

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

Criminal
Case No. 24/3451 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
AND: ANTHONY MANUAKE
Defendant

Date of Trial: 17,18,19, 24, 25, 26, 31 March 2025, 1 April 2025 and 28 July 2025
Submissions: 4 August and 2 September 2025
Date of Verdict: 9 October 2025
Before: Justice M A MacKenzie
Counsel: Mrs B N Tamau for the Public Prosecutor
Mrs P K Malites for the Defendant

VERDICT

Introduction

1. Mr Manuake faces 15 charges.¹ Prior to trial, he entered pleas of guilty to 4 charges:
 - a. Charge 1 - Domestic violence²
 - b. Charge 3 - Intentional assault causing permanent injury³.
 - c. Charge 7 - Escapes lawful custody⁴
 - d. Charge 13 – Intentional assault⁵

2. Mr Manuake faced trial in relation to 11 charges:

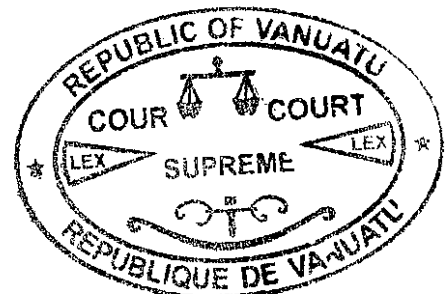
¹ As set out in the Amended Information filed on 2 April 2025. An Amended Information was filed on 13 March 2025, and is annexed to the Amended Information. There is a discussion about this at paragraphs 3-6.

² contrary to ss 4 and 10 of the Family Protection Act 2008

³ contrary to s 107(c) of the Penal Code [CAP 135]. There was a dispute as to the facts, which is addressed in this judgment.

⁴ contrary to s 84 of the Penal Code [CAP 135]

⁵ contrary to s 107(a) of the Penal Code [CAP 135]



- a. Charge 2 - Domestic violence⁶
- b. Charge 4 - Domestic violence⁷
- c. Charge 5 - Sexual intercourse without consent⁸
- d. Charge 6 - Act of indecency without consent⁹
- e. Charge 8 - Sexual intercourse without consent¹⁰
- f. Charge 9 - Sexual intercourse without consent¹¹
- g. Charge 10 - Act of indecency without consent¹²
- h. Charge 11 - Act of indecency without consent¹³
- i. Charge 12 -Threats to kill¹⁴
- j. Charge 14 - Sexual intercourse without consent¹⁵
- k. Charge 15 - Sexual intercourse without consent¹⁶

The Information

3. The initial information was filed on 15 November 2024. It contained fourteen charges. An amended information was filed on 13 March 2025. The reason for an amended information was to add an additional charge; charge 15. Charge 15 is an allegation of sexual intercourse without consent relating to AG, prior to LT's arrival at the basement at Seven Star on 2 September 2024. The charge was added into response to AG making an additional statement to Police on 13 March 2025 about this incident.
4. Pursuant to s 146(4) of the Criminal Procedure Code ("CPC"), an Information may be amended with the leave of the Supreme Court. There is no explicit provision in the CPC relating to adding a charge, but amending an Information must include adding a charge. Factors relevant to whether to grant leave to amend an Information by adding a charge will include matters such as the charges fitting the proof, the nature and seriousness of the charge, any delay that might result, the interests of the complainant and the public interest, and very importantly, procedural fairness, which includes in this case, Mr Manuake's right to a fair trial. This is a non-exhaustive list.
5. The interests of justice point towards the granting of leave. While the statement was disclosed late, counsel had an opportunity to take instructions, and relevantly, Mrs

⁶ contrary to ss 4 and 10 of the Family Protection Act 2008

⁷ contrary to ss 4 and 10 of the Family Protection Act 2008

⁸ contrary to ss 89A, 90(a) and 91 of the Penal Code [CAP 135]

⁹ contrary to s 98(a) of the Penal Code [CAP 135]

¹⁰ contrary to ss 89A, 90(a) and 91 of the Penal Code [CAP 135]

¹¹ contrary to ss 89A, 90(a) and 91 of the Penal Code [CAP 135]

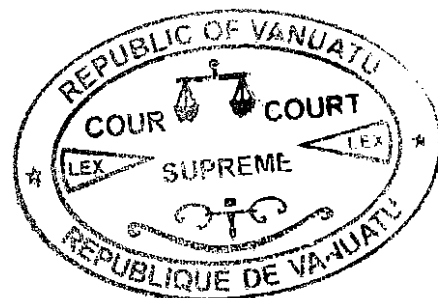
¹² contrary to s 98(a) of the Penal Code [CAP 135]

¹³ contrary to s 98(a) of the Penal Code [CAP 135]

¹⁴ contrary to s 115 of the Penal Code [CAP 135]

¹⁵ contrary to ss 89A, 90(a) and 91 of the Penal Code [CAP 135]

¹⁶ contrary to ss 89A, 90(a) and 91 of the Penal Code [CAP 135]

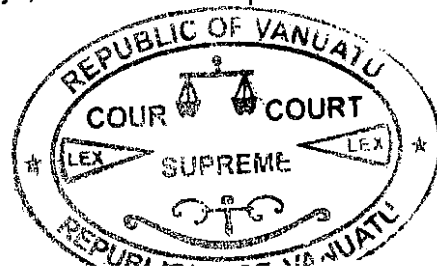


Malites did not object to the 13 March 2025 Amended information. Mr Manuake was called upon to plead to the charge. He entered a plea of not guilty to charge 15.

6. At the conclusion of the Prosecution case, there was a legal discussion about the charges as set out in the Amended Information filed on 13 March 2025. The issues are identified and discussed in the Minute dated 3 April 2025. This resulted in a further Amended Information being filed on 2 April 2025. An Amended Information was necessary to reflect the evidence and Mr Manuake's defence to the alleged rape offending in the basement at Seven Star on 2 and 3 September 2024. As set out in the Minute of 3 April 2025, there was no objection to the proposed amendments. In brief:
 - a. A nolle prosequi was entered in relation to charge 9 of the Information filed on 13 March 2025. This was an allegation of oral sexual intercourse. I raised with Counsel as to whether there was any evidence relating to that charge and after considering the issue, Mrs Tamau accepted there was no evidence to support charge 9 and invited the Court to enter a nolle prosequi in relation to that charge.
 - b. The other amendment to the Information was to split charge 8 into two separate charges. Charge 8 is a charge of sexual intercourse without consent relating to both LT and AG. The rationale is set out in the 3 April 2025 Minute. This was to fit the proof and reflect the different defences to the three alleged rapes. LT and AG's evidence was that there were three separate occasions where Mr Manuake raped them in the basement. However, the Information only contained two charges relating to the three alleged rapes. Where separate incidents are identified, they should be the subject of separate charges. That alone would warrant charge 8 being split into two separate charges. It was also necessary to reflect that there were different defences advanced at trial to the three rape allegations. The defence position is that there was one incident of consensual sexual intercourse and that the two further occasions of sexual intercourse did not happen. After considering the implications for Mr Manuake, Mrs Malites did not object to charge 8 being amended to reflect the first alleged rape incident and a new charge being added to reflect the second alleged rape incident. This is charge 9. I directed that the Amended Information filed on 13 March 2025 be attached to the further Amended Information filed on 2 April 2025.

Procedural issues

7. Procedurally, this was an unsatisfactory trial. Neither counsel was overly focused in their questions, but more importantly, both counsel grossly underestimated the time for trial, particularly given the need for an interpreter. Counsel estimated a total trial duration of three to four days. It was only after four days, that the first complainant LT's



evidence concluded. Both counsel sought early finishes and breaks in the trial without any advance notice to the Court. The Prosecution case took eight days. This resulted in other cases having to be rescheduled, and inconvenience to the witnesses in the trial. Further, the Court was told that the defence case would take two to three days. Dates needed to be found to resume the trial. When the trial resumed some months later, Mr Manuake elected to remain silent. That is his absolute right. There is no criticism at all of Mr Manuake, but if that was the position, counsel could have told the Court and the trial could have concluded much earlier. These matters have all contributed to an unsatisfactory trial process, and a delayed conclusion to the trial, and verdict.

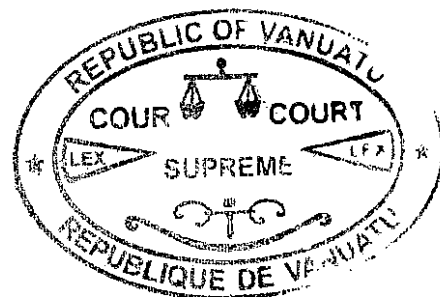
Submissions

8. Counsel asked to file written submissions. I have taken the submissions into account in considering whether the charges are proved beyond reasonable doubt and address them in the context of the charges. As I explain when considering the credibility and reliability of LT and AG's evidence generally, the defence submissions refer to Mr Manuake's position in relation to the charges in some detail. But other than brief comments made in one Police caution statement, there is no evidence of Mr Manuake's position because he elected to remain silent. Counsel's submissions are not evidence, so what is said about Mr Manuake's position cannot be taken into account.

Verdicts

9. For reasons which follow in this judgment, the verdicts I have reached are set out below:

Charge No.	Charge	Complainant	Verdict
Charge 2	Domestic violence	LT	Guilty
Charge 4	Domestic violence	LT	Guilty
Charge 5	Sexual intercourse without consent	LT	Guilty
Charge 6	Act of indecency without consent	LT	Not guilty
Charge 14	Sexual intercourse without consent	AG	Not guilty
Charge 8	Sexual intercourse without consent	LT and AG	Guilty
Charge 9	Sexual intercourse without consent	LT and AG	Not guilty
Charge 15	Sexual intercourse without consent	LT and AG	Not guilty
Charge 10	Act of indecency without consent	LT and AG	Guilty
Charge 11	Act of indecency without consent	LT and AG	Not guilty
Charge 12	Threats to kill	LT and AG	Guilty



Brief background

10. There are two separate groups of alleged offending.

First set of alleged offending (LT only)

11. Firstly, there are alleged incidents involving Mr Manuake's partner LT over a period of a few days between 19 – 22 November 2023. The Prosecution case is that during this period Mr Manuake physically and sexually assaulted LT. It is alleged that during an incident on 19 November 2023 that Mr Manuake physically assaulted LT in a serious way over an argument about a police report. This incident gives rise to a charge of domestic violence, and intentional assault causing permanent injury. Mr Manuake accepts that he assaulted LT but disputes that extent of the assault.¹⁷
12. Then, a few days later on 22 November 2023, there was a further alleged incident in the basement of an empty property at Seven Star area. While there is it is alleged that Mr Manuake assaulted LT, raped her by pushing a knife in and out of her vagina,¹⁸ and videoed that sexual act.
13. Mr Manuake denies that this incident happened.

Second set of alleged offending (LT and AG)

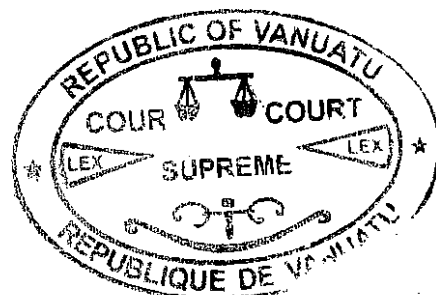
14. The second set of alleged offending occurred over 2 and 3 September 2024 also in the basement of the property at Seven Star. The alleged offending involved rape and acts of indecency in relation to LT, Mr Manuake's partner and another female, AG. The prosecution case is that there were three separate incidents of rape of each complainant over the period they were at Seven Star Area and other alleged indecent acts. LT and AG also alleged that Mr Manuake threatened them with a knife to ensure they complied with his demands.¹⁹ Mr Manuake also assaulted LT and has pleaded guilty to that assault.²⁰
15. Once LT and AG were able to leave the basement at Seven Star, they made an immediate complainant to Police.
16. Mr Manuake's position is that there was one occasion of sexual intercourse, which was consensual, and that LT and AG sucked each other's breasts willingly and consensually. He denies all other allegations.

¹⁷ Charges 2 and 3.

¹⁸ Charges 4, 5 and 6.

¹⁹ Charges 8, 9, 10, 11, 12, 14 and 15.

²⁰ Charge 13



Elements of the offences

Charges 2 and 4 - Domestic violence

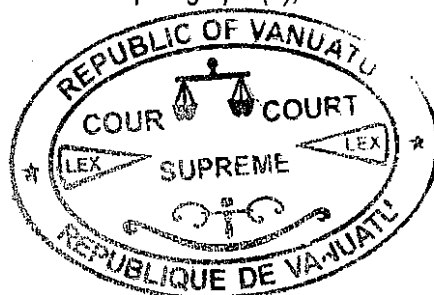
17. Under the Family Violence Act, domestic violence is an intentional act against a family member. The charge will be proved if I am sure that:
- LT is a member of Mr Manuake's family, as defined in s 3 of the Family Protection Act 2008 ('the Act').
 - Mr Manuake intentionally assaulted LT. Pursuant to s 4 of the Act, a person commits an act of domestic violence if he or she intentionally does any of a number of acts against a family member. It includes an assault.

Charges 5, 8, 9, 14 and 15 - Sexual intercourse without consent

18. There are three essential elements of rape: *McEwen v Public Prosecutor* [2011] VUCA 32. They are:
- That there was sexual intercourse. Sexual intercourse is defined in s89A of the Penal Code:

"For the purposes of this Act, sexual intercourse means any of the following activities, between any male upon a female, any male upon a male, any female upon a female or any female upon a male:

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



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

- b. That LT and AG did not consent to the sexual intercourse. Consent means true consent, freely given by a person who is in a position to make a rational decision. Consent may be conveyed by words, by conduct, or by a combination of both. The material time to consider consent is when the sexual act takes place. The behaviour and attitude of LT and AG before or after the act may assist in deciding that, but it is not decisive. A person does not consent to sexual activity just because she or he does not protest or offer physical resistance to the activity. A person does not consent to sexual activity if there is force used or a threat or fear of force, or intimidation. Consent cannot be inferred only from the fact that the person does not protest or offer physical resistance. There must be something more in the words used, conduct or circumstances (or both) for it to be legitimate to infer consent.
- c. That Mr Manuake did not believe on reasonable grounds that LT and AG were consenting at the time that the intercourse occurred. The critical question is whether at that time and in the particular circumstances I am sure that Mr Manuake did not genuinely believe that LT and AG consented or that a reasonable person standing in his shoes would not have believed that LT and AG consented?²¹

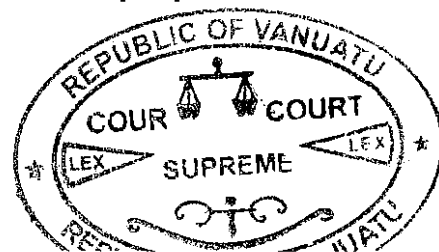
Charges 6, 10 and 11 - Act of indecency without consent

19. There are 3 elements of act of indecency without consent:
- a. Mr Manuake committed an act of indecency upon, or in the presence of LT and AG;
 - b. The act was without LT and AG's consent; and
 - c. That Mr Manuake knew there was no consent or did not believe on reasonable grounds that LT and AG consented.

Charge 12 – Threats to kill

20. For a charge of threat to kill contrary to section 115 of the Penal Code, the elements are:

²¹ See *Ishmael v Public Prosecutor* [2005] VUCA 1 and *McEwen v Public Prosecutor* [2011] VUCA 32



- a. Mr Manuake directly caused LT and AG to receive oral threats to kill them.
 - b. Mr Manuake knew the contents of the threats.
 - c. Mr Manuake intended the threats to be taken as real.
21. A review of cases tends to suggest some divergence as to the elements of threat to kill. I have derived the elements from *Public Prosecutor v Ahelmalahlah* [2021] VUSC 329. On appeal, the nature of the threat was in issue (rather than the elements). But there was no issue raised about the elements, so respectfully I adopt the elements identified by the primary Judge in that case.

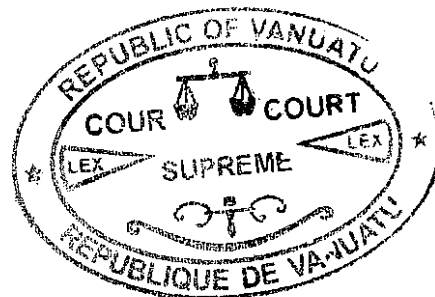
Burden and standard of proof

22. The Prosecution has the onus of proof and is required to establish the elements of each charge beyond reasonable doubt before a finding of guilt can be made in respect of the charges. This excludes consideration of any possibility which is merely fanciful or frivolous.²²
23. Proof beyond reasonable doubt is a very high standard of proof which the Prosecution will have met only if, at the end of case, I am sure that Mr Manuake is guilty. What then is reasonable doubt? Reasonable doubt is an honest and reasonable uncertainty about Mr Manuake's guilt after giving careful and impartial consideration to all the evidence.
24. Mr Manuake is not required to establish anything. He is presumed innocent. The presumption of innocence means that he does not have to give or call any evidence and does not have to establish his innocence. If at the end of the trial, any reasonable doubt exists as to his guilt, he will be deemed to be innocent of the charge and will be acquitted.
25. This was confirmed to Mr Manuake prior to the prosecution opening its case. I read the statement required by s 81 of the Criminal Procedure Code aloud to Mr Manuake in English. The statement was then translated into Bislama.

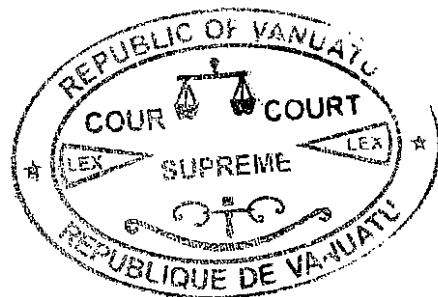
Approach to assessing the evidence

26. This case turns on the credibility and reliability of the prosecution witnesses.

²² Section 8 of the Penal Code [CAP 135]



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



uncorroborated evidence of LT in relation to the incident at Seven Star on 22 November 2023.²³

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

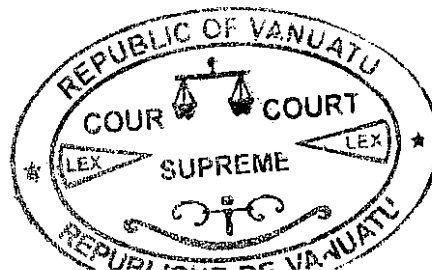
Prior statements

34. LT and AG were referred to prior statements made to Police. Relevant to this trial, LT made two statements to police: 19 December 2023, and 4 September 2024. AG also made two statements to police; 4 September 2025 and 13 March 2025. Parts of these statements were consistent with their evidence, and other parts inconsistent with their evidence.

Prior consistent statements

35. A prior consistent statement is not additional independent evidence of either LT or AG and corroborative of the evidence given at trial but is simply evidence which might assist in determining the strength of a challenge to the truthfulness or accuracy of evidence given in Court. Repetition, in and of itself, does not necessarily bolster LT and AG's

²³ Now that the Evidence Act 2025 has commenced, corroboration is no longer required. However, the Act was not in force at the time of the trial



evidence. A dishonest or untruthful person may repeat the same lie, and a mistaken person may repeat the same error.

Prior inconsistent statements

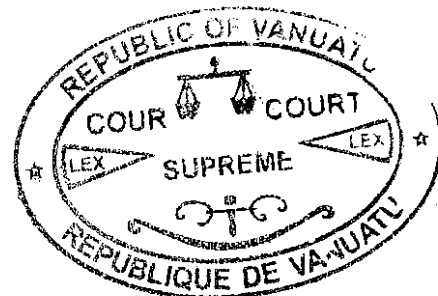
36. During cross examination, LT and AG were referred to prior inconsistent statements they had made. Prior inconsistent statements can be offered for a variety of purposes, but often to call into question credibility. It may be that a witness said something different before, or their evidence in Court went further than the original statement or gives more detail.
37. When assessing the credibility of LT and AG, I took into account any inconsistency highlighted by the earlier statements, and also any explanation given for the difference. What LT and AG said on earlier occasions was part of the evidence and like any of the evidence adduced during the trial, was available to be given such weight as appropriate. As I will explain, any inconsistencies in earlier Police statements that were not put to LT and AG in cross examination cannot be taken into account as they do not form part of the evidence.

Recent complaint

38. LT's evidence was that after the incident in the basement at Seven Star in November 2023 she walked to her parents' home and immediately told her mother about the alleged assault and rape. Then, in the immediate aftermath of the September 2024 incident, LT and AG made immediate complaints to Police. This evidence may help in deciding whether to accept LT and AG's narrative as true.
39. It is important to remember that repeating something does not necessarily make it true. An untruthful person might continue to repeat the same lie, and a mistaken person, believing themselves to be correct, might repeat the error. Of course, a truthful person might also repeat their complaints. It is a matter of deciding whether the parts of the earlier statements that form part of the evidence assist; they are there to be considered as evidence along with everything else.

Counter intuitive principles - sexual and family violence

40. In a number of overseas jurisdictions, counter-intuitive principles are well understood, and particularly in the context of jury trials. The purpose of such directions are educative in nature. I will address counter intuitive principles because the questioning of LT and AG in this trial engaged such principles.



41. The English Court of Appeal in *Miller v R* [2010] EWCA Crim 1578 said:

“Judges have, as a result of their experience, in recent years adopted the course of cautioning juries against applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving evidence, and to judge the evidence on its intrinsic merits. This is not to invite juries to suspend their own judgement but to approach the evidence without prejudice.”

42. The Supreme Court of Canada acknowledged in *R v Barton* [2019] 2 SCR 579 at [1] that:

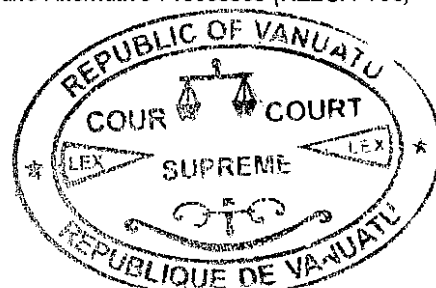
“We live in a time where myths, stereotypes, and sexual violence against women — particularly Indigenous women and sex workers — are tragically common. Our society has yet to come to grips with just how deep-rooted these issues truly are and just how devastating their consequences can be. Without a doubt, eliminating myths, stereotypes, and sexual violence against women is one of the more pressing challenges we face as a society.”

43. In New Zealand, the Law Commission said in *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes*,²⁴ stated:

The field of sexual violence is one that is commonly misunderstood by people without training or education in the area. Research has revealed that widely held assumptions about how frequently sexual violence occurs, and when, where and against whom it occurs, are usually incorrect or do not reflect the reality of sexual violence.

44. The purpose of counter-intuitive directions is to correct erroneous beliefs that a factfinder might otherwise hold. The purpose of such directions is to restore a complainant’s credibility from a debit balance because of misconception, back to a zero or neutral balance. It says nothing about the credibility of a complainant; rather is educative in nature. They cannot be used to assess credibility.
45. In terms of a judge alone trial, the New Zealand Court of Appeal has said that counter-intuitive evidence is not required. In *Keats v R*, the Court of Appeal said:

²⁴ *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* (NZLCR 136, 215) at [6.12].

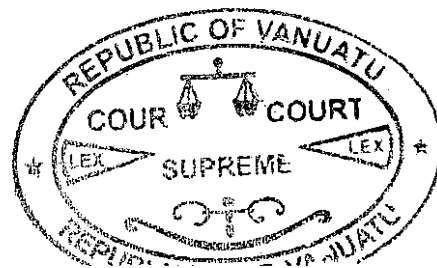


[25] *It is now generally accepted that juries can be instructed about counter-intuitive principles without calling an expert witness on that topic. It is axiomatic that, if juries can be properly directed on counter-intuitive principles, then there is even less need for evidence on those principles when the trial is being conducted by a judge sitting without a jury.*

46. Research shows that widely held assumptions about how frequently sexual offending occurs, and when, where and against whom it occurs, are usually incorrect and do not reflect the reality of sexual offending. It is therefore important to note that there is no such thing as "typical" sexual offending.
47. There is also no classic or "typical" response to sexual offending. Research shows that victims of sexual offending can react in different ways. It might be expected that a complainant of sexual offending would complain immediately, but it is not uncommon for complainants to delay making a complaint, to make a partial disclosure, or not say anything at all. Also, some complainants of sexual offending maintain contact with someone who has offended against them. There may be good reason for these things.
48. Research shows that alleged sexual offending can occur in a wide variety of circumstances, including when people know each other, when other people are around, and in the home. Finally, research establishes that stress and trauma can compromise a person's account of events. But others may try to avoid thinking about an event at all, and they may then have difficulty in recalling the event accurately.
49. The experience of the court also shows that different people react differently to family violence and that there is no typical or normal pattern of behaviour which is to be expected in response to domestic violence. Just how any individual will react is not predictable. Silence and delay in making a complaint, are not uncommon. It is not uncommon for a person who has been subject to domestic violence to stay with an abusive partner after the outset of such violence and even for extended periods.

Expert evidence

50. There was evidence from Dr Atkin about his examinations of LT and AG following the alleged rapes in the basement at Seven Star in September 2024. Dr Atkin was also asked about various matters arising from LT's evidence that Mr Manuake inserted a knife into her vagina in November 2023.
51. Normally, witnesses give evidence only about what they saw, heard or did. They are not allowed to express opinions. But people who have specialist qualifications and experience are frequently allowed, and Dr Atkin was allowed, to give evidence of



opinions about matters within his area of expertise. The reason for this is that the expertise of Dr Atkin may assist in assessing the evidence.

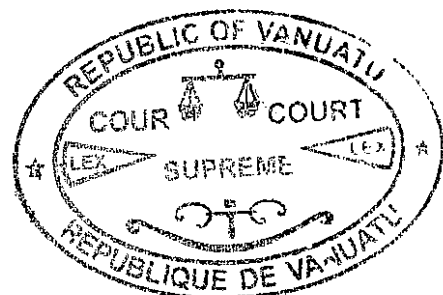
52. In assessing Dr Atkin's evidence and opinions, I must have regard to his qualifications and experience. But I remind myself that this is not a trial by expert. It will be for me to decide how much weight or importance to give to Dr Atkin's opinion, or whether I accept it at all, in the context of all the evidence I have heard.

Evidence not before the Court

53. In her written submissions, Mrs Malites contends that evidence that is missing and not before the Court undermines the credibility and reliability of LT's evidence. If evidence that might have been obtained and put before the Court is not here, it can have no bearing on the case one way or the other. The only thing that matters is the evidence that is before the Court. I must consider that evidence, and if it is enough to prove guilt beyond reasonable doubt, then I will find Mr Manuake guilty, and if it is not enough, then I will find Mr Manuake not guilty.

Credibility and reliability – LT and AG

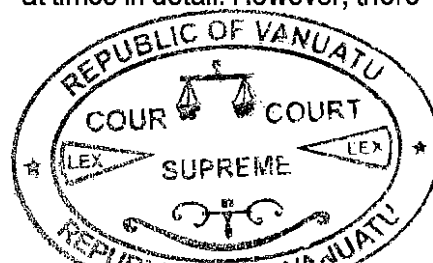
54. A key issue is the credibility and reliability of the evidence of both LT and AG. In large measure, the Prosecution case stands or falls on their evidence. Mr Tamau submitted that the Court should accept that LT and AG are truthful witnesses. She summarised the Prosecution position when contending that:
- a. Mr Manuake did not deny that he had sex with both LT and AG in September 2024.
 - b. LT and AG did not know each other. She points to the implausibility in those circumstances that LT and AG would voluntarily agree to sexual intercourse. The first thing they know about each other was at the property at Seven Star on 2 September 2024.
 - c. She points to the fact that LT and AG ran off as soon as the door was open the next day. They then made an immediate complaint to the police.
55. Mrs Tamau responsibly acknowledges in her written submissions that there were inconsistencies between LT and AG in terms of the alleged sexual activity on 2 and 3 September 2024. However, her contention is that the inconsistencies are minor in the broader context of what can only be described as a traumatic incident for both young women. In that regard, Mrs Tamau asked that Court to take into account the



observations made in *M. v the Queen* (1994) 181 CLR 534; HCA at 63, where McHugh J (in dissent) made the following observations:

"it is the everyday experience of the Courts that honest witnesses are frequently in error about the details of events. The more accounts they are asked to give the greater is the chance that there will be discrepancies about the details and even inconsistencies in the various accounts. Of course, it is legitimate to test the honesty or the accuracy of a witness's evidence by analysing the discrepancies and inconsistencies in his or her account of an incident. In a case where accuracy of recollection is vital – such as the account of conversation in fraud case or the description of a person where identity is the issue – discrepancies and inconsistencies in the witness's account may make it impossible to accept that person's evidence, no matter how honest she appears to be. But in other cases, discrepancies and inconsistencies may be of far less importance if the honesty of a witness, as opposed to the accuracy of the detail, is the crucial issue. If the jury thinks the demeanour of the witness or the probability of the occurrence of the witness's general account is persuasive, they may reasonably think that discrepancies or even inconsistencies concerning details are of little moment".

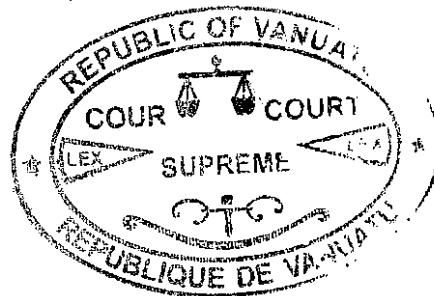
56. On the other hand, Mrs Malites mounted a strong attack on the credibility and reliability of LT and AG's evidence. In doing so, she referred to another authority, *Parkinson v Alexander* [2017] ACT SC201. In reliance on *Parkinson*, Mrs Malites submitted that:
- a. The evidence of LT and AG is inconsistent and contradictory - there are material discrepancies between the Police statements, subsequent statements, and oral testimony regarding timing, sequence and nature of the alleged sexual act.
 - b. There may be motives to exaggerate or fabricate allegations – LT's influence over AG, interpersonal jealousy, prior conflicts and animosity from LT's mother could have shaped the accounts in a way that undermines their independence.
 - c. Objective evidence conflicts with testimony - physical impossibilities, absence of the knife, mobility of the complainants, and the absence of spermatozoa all reinforce doubts about the credibility of the complainants.
 - d. Therefore, reasonable doubt exists where witness testimony is materially inconsistent, influenced by personal motives or contradicted by objective facts.
57. In her written submissions, Mrs Malites refers to the Mr Manuake's position about a number of the charges and in fact, details his position - at times in detail. However, there



is no evidence about the majority of these matters. Mr Manuake elected to remain silent after the section 88 statement was read aloud to him. This was his right. In determining verdicts, the Court can only take into account evidence that was given or introduced during the trial or was admitted by consent. Mr Manuake's two caution statements of 12 September 2024 were admitted by consent. In one of the statements, Mr Manuake elected to remain silent. He elected to remain silent in the other statement also made that day but made brief comments about some of the allegations. That is evidence to be considered by the Court. But what Mr Manuake said to Police is limited. The other way that Mr Manuake's position is before the Court is if LT and AG accepted propositions that were put to them in cross examination by Mrs Malites.

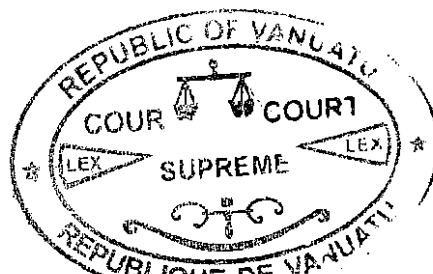
58. Questions and counsel's submissions are not evidence. Questions only become evidence if the witness accepts the proposition. Occasionally, LT and AG accepted a proposition that was put to them by Mrs Malites about Mr Manuake's position. However, they neither accepted nor adopted the majority of propositions that were put to them as to Mr Manuake's position regarding the various allegations. Therefore, the questions are not evidence. And the submissions made by Mrs Malites setting out Mr Manuake's position are not evidence either and cannot be taken into account in determining whether or not the charges are proved.
59. One other matter relevant to the Court's assessment of LT and AG's evidence is that in her written submissions, Mrs Malites refers to parts of Police statements made by LT and AG and highlights omissions and inconsistencies between the Police statements and evidence given by LT and AG during the trial. The Court can take into account inconsistencies in statements where the statement or part of the statement was introduced into evidence, and put to LT and AG. I cannot take into account an inconsistency between a statement which did not form part of the evidence and evidence given during the trial. The evidence the Court can take into account is the in person evidence given by the witnesses, the exhibits which were tendered, any evidence adduced by consent, and any part of a Police statement that LT and AG were asked about. This is evidence and is admissible for all purposes. I am unable to take into account then parts of the Police statements which were not introduced into evidence and which LT or AG were not asked about.
60. I make specific mention of a submission made by Mrs Malites as to omissions of key allegations in LT and AG's evidence during the trial.²⁵ Mrs Malites refers to serious allegations made by both LT and AG in their Police statements, which were omitted from their evidence in chief. I reiterate that these omissions cannot be taken into account by the Court in assessing LT and AG's credibility and reliability, unless they were put to LT and AG during the trial. Any omissions not put to Lt and AG do not form part of the evidence and cannot be taken into account.

²⁵ Page 21 of Mrs Malites' written submissions.



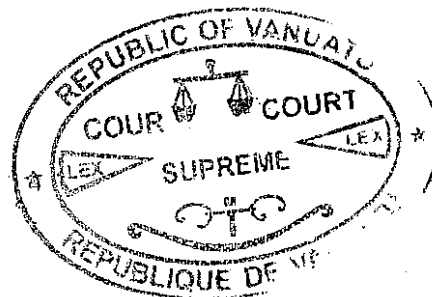
LT

61. During the trial there was evidence about episodes of family violence between LT and Mr Manuake. LT was cross examined about the relationship and Mr Manuake's violence towards her. A key plank of the defence case is that LT fabricated rape allegations to end the relationship as she felt trapped. There was unreported family violence, in addition to the violence related charges Mr Manuake has pleaded guilty to, being assaults on LT in July 2023, November 2023, and September 2024.
62. Evidence of other misconduct by a defendant towards a complainant can be admissible if the probative value far outweighs its prejudicial effect; *Pakoa v Public Prosecutor* [2019] VUCA 51 at [36] and [37], and *Public Prosecutor v Ahelmalahlah* [2021] VUSC 329.
63. I consider that LT's evidence about the family violence within the relationship is probative evidence relating to Mr Manuake's attitude towards her, and the hostility of its expression. While this type of evidence is a form of propensity evidence, it was not adduced for traditional co-incidence and linkage reasons. Rather, this was background or narrative evidence. It does not relate to any of the charges. It is integral to understanding the history between LT and Mr Manuake and the dynamics of their relationship. It has explanatory value in terms of Mr Manuake's attitude towards LT and also helps explain why LT acted as she did. LT did not leave Mr Manuake when he was violent to her. She did not leave him after the alleged assaults and rape in November 2023. LT delayed making a complaint about those alleged events. LT loved him, and as she explained, that is why she went back to him. She thought she could change him. LT also said that she would go back to him because of the threats to kill her and burn her family's house down. For these reasons, the probative value of the evidence far outweighs its prejudicial effect.
64. LT is an articulate young woman. I assess that LT did her best to recall relevant events and the core details of what happened to her in November 2023, and September 2024, as accurately as she could. LT gave detailed evidence over 4 days as to the various incidents. She was cross examined at length. Her evidence about some of the incidents contained specific detail. She gave evidence about events which had personal significance to her. LT was clear about the essential parts of her evidence.
65. LT's recounting was not perfect. There were some inconsistencies and omissions in her evidence. There was some inaccuracy about dates. I discuss inconsistencies at paragraph 66 below. LT's evidence was not as detailed as parts of her Police statements. Much was made of this by the defence. I do not regard the parts of Police statements admitted into evidence to be embellished, as contended. I assess she was recalling what actually happened to her. The statements were made close to, or immediately after, the alleged events. Rather, in her evidence LT did not give the same

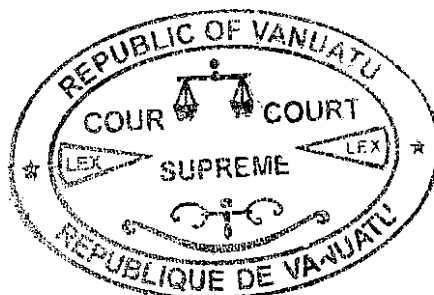


level of detail as her statements made 6-15 months earlier. LT gave extensive evidence about multiple allegations which were traumatic experiences. It is understandable then that she did not recall everything, but she did recall core or essential detail, and did not step back from her evidence that all these things happened to her. I do not think the omissions undermined overall the truthfulness of her evidence. They mainly reflect the passage of time. When asked, on all occasions LT said that what was in her statement was true.

66. There are inconsistencies in LT's evidence. There are inconsistencies between what LT said in her Police statements and her evidence during the trial. There are inconsistencies between LT's narrative and what AG said about the sexual activity on 2 and 3 September 2024. I assess that some inconsistencies are not material, and other inconsistencies are material. I do not though consider that inconsistencies render LT's evidence to either lack credibility or be so unreliable that her evidence cannot be believed or accepted at all. There were also consistencies between LT and AG. For example, both said that LT called out when she was outside the property at Seven Star. Both said that LT slapped AG once. Both gave evidence about the phone call that LT's mother made to LT in the early hours of the morning to say that LT's father/uncle had died. Both said that Mr Manuake had sexual intercourse with them three times. Both were firm that they did not consent to sexual intercourse. Both were firm that there were threats with the knife, although I accept the evidence was variable as to where the knife was.
67. Collusion and influence are raised. As to collusion, the defence position is that LT influenced AG to go to the Police and make false statements, because LT wanted to end the relationship. Mrs Malites is inviting the Court to infer that LT and AG colluded to falsely accuse Mr Manuake of rape. LT and AG denied that they had colluded to bring Mr Manuake down. It was firmly submitted that LT wanted to get rid of Mr Manuake out of her life and influenced AG into making a false rape complaint.
68. There is no dispute there is a sad history of family violence between LT and Mr Manuake. LT both loved Mr Manuake and was scared of him, because of his behaviour towards her and her family. She has gone back to him after the November 2023 incidents, and was living with him as at September 2024. She said she felt trapped in the relationship. But that does not mean that LT conspired with a virtual stranger to make false rape complaints. Family violence dynamics are complex, and LT's feelings about Mr Manuake are both genuinely and objectively held, given the violent and dysfunctional nature of their relationship. LT's reluctance to end the relationship is readily understood. The circumstances of the September 2024 incident itself demonstrate Mr Manuake's coercive control in relation to LT. Mr Manuake and LT were together at the time. Yet, Mr Manuake decided to have sex with another female, and when LT arrived at the basement at Seven Star, he assaulted her because of her reaction to finding another female, AG there.



69. LT said it was her idea initially to go to the Police. AG confirmed that but said she wanted to go and make a complaint. AG candidly acknowledged that they are now close friends. Both LT and AG confirmed that LT told AG during the time they were at Seven Star that Mr Manuake abused women. I do not think that amounts to LT influencing AG, because what she said was accurate. LT had the lived experience of that. Some context is needed. LT and AG knew nothing about the other's existence prior to 2 September 2024. Mrs Tamau makes a valid point that it is implausible that LT and AG would consent to sexual intercourse in circumstances where they did not know each other and had met in difficult circumstances for the first time. They made immediate complaints to the Police.
70. I do not accept that this was a concocted account, motivated and masterminded by LT. It seems implausible that they would immediately go to Police and give detailed narratives about Mr Manuake assaulting LT, which he admits, three occasions of sexual intercourse, being forced to suck in each other's breasts, Mr Manuake ejaculating into their mouths, and the threats with knives and put themselves through police interviews and coming to Court, simply so that LT could end the relationship. They had only known each other for a few hours. Mrs Kaltonga would have supported LT to do so. Rather, LT and AG were recounting what each recalled happened to them. It is telling that their narratives about the sexual activity at Seven Star vary, and at times markedly. That indicates they did not get together and make up a false account. The issue of collusion and LT's influence on AG is discussed further at paragraphs 176, and 189-191.
71. Mrs Malites submits that Mrs Kaltonga's evidence is unreliable because of her clear bias against Mr Manuake. I do not accept that. This is discussed in more detail at paragraphs 133 and 134. Certainly, LT's mother had a poor opinion of Mr Manuake, and did not want them to be together, and wanted LT to go to the Police in November 2023. But as I set out later in the judgment, Mrs Kaltonga's views about Mr Manuake have a rational basis. There is no dispute that there was violence in the relationship. Despite that, LT went back to him, so was able to stand up to her mother.
72. I do not accept that LT came to Court determined to get rid of Mr Manuake, as contended. Overall, LT gave her evidence in a genuine manner and without trying to embellish what had happened. That is evidenced by for example, LT's evidence about the assault on the road on 19 November 2023. During the trial, she said that Mr Manuake stood on her head. While that is consistent with her Police statement, it contains more detail. To Police LT said that Mr Manuake stood on her head numerous times. I will discuss that in more detail when considering charge 2. LT also made appropriate concessions. For example, she accepts she was cross when she got to property at Seven Star and had become aware Mr Manuake had taken another girl there. She acknowledged that she was upset because Mr Manuake had another woman. LT agreed that she and AG and talked about Mr Manuake while they were in the basement, and that she told AG he abused women. She also acknowledged that she had misplaced the medical report.



73. LT's narrative about events was coherent, and generally plausible. Where it is not plausible, then I do not accept it. I accept some parts of LT's evidence and reject other parts. I accept LT's evidence where it is coherent, plausible, inconsistencies are not material, or it is supported by other evidence.

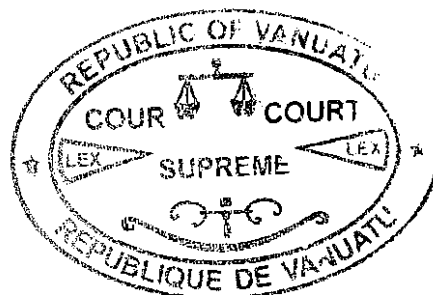
AG

74. AG and Mr Manuake had met once and chatted on Facebook. They met via Facebook. One aspect of AG's evidence that gave me pause for thought is that in evidence in chief AG said she chatted with Mr Manuake on Facebook and had not met Mr Manuake before. When cross examined, she conceded that she had met him on one occasion at the hospital. This was not explored with her. I assess that this was not a material inconsistency as it has no relevance to the charges themselves but is background context.

75. AG was an unconfident young woman, who comparatively, was not as articulate as LT. I assess that AG did her best to give a truthful account of what she recalled happened. Her evidence was matter of fact, and clear as to the core parts of the allegations, although she did not remember some peripheral detail. Her recounting was not perfect. There were both inconsistencies and consistencies in AG's evidence, as I have already discussed. I consider that some inconsistencies are not material and others are material. The more significant inconsistencies relate to the differences between AG and LT about various aspects of the sexual activity.

76. As discussed above, I do not accept that LT influenced AG to fabricate a rape allegation so that LT could end the relationship with Mr Manuake. The allegations reflect AG's recall of what happened in the basement at Seven Star. As with LT, it seems implausible that given the circumstances of how LT and AG met, and the fact that neither knew about the other, that they would immediately consent to sexual activity. Further, some of AG's evidence is consistent with Mr Manuake's position. Mr Manuake's position about the September 2024 incident is that there was sexual intercourse, but it was consensual. Further, AG's evidence that Mr Manuake punching LT a lot shows consistency, as Mr Manuake accepts he assaulted LT, as he pleaded guilty to assaulting LT during the incident.

77. I accept some parts of AG's evidence and reject other parts. I accept AG's evidence where it is coherent, plausible, inconsistencies are not material, or it is supported by other evidence.



Mr Manuake's position

78. Mr Manuake made two statements to police under caution on 12 September 2024. They were produced by consent. The statements were taken in Bislama but translated into English. In the first statement made on 12 September 2024, Mr Manuake initially elected to remain silent when the allegations of rape, threats to kill, and assault were put to him. Once police advised him that he was being charged with those offences, Mr Manuake chose to comment:

- Rape - both complainants consented to the sexual activity.
- Threats to kill – Mr Manuake denied making any threats and said he did not want to kill them. He apologised for saying anything inappropriate as he was angry at the time.
- Intentional assault- Mr Manuake said that his partner LT assaulted AG first, he wanted to block LT and accidentally hit her on the eye. He said he was sorry that happened.
- Domestic violence – Mr Manuake said he was the only one who had a job and LT would get his earnings and spend it on her other boyfriends, which was the main reason their relationship was not stable.

79. In the second statement made on 12 September 2024, Mr Manuake remained silent and said he would speak in Court.

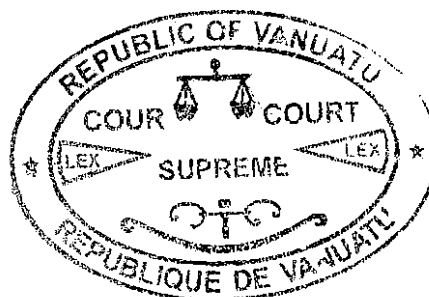
80. Once the prosecution case concluded, the s 88 statement was read aloud to Mr Manuake in English. It was translated into Bislama. Mr Manuake elected to remain silent. That he elected to remain silent does not of itself lead to an inference of guilt against Mr Manuake.

Separate verdicts

81. I must determine each charge on the basis of the evidence that relates to that charge. I must consider each charge separately and come to a separate decision on each. I may reach different verdicts on different charges.

First set of offending

82. This alleged offending relates to Mr Manuake's former partner, LT. The incidents are said to have taken place over a period of days between 19 -22 November 2023.



Charge 2 - Domestic violence

Is LT a member of Mr Manuake's family?

83. Mr Manuake and LT were in a relationship and lived together. They are not married. A spouse is a member of the family under s 3 of the Act. A spouse is defined in s5 of the Act:

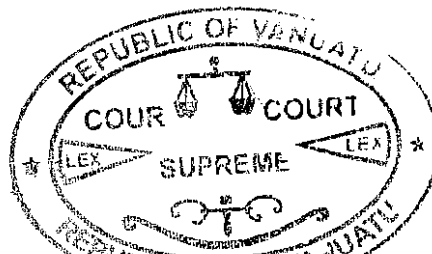
Meaning of spouse

Spouse of a person means an individual of the opposite sex to the person who:

- a. is or has been married to the person; or*
 - b. although not married to the person, is living with the person in a marriage-like relationship or has lived with the person in such a relationship; or*
 - c. is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together)*
84. Mr Manuake and LT lived together in a marriage like relationship. It was an on again/off again relationship, but LT remained Mr Manuake's partner until the alleged sexual offending in September 2024. LT said that as at November 2023, she had been living with Mr Manuake at Seven Star for about 3 months.
85. Therefore, I am sure that LT is Mr Manuake's spouse.

Did Mr Manuake intentionally assault LT?

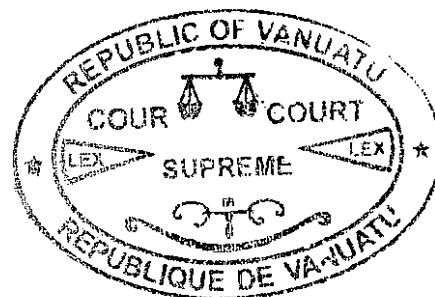
86. An assault is not defined in either the Family Protection Act or the Penal Code. An assault is threatened or actual intentional application of force. Mr Manuake accepts that he assaulted LT. He disputes the extent of the assault.
87. LT's evidence is that Mr Manuake came home in the early hours of 19 November 2023, and was intoxicated. He started hitting LT because he wanted her to withdraw a statement she had made to police in April 2023 about an assault. LT accepted in cross examination that another reason for the assault was that Mr Manuake had found out about some texts between LT and someone else.
88. LT said that Mr Manuake hit her while in the house and then dragged her outside along the road in the direction of the Covenant Church. While she was on the road, Mr



Manuake punched her in both eyes, the ribs, her head, and her face. LT said she fell onto the road after Mr Manuake hit her on the ribs. He then stood on her head as she was lying on the road. As a result, LT broke a tooth. She explained that it happened as she opened her mouth to call out. LT said that her tooth ached, there was blood and her whole body was painful. The assault ended when Mr Manuake pulled her back into the house. The injuries sustained by LT were a black eye, scratches on her face and a broken tooth.

89. LT did not report the assault to Police at the time. Nothing turns on that, as I assess the delay is explicable. One of the reasons for the assault on the road was the fact that LT had made a complaint to Police about an earlier assault. A few days later LT walked to see her mother, Ruth Kaltonga at Prima. Mrs Kaltonga gave evidence and said that LT had a swollen face, scratches on her head, marks on her body. She also said that LT's front tooth was broken. Mrs Kaltonga took photographs of LT's injuries.²⁶
90. LT was challenged in cross examination in detail. LT was asked a number of questions about Mr Manuake's version of events. Mostly, LT did not accept the propositions that were put to her. Counsel's questions are not evidence, only LT's response. That is important here because after the s 88 statement was read aloud to Mr Manuake, he elected to remain silent, which was his absolute right. LT remained firm in cross examination that she fell onto the road and that Mr Manuake stood on her head.
91. In her Police statement of 19 December 2023, LT said that Mr Manuake stood on her head numerous times, and confirmed in cross examination that her statement was correct. In evidence LT said it was once. Also, in her statement, LT said that Mr Manuake pulled her onto the road and hit her. In her evidence, LT said that Mr Manuake started hitting her before he dragged her to the road, and that he stood on her head, which is when she broke her tooth. In terms of where the assault started, there is an inconsistency between LT's evidence and her statement. As to how many times Mr Manuake stood on her head, LT's statement contains more detail than her evidence.
92. Inconsistencies do not necessarily mean that the evidence in Court cannot be relied on. The mere fact that LT is inconsistent on a particular topic does not mean she is generally untruthful or inaccurate. Inconsistencies can happen even when someone is telling the truth. It is a matter of considering whether that inconsistencies are significant or minor one and any explanation given for the inconsistency.
93. I consider that whether Mr Manuake started assaulting LT in the house or on the road is not a material inconsistency. The charge relates to what happened on the road, and LT's evidence focussed on the assault on the road. In evidence in chief, LT gave less detail about the head stomping than when she spoke to Police closer to the time of the incident, when events were fresher. I do not think that omitting more serious detail when

²⁶ Exhibits P5 and P6



she gave evidence demonstrates a lack of truthfulness on LT's part. When asked about the Police statement, LT confirmed that it was true. Rather, she was doing her best to recall the core detail of what happened more than a year ago. The omission is likely a reflection of the passage of time. Consistent with LT's evidence, when he was stomping on her head, Mr Manuake did so with enough force to break her tooth.

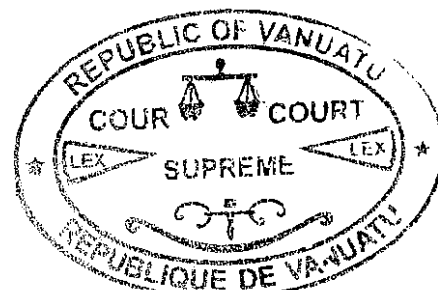
94. There is supporting evidence. LT told her mother she had been assaulted by Mr Manuake as soon as she saw her. Mrs Kaltonga saw that LT had visible injuries and took photographs of the injuries.
95. I am sure that Mr Manuake intentionally applied force to LT by punching her in both eyes, the ribs, her head, and her face. Mr Manuake then stood on her head as she was lying on the road. As a result, LT broke a tooth. This part of the assault forms the basis of charge 3. The particulars of the domestic violence charge include that LT was rendered unconscious. There was no evidence of that.

Result

96. I find Mr Manuake guilty of charge 2.

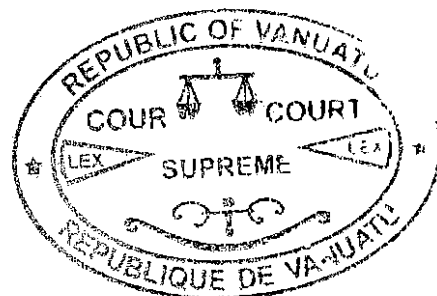
Charge 3 – Intentional assault causing permanent injury

97. Mr Manuake pleaded guilty to charge 3 but disputed the facts. The particulars of the charge are that Mr Manuake assaulted LT by breaking one of her front teeth. As I have said, LT's tooth was broken when Mr Manuake stood on her head. I have made findings about the assault on the road when considering charge 2. In the written submissions, Mrs Malites sets out Mr Manuake's position in some detail. I disregard her submissions about what Mr Manuake says happened. I can only take into account evidence, and submissions are not evidence. There is no evidence at all of Mr Manuake's narrative as set out in the submissions.
98. In her submissions, Mrs Malites refers to inconsistencies between LT's Police statement and her evidence. One inconsistency is that in her statement LT said that Mr Manuake punched her on the face and she fell unconscious, and in her evidence said he punched her on the ribs, and she fell. Another inconsistency is that there is a difference between what LT told police about how her tooth was broken and her evidence. I disregard that submission because those aspects of LT's Police statement were not put to her and so do not form part of the evidence.
99. I agree with Mrs Malites that there is considerable overlap between charges 2 and 3 because in effect it was a continuing course of conduct. One assault charge would have been sufficient.



Incident at Seven Star - November 2023

100. This alleged incident took place at Seven Star in the basement of a house, a short distance from their home at Seven Star. The Prosecution case is that while in the basement, Mr Manuake physically and sexually assaulted LT. This incident gives rise to three charges:
- a. Charge 4 - Domestic violence
 - b. Charge 5 - Sexual intercourse without consent
 - c. Charge 6 - Act of indecency without consent
101. Mr Manuake's position is that this incident did not happen. That LT has fabricated this incident, motivated by spite and an intention to remove Mr Manuake from her life. In the written submissions, Mrs Malites sets out Mr Manuake's contention that LT left him after the 19 November assault and was not home after that. There is no evidence of this, and I disregard that submission.
102. By way of background, LT said that a few days after the assault on 19 November 2023, Mr Manuake brought the police report up again. They argued and then Mr Manuake took LT to the basement in the empty yard. LT said that Mr Manuake punched her on the rib and stood on her leg. Then, after the physical assault, LT said that she was told to remove her clothes. She did so out of fear, as Mr Manuake threatened to kill her if she did not comply.
103. Once LT had removed her clothes, Mr Manuake opened LT's legs and started filming her vagina. While doing so, he took a small green kitchen knife and started inserting it into her vagina. LT's evidence was that she did not consent. Mr Manuake pushed the knife in an out of her vagina, and as a result she bled. There was also another assault when LT told Mr Manuake to stop pushing the knife in an out of her vagina. He punched her and she lost consciousness. She then walked slowly home. The next day LT escaped from the house and walked from Seven Star to Prima, where her mother lived. LT said she did not think she would make it to her mother's home. She felt dizzy and stopped for a while before carrying on.
104. LT's mother took her to the Vanuatu Women's Centre and then she went to hospital for treatment. LT remained in hospital overnight and was given some medication. LT candidly acknowledged that she went back to Mr Manuake after the November 2023 incidents.



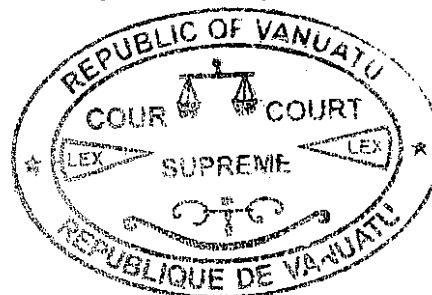
Charge 4 – Domestic Violence

Is LT a member of Mr Manuake's family?

105. I am sure LT is a member of Mr Manuake's family, for the reasons set out at paragraphs 83 and 84.

Did Mr Manuake intentionally assault LT?

106. LT said she and Mr Manuake were still arguing about LT's Police statement a few days after the 19 November 2023 assault. Then Mr Manuake pulled her into an empty yard about 200 metres from their house at Seven Star. Once they were in the basement at the yard, Mr Manuake hit LT in the ribs and stood on her legs. She said her body was painful. It was after this initial assault that Mr Manuake told LT to remove her clothes. LT said there was another assault when she told Mr Manuake to stop pushing the knife in and out of her vagina. According to LT, his response was to punch her, and she lost consciousness. LT said that her ribs, legs and stomach were painful.
107. LT was not cross examined about the assault in the basement. As was held in *Fisher v Wylie* [2021] VUCA 5, the fact that LT was not cross examined on that evidence leaves it specifically unchallenged, and so in the normal course it would be accepted. The focus of the cross examination was the rape allegation, involving the knife. It was put to LT that Mr Manuake would say that he assaulted LT on 19 November, but that he never took her to an empty house on 22 November 2023. LT rejected that proposition.
108. Contrary to Mrs Malites submission, LT did give evidence that she lost consciousness, as set out above. Further, again Mrs Malites referred to LT's statement about the assault in the basement. However, the quoted part of the statement was not put to LT, and so did not form part of the evidence.
109. I assess that LT's evidence that she was taken to the basement in the yard and assaulted was an authentic account of what happened to her. I do not accept that LT was motivated by spite or that she wanted to get rid of Mr Manuake. She in fact went back to him after this incident, which is explicable given the matters discussed in the judgment as to why she struggled to end the relationship. Further, a relevant point is that in September 2024, the alleged incident took place in the same basement. LT knew where Mr Manuake would be. An available inference is that she knew about the basement because she had previously been there. She was not cross examined about the assault, so that leaves the evidence unchallenged. LT did not embellish; rather it was a matter of fact recounting of what she says happened. I accept LT's evidence that she was hit in the ribs, that Mr Manuake stood on her legs and then punched her, rendering her unconscious.



110. I am sure that Mr Manuake intentionally assaulted LT.

Result

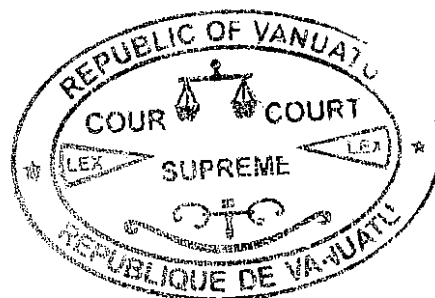
111. I find Mr Manuake guilty of charge 4.

Charge 5 - Sexual intercourse without consent

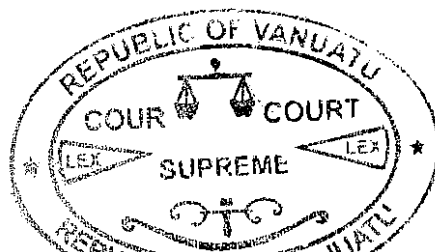
Am I sure that Mr Manuake inserted a knife into LT's vagina?

112. LT's evidence was that Mr Manuake told her to remove her clothes after he had assaulted her and was threatening to continue hitting her. LT accepted in cross examination that in her Police statement of 19 December 2023, she said that after she removed her trousers and t-shirt, Mr Manuake tore off her bra and panties from her body, whereas in her evidence, LT said that she removed her clothes, and omitted to say that Mr Manuake had forcibly removed her underwear. While Mr Manuake took a video of LT's vagina, he used a small kitchen knife with a green handle to penetrate LT's vagina. She said that he pushed the knife in and out of her vagina. He did so for about 15-20 minutes. LT drew a picture of the knife,²⁷ and said he used both the handle and the blade part of the knife. There is no evidence as to the force used by Mr Manuake, how long each end of the blade was used or whether the blade was sharp or not. There was no evidence as to whether the knife handle was rough or smooth. That is because LT was not asked about any of these matters. Nor was LT asked how heavy the bleeding was.
113. LT said she shouted out so someone could hear. LT was bleeding and told Mr Manuake to stop. His response was to punch her. She then lost consciousness, which is when he did stop. After the incident, they returned home. She walked slowly. LT's evidence was that she was bleeding when she went to the toilet and when she had a shower. She said it was painful when she urinated.
114. LT said that when they returned to their house at Seven Star, she was not allowed to leave the house. When Mr Manuake left the house to attend a ceremony on 23 November 2023, LT took the opportunity to leave. She did so because she felt weak, sore and was scared. She jumped out of the window and left. She explained that she jumped out of the window because the door was locked from the outside. LT then walked slowly to her parents' house at Prima Bridge. She said she did so because she felt weak, her body was sore, and she felt scared. She confirmed she had a knife with her, which her mother confirmed.

²⁷ Exhibit P1

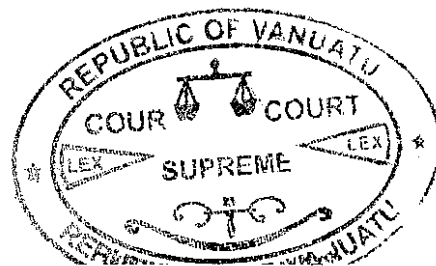


115. LT was cross examined at length about the walk to Prima. She agreed that it took her about 1 ½ hours to get to Prima. She said she took it slowly but felt that she really needed to get home to her mum. She forced herself to hurry up to get to the house. She did not think she could make it, but as she walked along, she prayed to God to get her there. She explained that as she felt weak and dizzy, she would stop and go again.
116. When she reached her parents' house, she told her mother about everything, and her mother took photographs of LT's face. LT said that the next day, she and her mother went to hospital for an examination. LT's evidence was that was on 24 November 2023. She went to have her eyes checked and her vagina was also examined. She was given medication. LT remained in hospital overnight. She believed that was because she was still weak, bleeding and her vagina was sore. LT said there was a medical report, which as per Mrs Malites submissions, the defence appear to accept. LT said she took the medical report to her parents' house and left it there. She explained she was coming and going from there and could not find it when she went to look for it. She candidly agreed that she told Mr Manuake that she had tom up the report, but that was not in fact true.
117. LT's mother, Ruth Kaltonga gave evidence. She said LT arrived at the house at Prima at about 8pm on 23 November 2023. She said LT was walking slowly and carrying a small knife. She took photos of LT's face but not the knife. Mrs Kaltonga said LT told her that Mr Manuake had assaulted her and after he hit her, he used a small knife which he pushed in and out of her vagina. LT's mother confirmed she and LT went to the hospital to seek medical treatment for LT, after going to the Women's Centre to get a Protection Order. Her evidence was that was on 27 November 2023.
118. Following the incident on 2 and 3 September 2024, LT was examined by Dr Atkin at the hospital. He gave evidence. Mrs Malites asked him a number of questions about likely injuries from a knife being inserted in LT's vagina. Dr Atkin said that if the handle of the knife was used, it depended on the type of handle- rough or smooth. He said that if the handle was smooth, he did not think there would be any injury. If the handle was rough, it could cause some abrasions on the vaginal wall. Dr Atkin was then asked about likely injuries if the knife blade was used. He said that if the blade was inserted with rough force, the likely injury would be laceration of any of the reproductive parts/organs, specifically the opening, the vaginal wall or even the cervix.
119. Dr Atkin said that if there was evidence of laceration, there would be bleeding. He confirmed that if there was an injury in the vagina, the victim would be able to walk. Dr Atkin said that if there was lots of blood loss/ bleeding and a drop in blood pressure, the victim would experience dizziness and difficulty standing up. But that would usually be experienced during massive bleeding. Dr Atkin was asked about how long it would take to recover from the bleeding. He queried what the bleeding was from- a laceration or abrasion? The Court confirmed that the evidence was there was bleeding, but there was no evidence about injuries, because of the lack of a medical report. He said that if



there was a small injury to the vagina and not actively bleeding, it would resolve itself in a few days. Dr Atkin said that if there was a laceration from the knife blade, that if the bleeding was heavy, then the victim would experience blood on her pants or running down her tights. He said that there are also cases where there would be lacerations, but the bleeding would not be heavy, so it would not be seen on pants or tights. Dr Atkin was asked about the possibility of LT walking from Seven Star to Prima slowly. His response was that if the bleeding was slowly leaking, then that would be possible.

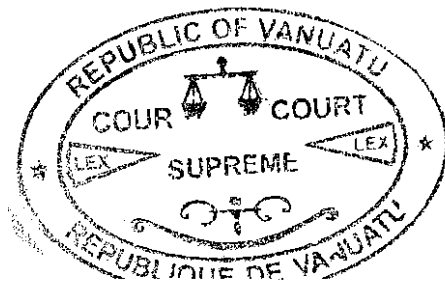
120. Inserting an object into LT's vagina comes within the definition of sexual intercourse contained in s 89A(b) of the Penal Code. Whether Mr Manuake did so is the key issue in relation to this charge?
121. The prosecutor submits that LT's evidence is corroborated by her mother's evidence and that all elements of the charge are established. Mrs Malites made extensive submissions in relation to this charge. The defence position is that this incident did not occur. I disregard Mrs Malites submission that Mr Manuake's position is that LT left the house on 19 November 2023. LT denied that proposition, and there is no evidence about that. Mrs Malites submits that LT fabricated this incident, as reflected by the numerous inconsistencies in her evidence. The defence submit that the discrepancies include the variance between LT's police statement and her evidence, the conflicting descriptions of the knife given by LT and her mother, the improbability of LT walking the distance from Seven Star to Prima if she had the injuries she said. That LT's mother, the corroborating witness, had a clear motive to lie. Finally, there was no medical report or photograph of the knife.
122. LT's evidence was matter of fact and had the ring of truth to it. It was a very specific allegation, and LT did not try and sugar coat what happened. She said Mr Manuake used both the handle and the blade of the knife. LT was candid about that. She gave a detailed description of the knife. LT's evidence was internally consistent, as LT remained firm in cross examination about various aspects of this incident- that she jumped out of the window to get away, that she was raped, and that it was not a false complaint. Mrs Malites contends that the difference between LT's evidence as to the removal of her clothes, and what she told police suggests embellishment. As set out above, LT's evidence in chief was that she removed her clothing due to threats. That is consistent with her statement, but in her statement, LT also said that Mr Manuake forcibly removed her underwear. When that part of her statement was put to her, LT confirmed that what she said in her statement was true but that she had forgotten to mention that. Mrs Malites submitted that LT's confirmation that such a traumatic experience would be deeply rooted in her mind raises the question of how she could forget such a critical and intimate detail if the rape happened as LT claims. LT acknowledged that she had omitted to give evidence about that aspect. What I have to be sure about is the core part of LT's narrative. The fact that she omitted to refer to something she said in a statement made when her memory and recall was fresher is explicable. She confirmed in cross examination that what she said about the removal of



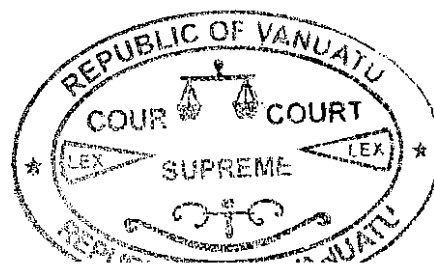
her clothes was true. I assess that LT's recall is impacted by the passage of time, and that LT was reliving a number of traumatic experiences during a relationship marred by dysfunction and family violence. As I have said, she gave evidence over 4 days and was cross examined at length. I do not think that omission undermines either the credibility or reliability of her evidence about this incident.

123. Finally on the topic of the underwear, Mrs Malites points to the fact that in her statement LT said she had dressed herself without wearing undergarments since they had been destroyed. I disregard that submission, as that part of LT's statement was not put to her, so does not form part of the evidence. As to the submission as to the fact that the torn underwear has not been produced, I reiterate that I will take into account the evidence before the Court. I do observe that the Police seem to be particularly inactive in these types of investigations, but a lack of proper investigatory practices cannot be sheeted home to LT.
124. LT was squarely challenged about the rape allegation. She rejected the proposition that there was no rape. LT remained firm and consistent about whether Mr Manuake pushed the knife in and out of her vagina. She said that Mr Manuake was drunk. She also rejected the proposition that she made up the injuries. LT did not shy away from the fact that there was no medical report relating to this incident, and that she had lied to Mr Manuake about the report, as she told him she had torn it up. In re-examination, LT explained why she lied to Mr Manuake. She said that every time he mentioned the report there would be an argument and he hit her. She said she wanted him to believe it had been torn up.
125. LT said the report had been misplaced. LT left the medical report at her parents' house, because she believed that Mr Manuake would destroy it if she took it to Seven Star. LT denied that the report had been misplaced or damaged because there were no injuries relating to the use of the knife.²⁸ There is no medical report. I do not think the report was deliberately mislaid so she could make a false rape complaint, as I do not accept this is a false complaint. As I have said, I assess that LT gave evidence about something which did happen to her. As was said in *Kal v Public Prosecutor* [2016] VUCA 56, Judges make their decisions based on the evidence before them. Either the evidence that is available will establish the charge or it will not. It is remarkable that a complainant in a rape or family violence case is responsible for putting a medical report before the Court. I consider that squarely the responsibility lies with either the police or the prosecutor.

²⁸ I asked Ms Tamau why she was not able to get a copy of the medical report, as the fact that LT had been admitted to hospital in November 2023, did not appear to be in dispute. Ms Tamau said she made attempts to obtain the report from the Women's Centre but understood it had been misplaced. With respect, Ms Tamau could have made an inquiry with the hospital to try and obtain the report, or information as to LT's admission to hospital. Minimal effort appears to have been made by the prosecutor.

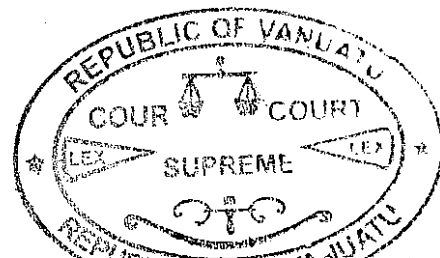


126. On the topic of LT's injuries, Mrs Malites was critical of the lack of detail as to LT's injuries, and that potential injuries of the severity described by Dr Atkin are inconsistent with LT walking 2-5 km for Seven Star to Prima. I make two points.
127. Firstly, there was no evidence as to the actual distance from Seven Star to Prima. LT described the route she took, and confirmed in cross examination it took her about 1 ½ hours to walk there.
128. Secondly, there are limitations to Dr Atkin's evidence. Relevantly, he did not examine LT at the time of this incident. So, his opinion was based on the evidence, and as I have said, LT was not asked about the degree of force Mr Manuake used, how long he used the handle and the blade, how sharp or otherwise the blade was, whether the handle was rough or smooth, or how heavy (or not) the bleeding was, which may well have been relevant to Dr Atkin's opinions. There are then a number of unknowns. Dr Atkin's evidence does not though render LT's evidence that she was bleeding and walked to Prima unreliable or improbable. LT's evidence was that she was bleeding, which she noticed when she went to the toilet and had a shower. Dr Atkin confirmed that if there was an injury to the vagina, LT would have been able to walk, unless there was lots of blood loss/bleeding and a drop in blood pressure, with dizziness and difficulty in standing. This would usually be experienced with massive bleeding. There is no evidence there was massive bleeding. LT said she was bleeding.
129. There is a difference between LT and her mother as to when LT went to the hospital for medical treatment. Both are clear that LT went to the hospital. LT said it was the next day, 24 November 2023 and her mother said it was a few days later. I disregard Mrs Malites submission that LT's evidence differed from what she said in her Police statement to police as to when she went to hospital, as she was not asked about that in cross examination, so it does not form part of the evidence. Mrs Malites submission that the delay in seeking medical treatment undermines the reliability of LT's account, is predicated on a view that LT would have sustained severe injuries. The Court has no evidence as to the severity of LT's injuries and the contention is also at odds with Dr Atkin's evidence. Either LT or her mother are mistaken as to when LT sought medical assistance, but I do not consider that renders their evidence unreliable. When LT went to hospital is not of any great significance. The variable evidence about this also undermines the defence submission that LT's mother is part of the collusion. What is important is that both LT and Mrs Kaltonga said that LT went to hospital and her vagina was looked at and she was given medication.
130. Mrs Malites contends that inconsistencies as to the description of the knife as between LT and her mother, along with the absence of physical evidence of the knife, undermines the reliability of LT's account. LT's description of the knife inserted into her vagina was that it was a small kitchen knife with a green handle. LT agreed that she had a knife with her when she walked to Prima. She was not asked if it was the knife used to penetrate her vagina. LT's mother said that LT had a knife with her when she



arrived. She described it as a small knife with a brown handle. Even if it was the same knife Mr Manuake used, whether or not the handle was green or brown is immaterial.

131. In my view nothing turns on the fact that Mrs Kaltonga did not take a picture of the knife or that there is no photograph in the police bundle. LT and her mother had more to worry about than taking a photo of a knife, given that LT had visible injuries (as evidenced by the photographs) and was upset. LT said she gave the knife to police, and a photograph was taken of it. There is nothing to contradict that and I do not speculate why there is not a photograph of the knife; there could be various reasons. Again, I must assess this charge based on the evidence before the Court.
132. It was put to LT that she made a false rape complaint to be able to get rid of Mr Manuake. LT denied firmly that it was a false complaint. She said that it did happen. LT was asked about the relationship in cross examination. She agreed the relationship was abusive and as a result she suffers from emotional distress and was trapped in the relationship. She said Mr Manuake hit her. LT was upfront and matter of fact about the dysfunctional nature of their relationship, but said she loved him and thought she could change him. LT denied more than once the proposition that making a rape complaint was her way of getting out of the relationship. This was a relationship marred by dysfunction and family violence to the point that LT knew that the relationship needed to end and was trapped. But did that lead her to manufacture a rape complaint so that Mr Manuake would be out of her life? Family violence is complex. A good indicator that LT did not make a false rape complaint to get Mr Manuake out of her life is that she and Mr Manuake resumed their relationship after she made a statement to Police on 19 December 2023. The relationship did not end until September 2024.
133. The defence case is that Mrs Kaltonga's evidence should be treated with caution because of her antipathy towards Mr Manuake. Therefore, Mrs Kaltonga's clear bias undermines the independence and reliability of her narrative. Mrs Kaltonga had strong views about Mr Manuake and wanted the relationship to end. She was upfront about that. Mrs Kaltonga agreed that she did not like Mr Manuake. Her views were shaped by the violence towards LT and Mr Manuake's threatening behaviour towards her and the children, that she and LT had seen and heard, including a threat to burn Mrs Kaltonga's house down. Mrs Kaltonga rejected the proposition that she influenced LT to report the rape with the knife, because of her view that Mr Manuake was bad for LT, but she kept going back to him. Mrs Kaltonga explained that LT would come home but Mr Manuake would threaten the children, assaulted the children and threatened to bum her house down. As a result, she said that LT was scared, and did not want to put her family in danger so stayed with Mr Manuake.
134. I do not accept the defence contention about a bias on Mrs Kaltonga's part. Mrs Kaltonga's views about Mr Manuake have an objective basis. Mr Manuake was violent to LT, which is not in dispute. LT turned up at Prima on 23 November 2023 with obvious injuries. Both LT and Mrs Kaltonga gave evidence about other threats and violence by



Mr Manuake to LT's family. Mrs Kaltonga was right to be concerned about the relationship. It was a dysfunctional relationship, which LT had enough insight to know. There is no basis to infer that Mrs Kaltonga influenced LT to fabricate a false rape allegation or colluded with LT to get Mr Manuake out of her life. Mrs Kaltonga gave matter of fact evidence as to what happened when LT arrived at Prima and what happened after that, and how she assisted LT. Her evidence had an air of authenticity to it and was internally consistent. As noted, Mrs Kaltonga's views as to LT and Mr Manuake's relationship had a rational basis, as she knew about the violence, that her daughter would go back to Mr Manuake and why she did so.

135. In summary, taking into account the matters I have discussed, I consider that LT was telling the truth about Mr Manuake penetrating her vagina with a knife. Her account was coherent, plausible, matter of fact, and supported in part by her mother's evidence. I assess LT's evidence about this incident to be something she actually experienced. LT's evidence about her walk to Prima was compelling. While demeanour should be approached with caution, LT was very distressed when giving evidence about that. I assess that to be genuine. I acknowledge that there is no corroborating evidence, as such. But there is some evidence to support LT's narrative. She told her mother immediately and sought medical assistance with her mother's help and was given some medication.

136. I am sure that Mr Manuake penetrated LT's vagina with a knife.

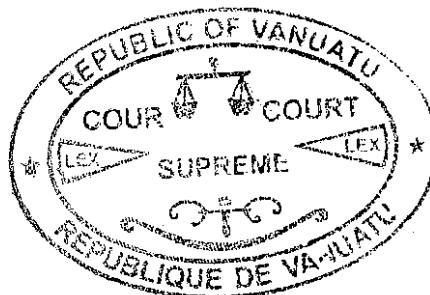
Am I sure that LT did not consent?

137. The defence have not put consent in issue for this charge. Nevertheless, the Prosecution are required to prove all elements of the charge to the required standard.

138. LT said that she was told to remove her clothes after having been assaulted by Mr Manuake, who threatened to continue hitting her. A person does not consent to sexual activity if force is used, or there is a threat or fear of force. LT also said she shouted out loudly so someone could hear while Mr Manuake was putting the knife in her vagina, and that when she told him to stop, he punched her and rendered LT unconscious. Because the trial issue in relation to this charge was a denial of the incident, LT was not asked questions in cross examination about consent, or Mr Manuake's view of whether she was consenting. So, LT's evidence about not consenting is unchallenged.

139. I am sure that LT did not consent to Mr Manuake penetrating her vagina with the knife. LT had been assaulted in the lead up to this incident. She shouted out and asked Mr Manuake to stop. His response was to punch her.

140. I am sure that LT did not consent.



Am I sure that Mr Manuake did not believe on reasonable grounds that LT was consenting at the time that he penetrated her vagina with the knife?

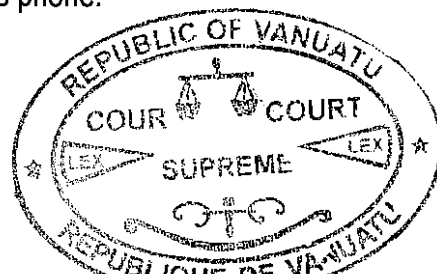
141. Belief in consent has not been put in issue by the defence for this charge. I will consider whether Mr Manuake could not reasonably have believed LT was consenting. If I am sure that a reasonable person standing in Mr Manuake's shoes would not have believed LT was consenting, that would be enough. This is to be assessed at the time of the sexual act.
142. The evidence in relation to consent is relevant and applicable to this issue. I have accepted LT's evidence that the penetration of her vagina with the knife was nonconsensual, for the reasons set out above. On that basis, no reasonable person in Mr Manuake's shoes would have believed LT was consenting. According to LT's evidence, which I accept, she had been assaulted, shouted out and asked Mr Manuake to stop. He responded by assaulting her again. No person could reasonably believe that LT was consenting at that time and in those circumstances.
143. Therefore, I am sure that a reasonable person standing in Mr Manuake's shoes would not have believed that LT was consenting when he was penetrating LT's vagina with the knife.
144. Therefore, I find Mr Manuake guilty of charge 8.

Charge 6 - Act of indecency without consent

145. As I have said, during the incident in the basement, LT said that Mr Manuake took a video of her vagina, after he had opened her legs. The key issue in relation to this charge is whether Mr Manuake took a video of LT's vagina, and so committed an act of indecency.

Am I sure that Mr Manuake committed an act of indecency upon, or in the presence of LT?

146. The prosecution case is that Mr Manuake committed an act of indecency in the presence of LT by taking a video of her vagina at the time he was penetrating it with the knife. The defence case is that it did not happen.
147. LT said that after she had undressed, Mr Manuake forced her to open her legs and started videoing her. She said that while he videoed her, he was inserting the knife in and out of her vagina. LT said that she did not agree to the video clips, but she basically let it happen because of the threats Mr Manuake was making. LT said that she knew about the videos as she saw them on Mr Manuake's phone.



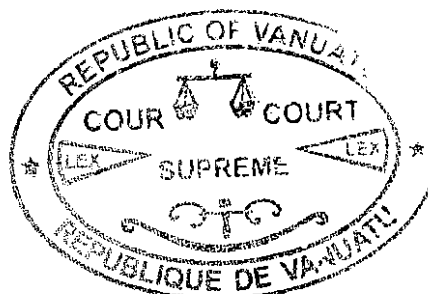
148. In cross examination, it was put to LT that Mr Manuake did not have a phone at the time. LT was clear that Mr Manuake did have a phone at the time. LT accepted that she did not take the phone to the police. She explained why. She said that every time she went out, Mr Manuake would hang onto the phone, and she was not allowed to have it.
149. The evidence in relation to this charge is slim. I have considered the coherence and probability of Mr Manuake taking a video of LT's vagina while penetrating it with a knife. It may have been possible - for example, if Mr Manuake was not in fact holding the phone at that time, but I simply do not know. That is because there was not much evidence about this part of the incident and the circumstances were not really explored in any detail with LT by either counsel. There was no evidence as to whether Mr Manuake held the phone or whether he had it propped up on something. If Mr Manuake held the phone, then there may be a question mark about the plausibility of how he could do both things. But equally it may have been propped up on something. But I do not speculate. I do consider that Mr Manuake taking a video is congruent with the power and control imbalance between he and LT, but on its own that is insufficient for me to be sure about what happened. While Mr Manuake may have videoed LT with the phone while putting the knife in her vagina, I cannot be sure, as there is insufficient evidence about this incident, as I have detailed.

Result

150. Therefore, I find Mr Manuake not guilty of charge 6.

Second set of offending – LT and AG

151. The Prosecution case is that in September 2024 there was an alleged incident in the basement of an unoccupied property at Seven Star. The Prosecution case is that Mr Manuake took AG to the property, and then LT arrived at the property later in the evening. It is alleged that over a period of hours, Mr Manuake sexually assaulted LT and AG, physically assaulted LT and threatened to kill both LT and AG. This incident gives rise to eight charges:
- a. Charge 14 - Sexual intercourse without consent in relation to AG only.
 - b. Charges 8,9 and 15 - Sexual intercourse without consent. These charges relate to both LT and AG.
 - c. Charges 10 and 11- Acts of indecency without consent relating to both LT and AG.
 - d. Charge 12 - Threats to kill.



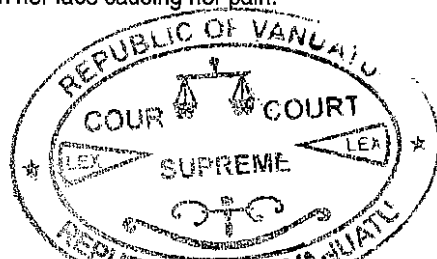
e. Charge 13 - Intentional assault.²⁹

152. By way of background, as at September 2024, Mr Manuake and LT had resumed their relationship. They were living together at Seven Star. Earlier in the day, LT and Mr Manuake had arranged to meet up, because Mr Manuake had demanded money from LT. They did not meet up because he was not there. Later in the evening, LT decided to go back to Seven Star. When LT got to the Seven Star Area, she received information that Mr Manuake had been seen with a girl walking along the Seven Star Road to an old house. She went to the house, because she was angry and wanted to see who this female was. This was the same yard that Mr Manuake had taken LT to on 22 November 2023.
153. AG said she met Mr Manuake via Facebook. As noted, she accepted in cross examination she had met Mr Manuake on a prior occasion but denied a greater level of contact with him. On 2 September 2024, Mr Manuake turned up outside her home address. She believed he had been drinking. He wanted her to go with him to Seven Star, but she refused. Mr Manuake was insistent and called her names. So, AG went with him to the empty property at Seven Star. AG's evidence is that she and Mr Manuake were engaged in non-consensual intercourse and were interrupted when LT arrived at the property.³⁰
154. When LT arrived at the property, she found Mr Manuake at the property with another female. LT did not know who this person was but slapped her because she was angry. Mr Manuake punched LT in the eye.³¹ After that, Mr Manuake introduced LT and AG and told them to shake hands.
155. The Prosecution case is that over a period of hours, Mr Manuake raped LT and AG on three separate occasions, and that he made LT and AG suck on each other's breasts and that he ejaculated into both their mouths. Both LT and AG also gave evidence that Mr Manuake threatened to kill them during this incident.
156. When Mr Manuake was spoken to by Police on 12 September 2024, he elected to remain silent. After he was charged, Mr Manuake made some comments about the charges relating to the September 2024 incident. He said that the sexual intercourse with both LT and AG was consensual. Further, he denied making any threat to kill LT and AG. He said he was angry at the time.

²⁹ I do not consider charge 13 as Mr Manuake pleaded guilty to charge 13

³⁰ Charge 14

³¹ As I have said, Mr Manuake pleaded guilty to charge 13, a charge of intentional assault contrary to section 107 [of the Penal Code]. The particulars are that he assaulted LT twice on her face causing her pain.



157. At trial, Mr Manuake's position was that there was one round of consensual sexual intercourse, and that LT and AG did suck on each other's breasts, which they did willingly. He denied all other allegations.

Charge 14 - Sexual Intercourse without consent (AG)

Am I sure that Mr Manuake penetrated AG's vagina with his penis?

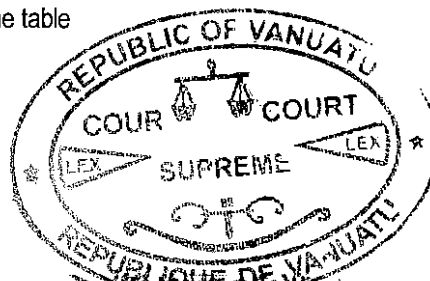
158. AG said that when she and Mr Manuake got to the property at Seven Star, Mr Manuake wanted them to sleep. AG did not want to. So, Mr Manuake shouted at her, said he would hit her and swore at her. AG said she was crying. After that, Mr Manuake grabbed her hand and pulled her down onto the bed, and they slept.

159. Then, after they had slept for a short period of time, AG said Mr Manuake told her to remove her clothes. She refused, so he threatened to hurt her with scissors that she had seen on a table.³² AG said this made her feel scared, and she stated crying. AG said that Mr Manuake removed her clothes when she refused to do so, and then pushed his penis into her vagina. As Mr Manuake was having sex with her, LT arrived. They knew she was there because she called out loudly and banged on the door. So, while Mr Manuake went to open the door, AG put her clothes on, sat down and was crying.

160. Mrs Tamau submits that AG's evidence is credible. She points to the fact that AG said they were friends on Facebook, chatting, but AG did not consider Mr Manuake to be her boyfriend. The defence position is that this incident did not happen. Mr Manuake wanted to have sex with AG, but they were interrupted by LT's arrival at the basement. Mrs Malites submits that the failure to say anything about the incident prior to LT arriving is material when her initial statement to Police contained specific details about Mr Manuake threatening sexual activity with scissors. But she omitted the actual penetration. I put to one side Mrs Malites' submissions about Mr Manuake's position in respect of this incident. As I have said, there is no evidence of the matters she has detailed in her submissions about this incident.

161. When AG spoke to Police in the immediate aftermath of the events in the basement, she did not say anything about Mr Manuake having sexual intercourse with her before LT arrived. In March 2025, she made a subsequent statement detailing this incident. That led to an Amended Information being filed with a new charge to reflect this incident. A partial or delayed complaint does not mean that AG's evidence is untruthful or unreliable, any more than an immediate complaint means that it is truthful and reliable. The fact that the complaint was delayed is a matter that may or may not impact on credibility and reliability. It is a matter of assessing the evidence relevant to the charge.

³² AG's evidence was that there was a pair of scissors and a knife on the table



162. In cross examination, AG was asked about the additional rape incident. It was suggested to her that what Mr Manuake did to she and LT was the reason that an additional rape charge was filed. She said that at the time she had panicked and did not remember everything. When she read through the statement again, she remembered the part where Mr Manuake had had sex with her. AG was asked about her Police statement made on 4 September 2024. AG accepted that she did not tell Police about the fact that she had sexual intercourse with Mr Manuake prior to LT's arrival. What she said was "then he held some scissors and told me to remove my clothes, but then at the same time he text LT to come and as he was threatening me in this manner LT came out. I was also surprised to see that LT was Anthony's girlfriend."
163. I recognise that this was a traumatic few hours for AG. She had gone to the basement at Seven Star with Mr Manuake, a man she had only met once before. She did not know LT, whose first reaction was to assault her. She saw Mr Manuake assault LT. AG alleges that she and LT were then sexually assaulted by Mr Manuake. That could account for AG not saying anything about this incident when she spoke to Police in the immediate aftermath. AG's explanation was that she panicked. That is plausible, but AG told Police she was threatened with the scissors and told to remove her clothes. It is not a matter of AG completely omitting to tell police about this incident. Rather, AG made a partial disclosure initially. It is curious that AG gave specific details about the lead up to the rape but did not say anything about the rape itself. It may be that the events once LT arrived were front and centre for AG when she spoke to police, but I do not think the omission to tell police about the most significant part of this incident, when she told Police about the lead up to the incident, can be explained by panic alone. As such, I cannot be sure that the sexual intercourse happened.
164. I do not consider that this was a false allegation. Rather, it is likely or probable that there was sexual intercourse, but for the reasons discussed above, I cannot be sure. I am left in a position then that I cannot be sure whether Mr Manuake penetrated AG's vagina with his penis before LT arrived.

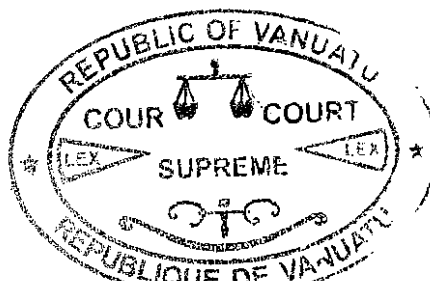
Result

165. I find Mr Manuake not guilty of charge 14.

Charge 8 - Sexual intercourse without consent (LT and AG – the first time)

Am I sure that Mr Manuake penetrated LT and AG's vagina with his penis?

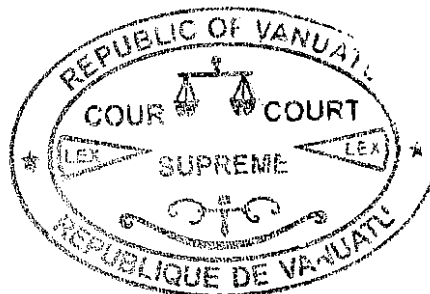
166. This charge relates to the allegation that Mr Manuake raped both LT and AG for the first time while they were in the basement at Seven Star. As a preliminary point, there should



have been a separate charge for each of LT and AG. This is applicable to the other charges relating to this incident.

167. Mr Manuake accepts that he had sexual intercourse with LT and AG on this first occasion. He disputes the subsequent sexual intercourse. The key issue for this charge is consent, but nevertheless, I must be sure that Mr Manuake penetrated LT and AG's vagina with his penis.
168. Both LT and AG said that after Mr Manuake introduced them to each other, and made them shake hands, they were told to undress. Both refused, and so Mr Manuake removed their clothes. LT remained firm about that in cross examination. However, in cross examination, AG said that they undressed themselves under threat. Mr Manuake told them both to lie on the bed, which they did. Both LT and AG described the bed as wooden with no mattress. AG said they were threatened with a knife, to make them lie down. LT and AG said that Mr Manuake told them to open their legs and then proceeded to have sex with them both in turn. AG said they were crying.
169. LT's evidence was that Mr Manuake had sexual intercourse with her first. She said she did not consent. She told him she did not agree. LT said that Mr Manuake then told her to kiss AG and suck her breast.³³ LT said that Mr Manuake then had sexual intercourse with AG and told AG to kiss her and suck LT's breast. She said that AG cried and asked him to stop. LT said that Mr Manuake ejaculated when he had sex with AG.
170. AG's evidence was that Mr Manuake had sexual intercourse with both of them. She said that Mr Manuake's penis was slack before the sexual intercourse and made LT hold and rub his penis. AG said that Mr Manuake then put his penis in her vagina, she cried and told him "no" but he persisted. She felt something metallic in his penis. AG said that Mr Manuake then had sex with LT, who said "no" but he did so anyway. Mr Manuake told LT to suck AG's breast. AG did not see if Mr Manuake ejaculated.
171. Ms Tamau acknowledged in her submissions that there is an inconsistency in relation to who Mr Manuake had sex with first, but that was immaterial. Ms Malites did not address the rape charges separately. That would have been preferable, because each charge must be considered separately. Mr Manuake's position is that there was one sexual encounter which was consensual. This is consistent with his police caution statement. The defence contention is that LT and AG's evidence is riddled with contradictions, material inconsistencies and omissions which undermines the reliability of their evidence and whether there were 3 occasions of sexual intercourse.
172. I must concentrate on the evidence and issues in relation to this particular charge. I will address that issues relating to whether the sexual intercourse happened more than once when I consider those charges.

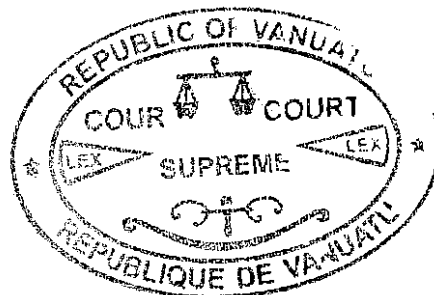
³³ Charge 10



173. Mrs Malites contends that there are a number of factors which mean that the credibility of LT and AG is undermined. These factors are contradictions about removal of clothing, knife use and placement, timing and sequence of acts,³⁴ the lack of sperm when AG was medically examined, motive to fabricate, contradictions about threats and escape, and influence/ context of LT's evidence. As noted, these factors relate to the entire incident.
174. LT and AG's evidence that Mr Manuake penetrated their vaginas with his penis is congruent with Mr Manuake's acceptance that he had sexual intercourse with LT and AG on this, but not the subsequent occasions. LT and AG's evidence about this incident was in an overall sense very similar that Mr Manuake penetrated their vaginas with his penis on that first occasion. They said they were told to undress, both refused, so Mr Manuake removed their clothes. I accept that AG walked back from that when cross examined, as she said they removed their clothes under threat. He then had sexual intercourse with each of them in turn, which they did not want., and said "no". And that during the sex, they sucked each other's breast.
175. There were differences in their narratives. One of the differences is that LT said Mr Manuake had sex with her first, and AG said that he had sex with her first. This is an issue about sequencing, which is not critical to whether or not the sex took place, particularly as Mr Manuake accepts that it did. Another difference is that each of them gave different details as to what took place. LT said that both of them kissed and sucked each other's breast during this incident. AG said LT was told to suck her breast. AG described the slack state of Mr Manuake's penis, and LT being made to rub it. I do not consider that such differences undermine the truthfulness and reliability of their evidence about this incident. They are recalling different parts of this incident. LT and AG were remembering or recounting what was important to them, as opposed to what happened to the other. As an example, in cross examination³⁵ LT candidly said that she could not recall which one of them he had sex with first. She explained that she recalled that he had sex with them both at the same time. That Mr Manuake had sex with each of them is the essential to the charge, and not the sequence of who he had sex with first.
176. The differences run contrary to the contention that LT and AG colluded to make this allegation so as to get Mr Manuake out of LT's life. As said, I do not consider that LT and AG colluded to fabricate this incident. It is true that while Mr Manuake was asleep, LT told AG about Mr Manuake and her perception of him. As I have observed, LT's perception had a rational basis. It was a relationship marred by violence, dysfunction and controlling behaviour on Mr Manuake's part. Mr Manuake in fact assaulted LT that night. It is also odd that LT could have such a level of influence over AG that she convinced her to immediately go to the Police once they left Seven Star and make a

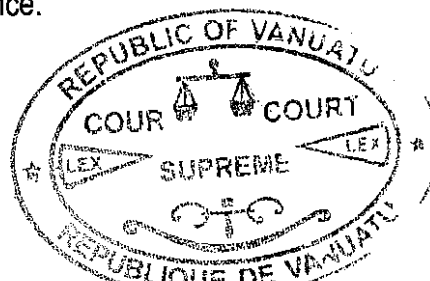
³⁴ this factor relates to whether there were multiple acts as alleged

³⁵ LT gave evidence over 5 days and was extensively cross examined



false complaint. LT and AG had only known each other for a matter of hours, and LT had assaulted AG. I consider that it is implausible and improbable that both colluded as a result of LT's influence over AG to the extent that they would go to police and fabricate rape and other allegations. The more plausible explanation is that they went to police because they had been sexually assaulted.

177. In her evidence in chief, LT said that Mr Manuake ejaculated inside AG. She was asked how she knew that. She said that when Mr Manuake ejaculated inside AG, he stopped having sex with her. LT was mistaken about that. LT and AG were medically examined on 3 September 2024. Swabs were taken and there was no evidence of sperm in AG's vagina. Dr Atkin, who did the examinations, gave evidence and said that sperm can stay for up to 5 days. I assess LT was genuinely mistaken, as opposed to being untruthful. She explained why she believed Mr Manuake ejaculated, and further, the defence case in fact was that Mr Manuake ejaculated while having sex with AG, as that proposition was put to LT. There was no evidence that condoms were used, so it is difficult to know what to make of this, given Mr Manuake's position also was that he ejaculated inside AG.
178. Mrs Malites mounted a firm challenge to LT and AG's credibility as to more peripheral matters, as described above. To recap, these matters included a contradiction about how their clothes were removed, knife use and placement, timing and sequence of events, contradictions about threats and escape.
179. As I have said, AG walked back on her evidence that Mr Manuake removed their clothes, but LT did not. Part of LT's statement was put to her in cross examination. In her statement, LT said that Mr Manuake removed her clothes. She remained firm in cross examination that Mr Manuake removed their clothes, so her evidence was both internally consistent, and consistent over time, so I accept LT's evidence that Mr Manuake removed their clothes.
180. Mrs Malites contended that LT and AG gave conflicting accounts as to where the knife was- on the table or held by Mr Manuake. Her submission is that contradictory versions of a critical detail show inconsistency and reduce reliability. I address this when considering charge 12 (threat to kill). I do not accept that contention. In fact, both said that Mr Manuake held the knife at times, so it is plausible that the knife was on the table at times and in Mr Manuake's hands at times. LT and AG are recalling different parts of the incident but are consistent that threats were made involving the knife. I assess that it speaks to LT's lack of embellishment that her evidence in chief was that the knife was on the table. Why not just say he was holding the knife if she really wanted to get Mr Manuake into trouble? It was not until a part of LT's statement was put to her in cross examination that she confirmed she told Police Mr Manuake was holding the knife. This is an example of LT omitting in evidence in chief detail given when these events were fresher in her mind, which as I have already said, is explicable and does not materially undermine the credibility and accuracy of her evidence.



181. Mrs Malites submits that there are contradictions as to whether the gate was locked and whether LT and AG were fleeing from Mr Manuake or left because they were fearful because Mr Nanyard and another person had arrived at the property and knocked on the door. LT was not challenged about the gate being locked or how she entered or exited the property, so ordinarily that evidence would be accepted. If Mrs Malites wanted to make submissions about this, then LT should have been asked.³⁶ Mr Nanyard's evidence was that he and another person came to the property to check if that grass needed cutting, and noticed the lock on the gate to the left was broken. There is a difference between LT's evidence and Mr Nanyard's evidence, but I do not place any real weight on that, given LT was not asked about the gate when she was cross examined. As to LT and AG leaving the property, Mr Nanyard was asked if he knew why they ran away. He said he did not, but thought they were perhaps afraid of Mr Nanyard and his associate. And then said he did not know. It is a long bow to draw the inference, as contended by Mrs Malites that Mr Nanyard's evidence indicated LT and AG were concerned about being reported for trespassing, and so their rapid exit is consistent with fear of Mr Nanyard and his associate. I consider that LT and AG took the opportunity to leave when the two men came to the property. There is no credible evidence that they left because they were worried about trespassing. And in any event, it is a peripheral matter, at best.

182. The core part of this element is whether Mr Manuake penetrated LT and AG's vagina with his penis. Their evidence that he did penetrate their vaginas on the first occasion was clear, internally consistent and consistent over time. The sequencing issue is irrelevant as Mr Manuake accepts he had sexual intercourse with LT and AG. Relevantly, Mr Manuake accepts that he did so. Further, none of the matters set out above, show that LT and AG's evidence that Mr Manuake penetrated their vaginas with his penis on the first occasion was untruthful or unreliable, for the reasons discussed.

183. Therefore, I am sure that Mr Manuake penetrated LT and AG's vagina with his penis.

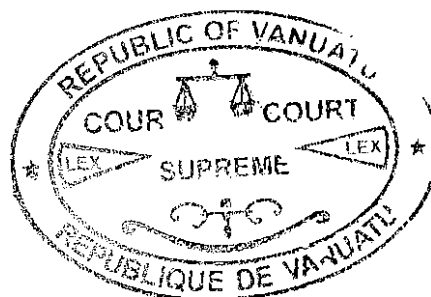
Am I sure that LT and AG did not consent to this sexual act?

184. This is the key issue for this charge.

185. LT and AG's evidence is that they did not consent to having sexual intercourse with Mr Manuake. They said "no", their clothes were removed (according to LT's evidence, which I have accepted), they were forced to open their legs, and threatened. Mr Manuake's position is that LT and AG were willing participants and consented.

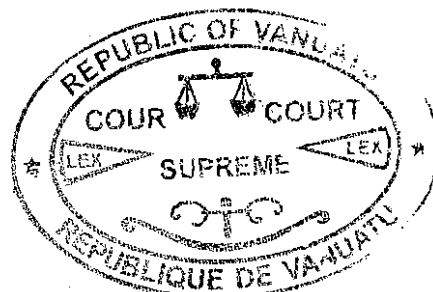
186. If I accept LT and AG's evidence, they did not consent. They both said "no" and complied because of the threats made by Mr Manuake. A person does not consent to

³⁶ See *Tui UK Ltd v Griffiths* [2023] UKSC at 70



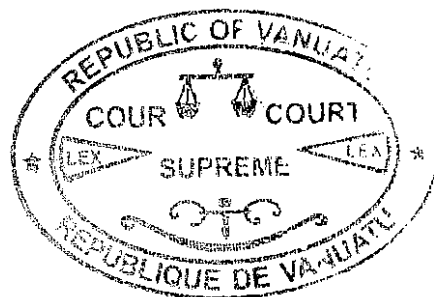
sexual intercourse if he or she allows the sexual activity because of force or an express or implied threat of force, or intimidation.

187. It is important to consider the context. According to AG, she and Mr Manuake had been chatting on Facebook but had only met in person once. Relevantly, LT and AG did not know each other, and were unaware of each other's existence. They met for the first time in the basement at Seven Star. Both were surprised to find out about each other, and LT was cross with Mr Manuake when she found him with another female, because they were in a relationship. That led her to assault AG immediately. Mr Manuake's response was to assault LT. AG witnessed that assault. He has pleaded guilty to that assault. Then LT's mother telephoned to let LT know that a man she regarded as a father figure had died. This was an uncle but LT called him her father. LT wanted to leave Seven Star to be with her mother and was upset and crying. In those circumstances, it seems incredible that LT and AG would willingly have a threesome, and engage in consensual sexual activity.
188. In considering this element, I focus on the evidence about consent, or lack of consent. LT and AG's evidence was clear and cogent that they did not consent to the sexual activity, said "no" and complied because of the threats. One possibility is that they colluded to say that the sexual intercourse was nonconsensual, as the defence contend. But I do not accept that, and nor do I accept that LT influenced AG to go to Police or to fabricate a rape, for the reasons already discussed.
189. Mrs Malites contends that LT's evidence raises serious questions about the credibility and reliability of her account, as LT repeatedly emphasised to AG that Mr Manuake is a man who ill-treats women. LT and AG's evidence was that during the time in the basement, LT told AG that Mr Manuake abused women. LT was candid about that. Mrs Malites contends that LT had a clear interest in influencing AG's perceptions of Mr Manuake, her evidence reflects her own perspective and interventions, rather than a neutral account of events. Further, LT and AG's portrayal of Mr Manuake as coercive and controlling may be partly shaped by LT's influence, rather than factual evidence of nonconsensual conduct.
190. The first point, as I have emphasized already, is that there is a rational basis to LT's views about Mr Manuake. He is violent to women and controlling. He has pleaded guilty to family violence in relation to LT, and LT's evidence indicates a dysfunctional and controlling relationship. This is demonstrated by the circumstances of LT and AG meeting, and Mr Manuake's reaction to LT turning up at the basement. This is not a Court of morals, but Mr Manuake was with a female who was not his partner at Seven Star, and who did not know Mr Manuake had a partner, LT. And Mr Manuake's intention was to have a sexual relationship with AG, while still in a relationship with LT. Then after LT assaulted AG, Mr Manuake responded, as I have said, by assaulting LT. There was no evidence of any sign of contrition, or apology to either LT or AG on Mr Manuake's



part after the situation unfolded. I mention this only because it is an example of controlling behaviour by Mr Manuake.

191. The second point to make is that AG did not need LT to tell her about Mr Manuake, as she had seen for herself that he was willing to resort to violence and is controlling. She saw him assault LT and found out that the person she had been in contact with, had a partner.
192. I assess that LT and AG were telling the truth about not consenting to the sexual intercourse, for the following reasons:
- a. Firstly, there is the context. It is implausible that LT and AG would consent to sexual activity with Mr Manuake in the circumstances described above.
 - b. Secondly, I do not accept that LT influenced AG to make a false complaint, or that LT and AG colluded to get Mr Manuake out of LT's life.
 - c. Thirdly, LT and AG made an immediate complaint to police. I acknowledge that an immediate complaint does not necessarily demonstrate a true complaint, any more than a late complaint necessarily demonstrates a false complaint. But here, they immediately went to the Police and made a complaint, had a medical examination and gave statements the next day, 4 September 2024.
 - d. LT and AG's evidence that they did not consent was clear and cogent, and internally consistent. They remained firm in cross examination that they did not consent. I do not consider that the inconsistencies that exist between LT and AG's narrative as to some of the other allegations, or who had sex with Mr Manuake first one this first occasion, undermine their credibility about consent relating to this incident, particularly given the context, which significantly points away from consensual sexual activity. Further, the matters discussed above, do not render their evidence as to consent unbelievable or unreliable.
 - e. LT and AG both said "no" to the sexual intercourse. They were both firm about that.
 - f. LT and AG both said Mr Manuake made threats with the knife. This is discussed in more detail when considering charge 12. It is relevant to the issue of consent, as consent obtained as a result of force or a threat or fear of force is not a true consent, freely given. The evidence is that both LT and AG complied because they were fearful. Given Mr Manuake's reaction to LT arriving and assaulting AG, they had good reason to be fearful.



193. I am sure that LT and AG did not consent to having sexual intercourse with Mr Manuake on the first occasion.

Am I sure that Mr Manuake did not believe on reasonable grounds that LT and AG consented?

194. Given the matters I have referred to regarding the issue of consent, which are relevant to belief on reasonable grounds in consent, no reasonable person in Mr Manuake's shoes could have believed that LT and AG consented. LT had been assaulted, both LT and AG had been threatened with a knife and were doing as they were told. I accept that LT and AG both expressly said "no". I am sure that Mr Manuake did not believe on reasonable grounds that LT and AG consented.

Result

195. I find Mr Manuake guilty of charge 8.

Charge 9 and 15 - Sexual intercourse without consent (LT and AG – the second and third times)

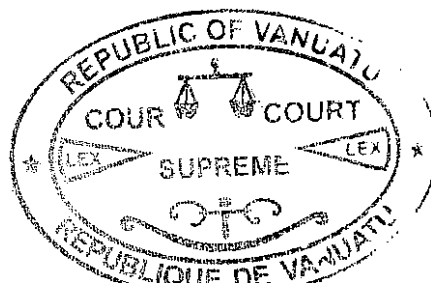
The evidence - charge 9

196. Both LT and AG said that Mr Manuake raped them a second time, shortly after the first rape. Both give very different narratives about what happened.

197. LT said that after they had slept for a short period of time, Mr Manuake woke them up and had sex with both she and AG for a second time. She said that Mr Manuake kissed them and asked them to suck his penis. Mr Manuake then had sex with them again, by pushing his penis into them. They did not agree. LT said that they had sex with Mr Manuake because he threatened them with a small knife and verbally. The knife was on the table. Mr Manuake said he would kill them both.

198. LT said that Mr Manuake ejaculated in her mouth and then into AG's mouth. He did this by standing up, telling them to kneel and taking him in their mouths. LT said she let him do it because he said that if we did not do what he told us, he would kill them. She also said that Mr Manuake told them to swallow his semen.

199. AG said that they slept for a short while and then Mr Manuake had sex with them both again. AG's evidence is that Mr Manuake told them to sit on the side of the bed. He made them stand up and bend over. Then he had sex with them. AG said they bent



over put their hands on the edge of the bed and then Mr Manuake pushed his penis to their vaginas. They did so, because he threatened to hit one of us.

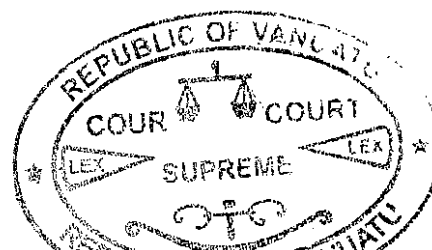
200. AG said that Mr Manuake had sex with her first and while that was happening, he put his hand on LT's breasts and was hitting her bottom. Then he had sex with LT again, which LT did not want. When he had sex with LT, he grabbed AG's breasts and slapped her on the bottom. Unlike LT, AG did not see if Mr Manuake ejaculated or not while the sex was happening, Mr Manuake shouted and swore at them.

The evidence - charge 15

201. LT and AG's evidence was that there was a third time that Mr Manuake raped them. LT said this was at about 5 to 6 am. AG said that it was already daylight.
202. LT said that about four minutes after the second round of non-consensual sexual intercourse, Mr Manuake pushed his penis into her vagina and told AG to suck LT's breasts. Then they swapped and Mr Manuake had sex with AG and LT sucked AG's breasts. Then he ejaculated into their mouths. They went back to sleep, but it was not long after this that they heard someone knocking at the door.
203. AG's narrative is that after the second round of non-consensual sex, they laid down for a short while and Mr Manuake had sex with them again. She said that he pushed his penis into their vaginas and had sex with them. AG could not recall who Mr Manuake had sex with first on this occasion. She said that he shouted and threatened them with a knife saying that if they did not do what he said, he would stab one of them with a knife. The knife was on the side table.
204. AG said that when Mr Manuake was nearing ejaculation, he told both LT and AG to open their mouths. He ejaculated into their mouths and said they had to swallow the semen. AG described how Mr Manuake got them to kneel on the bed and to open their mouths. He got them to do this because he threatened to hit one of them. They opened their mouths and swallowed the semen. AG also said shortly after, there was a knock at the door.

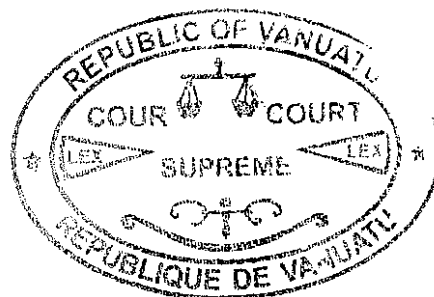
Am I sure that Mr Manuake penetrate LT and AG's vagina with his penis on the second and third occasions?

205. Ms Tamau acknowledged in the written submissions that there were inconsistencies between LT and AG as to what happened on the second and third occasions. This is particularly in relation sequencing and positions. Ms Tamau's contention is that the inconsistencies are not unusual and understandable. Both LT and AG were in a heightened state of fear and emotional distress and were candid and credible. On the



other hand, Mrs Malites submits that LT and AG's evidence is not credible, for the reasons discussed when considering the first rape (charge 8).

206. I acknowledge this was a distressing time for LT and AG. I do not think either LT or AG set out to give false evidence and recalled what happened to the best of their ability. But there are issues as to the accuracy of their recall about the second and third occasions, because of the differing narratives, and inconsistencies between them as to what happened. I assess that the lack of congruence between their accounts of what happened to be material, which undermines the credibility and reliability of their evidence about the second and third rape incidents.
207. LT and AG give very different narratives about the second occasion. As detailed above, LT said that during the second rape, they were threatened, Mr Manuake had sex with them, and then LT and AG had to kneel so that Mr Manuake could ejaculate into their mouths. On the other hand, AG said they had sex standing up bent over the bed. As he did so, he touched their breasts and hit them on the bottom. There is a big difference between what each says happened. They could be describing completely different incidents. The variance between their accounts of the second occasion are material. It may be that the sexual activity happened as either LT or AG said, but the stark differences between their narratives means that I cannot be sure there was sexual intercourse on the second occasion.
208. Both LT and AG give different accounts of the third occasion. As I have said, LT said that Mr Manuake pushed his penis into her vagina and told AG to suck her breasts. Then they swapped and LT sucked AG's breasts. AG did not give any evidence about sucking each other's breasts. LT was asked about what she told police about the third time. In her statement, LT said that Mr Manuake ejaculated inside AG again. LT said that was what was written but it was not what she told police, which was that Mr Manuake ejaculated in their mouths. She thought there may have been a difference between what she said and what was written because it was done in a rush.
209. AG could not recall who Mr Manuake had sex with first on this occasion. She said that they were threatened with a knife, which was on the side table. It is common ground between LT and AG that Mr Manuake ejaculated into their mouths, but that was not mentioned in LT's statement. LT gave no evidence as to their positions at the time of ejaculation into each of their mouths. AG said that Mr Manuake got them to kneel on the bed and to open their mouths. other's breasts.
210. The omission in LT's statement regarding ejaculation is material, and the explanation seems odd. The differences in their narratives about what happened on the third occasion are material inconsistencies. It may be that the sexual intercourse happened as described but I cannot be sure that Mr Manuake penetrated LT and AG's vagina with his penis on the third occasion.



Result

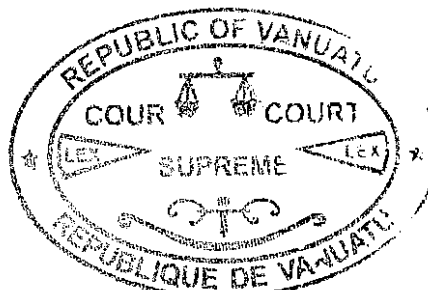
211. I find Mr Manuake not guilty of charges 9 and 15.

Charge 10 - Act of indecency without consent (LT and AG)

212. The prosecution case is that while Mr Manuake was raping LT and AG, he forced both LT and AG to suck on each other's breasts, committing an act of indecency on or in the presence of LT and AG.

Am I sure there was an act of indecency?

213. LT's evidence was that during both the first and third time that Mr Manuake has sex with them he directed them to suck on the other's breast. LT said that when Mr Manuake had sex with her on the first occasion, Mr Manuake told her to suck on AG's breast and kiss her. Then, when Mr Manuake was having sex with AG, he told her to suck LT's breast and kiss her. LT said this also happened on the third occasion. LT's evidence was that Mr Manuake pushed his penis into LT's vagina and told AG to suck on LT's breast. Then her had sex with AG and LT sucked on AG's breast.
214. AG's evidence was that on the first occasion, Mr Manuake told LT to suck AG's breast when he was having sex with LT. AG gave no evidence as to whether it happened during the third occasion of sex.
215. The defence position in respect of this charge is that LT and AG did suck on each other's breasts, but did so willingly and consensually.
216. Both LT and AG said that during sexual intercourse, Mr Manuake made them suck on the other's breasts. Their evidence was consistent that this occurred. Both said that it happened during the first sexual occasion. LT said it also happened during the third round of sex. AG gave no evidence about that. The background and context as detailed in assessing charge 8 is also relevant to this charge, as is LT and AG's evidence that they were threatened by Mr Manuake.
217. I am sure that LT and AG sucked on each other's breasts. Both LT and AG were clear about that. Saliiently, Mr Manuake accepts that this happened. Further, I am sure that Mr Manuake told them to do this, and LT and AG complied because they had been threatened. I adopt what I said about the threats when considering charges 8 and 12.
218. I am sure that when Mr Manuake made LT and AG suck on each other's breasts, it was an act of indecency on or in the presence of LT and AG. The act must occur in



circumstances of indecency in the sense that it would be so regarded by right-thinking members of the community generally. Sucking on breasts is not necessarily an indecent act. It will depend on the context and circumstances. Here, I consider that the breast sucking is indecent because of the particular context and circumstances. That is because two females, LT and AG, who had never previously met each other, sucked on each other's breasts at the direction of Mr Manuake, and under threat.

219. I am sure there was an act of indecency on or in the presence of LT and AG.

Am I sure that LT and AG did not consent to this sexual act?

220. This is the key issue in relation to this charge. I focus on the evidence which relates to the issue of consent.

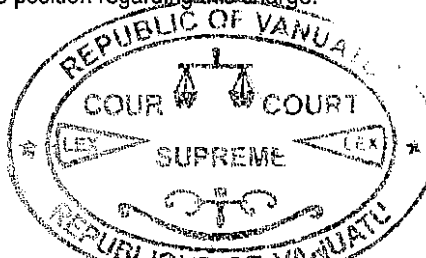
221. The defence submissions³⁷ set out Mr Manuake's position, which is that LT and AG acted on their own, seemingly competing for attention, and their actions were self-initiated. There is no evidence of this, and I disregard that submission.

222. LT and AG said that they were forced to suck each other's breast as part of the sexual encounter. They both said that Mr Manuake forced them to act as though they were enjoying it. While there are internal inconsistencies in their evidence about other matters, both were clear that they were forced to suck on each other's breasts and after they had been threatened. There is no evidence at all that it was self-initiated. Both LT and AG's evidence was that this act was done at Mr Manuake's direction. Both were firm about that. As I have said, I reject the suggestion that LT and AG colluded to make up nonconsensual sexual allegations.

223. Their evidence that they did not consent is plausible and coherent. They had never met before, neither was aware of each other and had no idea that they would meet each other that evening. LT was in a relationship with Mr Manuake. AG had just been assaulted by LT when she entered the basement. LT had been assaulted by Mr Manuake, which he admits and which AG witnessed. LT and AG had been threatened with the knife. It is highly improbable in those circumstances that this activity was undertaken willingly.

224. I am sure that both LT and AG did not consent to sucking each other's breasts.

³⁷ At page 19 of her submissions, Mrs Malites sets out Mr Manuake's position regarding this charge.



Am I sure that Mr Manuake did not believe on reasonable grounds that LT and AG consented?

225. Given the matters I have referred to regarding the issue of consent, no reasonable person in Mr Manuake's shoes could have believed that LT and AG consented. LT had been assaulted, both LT and AG had been threatened with a knife and were doing as they were told. I am sure that Mr Manuake did not believe on reasonable grounds that LT and AG consented.

226. I find Mr Manuake guilty of charge 10.

Charge 11 - Act of indecency without consent (LT and AG)

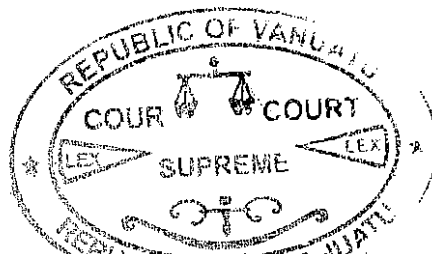
227. The Prosecution case is that during the sexual activity, Mr Manuake ejaculated into LT and AG's mouths. The key issue in relation to this charge is whether Mr Manuake ejaculated into their mouths.

228. LT's evidence was that Mr Manuake ejaculated into both their mouths during the second occasion of sex. She said that Mr Manuake stood up, told them to kneel and take him in their mouths. LT said she complied because Mr Manuake said if they did not do what he wanted, he would kill them. He told them to swallow his semen. LT said that Mr Manuake also ejaculated into their mouths during the third occasion of sex. She said that after inserting his penis into their vaginas, Mr Manuake then ejaculated into their mouths.

229. AG's evidence was that during the third occasion of sex, Mr Manuake told she and LT to open their mouths when he was nearing ejaculation. AG said that Mr Manuake got them to kneel on the bed and open their mouths. They complied because he threatened to hit one of them. AG said that Mr Manuake then ejaculated into their mouths and told them to swallow the semen.

230. LT said Mr Manuake ejected into their mouths during the second and third rounds of sex. AG said that Mr Manuake ejected into their mouths during the third occasion of sex and described them being told to kneel on the bed and open their mouths. AG gave no evidence about ejaculation into their mouths during the second occasion of sex. This sexual activity is said to have happened within a relatively short period of time. I query the probability of Mr Manuake ejaculating on three occasions relatively closely connected in time. In addition, there are the differences between LT and AG's narratives. LT says that he ejaculated twice in their mouths and AG says he ejaculated once in their mouths. I do not consider these are minor inconsistencies.

231. I do not think LT and AG's narratives are false. Indeed, both said he ejaculated into their mouths. It could be they are recalling different parts of the same encounter but there is



a material difference between ejaculation into their mouths on one as opposed to two occasions. In addition, I question the probability of Mr Manuake's ejaculating on various occasions relatively close together. Therefore, I cannot be sure whether or not Mr Manuake ejaculated into LT and AG's mouths.

Result

232. I find Mr Manuake not guilty of charge 11.

Charge 12 – Threats to kill (LT and AG)

Am I sure that Mr Manuake made oral threats to kill LT and AG?

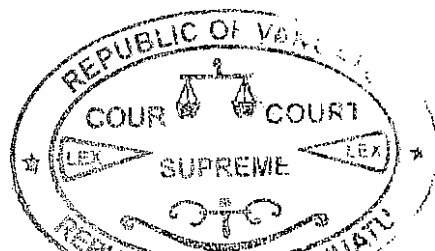
233. The Prosecution case is that Mr Manuake threatened to kill both LT and AG to ensure they complied with his sexual demands. The particulars of the charge are that Mr Manuake made oral threats to kill both LT and AG that he would have them both killed if they attempted to escape. The purpose of particulars is to fairly inform, with particularity, a defendant about the substance of the offence.³⁸ The purpose of the threats is not an element of the charge. The Prosecution are required to prove the elements of the charge and not why the threat was made. It would have been better not to include the purpose of the threats in the particulars.

234. As a preliminary point, I note that Mrs Malites did not make any submissions about this charge. However, the defence position,³⁹ as was evident from cross examination, is that he did not threaten LT and AG at all with a knife. Rather, that both LT and AG were willing participants in the sexual intercourse and when they sucked each other's breasts.

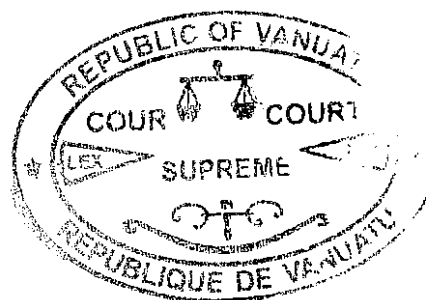
235. LT's evidence was that Mr Manuake made threats to kill she and AG on various occasions while they were in the basement. LT said that Mr Manuake threatened both of them with a small knife, which was lying on a table. That was her response when asked what led her to let everything happen. Her evidence was also that Mr Manuake said he would kill them both; kill them dead. And that he would put one body in the toilet and one in the sitting room. She said that when Mr Manuake ejaculated into their mouths during the second occasion, he said he would kill them if they did not do as they were told. In cross examination, LT remained firm that Mr Manuake threatened them with a knife. She said that Mr Manuake said that if they did not do what he said, he would cut them with it, stick it into them. This is consistent with her statement to police on 4 September 2024, which LT was asked about.

³⁸ See for example, *Gamble v R* [2012] NZCA 91

³⁹ As per the cross examination is that Mr Manuake did not threaten LT and AG with a knife.



236. In her Police statement, LT said that Mr Manuake was threatening to stick the knife into them. The reason LT was asked what she said about the knife to Police is that in her statement, LT said Mr Manuake held the knife and threatened them, whereas in her evidence in chief LT said the knife was on the table. LT agreed that she told police Mr Manuake was holding the knife and explained that he held the knife to force them before sex occurred, as she said in her statement. In her statement, LT spoke about the second incident and said Mr Manuake wanted to ejaculate in their mouths, and they complied because Mr Manuake was holding a small knife. LT was firm that Mr Manuake threatened them with a knife.
237. AG's evidence was Mr Manuake made threats, including with the knife. She said that when they refused to lie on the bed, Mr Manuake asked them if they wanted him to hurt them with the knife; "*stick the knife into you*". AG said that to get she and LT to agree to having sex a third time, Mr Manuake threatened them with a knife saying that he would stab one of them with the knife, which was on the table. In cross examination, AG said Mr Manuake was holding the knife, and threatening to stab one of them with it. AG was firm that she and LT were threatened with the knife.
238. LT and AG said that Mr Manuake did threaten them with a knife, to comply with his sexual demands. Both remained firm about that when cross examined. LT said Mr Manuake would cut them with it or stick it into them if they did not do what he said. AG said that Mr Manuake threatened them with a knife saying that if they did not do what he said, he would stick them with the knife, stab one of them with a knife. This shows consistency between LT and AG's narratives. Both said Mr Manuake threatened to cut or stab them with the knife. Their words might be slightly different, but the meaning is the same. And as I have said, I reject the proposition that they got together and colluded, for the reasons given.
239. There are differences between LT and AG as to when these threats with the knife were made. I do not consider that to be a significant inconsistency, as timing is not relevant to any of the elements of the offence. I do not regard it as material either that LT told police Mr Manuake was holding the knife, whereas in her evidence she said it was on the table. It is not key to whether oral threats were made. A piece of supporting evidence is that when Mr Manuake was spoken to by police, he said he was angry. That anger manifested itself when Mr Manuake assaulted LT after she hit AG when she first arrived. LT detailed other threats that AG did not. I do not regard that as an inconsistency between their narratives, but rather they recalled different things.
240. I am sure that Mr Manuake made oral threats to kill to LT and AG.



Am I sure that Mr Manuake knew the contents of the threats?

241. Mr Manuake must have known the contents of the threats. He threatened to kill LT or AG by saying that he would stab or cut them with a knife. I infer that he knew the contents of threat.

Am I sure that Mr Manuake intended the threats to be taken as real?

242. As the defence case is that Mr Manuake denies making any threats with a knife, it is a matter of inferring Mr Manuake's intention. The available inference is that he did intend the threats to be taken as real, given the nature and circumstances of the threats. Both LT and AG were aware of the knife. Mr Manuake was either holding it or it was on the table. Given the nature of the questions put to LT and AG, there is no dispute that there was a knife in the basement. I infer that Mr Manuake intended the threats to be taken as real, given the presence of the knife and that the threats related to the use of the knife when Mr Manuake threatened to "stick it into them" or "stab them".

Result

243. I find Mr Manuake guilty of charge 12.

DATED at Port Vila this 9th day of October 2025
BY THE COURT


.....
Justice M A MacKenzie

