her that she did not want to stay at Teouma and was crying. Ms Tau went and collected JP from Teouma. She asked JP why she wanted to go to Fresh Wota with her? On the way, JP told her aunt that uncle has caused a problem with her. He wanted to be with her. JP told her that Mr Sandy knew about his wife's escapades, which JP said she didn't know anything about. Mr Sandy said he wanted to pay her back for what she had done to him. Her uncle said he would take it out on JP. JP relayed to Ms Tau that Mr Sandy blocked her when she tried to get away and dragged her inside and into the bedroom. And then he had sexual intercourse with her. That after forcing her into the room, he forced her to remove her clothes, and blocked her mouth to stop her from calling out and used a blanket to do so. Ms Tau's evidence was not challenged as there was no cross examination.
52. Ms Kethy and Ms Tau's evidence is not "*recent complaint*" evidence about the issue of consent. That is because JP did not say anything to her mother about the sexual intercourse, let alone whether it was nonconsensual and did not say anything to her aunt about consent.
53. What JP told her mother and her aunt about other aspects of the incident is consistent with her evidence during the trial- that Mr Sandy wanted to pay his wife back, that he blocked her, that she was dragged inside, taken into the bedroom, that there was sexual intercourse, Mr Sandy put a blanket over her head, and that JP was crying. It is important to remember that repeating something does not necessarily make it true. An untruthful person might continue to repeat the same lie, and a mistaken person, believing themselves to be correct, might repeat the error. Of course, a truthful person might also repeat their complaints. It is a matter of deciding whether the earlier statements assist.
54. JP's evidence that she was held and then dragged by Mr Sandy is congruent with Mr Sandy's acceptance that he dragged her, and her mother's evidence of JP showing her the bruises and injuries on her body, resulting from being dragged along the concrete or bricks. Then there is the medical report which confirms small abrasions to JP's knee area, foot and her wrist.



55. Sometimes small details can assist in assessing the truthfulness of evidence. JP's unchallenged evidence that Mr Sandy put a blanket over her face while they were having sexual intercourse is such a detail. It is an odd thing to fabricate, and seems incongruent with an enjoyable, consensual sexual encounter.
56. What Mr Sandy told police is instructive. Mr Sandy's narrative under caution that the back drop to the sexual intercourse was JP suggesting that they pay back her aunt is improbable. Mr Sandy acknowledged that JP was frightened by his aggression and that he had dragged her along the concrete into the house. What is clear from Mr Sandy's statement to police is that he was angry about what he believed to be his wife's misconduct, telling police JP had been hiding "*your aunt's filthy conduct*". Mr Sandy wants the Court to accept that JP, being frightened of her uncle's aggression, of her own volition proposed that they pay back her aunty by having sex and then hiding it from her. That makes no sense. On a similar note, it is improbable that JP would consent to having sexual intercourse with a family member who had just assaulted her and whom was aggressive and frightening. I put to one side his narrative about what happened, as it is improbable and implausible.
57. I accept JP's evidence as an authentic account of what took place at the home. It was not squarely put to JP that either she did not consent or that she lied about the intercourse being nonconsensual. It should have been because that is the defence case. But even so, this was not a fabrication. JP's evidence had an air of reality to it. She simply recounted what took place in a genuine way without embellishment. She was dragged inside by her uncle, who on his own admission was angry about his wife's perceived behaviour and that he had not been told. She was pushed or pulled into the bedroom, told him "*no*" because they are related, and he put a blanket over her face during the sexual encounter. She was crying and had made it clear to Mr Sandy on three occasions that she did not want to have sexual intercourse with him. JP's words and actions were inconsistent with consent. Nothing turns on the fact that JP removed her own clothes. She had said no, Mr Sandy ignored that and, in the lead up to the sexual intercourse had been violent to her by holding her hands tightly, dragged her inside and pushed or pulled her into the bedroom, and put a blanket on her head. JP rejected the proposition that she thought about reporting the incident because she felt guilty about having sexual intercourse with her uncle.
58. JP's evidence was internally consistent, consistent over time in relation to aspects of the incident, and consistent with other evidence, including what Mr Sandy told police. As I have said, I put Mr Sandy's evidence about consent to one side, as I assess what he told police to be improbable and implausible. It does not make sense that after being dragged inside, in combination with Mr Sandy's admitted aggression and acknowledgement that JP was frightened, that she would consent to having sexual intercourse with her blood relative. I acknowledge that there is no corroboration of consent. I warn myself about that but nevertheless, I accept JP's evidence that she did not consent to the sexual intercourse for the reasons set out above.



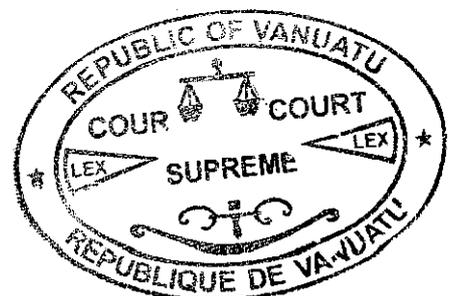
59. Mr Vira submitted that that the medical report is inconsistent with a lack of consent. His submission is that the medical report shows that JP did not suffer any bruises on her vagina. The only bruises were on her hands and legs. Had she not agreed, Mr Vira submitted that there would be bruises on her vagina. I do not accept that submission. The medical examination was normal. But that says nothing about whether or not JP consented to the sexual intercourse with her uncle. Consent does not turn on whether or not there are vaginal physical injuries, but rather JP's words and actions, and the surrounding circumstances.
60. Therefore, I am sure that JP did not consent to the sexual intercourse.

Am I sure that Mr Sandy did not believe on reasonable grounds that JP was consenting at the time that the intercourse occurred?

61. I will consider whether Mr Sandy could not reasonably have believed JP was consenting. What Mr Sandy thinks is reasonable is *not* the issue. If I am satisfied that Mr Sandy had no reasonable grounds to believe JP was consenting, that would be enough. This is to be assessed at the time of the sexual intercourse.
62. The evidence in relation to consent is relevant and applicable to this issue. I have accepted JP's evidence that the sexual intercourse was nonconsensual as credible and reliable. On that basis, no reasonable person in Mr Sandy's shoes could have believed JP was consenting. JP tried to get away from Mr Sandy at the start of the incident. She had been assaulted, pushed or pulled into the bedroom and she told Mr Sandy "no" because they were related. As detailed above, JP made it clear to Mr Sandy three times that she did not want to have sex with him. She was crying. JP's words and actions were inconsistent with a belief on reasonable grounds in consent. The fact that JP took her clothes off and lay down does not give rise to a belief on reasonable grounds in consent, when the broader context is taken into account. Mr Sandy, as I have said, confirmed when interviewed that JP could see that he was too aggressive and became frightened. As I have also said, JP gave a cogent explanation why she took off her clothes and lay on the bed.
63. Therefore, I am sure that Mr Sandy did not believe on reasonable grounds that JP was consenting at the time the sexual intercourse occurred.

Verdict

64. Charge 1 is proved beyond reasonable doubt. I find Mr Sandy guilty of sexual intercourse without consent.



Charge 2- Domestic Violence

65. Under the Family Protection Act 2008 (“the Act”), domestic violence is an intentional act against a family member. The charge will be proved if I am sure that:
1. JP is a member of Mr Sandy’s family, as defined in Section 3 of the Act.
 2. Mr Sandy intentionally assaulted JP. Pursuant to s4 of the Act, a person commits an act of domestic violence if he or she intentionally does any of a number of acts against a family member. It includes an assault.
66. It is not obvious what the trial issue is in relation to this charge.

Is JP a member of Mr Sandy’s family?

67. There is a definition of “family member” in s 3 of the Act:

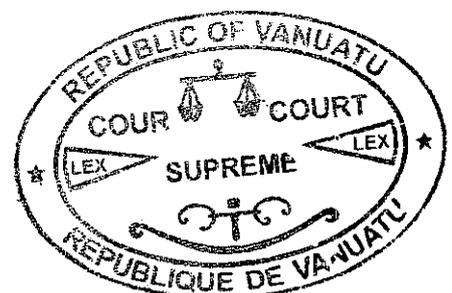
“3. Meaning of family member

Each of the following is a member of a person’s family:

- (a) the spouse of the person;*
 - (b) a child of the person and/or the person’s spouse;*
 - (c) a parent of the person or the person’s spouse;*
 - (d) a brother or sister of the person or the person’s spouse;*
 - (e) any other person who is treated by the person as a family member”.*
68. JP is a member of Mr Sandy’s family pursuant to s3(e) of the Act. She was treated by Mr Sandy as a family member. He is her uncle, and relevantly JP was living in the home at Teouma with Mr Sandy, and had been since 27 July 2022. Mr Sandy was asked how he was related to JP in his interview with police. He said:

“Jenita calls me uncle; Jenita’s mother is my biological sister. I am the second youngest in the family. Our (myself and Jenita’s mother) father’s name is Ruben Sandy and our mother’s name is Leiwia Norcy Sandy. They are from Tongoa.”

69. I am sure that JP is a member of Mr Sandy’s family.



Did Mr Sandy intentionally assault JP?

70. The intentional assault alleged is that Mr Sandy dragged JP's body under the bricks outside the home. An assault is not defined in either the Family Protection Act or the Penal Code. That Mr Sandy dragged JP inside is not in dispute. As set out above, JP's evidence is that she fell, tried to regain her balance but Mr Sandy was holding her hands tightly. Then Mr Sandy started pulling on her hands/arms and started dragging her to the sitting room. Mr Sandy told police he dragged her along the concrete into the house. He said:

"Then I held her hand and pulled her inside but she stood firm, so I dragged her along the concrete into the house, but Jenita got caught at the one-line of bricks I had layed."

71. An act is intentional if done consciously and deliberately. I infer that Mr Sandy intentionally dragged JP. As he said, he pulled her inside but she stood firm so he dragged her along the concrete into the house. There can be no suggestion that was somehow accidental. It was not suggested to JP in cross examination that the dragging incident did not happen or that it was accidental. JP was asked if she could see that Mr Sandy was very cross and pulled her from the veranda to the main door? She said yes.
72. I am sure that Mr Sandy dragged JP's body and that he did so intentionally. This was a conscious and deliberate action on Mr Sandy's part.

Verdict

73. Therefore, charge 2 is proved beyond reasonable doubt. I find Mr Sandy guilty of domestic violence.

**DATED at Port Vila this 16th day of December 2024
BY THE COURT**

Mackenzie
Justice M A Mackenzie

