

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

Criminal
Case No. 22/661 SC/CRML

PUBLIC PROSECUTOR v ASANA KELEP

Date of Trial: 20 – 24 September 2022

Before: Hon. Chief Justice Vincent Lunabek

Counsel: Mrs BN Tamau and Ms M Meltebury for the Public Prosecutor
Mrs PK Malites for the Defendant

Date of Verdict: 25 July 2025

REASONS FOR VERDICT

I. Introduction

1. Defendant Asana Kelep ("Mr Kelep") was charged and tried with one count of sexual intercourse without consent, contrary to Section 90(b)(vi) and 91 of the Penal Code.
2. It is particularised that on 6th January 2022 at Paradise Motel, Mr Kelep has sexual intercourse with a married woman (N.O.K.), whereby her consent was obtained due to the effects of alcohol, particularly being highly intoxicated at that time when she consented to have sex.

II. Law

3. Mr Kelep was charged under Sections 90(b)(vi) and 91 of the Penal Code. Section 90(b)(vi) provides:

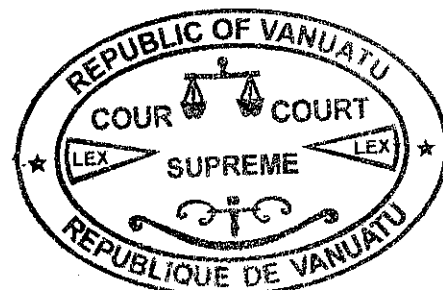
"SEXUAL INTERCOURSE WITHOUT CONSENT

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

...

(b) with that person's consent if the consent is obtained:

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...
- (vi) By the effect of alcohol or drugs;



Commits the offence of sexual intercourse without consent.

4. Section 91 deals with the punishment. It says:

"91. No person shall commit sexual intercourse without consent.

Penalty: Imprisonment for life".

5. Section 89A defines sexual intercourse in this way:

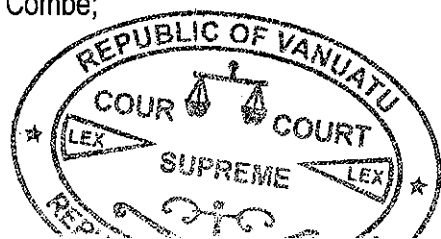
"SEXUAL INTERCOURSE DEFINED

89A. For the purposes of this part **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 or 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 authorised 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 authorised 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 or 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 another person."

III. Burden of Proof and Elements of Offence

6. The prosecution has the burden to prove its and all essential elements of the offence beyond a reasonable doubt before Defendant Asana Kelep could be convicted.
7. Defendant Asana Kelep has no burden to prove.
8. The prosecution has to prove the following elements of the offence of sexual intercourse without consent under s.90(b)(vi) of Penal Code before Defendant Kelep could be convicted:
- (1) That on 6 January 2022 at Paradise Motel, Tebakor, Port Vila, Efate, Defendant Kelep had sexual intercourse with the complainant Natacha Oren Combe;

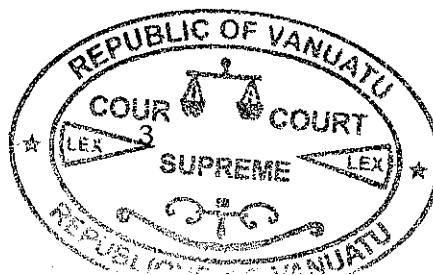


- (2) That on 6 January 2022 at Paradise Motel, Natacha Oren Combe did not consent to have sexual intercourse with Defendant Kelep as the consent was obtained by the effect of alcohol;
- (3) That Defendant Kelep had reasonable belief that complainant Natacha Oren Combe did not consent to have sexual intercourse with him on 6 January 2022 at Paradise Motel.

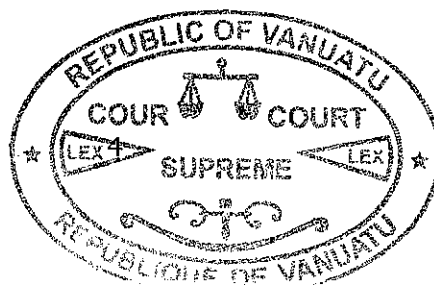
IV. Evidence

A. Prosecution Evidence

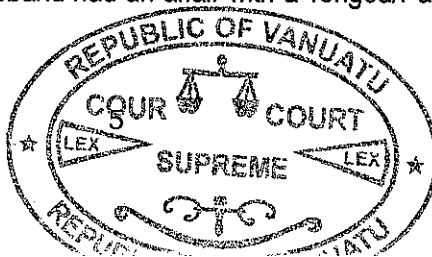
9. The prosecution has called five (5) witnesses. The complainant, Natacha Oren Combe gave evidence to the following effect.
10. She is from Ambrym Island. She married Pierre Christian Combe from Malekula. The complainant and her husband were married since 2005. They have five (5) children aged between 23, 19, 18, 14 and 11 years old. They live at Erakor Half Road, Port Vila, Efate.
11. In the early evening of 5 January 2022, the complainant and her husband visited a nephew of her husband as that nephew was ready to go to Santo Island. They brought a small bottle of kava (600ml) and the big brother of the nephew joined them with a big bottle of kava (1.5l). Four (4) of them drank the kava.
12. At 9:00pm o'clock, she and her husband took a bus to return home at Erakor Half Road. On their way home, they stopped at Au Bon Marché shop, they bought a bottle of red wine with 2 VBx. They took a bus and stopped at a nakamal ("First Bucket"). They drank few shells of kava again before they got home. At home, she and her husband drank the red wine and the 2 VBs.
13. At 11:00pm, she and her husband decided to go to Club 21 at Number 2. There, they drank 4 VBs. No other person joined them. They stayed at Club 21 until it was closed at 3:00am in the morning.
14. Then they took a bus from Club 21 and went to Planet 107 at Tebakor area. At Planet 107, they drank a jug of VB. They also drank a jug of whisky. They had no food when they started to drink.
15. Planet 107 was closed at 6:00am. When Planet 107 was closed, she was drunk. She followed her husband to come out from the Planet 107.
16. Outside the Planet 107, they met Asana Kelep. She never met Asana before. She did not know him. At that time, Asana Kelep approached her and her husband and Asana told her husband that he is one of his brothers and he told her (complainant) that he is one of her uncles. But she said she never knew him.



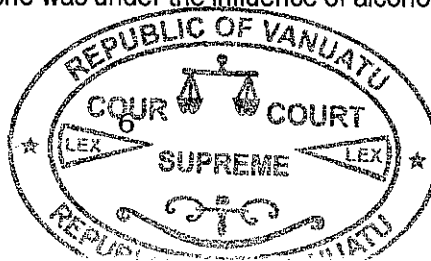
17. Asana Kelep was with another man from Epi at that time. Asana proposed to the complainant and her husband that he will purchase chicken wings and more alcoholic drinks and they were going to roast the chicken wings and drink the alcoholic liquor on a ship. Her husband told her that they both go home. Asana said he will pay chicken wings and more alcoholic drinks and followed them at their house. Her husband wanted to assault Asana. She stopped him.
18. They crossed the main road and came to the shop opposite Planet 107 (Lin Ping Chinese store). Her husband purchased two beers for them. The complainant and her husband drunk the two beers. Asana and his friend followed them on the other side of the road. She did not meet Asana Kelep inside Planet 107.
19. She said she was too drunk. She felt sleepy. They went to Agriculture Suppliers. She laid on the forehead of a parked truck there. Her husband was with her.
20. She could not remember how she went to Pacific Paradise Motel. She said she remembered she was in a room of Paradise Motel. She said she knew the Motel because she used to come to the Paradise Motel with her husband and children.
21. When she was in that room, she remembered that her husband came and knocked at the door. She said she reacted and wanted to open the door but she remembered that Asana Kelep made a sign to her that she should not make noise. She remembered Asana took her to another room. She did not know why Asana took her to the other room. She said she remembered she fell on the floor near that room. She said she fell again the second time on the floor.
22. In the second room, she did not know how sexual intercourse occurred. She said it might be that Asana kissed her or she knew she wore a t-shirt and a skirt. She knew Asana asked her to remove her top shirt. She said she was under the influence of alcohol, and if she was sober she could not do this. This was the first time this thing happened to her since her marriage in 2005.
23. On the same day, she slept and got up, she felt whole of her body was painful. She said a staff of the Motel told her that her husband was looking for her. She said she thought her husband assaulted her as her head was swollen, she was confused of the injuries she received on her body. Her husband told her he did not assault her.
24. Before she got up, she said she knew that Asana Kelep had left already. She was alone in the room. She said she remembered she told Asana at the end of the sexual intercourse that she is a married woman. She said before Asana left, Asana told her that he will return to the room, then a staff came, knocked at the door and told her that her husband was looking for her.
25. She said she used to consume alcohol with her husband but the amount of alcohol she took on this occasion was beyond her limits.



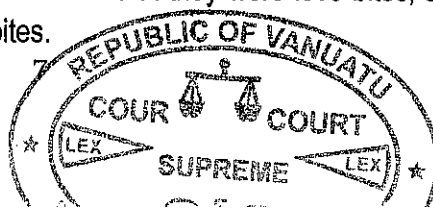
26. On 6 January 2022, she got injuries on her body. She had bite marks on her chin, neck and shoulder. She was not comfortable to go back to her house. She decided to stay at the Motel. Her leg also was twisted.
27. On 8 January 2022, she decided to go to hospital. She and her husband went first to the place Asana Kelep lives. They got Asana Kelep's phone number. She said she texted him and called him and told him that she made a medical report.
28. Asana Kelep came to see her and her husband at the hospital. She said Asana said sorry and wanted to settle the matter in custom. Asana said he will send money after he travelled. She said Asana tried to negotiate the settlement with her husband.
29. She said if she was not under the influence of alcohol, she would not have sex with Asana Kelep. She never cheated her husband. This was the first time and her children were aware of this.
30. The complainant, Natacha, was cross-examined by the defence counsel. She gave evidence to the following effect. She confirmed the kava drinks she took on 5 January 2022 before she and her husband went to Club 21. After they came out of Club 21, she was aware of the things she described. When they went to Planet 107, she and her husband continued to drink alcohol.
31. She was asked and she said she did not remember that she came outside Planet 107 and sat next to Asana Kelep. She confirmed her evidence that when Planet 107 was closed, she and her husband met Asana Kelep outside. She was asked she denied she came outside Planet 107 before it was closed and sat next to Asana. She denied also that Asana talked to her and asked her who she had come with at Planet 107. She denied she told Asana she came with a friend. She also denied she had slept on Asana's leg. She was asked she denied she told Asana to massage her back. She denied Asana told her he was drunk. She denied also that she asked Asana to massage her back and her chest. It was put to her and she denied she met Asana before Planet 107 was closed on 6 January 2022.
32. It was put to her that she had met Asana before the closing of Planet 107 that was why she introduced Asana to her husband. She denied that and said it was Asana who introduced himself to her and her husband and Asana explained the family line or connections.
33. She was asked and she confirmed her husband was not happy because she and Asana were close and her husband assaulted her when she was at the Chinese store opposite Planet 107, and she fell down.
34. She was asked and she said she could not recall that her husband punched her, she fell down and her husband kicked her. She could not remember Asana lifted her up. She denied and said she could not remember that she said her husband had an affair with a Tongoa/Paama woman. That was the first time she heard this.



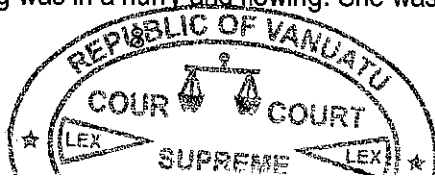
35. She was asked that her husband said to Asana, "*brother this woman wantem you you takem igo ...*". She said her husband did not give any right to Asana to take her. She confirmed her husband wanted to assault Asana and she pushed him away. She confirmed Asana gave her a phone and money. She confirmed her husband went up the road to Namburu Sesivi and she was at Agriculture Suppliers with Asana. She said she remembered she laid on the forehead of a parked truck there.
36. She denied trying to stop a bus. She denied opening the door of a bus and went inside the bus. She said she remembered part of what happened at Linping store but she could not remember other parts.
37. She was asked and she denied that she tried to kiss Asana inside the bus and tried to put her leg on top of Asana's leg and Asana pushed it away.
38. She was asked and she confirmed the bus stopped at the car park of Tebakor Shopping Centre near the gat of Pacific Paradise Motel. But she denied knowing how she walked to the Motel room as she was fully drunk. She was asked that she walked with a man who is not a member of her family to the Motel but she said she expected her husband to come.
39. She denied she and Asana held each other to the Motel room. She denied Asana asked her inside the bus that they will go to the motel and she accepted.
40. In the motel room, she was asked and she said she saw Asana's face coming close to her face, they were kissing or sexual intercourse occurred in the room downstairs, she did not know. She said she did not know that Asana told her to pray, and that after the pray, Asana asked her for sex. She fell asleep already, she did not remember the details.
41. It was put to her that when she was asked about the details, she said she was aware she removed her t-shirt (her top).
42. She was asked that she consented to have sexual intercourse with Asana, she said she was under the influence of alcohol at the time. Asana has a plan. She did not know. He tried to play a game and she did not agree.
43. It was put to her that in the beginning, she remembered she will sleep and Asana will look after her, but now she said she remembered Asana asked her to remove her clothes.
44. It was put to her that Asana said he asked her for sex, he noticed that she was dirty, he asked her to have a bath and he removed his clothes and came swim with her in the bathroom. She said she did not remember. It was suggested Asana said the complainant and he were kissing in the bathroom, he performed oral sex on her in the bathroom. She answered it may happen – yes. She confirmed she told the prosecutor that when she was under the influence of alcohol and went to get a bath, her head will be cleared.



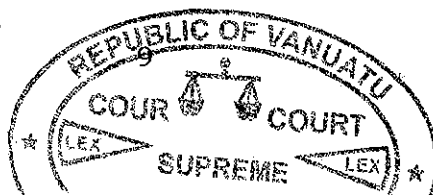
45. She was asked she understood what the defendant did to her in the room. She said her mind was not 100% clear. She was under the influence of alcohol. She did not have full control of her mind. It might be that what Asana said was true as she was under the influence of alcohol. Asana took advantage of her.
46. It was put to her that her husband had just assaulted her because of Asana, but yet she left her husband go and went with Asana. She said her husband was crossed with her because she took side with Asana.
47. She was asked she told the prosecutor that it was the first time, she must have felt guilty because she had consensual sex so she blamed Asana. She answered she did not say that she was guilty towards her husband because she had sexual intercourse with Asana, but it was her body, especially the bite marks on her body as she has a home, she has children. This affected her morally and physically.
48. She was asked and she admitted that she knew that having sex with a man outside marriage is morally wrong, and that she had realised then.
49. She was asked and she admitted that she had sex with Asana and that after sexual intercourse with Asana, she told him that she was a married woman.
50. She was asked and she said it might be at the time that Asana asked her to remove her t-shirt, she said she remembered that she removed her t-shirt.
51. She was asked that she went to lay on the bed as Asana said he performed oral sex on her. She said she did not remember. It was asked of her that Asana had sexual intercourse with her by penetrating her. She said she could not remember. It was asked that when Asana had sex with her she held him and they had sexual intercourse. She said she did not remember. She was asked they changed position during the sex when she was on top of him, and this was in the first room downstairs. She said she did not remember.
52. She was asked that during sex, she told Asana that "*Blong man blong mi olsem siborro, blong you itough tumas*". She said she did not remember. She said she did not remember.
53. She was asked that during the process of her sexual intercourse with Asana, she was in sexual mood while Asana bit her. She said she did not feel the bites. The bites were not painful at the time. The next morning, she felt the bites were painful. She looked herself in the mirror she saw bite marks on her face, chin, neck, shoulder and on her private parts. There were also blood stains on the bed sheets.
54. She was asked that Asana said when he gave her the love bites, she enjoyed them. She said she did not remember. She was asked about the bites that they were love bites, she said she did not accept or consent Asana gave her these bites.



55. It was put to her that when she agreed to go to the motel room, she agreed to remove her t-shirt, agreed to swim, agreed for oral sex on her in the bathroom, then on the bed, they showed that she agreed to have sex with Asana? She replied that when sexual intercourse occurred, it had just happened and followed that quick process or motion.
56. It was put to her that when they had sexual intercourse, she did not call for help. She said in the first room, Asana heard that her husband came and knocked at the door, he made sign by putting his finger on his mouth indicating that she must not make any noise.
57. She was asked that the reason she did not call out was because she understood her husband was there, her husband will find out and assaulted her. She said she did not deny anything. She answered the questions.
58. She was asked and she said after Asana went to the reception for another room, she was still in the first room. She did not remember he told her to change the room. Asana held her hand and pulled her and told her to hurry up. They both walked in the parking. She walked and she fell as it was slippery because of the rain.
59. She confirmed that when they both came outside the first room walking to the other room, they looked around and to ensure that her husband was not around.
60. She confirmed she fell down because it was slippery. Asana tried to help her. She remembered she fell twice. In the second room, she was asked that Asana left the complainant in the room to purchase food for them. She did not remember but she saw the dust of names and a box of milk. She remembered Asana came back in the room and she told him that her stomach was upset.
61. She was asked and she confirmed Asana wanted still to be with her in the room while both of them were still in that room, a staff member of the motel knocked at the door of their room.
62. The staff of the motel advised Asana to leave the motel room as the husband of the complainant was around and he might come and assaulted the defendant.
63. She was asked and she admitted while Asana talked to the members of the motel staff, she might come hide behind the door as she was not in a comfortable position at the time.
64. She said she was not aware that the motel staff members arranged for asana to get out of the motel. They took him in the motel mini-bus and dropped him in the town.
65. She was asked that based on what she remembered at the time, she was not too drunk as not agreeing to have sex with Asana at the time. She said she was under the influence of alcohol. How he took her to the motel, it was true there was sexual intercourse but she did not plan it with Asana. Asana pulled her hand. Everything was in a hurry and flowing. She was not in the mind.



66. It was put to her that she went with Asana at the Agriculture Suppliers, followed Asana to the motel, removed her clothes when asked showed that she consented to have sexual intercourse with Asana. She said there was sexual intercourse, it was a surprise with the influence of alcohol.
67. She said she agreed to remove her cloth when asked and this was at the second room.
68. It was put to her that based on what she can remember, based on what happened, Asana believed that she agreed to have sexual intercourse with him. She said she was close to Asana because he was her uncle. She said she did not consent for sexual intercourse.
69. She confirmed that in her statement to the police, she mentioned that she heard a man knocking at the door of the motel room on 6 January 2022 and told her that her husband was looking for her and that that staff will take some security and motel staff to come with her husband. They come and saw her and they went talking in the sitting room. She asked her husband why he fought her pointing to the white marks on her face which was swollen up. She said her husband told her he did not fight her.
70. She was asked and she admitted that her husband assaulted her earlier and she fell on the ground. She denied she followed Asana to the motel because her husband assaulted her.
71. On 8 January 2022, she and her husband went to the hospital for medical examinations. While the husband went to a shop, she sat outside the Vila Central Hospital Emergency and sent a message to Asana. She said the message was: "... youmitu bin walkabout, me wantem look you back again blo toktok". After sending the message, she called Asana and asked Asana to come and see her at the hospital.
72. She was asked when Asana came to see her at the hospital, she asked Asana about the person who assaulted her. It was suggested to her that Asana responded that it was her husband who assaulted her and that he (Asana) only gave her the love bites. She accepted saying "*hemi stret*".
73. She did not remember she responded "*mi save hemi work blo drunk ia*". She did not remember that she shook hands with Asana and told Asana to forget the incident as "*hemi work blo drong ia*".
74. Then she accepted that her husband arrived at that time at the hospital. She accepted that she told her husband "*man be you nao you kilim mi*".
75. It was suggested that her husband talked to Asana and asked Asana that he was the one who bited the neck of his wife. She said she did not remember.
76. She accepted that her husband continued to tell Asana that he had broken his heart. She also accepted that Asana apologised to her husband because he had broken his heart. She confirmed Asana said sorry to her husband.

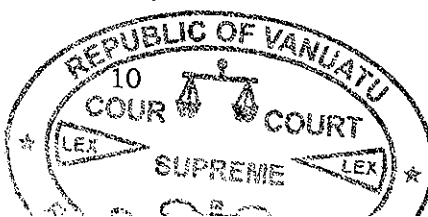


77. She accepted that her husband told Asana that if Asana did not want this case to go to the police, he must pay a fine to him of VT300,000. Asana said sorry, he did not have that amount of money as he could not travel overseas because of the Covid virus.
78. She accepted also that when her husband insisted, she talked to her husband defending Asana as Asana said he did not have that amount of money.
79. She accepted also that her husband told Asana: "... brother sipos you no gat woman, takem woman ia blo you". She accepted that Asana responded: "... mi nogat woman, mi save takem hem icome woman blo mi?".
80. Her husband walked away smoking a cigarette. When her husband came back, she accepted that she said Asana did not have the money "*hemi work blo drong ia*". She accepted her husband asked her to give back to him all his expenses he made on her. She accepted she cried. She accepted her husband came and pulled her out when she sat close together with Asana. She accepted that her husband told her to report the matter to the police. She accepted that her husband told her to tell Asana that she was going to report him to the police. She accepted that she did not say anything. She was asked and she accepted that she should not report this matter to the police but her husband put pressure on her to report this matter to the police.
81. She accepted that few days after 8 January 2022, she and her husband asked Asana to pay VT300,000 fine.
82. Natacha Combe was re-examined. She confirmed never met Asana before Planet 107 closed. She confirmed she did not ask Asana to rub her chest.
83. She said she remembered walking with Asana to Agriculture Suppliers; they came out from the bus at the parking outside the area of the motel. She said she could not remember how she went to the motel by bus.
84. She confirmed that when Asana asked her to remove her shirt, she removed it and she said she understood what she did at that time. She was also asked:

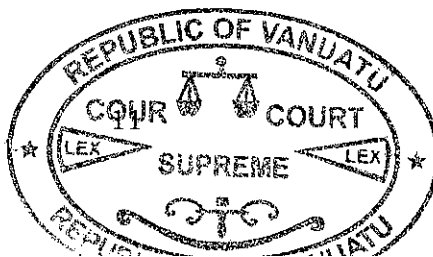
"Q: At that point when you removed your shirt, you understood what you agreed on?"

A: Bae igat sex bae ihappen. Mi no save exactly what happened but I knew that me ended up long bed wetem Asana ... I recalled that I was asked to remove my shirt long second room ...".

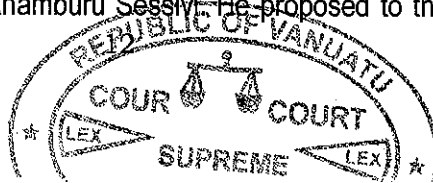
85. She confirmed the evidence that after a person knocked at the door of the first room, Asana told her to change the room to another room. When they walked outside to the other room, they watched if her husband was around. She was asked to explain, and she said the place they both walked was facing the entrance of the motel.



86. She confirmed her evidence in cross-examination that Asana went out and returned back to the room (second room) and told her that he will go down to town and he left. That was the last time she saw Asana.
87. She was asked about the suggestion of Asana that they had some sex in the bathroom of the first room, though she could not remember but after questioning by the defence counsel she remembered something.
88. She confirmed that on 8 January 2022, her husband asked for VT300,000 fine because he felt bad, was very cross and it was the first time.
89. She confirmed her husband told her to report the matter to the police. She said she reported the matter to the police because she sustained injuries on her body. She was hidden from her children. She and her husband argued everyday from the incident and it affected her morally and physically. To her mind, she reported this matter to the police because it was the first one. She asked Asana to come to the hospital. At that time, discussion of settlement was between Asana and her husband. She stopped both of them. She got injured in her body. Her leg was twisted. She thanked Asana for coming. She confirmed that the stomach upset occurred in the second room after the sexual intercourse. She also confirmed that a man knocked at the door of the second room and told her that her husband was looking for her. She asked to see her husband in the presence of a motel staff and security as she knew he might be cross and she was afraid he will argue with her and assaulted her.
90. The second prosecution witness is Christian Pierre Combe, the husband of the complainant. He is 46 years old. He is married to Natacha O. Combe, the complainant.
91. On 5 January 2022, he and his wife visited a nephew at Erakor Half Road at about 5:00pm with a bottle of 1.5Litre kava. He drank the kava with his wife and the nephew joined them with a 1.5Litre kava. Then they took a bus to Au Bon Marché, he bought a bottle of red wine and two VBs. They went to First Bucket Nakamal, they drunk VT100 shell kava each. He got 600ml kava to drink at his house. He and his wife went back home. He said they all drunk the same amount of kava that night. He drunk the 600ml kava with his wife at their home. Then they drunk the wine and the VBs. They went to Club 21. There, he paid four (4) VBs for him and four (4) VBs for his wife. They were at Club 21 until it closed at 3:00am.
92. They got a bus and went to Planet 107 to dance. At Planet 107, his wife paid a jug of VB, they drunk and he paid a jug of whisky. He drunk only one (1) cup as he did not drink whisky. His wife poured a cup of whisky for a friend who sat at the other side of the table inside Planet 107. His wife drank the rest of the whisky. Before Planet 107 closed the owner (Saby Natonga) gave him 2 VBs to drink. When Planet 107 closed at 6:00am, they went outside Planet 107. And outside near the door of Planet 107, Asana approached both of them and especially his wife. He did not know and had never met Asana before.



93. When they were in Planet 107, he came and sat outside but not his wife and she was dancing inside. His wife came outside only once to take him back inside Planet 107.
94. When Asana approached them outside Planet 107, he was close to his wife and his wife told him to shake hands with uncle. He shook hands with Asana and Asana told him he is one of his brothers. Outside Planet 107, there was a slope. Asana told them he was the captain of Ship Princess Mary. He was with a friend of his. He showed that man and said this man and others were his workmen on the ship. They climbed the slope up. Asana grabbed on his wife's hand stopping her from getting on the other side of the road. He said at the time he was crossed and wanted to assault Asana. He said his wife was drunk at that time. He told Asana and his friend to let go of them – they must go to their home. Asana came close to his wife. Asana held the hand of his wife to cross the road. He was really crossed. He said he cannot fight as he is a teacher. Asana tried to convince him and his wife telling them he will buy chickens wings and alcohol liquors, they were going to roast the chickens and drink alcohol at the couple's home. He said he told Asana they did not need him they will go home. He noticed that when he did not take note of his wife, Asana came close to her, held her hands closers to him. He was crossed he told Asana and his friend to let go of them. But still, they were still with him and his wife.
95. He purchased beers and cigarettes and shared with Asana and his friend. More and more, he noticed that Asana was closer to his wife. Asana massaged the back of his wife. He said his wife did not react but he said he did not trust Asana. He said he did not know that Asana was his uncle but his wife told him that Asana was their uncle. He started to trust and believe that Asana was their uncle. They all sat down outside the Chinese store. He had no more money on him. He left them and went to Au Bon Marché Manples and withdrew some cash money at ATM machine. He took a bus to ATM Au Bon Marché there. He went there alone. Asana held on his wife and sat there in front of the Chinese store. Asana held his wife as she was drunk and he held her backside. He was asked why he did not ask his wife to go home. He said he understood that Asana helped his wife and there was no other way. He thought he will go to ATM at Au Bon Marché because it was closer and then they will go to Erakor. When he returned from ATM, he saw that Asana still held his wife, he went in the store and paid a beer and drunk it with Asana. After the beer, Asana went back and held his wife. His wife laid on the wall and bent her head as she was drunk.
96. Then his wife walked at the other side of the Chinese building for about 3 minutes he thought to pass out water. She came back and sat at the same place near Asana. He assaulted his wife on her left jaw. Then the tension was high. His wife moved and called out as to why he assaulted her. He told his wife that he wanted them to go home but Asana still held his wife. When he fought with his wife, Asana tried to stop both of them. Asana took his wife away from him and talked to hear. He did not know what Asana was talking to his wife about. After the fight, his wife walked to the other side of the Chinese building again for about 3 minutes and she returned. She walked passed him and the man from Epi, she fell. He and Asana lifted her up.
97. His wife and Asana went and sat together again. About 5 minutes later, he remembered that his wife's relatives live up the hill at Anamburu Sessivi. He proposed to them to go up to Anamburu

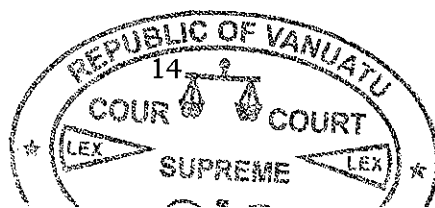


Sessivi. He assisted to lift up his wife so that they could go up the road next to Agriculture Suppliers up to Anamburu Sessivi. He wanted to hold his wife but Asana said it was alright, he would do it. He thought it was alright as Asana was his wife's uncle.

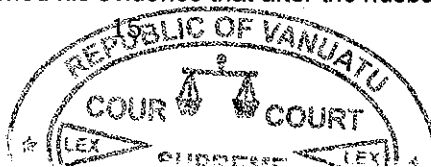
98. They were at the Chinese compound for about 1 hour. He went ahead first for about 5 – 6 meters. When he looked back his wife and Asana were no longer there. He run down the hill, he could not see them anymore.
99. He thought they might go to Paradise Motel as he knew that place because he went there plenty of times with his wife and children. He asked the man from Epi, he told him Asana slept at SIL building next to Coral Motel. They went to Coral Motel and checked they were not there. He thought man Epi and Asana planned this out and man Epi tried to slow him down. He run to Paradise Motel and man Epi run behind him. At the reception of Paradise Motel, he asked for the room his wife and Asana went to. The receptionist told him the room number. He went to that room and the man Epi followed him. He called the name of his wife, she did not answer. He knocked at the door, there was no response. He went back to the receptionist Melissa and asked for the key of the room. Melissa told him she was not allowed to give out the key of the occupied room. He insisted and forced Melissa to give him the key, Melissa told him the boss of Paradise Motel took all the keys. His mind was troubled. He went back and called out the name of his wife and knocked at the door again. There was no answer or response.
100. He went to Au Bon Marché and returned 30 minutes after at the motel. The receptionist told him a man and his wife just got in that room. He went to Port Vila town. There, he asked his wife's friends whether she was with any of them. They told him no. He returned to Paradise Motel. He was cross at that time. He was having a dispute with the staff members of Paradise Motel.
101. He was told to go to a specific room. He went to that room. Asana and his wife have just left that room. It was about 2:00pm o'clock. The room was empty. He came back to the reception and sat outside the reception. He got lost and confused. He sat outside the reception until 3:00pm o'clock. He asked about his wife to the workmen of the motel, they said no. He said he knew they were hidden his wife inside. He said he paid a workman to ask a technician to find out which room his wife was in. 30 minutes after, the staff of the motel told him that his wife was in specific room number.
102. He was told to remain there. The staff went to see his wife and asked if she wanted to see him. She accepted. She asked the staff to take him to her. The staff was accompanied with two (2) others (a security officer and a staff member). They told him not to assault his wife at the motel as it was against the rules of the motel. He and 3 others went up to the room. He knocked at the door, his wife came and started to argue with him asking him why he assaulted her. She showed the right jaw where there were tracks of bites. He told his wife, he was not responsible for the bites.
103. On the 8th of January 2022, they discussed and decided to go to the police. They went to the police station in the town opposite Au Bon Marché, they were told, the police there did not receive complaints. The police directed them to go to another police station.



104. Mr Combe and his wife decided not to go to that police station. They decided to go to Asana's house at Pango. He wanted Asana to explain to him his actions. His wife also wanted to talk to Asana. They got a woman who used to live with Asana and she told them they were separated for some months back. That woman gave them the phone number of Asana. Then, they went to hospital for medical check up. His wife called Asana.
105. Asana came. And Mr Combe came back from the shop and joined his wife and Asana while they were discussing outside the hospital emergency. His wife told Asana that this incident should not have happened but Asana used the situation to make it happen. He said his wife told Asana that she will make medical check up to put the complaint to the police against him.
106. Asana said sorry and asked them not to put the complaint to the police. They could settle it. Asana said he is the only son of his mother and his parents died already. He said he told Asana that they will settle it in custom. He said he proposed to Asana to pay him a fine of VT300,000. Asana accepted and wanted a week to pay.
107. He said he suspected his wife will say something to support him but she did not. He said he was crossed and he told his wife to stay with Asana. His wife called out again to him. He told her it is better she stayed with Asana. And Asana said yes if she came to him he will look after her. He said his wife looked at Asana and told Asana to stay where he was. His wife told him to go home with her. Then they returned to the Paradise Motel.
108. They stayed in the motel for another week because of the tracks of the bites on his wife's body. She was terrorised and it was better to go home when she was alright. They both decided to go to the police.
109. Mr Combe was cross-examined. She confirmed his evidence that his wife loved dancing. He denied she came outside of Planet 107. She explained that she went to the toilet 3 times and she told him. She danced just next to him. He was outside but not his wife.
110. He confirmed his evidence that outside Planet 107, Asana approached them and in particular his wife. Asana said he was his wife's uncle. He confirmed that his wife spent lots of time together with Asana after Planet 107 was closed. He confirmed they spent about 1 hour at the Chinese shop yard. He did not know what his wife and Asana were talking about. He accepted that his wife did not resist Asana. His wife was close to Asana instead of himself. That was why he was cross and Asana held her hand.
111. He accepted he assaulted his wife because he was talking to Asana. He admitted he assaulted her once only. He denied that his wife was crossed to him and told him that he had an affair with a Tongoa/Paama woman. He could not remember he told Asana to take his wife.

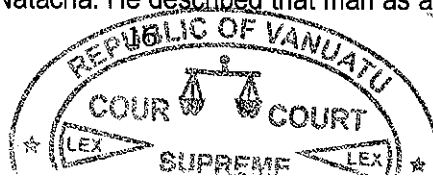


112. He met his wife on 6 January 2022 and there were black marks on her shoulder down to her back. He confirmed Asana came and met his wife at the hospital. He denied that Asana told his wife that he assaulted his wife. He denied he told Asana that he bites his wife. He denied he told Asana that he broke his heart.
113. He said Asana said sorry to his wife. He said he never mentioned the bites on the body of his wife to Asana. He confirmed that he asked Asana to pay a fine of VT300,000 because he felt sorry for Asana. He denied the fine was because Asana broke his heart. He denied that the fine was because Asana broke his marriage. He confirmed Asana said he did not have that money because of the Covid. He denied his wife told him Asana did not have that money. His wife did not support Asana. He denied he told his wife to give him back his expenses on her. He denied his wife was crying at the hospital. He said at the hospital Asana went first and he and his wife just gone. He said he and his wife went to the emergency. He accepted he contributed to the pain on the body of his wife as on 6 January 2022, he assaulted her.
114. He accepted that sexual intercourse between his wife and Asana but he did not know whether his wife consented or not.
115. Batick Vincent Houl was the third prosecution witness. He worked at Paradise Motel as maintenance person. He worked there for 6 years. He worked on 6 January 2022 and he started work at 8:00am o'clock in the morning. He fixed a shower at room number 298. Then, a staff of the reception called him to go and see a drunk man. Room 298 was on a different building. At the reception, they told him to go to room 800.
116. It was about 8:45am. I went to room 800 and saw the husband of the complainant who was sitting at the door. He did not know the man. The man asked him of his wife and he told him he did not know where she was. Then the man moved to the entrance of the motel, and went outside the gate of the motel. The man was drunk. Then, he said he saw the wife and that man she went into the motel room with came out from the room. That man pulled the hand of the woman and the woman followed and they walked. The woman was too drunk. He saw the woman slipped and fell down. He saw the man held the hand of the woman because she was too drunk. When the woman fell down, she banged the back of her head on the cement floor. The man tried to lift her up but he could not. So, he went and helped lifting her up. The man he described was the defendant Asana Kelep. They walked in a hurry. The man was holding the hand of the woman and walked in the front. The woman followed him. At that time, the rain stopped the woman slipped and fell down. She also fell down the second time on the tiles.
117. They went to another room in the other building upstairs. They went to room 300. The woman said nothing. The man (Asana) said nothing either. He had come to know that the woman was the wife of the other man who was sitting at the door of the room in the other building.
118. Batick Vincent Houl was cross-examined. He was told that the name of the woman was Natacha. He said he did not know her. He confirmed his evidence that after the husband of Natacha left, Natacha



and Asana came outside the room they were in previously. He was not there when Asana went to the reception. He was only there when they both came out from the room they were previously. He confirmed his evidence that he was in front of the entrance when they walked pass before the woman fell down. He insisted that he saw Asana held the hand of the woman when they walked passed him before they went up to the other room in the other building upstairs. He saw Asana held the hand of the woman and walked in front and the woman followed him.

119. He saw the woman walked but she was not in her normal state. She fell down while the man held her hand as it was raining at the time. He accepted it is possible she fell down as they both walked hurry. The woman fell down again on the tiles as she was drunk and she slipped and fell down.
120. Angela Daniel was the fourth prosecution witness. She worked at Paradise Motel as a receptionist. She worked on 6th January 2022 and she started work at 7:00am o'clock in the morning. At about 9:00am, she saw Asana and Natacha came to Pacific Paradise Motel. She knew both of them as they were their regular guests at the motel. Natacha used to come to the motel with her husband. She saw Natacha was too drunk and she fell down and Asana lifted her up before they both came inside the reception. Natacha fell down at the reception door.
121. Asana asked for a room. Natacha stood there with Asana. Asana held on Natacha and Natacha stood there. She said Natacha was too drunk. She did not talk. Natacha looked she was too drunk. Asana paid the room number 868. It was on the right side of the Pacific Motel. It was one of the rooms of 800. Then both went in that room. Asana held on Natacha and they went in the room.
122. About lunch time, Asana came to the reception and asked that they changed the room. She told Asana, they were still room available. Asana paid for that other room. The invoice/receipt was issued in the name of Asana Jones. The room was paid on 6 January 2022 ("P1"). The room number was 358 on the left side of the Paradise Motel. Asana was in a rush when he came and paid the room. He was walking fast when he came to pay the room. She saw the level of drunkenness on Asana was lowered.
123. Angela Daniel was cross-examined. Natacha did not ask any help from her. She knew Natacha's husband. Natacha was hanging on Asana.
124. Joshua Viradiu was the fifth and last prosecution witness. He lived at Erakor Half Road. He worked at Thai Viet. Thai Viet is at Tebakor, opposite Agriculture Suppliers. He was a mechanic. On 6 January 2022, he was at work. Somewhere at 8:00am in the morning he was with all the staff who witnessed what happened there that morning. They were at the place of work at Lingping store – he saw 4 drunk people. A man and his wife with 2 other men. She recognised the woman was Natacha and her husband. They were teaching at INTV. He did not recognise one of the two others. These 4 people were on the other side of the road at the Chinese store about 13 – 15 meters.
125. He saw the 4 of them. Natacha and her husband were sitting down. The other man took his mobile phone and money gave them to Natacha. He described that man as a baldhead. Some of his work



mates knew that man. He identified that man as Asana in the defence dock. Natacha was laying on and bent herself. Her husband also was drunk. The 4 drunken people were talking and walking toward Agriculture Suppliers. Natacha's husband walked up the hill toward Anamburu. Asana forced his friend (man Epi) to follow Natacha's husband. Then Asana pulled on Natasha towards Agriculture Suppliers. Asana pointed his finger to his friend to follow Natacha's husband up the hill to Anamburu. Asana's friend followed Natacha's husband up the hill to Anamburu.

126. Asana and Natacha walked to Agriculture Suppliers. Natacha laid on the trucks there. Then Natacha and Asana stopped a bus. Asana stopped a white bus. Asana held Natacha and stopped the bus. Asana held on Natasha and Natacha went into the bus. He said Asana rounded his hand around Natacha and lifted her up to go inside the bus.
127. Joshua Viradiu was cross-examined. He confirmed he and other workers stood 13 – 15 meters and watched what happened on the other side of the road at Linping store. Natacha's husband was laying down at Linping store's door. He saw Asana gave his mobile phone and money to Natacha. He saw Asana talking to his friend, pointing his finger pointed to Natacha's husband going up the hill and Asana talking strongly to his friend to Natacha's husband up the hill of Anamburu. The Asana's friend followed Natacha's husband up the hill and came back down to check on Asana and Natacha but when he came down they left already. He went back up the hill to join Natacha's husband and they both came back down but Asana and Natacha were no longer there.
128. At Linping store, Asana held on Natacha when the 4 drunken people walked towards Agriculture Suppliers. Then Natacha's husband walked up the hill. He denied Natacha made a sign to Asana to come to her. He denied Natacha stopped the bus. Asana and Natacha were together at the bus stop and Asana stopped the bus. He confirmed his evidence he saw Asana rounded his hand on Natacha and put her in the bus. He denied he saw them talking in the bus.

B. Defence Evidence

129. Defendant Asana Kelep exercised his right pursuant to Section 88 of the Criminal Procedure Code Act to remain silent and not give evidence.
130. Joe Yaoyao was the only defence witness. He is from Tanna Island. He was a bus driver. He drove his own bus on 6 January 2022. As a bus driver, he drove everywhere. Before becoming a bus driver, he was employed in the night clubs as security officer. He worked as a security officer for long time at Salili night club, Mabeka, chief security officer at Trader Vicks. As a security officer he looked after the drunken people of the clubs. He talked to drunken people and put them in the taxi.
131. On 6 January 2022, in the early morning of that day, about 8:00am he was driving his bus from Port Vila toward Blacksands, the place he lives. He saw a woman stopped his bus. He did not recognise the woman. The woman opened the bus, she came in the bus but she did not close the door of the bus. The woman turned and looked at the road up the hill of Anamburu Sessivi. He saw the defendant

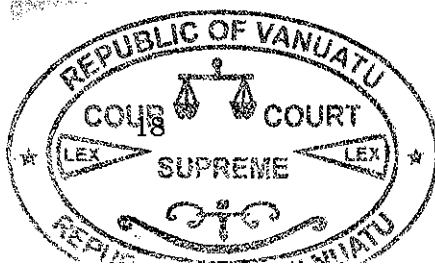


walked into the bus. The woman and the defendant sat on the chair behind him. He asked them where they were going, they told him Tebakor. He looked at the mirror of the bus, he saw the woman and defendant held each other. He saw the woman was kissing the defendant and she put her leg on top of the defendant's leg. The defendant turned and said "hiss" and pushed the woman's leg out of his leg. Nothing else happened, they held on each other only. He dropped them at Paradise Motel. The defendant Asana paid the bus. At the time, there was no other passengers in the bus. Asana paid the bus when they were outside and they both walked inside the Paradise Motel.

132. He was taken to the day when the trial started on 21 September 2022 when he was outside the Court waiting to give his evidence, and he asked the woman in white shirt when the Court sat to hear the case. He was told not to come in Court.
133. While he was outside waiting to give his evidence, an old man he did not know, approached him and asked him whether he came to witness a case. He answered yes. The old man asked him if he was the driver who drove his wife and the defendant to Pacific Paradise Motel, he answered yes. The husband of the woman asked him if his wife was asleep because she was too drunk, he said he answered no. The husband of the woman again asked him as to who stopped the bus, he said he told him his wife stopped the bus. He said he did not know that the old man who talked to him was the husband of the woman.
134. Yaoyao was cross-examined. He did not know about Asana. He did not know of the woman who followed Asana. He did not see Asana before he came to court. He started his bus service at 5:00am or 5:30am o'clock in the morning. He was asked about the number of people he picked them up, he said he could not remember. He remembered the place he dropped his passengers. On 6 January 2022, he remembered he dropped Asana and the woman at the motel. He denied Asana told him to tell the court of the details that they were kissing and the woman put her leg on top of the leg to Asana inside the bus. He answered no. he said he saw the woman stopped his bus. He denied that a witness saw Asana stopping the bus, the woman was laying on the parked truck and when the bus was stopped Asana pulled he hand of the woman and held her into the bus. He said no. he said when the bus arrived, the woman stopped the bus, she opened the bus and came inside the bus, but he did not see that Asana pulled the woman towards the bus. He denied Asana told him to make the statements he made in the court. He said he testified of what he saw.
135. That is the end of the defence evidence and the end of the case.

V. Facts Findings, credibility and considerations

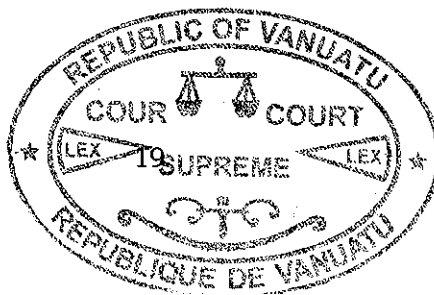
136. I assess the admissible relevant evidence to determine the outcome of the trial. I assess the prosecution and defence witnesses' evidence with equal value. I assess each witness on his or her own merits.



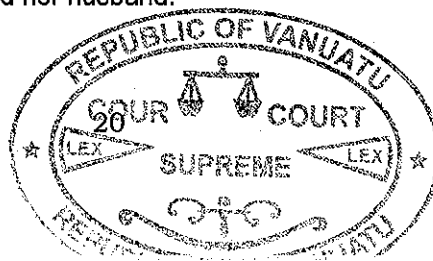
137. During the trial, I observed the demeanour of each witness and I give consideration when relevant to do so. In assessing the evidence, I need to look for consistency within each witness accounts; consistency when I compare that witness' accounts with other witness' accounts; consistency when I compare each witness accounts with documentary material evidence (if any); and I need to consider the inherent likelihood, or not, of the witness' account.
138. In this trial, the defendant exercised his right to remain silent and do not give evidence himself. That is his right. He should not be criticised for doing so. If I were to draw inferences, they could not be guesses or speculations. They had to be logical conclusions from other properly established facts. Adverse inferences are to be drawn only if they are the only available inferences to be drawn. If there are more than one inference that were available, the inference most favourable to the defence must be drawn.
139. The caution statement of police officer Elivna Nikiau dated 14 April 2022 was tendered by consent. It will impact on the findings of facts.

A. Evidence of physical sexual intercourse between the defendant and complainant

140. Evidence is that sex occurred between the complainant and defendant on 6 January 2022 at Paradise Motel in the second room upstairs.
141. The prosecution focused on the sexual intercourse that occurred on the 6 January 2022 in the second room upstairs in the information charge they laid against the defendant in the information dated and filed 2nd June 2022 with particulars.
142. The complainant gave detailed evidence of how sexual intercourse occurred in the second room upstairs of the Paradise Motel on 6 January 2022.
143. The defence did not dispute that sexual intercourse occurred between the defendant and the complainant in the second room upstairs.
144. In the cross-examination of the complainant, it was suggested that, in the first room of the Paradise Motel, the defendant and complainant were kissing; they prayed; the complainant took a bath as she was dirty; he performed oral sex on her in the bathroom; they came on the bed; she performed oral sex on him; they had sexual intercourse on the bed and the defendant made love bites on the body of the complainant.
145. The complainant denied that sex occurred in the first room. She denied the detailed suggestions of sexual intercourse made by the defendant in the ground floor.



146. There was evidence that the complainant was drunk when she and the defendant got into the Paradise Motel rooms (see evidence of complainant, evidence of her husband, Christian Combe, evidence of Batick Vincent, evidence of Angela Daniel, evidence of Joshua Viradiu).
147. The evidence showed that the complainant and her husband met the defendant outside Planet 107 nightclub. The complainant and the defendant were close. The husband was not happy with the complainant (wife). He assaulted her and she fell down. He wanted to assault the defendant, the complainant defended him. The defendant lifted her up. The husband of the complainant left the complainant with the defendant and went up the hill toward Anamburu Sessivi area.
148. The defendant and the complainant took a bus to Paradise Motel. The complainant recalled the bus stopped at the entrance of the motel.
149. The defence witness Joe Yaoyao described what the complainant did in the bus and showing the defendant and the complainant were close. That evidence was not discredited.
150. It is a fact that on the suggestion of the defence, sex occurred between the defendant and the complainant in the first room. The complainant was drunk. She did not remember the sexual activities described or suggested by the defence in the first room but she said she remembered her husband came, called her and knocked at the door, she wanted to open the door, the defendant made a sign to her not to make any noise. She did not respond to her husband.
151. There is evidence that the defendant and the complainant changed the room from the first room to a second room upstairs. The complainant confirmed that when they changed the room, they were watchful as the husband might be around.
152. There is evidence that it was raining day, it was slippery. The complainant fell on the floor twice and got helped by the defendant and the motel staff (Batick Vincent) to the second room.
153. In the second room upstairs, the defendant and the complainant had sexual intercourse in that room. The complainant had clear recollection of the sexual activities occurring in the second room. The defendant asked her to remove her top. She removed it. She gave evidence she understood what she was doing and why she was doing it as sex happened as a consequence. In her re-examination by the prosecution, she confirmed that Asana asked her to remove her top (shirt), she removed it and she said she understood what she did at that time and why that "... bae sex bae ihappen ... Me ended up long bed wetem Asana".
154. On 8 January 2022, the husband of the complainant put pressure on her to report the matter to the police because he was hurt and he was cross. The complainant's evidence was that she put the report because she had injuries on her body, she was hiding from her children and the incident caused disputes between herself and her husband.



155. On 8 January 2022, the complainant's evidence was that she called the defendant to come and meet her at the hospital. The defendant came and met her at the hospital with her husband. Her husband was hurt and was cross. Her husband asked the defendant to pay a fine of VT300,000. The defendant said he did not have that amount. The husband of the complainant and the defendant argued. The complainant said she stopped them.
156. Based on the evidence of the complainant, it can be inferred that the complainant and her husband decided to put the complaint to the police not because the complainant did not consent to have sexual intercourse with the defendant on 6 January 2022 on the second floor (second room) but because the defendant did not have the money to pay the fine of VT300,000 to the husband of the complainant who was hurt by the sexual intercourse of his wife with the Defendant.

B. Application of law to facts

157. The question to ask is what is true consent? The prosecution say a number of cases in Vanuatu have discussed this issue in a number of cases outlined below:
158. In the case of **PP v Jack Polo**, the court discussed the following:

True consent means consent that is given **voluntarily by someone who understands the nature and quality of the sexual act and was able to make a rational and free decision about it.**

True consent is not one given as a result of violence or threat of violence.

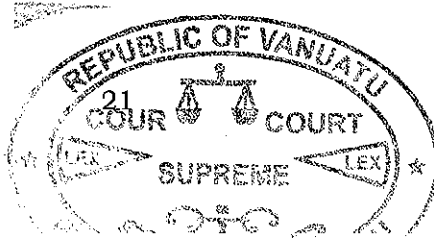
In another case **PP v Tor [2003] VUSC 101**, Treston J started the following:

When I refer to the issue of consent, consent means of course agreement given by a person who is able to understand the significance of what is about to happen and who is able to make an informed and a rational decision as to whether to consent or not.

Any consent must be freely given. It is important to distinguished between a consent that is freely given and submission to what the complainant may regard as unwanted but unavoidable. For example, submission by the complainant because she was frightened of what might happen to her if she did not give in, is not true consent.

Further in the case of **Siply v Public Prosecutor [2016] VUCA 22; CRAC 07 of 2015 (15 April 2016)** at [29]: the Court of Appeal upheld the decision of the trial judge where it stated the following:

It was not the obligation of the court to request a medical report but even if the judge had asked the prosecutor for more information on the topic it is difficult to see what could possibly have been provided. The victim clearly stated the extent of her intoxication and limited recall, she was cross-examined about it and the judge was entitled to conclude, as he did, that this was one of those not uncommon cases where the victim was incapable of giving true consent because of her level of intoxication, whatever that level actually was.



159. The prosecution submits that the consent given by the complainant does amount to "true consent" according to the definition of true consent explained in the above cited cases.
160. The defence observed and submitted that the prosecution in their opening statement said that the complainant only recalled moving to the other motel room to escape the husband then had sexual intercourse with the defendant. Though, during cross-examination, it transpired that a sexual intercourse did occur on the ground floor. The prosecution had not cleared this up, to add another charge to cover the new evidence of rape. It seems from their closing submissions that they are agreeing that the sexual intercourse that occurred upstairs was consensual, though, the ground floor sex was rape. A similar situation occurred in *McEwen v Public Prosecutor* [2011] VUCA 32, the Court of Appeal stated:
42. *The only other matter to which we should avert is the unchallenged allegation that the prosecution opened this case on the basis that the complainant was awoken from her sleep to find the accused having sex with her.*
43. *That is not the evidence which emerged. If it had been, the outcome may well have been different. The misrepresentation was raised at trial by Mr McEwen's counsel but not altered by the prosecutor. That should have occurred immediately it was apparent that there was no evidence to support it. Apparently it was a bone of contention between counsel throughout the hearing.*
44. *Whenever a statement is made in opening which is not later sustained by the evidence, the prosecution has a clear duty to make the appropriate concession and withdraw the allegation. It appears not to have done so in this case.*
161. As to the sexual intercourse on the first floor, I agree and accept the submissions of the defence counsel that the prosecution had formed the charge against the defendant surrounding the facts relating to the intercourse at the second floor upstairs. Though, it transpired that during trial that there were evidence of two sexual encounters, the first being on the ground floor and the second being upstairs. The prosecution only based their charge on the second floor sexual intercourse. During the trial, the complainant's evidence suggested that she consented to the sexual intercourse on the floor upstairs (initial charge of the prosecution). The complainant did not recall the sexual intercourse that occurred on the ground floor. The prosecutor did not press any further charges to cover up the sexual encounter on the ground floor or make necessary amendment. It is therefore not open to the Court to make findings or convict the Defendant on the first sexual encounter.
162. As to the sexual intercourse that occurred at the floor upstairs, the complainant though under the influence of alcohol understood or was able to make an informed decision to having sexual intercourse with the defendant. The complainant's evidence established that clearly under her cross-examination and confirmed this in her re-examination.
163. From the evidence prior to entering the motel, entering the motel and moments before the sexual intercourse, the complainant was conscious and consented to the sexual intercourse upstairs. She did not show any signs of resistance. She did not sought help. She did not respond to her husband

calls. She did not show any reluctances when she accompanied the defendant to the top floor where the second sexual encounter occurred. She only called for her husband when she knew the defendant had left sight and due to her guilty conscience, she asked that her husband be accompanied with the motel staff.

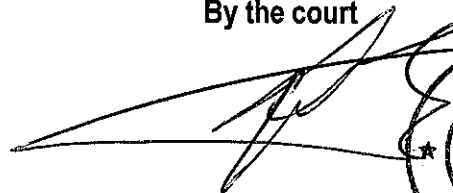
164. Due to the events and circumstances, the defendant under a reasonable person's position believed that the complainant was consenting to the sexual intercourse.
165. This conclusion is supported by the conversations that occurred outside the emergency (hospital) area on 8 January 2022 which is relevant as it directly proves the defendant's innocence. The defendant, after the complainant called her to come and meet her at the hospital, had intended to pay a fine to pave peace between him and the husband of the complainant who is significantly hurt. The complainant is more concerned about the injuries in her body and she admittedly repeated "*wok blo drong ia*". The sexual intercourse occurred between two consenting drunkards. From the evidence, the Court is left with a reasonable doubt as to the nature of the consent.
166. As a consequence, the defendant must be acquitted of the charge of sexual intercourse laid against him in this case.

VI. Verdict

167. Defendant Asana Kelep is found not guilty of sexual intercourse charged against him. He is acquitted accordingly.

DATED at Port Vila, this 25th day of July, 2025.

By the court


Hon. Chief Justice Vincent Lunak

