

PUBLIC PROSECUTOR

v

JAMES MELIKUM

Dates of Trial: 18-19 March 2026
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Ms G. Kanegai
Defendant – Ms B. Taleo ; Defendant present
Date of Decision: 8 April 2026

VERDICT

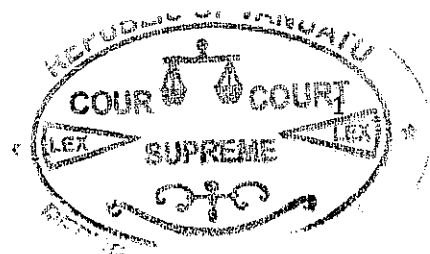
A. Introduction

1. The defendant James Melikum 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.

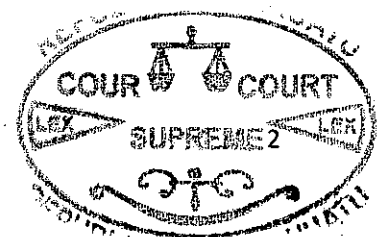
Penalty: Imprisonment for life.

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:

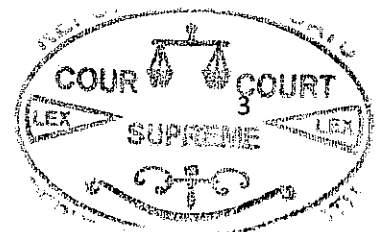
- That sexual intercourse took place between the defendant and the complainant on 16 August 2025 at the Shell company area at Luganville;
and
- Without the complainant's consent; **and**
- That the defendant at the time that the sexual intercourse occurred did not have an honest and reasonable belief that the complainant was consenting.

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 charge.

6. The defendant was not required to establish anything.

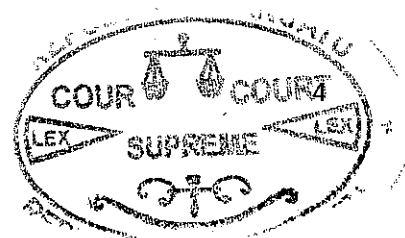


- C. Evidence
7. The witnesses' demeanour was a small part of my assessment of each witness. I also looked for consistency within the witness' account; consistency when comparing the witness' account with that of another witness; consistency with relevant exhibits; and considered the inherent likelihood, or not, of the witness' account.
 8. 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.
 9. The following evidence was tendered by consent:
 - i) The Police witness statement of Police Officer Alfose Laten dated 15 September 2025 [**Exhibit P1**];
 - ii) The Police witness statement of Police Officer John Iesul dated 5 September 2025 [**Exhibit P2**];
 - iii) The Police witness statement of Police Officer John Iesul dated 15 September 2025 [**Exhibit P3**];
 - iv) The Police witness statement of Police Officer Francky Napang dated 16 September 2025 [**Exhibit P4**];
 - v) The Vanuatu Police Force Request of Medical Report for the complainant dated 19 August 2025 [**Exhibit P5**];
 - vi) The Police witness statement of the defendant dated 3 September 2025 [**Exhibit P6**]; and
 - vii) The defendant's record of interview [**Exhibit P7**].
 10. The Prosecution called two witnesses – Kristel Tom Joshua and the complainant HB (name suppressed).
 11. The defendant elected to give evidence and called two witnesses, Mathew Grose and Noella Adel.
 12. The first Prosecution witness, Kristel Tom Joshua, was not an eye witness to the alleged offending. Her evidence was about what the complainant told her at



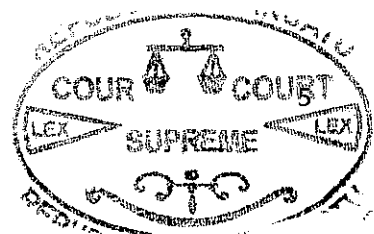
around 1am on 17 August 2025. She and Mathew and others had been drinking kava until that time. She said that the complainant told her that Mr Melikum raped her. She told Mathew immediately and he said that they would talk about it the next morning. I do not give Ms Joshua's evidence about what allegedly happened to the complainant any weight as she only related what the complainant had told her.

13. The second Prosecution witness, the complainant **HB**, gave evidence that she is 18 years old and attends secondary school. On 16 August 2025, she folded clothes upstairs in the bedroom belonging to Mr Melikum and her "small daddy" John Andrew, and then fell asleep. She said that she sleeps in the sitting room but there were many people in the sitting room for lunch so she said that she would go and fold clothes in John Andrew's bedroom and then she fell asleep. Mr Melikum came to the room and told her to go and eat lunch. But she said for them to cover her food and that she would sleep first and eat later. She said that he left and she fell back asleep.
14. HB stated that Mr Melikum returned to the bedroom and touched her breasts and her vagina. He put a thick blanket over her face then inserted his penis into her vagina. She felt pain in her vagina. She said that he put his hand over the blanket and pressing into her face so that she could not call out. She tried to struggle and free herself but there was no one around and she was weak – she was recovering from her illness and her operation. She said that she tried to free herself but Mr Melikum is much bigger than she is and she is too small. She said that Mr Melikum did not ask her to have sex with him.
15. She said that they heard Mathew's truck arrive outside which was when she realised that the others in the house had gone out. She said that Mr Melikum left and said sorry to her and that he would give her some money, and then he went downstairs to open the door to Mathew and the others. She began crying in the room, and after Mr Melikum went to Mathew's garage, she went and cried in the laundry room. That night, she told her aunty Kristel what had happened, and Kristel immediately told Mathew. The next day, she and Kristel went to church then Mathew held a meeting about what had happened; Mr Melikum paid a fine to her. Her mother came to get her the next day and she returned home to her mum and dad's house. On 25 August 2025, she reported the matter to the Police.
16. In cross-examination, HB agreed that she began staying at Mathew's house in July 2025, that Mr Melikum also lived there, that she saw him every day, spoke with him every day and called him, "daddy." She denied asking him for money or that he bought her a phone. She agreed that she asked him to buy credit for her phone. She agreed that she slept in the sitting room but that on 16 August 2025, she went to sleep in the room that Mr Melikum shared with her daddy John



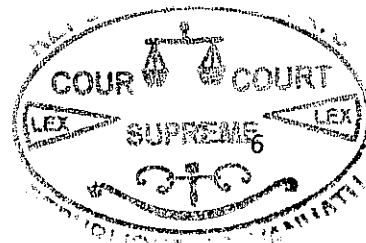
Andrew and Albert. She denied that Mr Melikum touched her shoulder first and then she woke and faced him. She agreed that in her Police witness statement, she said that Mr Melikum threw a blanket over her face so she could not call out. She also agreed that she could not see anything with the blanket over her face. She was asked how then could she see that he had moved his pants down and put his penis into her vagina. She replied that she felt that he pushed his penis into her vagina.

17. HB agreed that she was sleeping but felt Mr Melikum touch her breast which woke her up. It was put to her that when Mr Melikum touched her, she did not say, "No." She replied that she said, "No" to Mr Melikum. It was put to her that her Police witness statement and her evidence at trial was that Mr Melikum threw a blanket over her face and she struggled and tried to call out, but that she had never said, "No" to him. She did not agree. It was put to HB that Mr Melikum did not force her to have sex. She said, "No." She agreed that Mr Melikum told her on a different day than 16 August 2025 that he would give her money.
18. HB also agreed that on Monday 18 August 2025, Mathew's wife sent her to deposit her (the wife's) loan repayment at SPPD. She met her relatives Ruth and Esther who urged her to get checked at the hospital. And that Ruth gave the taxi fare for her to go to the hospital, accompanied by Kristel and Noella. She agreed that the doctor checked her, gave her Panadol and advised her to go to the Police. She agreed that they went to the Police station but did not go inside, and that she told Kristel and Noella that she did not want to because she did not want to bring trouble on Mr Melikum and Mathew. She agreed that she reported the matter to the Police one week later, after she had returned to her parents at night of 18 August 2025. She agreed that on the night of 16 August 2025, that she accompanied Aru in the car to drive out and search for Mr Melikum. She agreed that it was not her own idea to return to her parents' house. She denied speak with Mr Melikum the next day.
19. There was no re-examination.
20. The defendant **James Melikum** gave evidence. He is 46 years old and works as a mechanic at Mathew Grose's garage. He described his relationship with HB as a friendship, that she asked him for phone credit which he would buy for her and she asked for a phone, and he gave her a phone. He said that she was playful with him and spoke sweetly to him. She was playful in that she would sit on his legs, hug him and poke him in the side with her finger.
21. Mr Melikum said that he worked at the garage on 16 August 2025 in the morning then they went home for lunch. When he went to call HB to come and eat lunch, he saw that she went to sleep in his bedroom, on his bed. She told him to cover

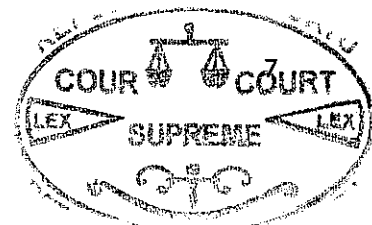


up her lunch, which he did and then he returned to the bedroom. He touched her shoulder and then she turned onto her back. He started to touch her breasts and vagina. She did not struggle, but let him touch her like that. Because she did not say anything, he took that to mean that she agreed with him touching her breasts and vagina, and then they had sexual intercourse. He said that he believed that she agreed because she did not push him away, struggle or call out. And because of their relationship in which she would ask him to buy her phone credit and he had given her a phone. He said the sexual intercourse was consensual and he did not force her and he never covered her mouth with a blanket. After the sexual intercourse, he returned downstairs to the sitting room and then Mathew came for him and they went to the garage.

22. In cross-examination, Mr Melikum agreed that he lived with Mathew and family because Mathew employs him as a mechanic. He agreed that they regard him as family. He denied that he should regard HB as family. He said that he did not remember that Mathew told HB to call him (Mr Melikum), "daddy." He denied that HB asking him to buy her phone credit or being playful with him did not mean that she agreed to have sex with him.
23. He agreed that on 16 August 2025, they had lunch at home. He denied that she did not go to his room so that he would follow and have sex with her. He agreed that was his and the men's room and the girls slept in the sitting room. He agreed that it was lunchtime. He denied that they were eating in the sitting room so that HB could not rest or sleep there. He agreed that the girls could go into his room. He agreed that after everyone left, he went back upstairs to his room and touched HB's breasts and vagina. He denied that he did not ask her before touching her breasts and vagina. He said she was already awake. He agreed that after that, he had sex with her.
24. He denied throwing a blanket over HB's face after she tried to call out. He agreed that he did not pull off HB's panty and pants, but pushed those clothes aside and inserted his penis into her vagina. He agreed that he did not ask HB whether or not she wanted to have sex with him. He denied that HB struggled to free herself from him. He denied that she has a small body, that she is a small girl. He agreed that he has a larger body than HB and is stronger than her, so she could not free herself from him. He denied that she was playful with him like a child so he thought that she wanted to have sex with him. He denied saying sorry to HB after the sexual intercourse. He denied that HB had not agreed to have sex with him at the time. He denied that he approached HB for sex because he had bought her phone credit an though she wanted to have sex with him. He agreed that they had a meeting after the incident to solve the issue within the family so that people would not hear what had happened.



25. In re-examination, Mr Melikum said that HB's actions toward him were as if he was a boyfriend of hers. He said that it made him attracted to her and regarded her as a girlfriend of his. He said that he did not ask her to have sex with him because once he touched her, she responded in a way that made him think that she agreed to have sex with him. In cross-examination, he denied that HB struggled to free herself from him. He explained his answer as follows: that he did not force her for sex and she did not struggle to free herself from him, but just let them have sex.
26. The second defence witness **Noella Adel** gave evidence that she and Kristel went to the savings scheme on 18 August 2025, in the afternoon. After HB's aunt asked HB what had happened and gave them the taxi fare, she and Kristel accompanied HB to the hospital. The doctor checked HB, did not find anything, gave her Panadol and said that they must go to the Police for a rape form. They went to the Police station but did not go inside because HB said that she felt sorry for Mr Melikum and Mathew.
27. Ms Adel agreed in cross-examination that she was not at Mathew's house around lunchtime on 16 August 2026. She agreed that she just heard about the incident on 18 August 2025 from Kristel, and that she accompanied HB to the hospital because she was trying to help HB. She agreed that just because the doctor did not find anything did not mean that there had not been sex. She agreed that they did not enter the Police station because HB was worried about the process with the Police. She agreed that because HB said that she felt sorry for Mr Melikum did not mean that they had had an affair. She agreed that after they left the Police station area, they laughed together but that did not mean that Mr Melikum had not raped HB. She agreed that she was not at Mathew's house on 16 August 2025 so she did not know whether HB had agreed to have sex with Mr Melikum.
28. In re-examination, she explained her answer that HB was worried about the process with the Police because Mr Melikum works as a mechanic for Mathew, and if Mathew sacked him, who would repair the vehicles for Mathew?
29. The final defence witness **Mathew Grose** gave evidence. He stated that his rental unit at Shell company area had a kitchen and sitting room in the ground floor and two bedrooms, a toilet and bathroom upstairs. He, his wife and child slept in one bedroom, and Mr Melikum and John Andrew in the other bedroom. He said that on 16 August 2025, he and his family went to town in the morning and then returned home after lunch. He said that at the time, he had lost the house key so they never locked the house – just walked in. That night, he and others drank kava together on the verandah of the unit next to his one. He said that Mr Melikum took some kava and left in his (Mr Grose's) vehicle to meet some friends. At around midnight, he sent Aru in his other vehicle to look for Mr Melikum in case



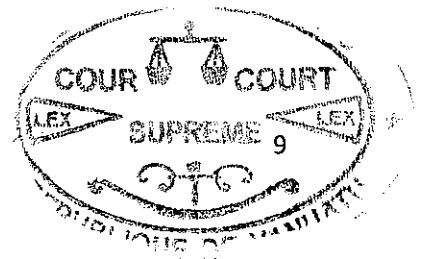
he was drinking alcohol and driving. HB went with Aru in the vehicle to look for Mr Melikum. After that, Kristel told him what HB had told her. He was intoxicated with kava so he told her that they would talk about it the next morning. He said that HB and Mr Melikum had a flirtatious relationship, that she treated Mr Melikum differently to how she treated him (Mr Grose) and others who were related as her "daddy." On Sunday afternoon 17 August 2025, he held a meeting with both HB and Mr Melikum about what had happened. HB wanted to keep on staying with them. When HB's mother came to get her the next afternoon, HB cried and did not want to go with her, but eventually she did.

30. In cross-examination, he agreed that he had not made a rule in the house that the girls could not sleep in the men's bedroom. He denied that because HB is like his daughter, that she could rest in any room. He agreed that he had gone out to town so if offending occurred, he would not have known. He agreed that although he described HB and Mr Melikum as having a flirtatious relationship, that he as HB's "daddy" had never questioned them about this. He denied that he had not done anything about HB's behaviour – he said that he told her off about returning home late and alcohol drinking. He agreed that drinking alcohol when one turns 18 is something that young people do. He agreed that HB drinking alcohol has nothing to do with having a sexual relationship with Mr Melikum. He agreed that he did not tell HB's parents what happened. He said that he assumed that HB's mother already knew when she turned up on 18 August 2025 to take HB home. He agreed that HB cried and did not want to leave with her mother because she would be scared about what her father would do on hearing the news. He agreed that he was not home on 16 August 2025 when the sexual intercourse occurred so he did not know whether it was consensual or not.
31. In re-examination, he stated that he had set boundaries that in his house, the girls could not go inside the men's bedroom. He described where he was sitting whilst drinking kava and that he saw Aru and HB leave in the vehicle to look for Mr Melikum. He confirmed that maybe HB was scared of what her father's reaction would be at the news.
- D. Discussion
32. The first element for proof by the Prosecution is agreed. The defendant and the complainant had sexual intercourse on 16 August 2025 at the Shell company area in Luganville.
33. The only issues are consent and reasonable belief in consent.



Has the Prosecution proved beyond reasonable doubt the complainant's lack of consent?

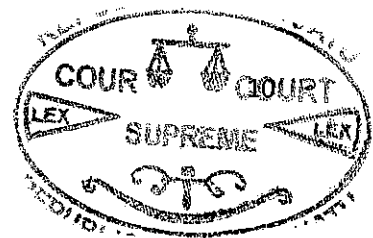
34. HB's evidence was that she did not consent. She said that Mr Melikum did not ask her before touching her breasts and vagina and having sexual intercourse with her. In cross-examination, it was put to HB that when Mr Melikum touched her, she did not say, "No." She replied that she said, "No" to Mr Melikum. Mr Melikum did not address this in his evidence. He said only that because HB did not say anything, he took that to mean that she agreed with him touching her breasts and vagina, and then they had sexual intercourse. He denied that he put a blanket over HB's face and that she struggled to get free of him, but did not contradict HB's evidence that she said, "No" to him. I find that when Mr Melikum touched HB's breasts and vagina, she said, "No" to Mr Melikum.
35. Mr Melikum agreed in cross-examination that he did not ask HB whether or not she wanted to have sex with him.
36. I find it proved beyond reasonable doubt that the complainant HB did not consent to the sexual intercourse.
37. Ms Taleo submitted that the doctor's finding of no injuries on HB's body [**Exhibit P5**] raised a doubt therefore the charge had not been proved beyond reasonable doubt. In addition, Ms Adel's evidence was that the doctor did not find anything, gave HB Panadol and said that they must go to the Police for a rape form.
38. However, it is a rape myth (a widespread belief or stereotype) that a woman or girl must have suffered injuries on her body for rape to have occurred. On the contrary, sexual intercourse without consent may occur which results in physical injuries, and it may also occur without any resultant injuries to the woman or girl's body. I reject the submission that the absence of injuries on HB's body or in Ms Taleo's words, "no supporting medical evidence," raises a doubt.
39. Ms Taleo also submitted that the complainant's conduct after the alleged offending including not making a complaint to the Police on the following Monday but a week later raises a doubt. I do not agree. It is a rape myth (a widespread belief or stereotype) that a victim of rape will lodge a Police complaint straight away. On the contrary, there is no typical victim response. Some victims will lodge a complaint straight away. Other victims may take time to do so, even years later. Accordingly, I reject the submission that HB not lodging a complaint on the Monday but a week later raises a doubt.



40. Similarly, other aspects of HB's conduct after the alleged offending including accompanying Aru in the vehicle to look for Mr Melikum around midnight on 16 August 2025, or not wanting to return home with her mother on 18 August 2025 do not raise a doubt. What the Court has to determine is whether or not the complainant consented, and whether or not the defendant had a reasonable belief that she was consenting, *at the time* that the sexual intercourse occurred, not draw conclusions from her behaviour after the sexual intercourse occurred.

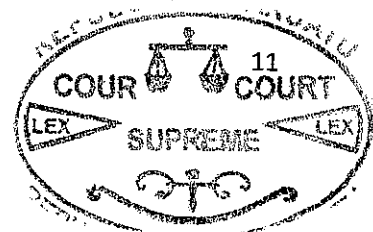
Has the Prosecution proved beyond reasonable doubt that the defendant at the time that the sexual intercourse occurred did not have an honest and reasonable belief that the complainant was consenting?

41. I have already found that when Mr Melikum touched HB's breasts and vagina, she said, "No" to Mr Melikum.
42. HB's evidence was that she tried to struggle and free herself but there was no one around and she was weak – she was recovering from her illness and her operation. She said that she tried to free herself but Mr Melikum is much bigger than she is and she is too small. Mr Melikum initially denied that HB has a small body, that she is a small girl. Then he agreed that he has a larger body than HB and is stronger than her, so she could not free herself from him. My observation of HB is that she is small in stature and that Mr Melikum is much taller and stronger than her.
43. HB's evidence was that she did not know that the others in the house had gone out. She said that they heard Mathew's truck arrive outside which was when she realised that the others in the house had gone out. Mr Grose's evidence was that he had lost the key to the front door so the door stayed unlocked.
44. Whether or not the front door was locked, the fact is that HB did not go to the door when Mathew and the others returned to the house; she stayed in the room and began to cry. Therefore, HB did not see whether or not the front door was locked. Accordingly, I accept HB's evidence and find that she did not know that the others in the house had gone out.
45. Ms Taleo submitted that there were inconsistencies in HB's evidence in Court and what she told Kristel, and between her evidence in Court and what she stated in her Police statement which raised doubts about her credibility. I have already stated that I do not give Ms Joshua's evidence about what allegedly happened to HB any weight as she only related what HB had told her. As for differences with the Police statement, Ms Taleo's example was about HB not realising till Mathew and family returned that the others in the house had left and about Mr Melikum



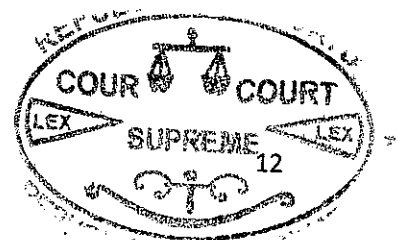
locking the door. I have dealt with HB's evidence and found that HB did not know that the others in the house had gone out. I have also found that HB did not go to the front door when the others returned so she would not know if the door was locked or not. I do not consider that any differences with her Police statement, including that she may have said otherwise in her Police statement, were material nor negatively affected HB's evidence in any way about the alleged offending.

46. HB's evidence was that she tried to struggle and free herself. She stated that Mr Melikum put a thick blanket over her face then inserted his penis into her vagina, which was painful. She said that he put his hand over the blanket and pressed it into her face so that she could not call out. I infer that when Mr Melikum started touching her breasts and vagina, that she tried to struggle to get free and call out because she expected others in the house to come to her aid because she did not know that the others in the house had gone out.
47. I find that when Mr Melikum started touching HB's breasts and vagina, that she tried to struggle and free herself.
48. Mr Melikum denied that he put a blanket over her face. He said that he believed that she agreed because she did not push him away, struggle or call out.
49. I have already found that when Mr Melikum started touching HB's breasts and vagina, that she tried to struggle and free herself. HB stated that Mr Melikum put a blanket over her face and pressed his hand over the blanket onto her face so that she could not call out. I infer that because she tried to struggle and free herself, that Mr Melikum put a thick blanket over her face. I accept HB's evidence and find that Mr Melikum put a thick blanket over her face and pressed his hand over the blanket onto her face so that she could not call out, then inserted his penis into her vagina, which caused her pain.
50. HB's evidence was that she called Mr Melikum "daddy." She also calls Mr Grose and his brother, "daddy" ("tata" in their language). In cross-examination, she denied asking Mr Melikum for money and that he bought her a phone. She agreed that she asked him to buy credit for her phone.
51. Mr Melikum's evidence was that because HB did not say anything, he took that to mean that she agreed with him touching her breasts and vagina, and then they had sexual intercourse. And because of their relationship in which she would ask him to buy her phone credit and he had given her a phone.
52. Ms Taleo submitted that HB and Mr Melikum's relationship in which he bought her phone credit is relevant to Mr Melikum's belief at the time the sexual intercourse occurred. I accept that, but do not accept that that aspect of their relationship was




sufficient to give him an honest and reasonable belief that the complainant was consenting at the time that the sexual intercourse occurred particularly when she said, "No" to him, struggled and called out when he touched her breasts and vagina, and he covered her face with a blanket and pressed it into her face to stop her calling out before and during sexual intercourse with her.

53. Mr Melikum's evidence was also that he and HB's relationship was a friendship and that she was playful with him and spoke sweetly to him. However, none of this was put to HB in cross-examination. I therefore do not give any weight to this evidence from Mr Melikum and it is not evidence relevant to his belief at the time that the sexual intercourse occurred about whether or not HB was consenting.
 54. Mr Grose's evidence was he observed that HB and Mr Melikum's relationship was flirtatious. He accepted that he did not question either of them about this. That HB and Mr Melikum's relationship was flirtatious was not put to HB in cross-examination. I therefore do not give any weight to this evidence by Mr Grose.
 55. I find that in the circumstances when Mr Melikum touched HB's breasts and vagina, she said, "No" to him, that HB tried to struggle to get free when he touched her breasts and vagina, and he covered her face with a blanket and pressed it into her face to stop her calling out before and during sexual intercourse with her, that Mr Melikum 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 Melikum's position at the time that sexual intercourse occurred could not have believed that the complainant was consenting.
 56. I find it proved beyond reasonable doubt that the defendant at the time that the sexual intercourse occurred did not have an honest and reasonable belief that the complainant was consenting.
 57. The charge has been proved beyond reasonable doubt.
- E. Result
58. I return a verdict of guilty as to the charge. Mr Melikum is convicted as charged.



59. All details leading to the identification of the complainant HB are permanently suppressed.

DATED at Isangel, Tanna this 8th day of April, 2026
BY THE COURT


Justice Viran Molisa Trief

