

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

Criminal  
Case No. 25/5 SC/CRML

PUBLIC PROSECUTOR

v

CLIFF ESTAPAS

Dates of Trial: 28-29 October 2025  
Before: Justice V.M. Trief  
In Attendance: Public Prosecutor – Mr D. Liu  
Defendant – Mr T.J. Botleng; Defendant present  
Date of Decision: 29 October 2025

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VERDICT

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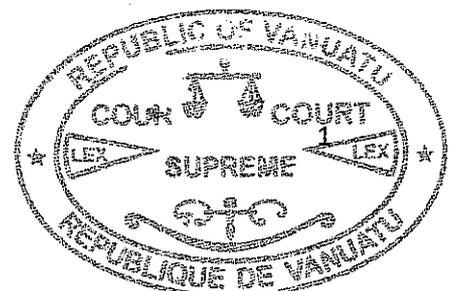
A. Introduction

1. The Defendant Cliff Estapas is charged with sexual intercourse without consent contrary to ss 90 and 91 of the *Penal Code* [CAP. 135].

B. The Law

2. Paragraph 89A(a) of the *Penal Code* provides as follows:

89A. 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*

3. Sections 90 and 91 of the *Penal Code* provide as follows:

90. *Any person who has sexual intercourse with another person –*

(a) *without that person's consent; or*

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

(i) *by force; or*

(ii) *by means of threats of intimidation of any kind; or*

(iii) *by fear of bodily harm; or*

(iv) *by means of false representation as to the nature of the act; or*

(v) *in the case of a married person, by impersonating that person's husband or wife; or*

(vi) *by the effects of alcohol or drugs; or*

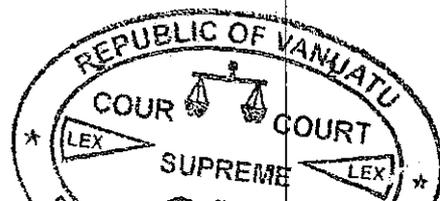
(vii) *because of the physical or mental incapacity of that person;*

*commits the offence of sexual intercourse without consent.*

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

*Penalty: Imprisonment for life.*

4. The charge of sexual intercourse without consent has the following 3 elements or legal ingredients which must be proved in order for a conviction to be entered:
- That sexual intercourse took place between the defendant and the complainant; **and**
  - Without the complainant's consent; **and**
  - That the defendant knew that there was no consent or could not have had a reasonable belief that the complainant was consenting at the time that the intercourse occurred.
5. The Prosecution had the onus of proof and was required to establish the allegations beyond a reasonable doubt before a finding of guilt could be made in respect of the charges. The defendant was not required to establish anything.
6. The trial commenced as to the amended charge filed on 9 September 2025. During the cross-examination of the complainant thus before the Prosecution case closed,

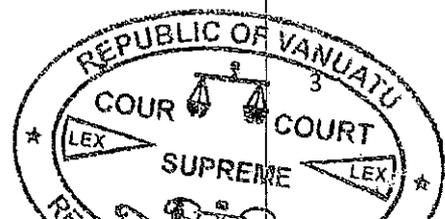


Mr Liu sought leave for the charge to be amended pursuant to s. 139 of the *Criminal Procedure Code* [CAP. 136] ('CPC').

7. Having heard both counsel, I granted leave for the amendment and Mr Liu handed up a copy of that Amended Charge dated 28 October 2025 in which the charge as amended was set out. The only change to the charge was in the timeframe in which it is alleged that the offending occurred – that it is alleged to have occurred between October 2024 and October 2025.

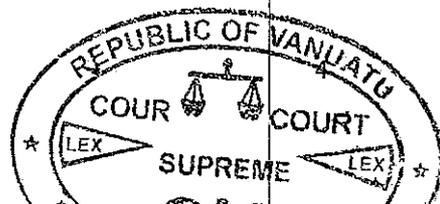
C. Evidence

8. The witnesses' demeanour was a small part of my assessment of each witness. I looked more for consistency within the witness' account; consistency when comparing the witness' account with that of another witness; and considered the inherent likelihood, or not, of the witness' account.
9. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Adverse inferences are to be drawn only if they are the only available inference to be drawn. Further, if more than one inference was available, the inference most favourable to the defendant must be drawn.
10. The Prosecution called one witness – the complainant. The defendant elected to give evidence and also called his wife to give evidence.
11. The complainant IT (name suppressed) gave evidence that she is from Vatop village. She stated that one night, she was asleep inside their house and heard a man calling her. It was Mr Estapas who she knows by the names, "Kominis" and "Cliff." He is a cousin brother of her father; she calls him, "Daddy." He pushed his head through the window in the bamboo walling. He told her that her boyfriend was waiting for her at the toilet. So she came outside and followed him to the bush toilet by the garden, he squeezed her hand tightly and told her that if she did not remove her clothes, that he would tell everyone all her secrets. He made her lay down by the side of the toilet, he was not wearing a shirt but just his blue sportswear pants and forced her to remove her top, he removed all her clothes.
12. He lay down on top of her tummy and put his penis inside her vagina ("*Hemi karem aot bol blo hem, hemi pusum l kam lo malmal blo mi*"), she was crying and he had sexual intercourse with her until he ejaculated ("*Hemi stap tekem mi, mi stap cry, after mi luk wan white samting i ron aot lo bol blo hem*"). She stated that he pushed his penis in her vagina 4 times. He also pushed his fingers into her vagina and licked her vagina. She said that when he was pushing his fingers in and out of her vagina, she cried because it was painful. When he was having sex with her, she was crying



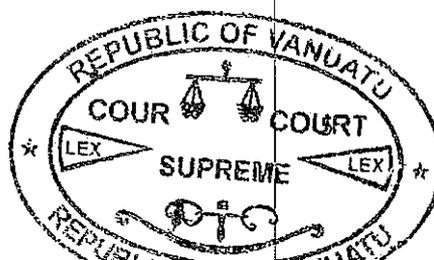
and told him to stop but he held her tightly and continued ("Time hemi stap tekem mi, time mi stap cry, mi talem se bae hemi stop, be hemi stap holem taet mi."). She could see his face in the moonlight. He told her that she must not tell anyone including her mum.

13. After that, he told her to go to her boyfriend's house and she did, and he went to his house. She called her boyfriend but he did not wake up so she returned home, and cried on her bed. In the morning, her mum and dad asked her repeatedly what had happened but she was scared to tell them. She left the house and saw a sister of hers, she told her sister what had happened, that sister told her mum and then they made the complaint to the Police.
14. In cross-examination, it was put to IT that it was dark so she could not have seen that Mr Estapas' shorts were blue or that his sperm was white. She replied that there was moonlight. It was put to her that it was not Mr Estapas who called her through the window. She replied that it was him, she saw his face and he called her. She saw his face because he was standing by there was a bright solar light next to their house. It was put to her that she could not see through the bamboo wall of their house. She replied that there were small holes in the bamboo walling that she could see him through. She said that the bamboo walling had rotted, he lifted up the bamboo, moved her mosquito net and she recognised him.
15. She was asked to say the date the offending occurred – she said 29 April 2025. She could not remember the date the complaint was lodged with the Police. Her mum came with her to make the complaint but stayed outside when she spoke with the Police. It was put to her that she had not stated in evidence-in-chief if Mr Estapas fingered her with his right or left hand, or whether she was lying down when he fingered her. She replied that she forgot to say. She said that Mr Estapas fingered her 4 times.
16. It was also put to IT in cross-examination that she was lying on the floor so could not see Mr Estapas through the cement at the base of the bamboo wall. She replied that when he called her, she got up. It was put to her that on 29 April 2025, Mr Estapas was in custody at the Correctional Centre on Santo. She agreed that he was released from custody in July 2025. She agreed that Mr Estapas having sex with her happened once and not on 29 April 2025 as she had said, but in 2024. She stated that she had forgotten the exact date.
17. It was put to IT to say which was true – that she removed her clothes or Mr Estapas removed her clothes. She stated that she removed her shirt and skirt, and he removed her panty and the rest of her clothes. It was put to her that she had not specified if he used his left or right hand to remove her panty. It was put to her that Mr Estapas had not pushed his penis in her vagina. She replied, "No." It was put to



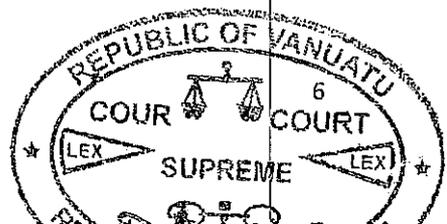
her that she did not say which hand Mr Estapas used to remove her clothes when she was lying on the ground. She said he used both hands.

18. It was put to her that Mr Estapas' evidence would be that he was not at Vatop village at the time. She replied, "No." It was put to her that Mr Estapas did not put his penis in her vagina. She replied, "No." She also answered, "No" that Mr Estapas did not ask to put his penis in her vagina, and that she could not see his face when he put his penis in her vagina. It was put to her that Mr Estapas did not call her at her window and that she could not see through the thatch. She did not agree. It was put to her that she did not hold a torch to shine his face. She replied that there was moonlight. She agreed there was no spotlight at the toilet to shine his face. She stated that the solar light is at the back of their house, that she was facing it. It was put to her that that solar light was not bright enough for her to identify Mr Estapas. She did not agree.
19. In re-examination, IT stated that she knew that Mr Estapas was calling her because she recognised his voice. She also saw him in the moonlight. When asked to explain her answer about the small holes in the bamboo walling, she said that she put her eye to the holes and saw Mr Estapas standing outside. She explained that she said, "No" to the question that Mr Estapas did not ask to put his penis in her vagina because she did not want Mr Estapas to do that but he forced her. She also explained that she said, "No" to the question that she did not see Mr Estapas' face when he put his penis in her vagina because he blocked her face.
20. None of the matters put to IT in cross-examination displaced her evidence. She maintained her account. She confirmed that it was a moonlit night. She confirmed that she recognised Mr Estapas' voice calling her and saw that it was him as he was standing in the light of the solar light behind the house, and she followed him to the bush toilet. There were questions about her lying down on the floor and not seeing through the cement at the base of the wall, or not being able to see through the bamboo walling. However, with the solar light illuminating him outside, in her darkened room, she would be able to see him through the small holes of the bamboo walling. She gave dates of 29 April 2025 and later of 2024 when the alleged offending occurred. Both of those dates are within the timeframe in the amended charge, that the alleged offending occurred sometime between October 2024 and October 2025. She maintained that Mr Estapas called her at her house, she followed him to the bush toilet and he forced her to remove her clothes, he removed the rest of her clothes and pushed his penis into her vagina, pushed his fingers into her vagina and that she did not want him to do that but he had forced her. I accepted IT as a witness of truth and accepted her evidence.
21. After the mid-afternoon break and whilst IT was still under cross-examination, Mr Botleng raised that there were Police officers seated in the Courtroom who had



communicated with IT whilst she was giving her evidence. At that point, all Police officers had left the Courtroom. I stated that that was unacceptable behaviour – that no one is to communicate with any witness whilst he or she is giving their evidence. I asked Mr Liu to communicate that to the Police. The cross-examination continued for another hour after that in which Mr Botleng put the defence case to her. I consider that the defence had the opportunity to put its case to IT without Police officers in the Courtroom and that it was not prejudiced by any suggestion that other persons in the Courtroom had communicated with IT whilst giving her evidence, even if that had occurred.

22. The defendant **Cliff Estapas** gave evidence. He confirmed he is also known by the name, "Kominis." He and his wife have five children. They live at Vatop village on Vanua Lava. He stated that on 29 April 2025, he was in custody at the Correctional Centre on Santo. He stated that he did not have sex with IT in the time period October 2024-October 2025. He said that he did not go to her house and call her. He said that the holes in the bamboo wall were too small for her to see him through. He was asked how he knew that the holes were small. He answered that they must be woven small to protect people in the house from the rain coming inside. He said that he did not go to IT's house and he did not have sex with IT. He said that between 10pm-12am at night he was at his house at Vatop with his children and wife. He stated that he was in custody on Santo from November 2024 to July 2025. He also stated that he was on Santo for only 4 months and also that from February-July 2025. He said that he did not have sex with IT, that the timeframe alleged was a long time and if he had had sex with IT throughout that time, she would already be pregnant. He said that he did not put his fingers in IT's vagina.
23. In cross-examination, Mr Estapas confirmed that he told the Court he was in custody on Santo from February-July. He also said that he is uneducated so was not recalling the dates. He agreed he saw IT's house but that he did not go to her house and call her or have sex with her. He agreed that he was in custody on Santo from November 2024 to July 2025. Mr Liu put separate questions to Mr Estapas that he went to the complainant's house one night, called her, she came outside, he held her hand tightly and made her lie on the ground, that she was crying, that he pushed his penis inside her vagina till he ejaculated and that he pushed his fingers in her vagina. He denied all of those matters as not true.
24. Mr Estapas gave evidence about being in custody on Santo in the time period alleged in the charge, however alternately stated that he was in custody there from November 2024-October 2025, and that he was only on Santo for 4 months as well as being there from February-July 2025. He was not consistent within his own account. He had much comment about the holes in the bamboo walling and that IT could not see him in the light outside the house, however that is displaced by IT's evidence that she recognised his voice and saw his face and that it was him when

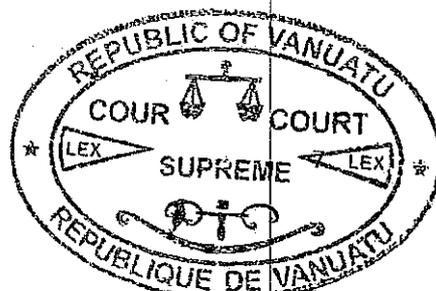


she came outside and followed him to the bush toilet. Mr Estapas denied that he committed the alleged offending against IT. However, I do not accept him as a credible and reliable witness, and do not accept that he was telling the truth.

25. The defendant's wife **Nerisan Sion** gave evidence. They have 5 children and live at Vatop village. She stated that on 29 April 2025, she was at Vatop and Mr Estapas was in custody on Santo. She stated that from November 2024-October 2025, she was at Vatop. She said that her husband was with her at their house.
26. In cross-examination, she repeated her evidence in-chief in answer to the questions put.
27. Mrs Sion did not give evidence of the whereabouts of her husband during the period November 2024-October 2025 other than that he was with her at their house. Her evidence did not assist the Court. Her account was not consistent with that of Mr Estapas.

D. Discussion

28. I find on the evidence that IT was asleep one night when Mr Estapas came to her house and called her that her boyfriend was waiting for her at the bush toilet. I find that she recognized his voice and saw his face in the solar light outside the house. He is a cousin brother of her father, she calls him, "Daddy." I find also that IT came outside and followed him to the bush toilet by the garden. She saw that it was Mr Estapas as it was a moonlit night.
29. I also find that beside the bush toilet, Mr Estapas squeezed her hand tightly and told her that if she did not remove her clothes, that he would tell everyone all her secrets. He made her lay down by the side of the toilet, he was not wearing a shirt but just his blue sportswear pants and forced her to remove her shirt and skirt, he removed the rest of her clothes.
30. I find that Mr Estapas lay down on top of her tummy and put his penis inside her vagina ("*Hemi karem aot bol blo hem, hemi pusum I kam lo malmal blo mi*"), she was crying and he had sexual intercourse with her until he ejaculated ("*Hemi stap tekem mi, mi stap cry, after mi luk wan white samting i ron aot lo bol blo hem*"). I find also that Mr Estapas pushed his fingers into her vagina and licked her vagina. I find that when he was pushing his fingers in and out of her vagina, she cried because it was painful. When he was having sex with her, she was crying and told him to stop but he held her tightly and continued ("*Time hemi stap tekem mi, time mi stap cry, mi talem se bae hemi stop, be hemi stap holem taet mi.*"). She could see his face in the moonlight. He told her that she must not tell anyone including her mum.

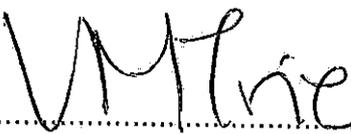


31. I also find that IT did not consent to the sexual intercourse. She was crying and told him to stop but he continued to have sexual intercourse with her.
32. Finally, I find that in the circumstances in which Mr Estapas squeezed IT's hand tightly, forced her to remove part of her clothing and he removed the rest of her clothes, forced her to lay on the ground then held her tightly and while she was crying, penetrated her vagina with his fingers and his penis, and licked her vagina, and told her that she must not tell anyone what happened, that Mr Estapas could not have believed on reasonable grounds that she was consenting at the time that the sexual intercourse occurred. Put another way, I consider that a reasonable person in Mr Estapas' position at the time that sexual intercourse occurred could not have believed that the complainant was consenting.
33. There was no documentary evidence as to the time period that Mr Estapas was in custody on Santo. I take judicial notice of the consent bail orders dated 1 July 2025 that he was released on bail in July 2025 in order to return to Vanua Lava for this trial. His evidence was that he was in custody from November 2024 to July 2025. That timing is consistent with the charge that the offending occurred at sometime between October 2024-October 2025 and that after the matter was reported to the Police, he was arrested and taken into custody in November 2024. Accordingly, I find that the offending occurred in October 2024.
34. The charge has been established beyond reasonable doubt.

E. Result

35. I return a verdict of guilty as to the charge. Mr Estapas is convicted as charged.
36. All details leading to the identification of the complainant IT are permanently suppressed.

DATED at Sola, Vanua Lava this 29<sup>th</sup> day of October, 2025  
BY THE COURT

  
Justice Viran Molisa Trief

