

BETWEEN: Public Prosecutor

AND: John William
Defendant

Date of Plea: 10th March 2026
Date of Trial: 13th March 2026
Date of Oral Decision: 13th March 2026
Date of Written Decision: 16th March 2026

Before: Hon. Oliver A Saksak

Counsel: Mr Lenry Young for Public Prosecutor
Mr Harrison Rantes for the Accused

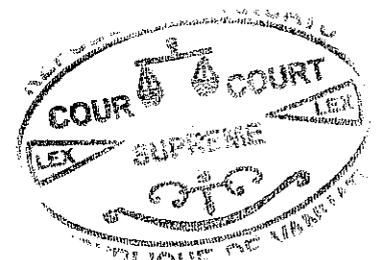
REASONS FOR ORAL DECISION

Introduction

1. At the end of the defence case and upon hearing Mr Young and Mr Rantes in relation to their closing addresses and submissions, I orally returned the verdict of not guilty and accordingly acquitted the defendant and ordered his immediate release from custody.
2. I now provides reasons as follows:-

Background

3. The defendant was charged with one count of sexual intercourse without consent contrary to sections 90 and 91 of the Penal Code Act [Cap 135], to which he pleaded not guilty on 10th March 2026. Trial was held on 13th March 2026.
4. Before Prosecutions opening its case the Court read and explained section 81 of the Criminal Procedure Code [Cap 136] of the defendant in Bislama.
5. Prosecution adduced evidence from one only witness being the victim and complainant, Serah Sam and closed its case.
6. The Court found a prima facie case had been made out against the defendant and required him to make a defence.



7. The defendant opted to give evidence himself on oath. Previously he had indicated to the Police that he would only give his side of the story in Court. The Court afforded him that opportunity. And before giving his evidence in his defence, the Court read and explained to the defendant section 88 of the Criminal Procedure Code.

Burden and Standard of Proof

8. In this case Prosecution bears the duty of proof. It is a high duty of proof beyond reasonable doubt as stipulated in section 8 (1) of the Penal Code Act, and Section 81 of the CPC Act. It is a legal and evidential burden.

Elements

9. Three elements to be proven by Prosecution on the standard of proof beyond reasonable doubt. These were:
 - a) That the defendant had sexual intercourse with the complainant.
 - b) That there was no consent, or that consent was obtained by force, or by means of threats of intimidation or by fear of bodily harm.
 - c) That the defendant did not believe on reasonable grounds that the complainant was consenting to having sex.

The Law

10. Section 90 of the Penal Code Act provides:

90. *Rape defined*

Any person who has sexual intercourse with another person –

- (a) *without that person's consent; or*
- (b) *with that person's consent if the consent is obtained –*
 - (i) *by force; or*
 - (ii) *by means of threats of intimidation of any kind; or*
 - (iii) *by fear of bodily harm; or*
 - (iv) *by means of false representation as to the nature of the act; or*
 - (v) *in the case of a married person, by impersonating that person's husband or wife;*

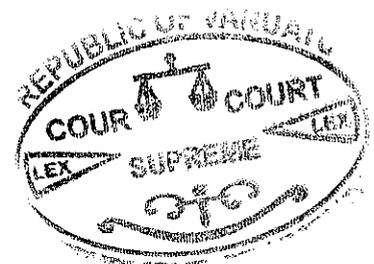
commits the offence of rape. The offence is complete upon penetration.

11. Section 91 provides:

"91. Punishment of rape

No person shall commit rape.

Penalty: Imprisonment for life."



The Evidence by Complainant

12. Serah Sam was sworn on oath. Her evidence was translated by Ms Juliette Kaukare. She confirmed her name as Serah Sam, a resident of Imai village. She was weaving and she recalled the date to be 6th November 2023. That William (defendant) came around. He removed his clothes first. After that he removed her clothes as well. This happened inside her house. He pushed her aside. He told her to inform anyone who came around to enquire that she was all by herself. He pushed her to sleep over her basket which was on the bed and then had sex with her. After having sex, the defendant then left her. He told her not to tell on him to anyone else or he would go to 'container' meaning prison. She felt bad and told her dad about it. She felt afraid of her daddy. The incident happened at lunch. When John came he assaulted her with wood and knife. He wanted to have sex with her but she did not want to so he assaulted her. She agreed that her mum Lesbeth had seen them. That John asked her for sex but she was afraid. She did not call out because John stopped her. The next day (7/11/23) she came to the Police station to report John. She confirmed John also lived at Imae village.

13. Mr Rantes cross-examined the complainant as follows:

Q You stated you are from Imae village as well as John?

A Yes

Q Do you know him well

A Yes, agreed

Q On 6/11/2023 you were in your kitchen around mid day. And the kitchen has no door?

A Yes, agreed

Q You heard John call out and asking if someone was with you and you said you were by yourself?

A Yes

Q And John asked to have sex with you?

A Yes, but our kitchen has no door

Q You told John you should go to the other house and that you would go first and John would follow you later?

A Yes

Q And you went into your house first?

A Yes

Q Your sleeping house has a door?

A Yes

Q Because it can be locked inside?

A Yes

Q And you entered but did not lock the door?

A Yes

Q You made it easy for John to follow you inside?

A Yes

Q When John came in, you told him to lock the door?

A Yes

Q When he entered you were clearly sitting on the basket?

A Yes

Q You removed your clothes and John removed his?

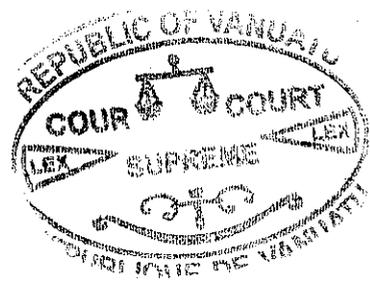
A No John removed his clothes and mine as well

Q Then you slept down?

A No he pushed me down.

Q When you slept down you opened your legs?

A John opened my legs and slept on top of me.



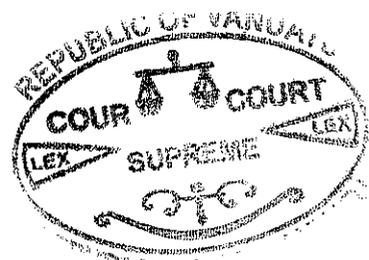
Q John had sex with you?
A Yes, agreed.
Q During the intercourse a mother called you from the outside?
A Yes
Q It was your mother Lesbeth?
A Agreed
Q You did not answer back?
A I told John " you harem oli singaot, bae you mekem wanem?"
Q You did not call out to your mother at the time?
A Yes (meaning "No").
Q You heard Lesbeth come and pushed the door?
A Yes – Agreed
Q You did not call out then?
A Yes- meaning "No"
Q Then Lesbeth looked through the door and saw you both inside?
A Agreed
Q You did not call out yet?
A Yes (meaning " No")
Q John then told you " Lesbeth has seen us?"
A No
Q After sex John wore his clothes, you wore yours and both of you went outside?
A Agreed
Q You did not tell your father?
A No
Q You were afraid your dad would do something?
A I was afraid so I told dad about it.

14. Question by the Court

Q Why were you afraid?
A Because John was doing this to me.

15. Mr Rantes continued:

Q Because Lesbeth saw the two of you she reported you to Peter Ialu?
A Yes, Peter is our chief
Q Peter called a meeting at your house?
A Agreed
Q He asked if it was true you had sex with John and you agreed?
A Yes, agreed
Q Then next day your family took you to Isangel on 7/11/2023?
A Yes
Q So it was your family who made a report?
A Yes it is our chief who did.
Q So with the report you said John forced you for sex?
A Agreed
Q At Imae village there are other houses close to yours?
A Yes
Q During the intercourse you did not call out?
A Yes, but he was stopping me from calling out.
Q When you went into the house, John did not do anything?
A No



- Q When he asked for sex he did not hold anything in his hand?
 A No
 Q You did not kick or struggle?
 A I was kicking
 Q He did not block your mouth?
 A He put his hand over my mouth.
 Q You did not cry?
 A I cried

16. In re-examination Mr Young asked:

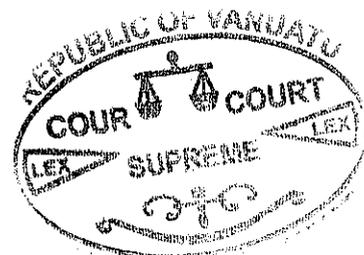
- Q Who stopped you from calling out?
 A John
 Q What did John do to you causing you to be afraid of your father?
 A Because he had sex with me
 Q Why did you not call out?
 A John was stopping me
 Q Who was stopping you?
 A John
 Q Why did you go into the house?
 A John told me to go into the house
 Q Why did you agree to have sex with John?
 A I did not agree to have sex – John forced me to have sex
 Q Why did you cry?
 A I was afraid
 Q Who of?
 A John
 Q Why did you sit down on the bed?
 A John pushed me

Defendant's evidence

17. John William gave evidence under oath as follows:

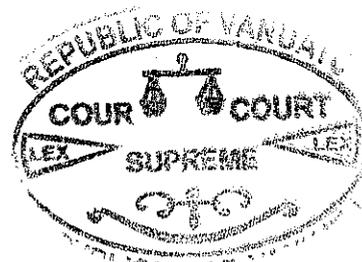
“ Yes my name is John William from Imae Village. On 6/11/2023 at midday was in my house. I wanted to go and see my small daddy. I went by Serah's house upon my return. I saw Serah in the kitchen house eating nambalanko leaves. I asked her where her father and the others were. She told me they had gone to the garden. She then called to me saying “ yu traem kam.” I went to her and asked where her parents were and she told me they had gone to the garden. She then asked whether I had gone there to see her and I said “yes”. As the kitchen had no door she told me to go into their house instead. She told me to wait, that she would go in first then I would follow her. She beckoned to me and I went and saw her inside. She was standing up waiting for me. I went in and she told me to lock the door. She stood up and hanged on to me. I told her to let me go. She sat down and asked me to sit down with her and to have sex with her. She removed her pantie and clothes then I removed my trousers. She held my hand and told me to hurry to have sex with her. She held on to me.

She heard her small mummy calling her, it was Lesbeth. She told me to hurry as her mum was calling her. I looked through the wall and saw her mum outside. She told me not to worry about her, that it was only the two of them. I ejaculated and stood up, wore my trousers and left the house. She told me to go outside first and I went to my small daddy's house to drink kava.



18. In Cross-Examination Mr Young asked:

- Q You wore back your trousers after having sex?
A Yes
Q After you ejaculated?
A Yes
Q Before sex, you told her to go to the other house?
A No, it was her who told me to go.
Q You asked her to sex with her?
A Yes
Q But she refused?
A No
Q Then you whipped her with a stick?
A No
Q Because she did not want to have sex with you?
A No
Q She was afraid of you?
A No
Q You pushed her onto the bed?
A No
Q You removed your clothes?
A Yes
Q You also removed her clothes too?
A No
Q You opened her legs?
A She opened her legs?
Q This morning Serah told the Court you removed her clothes?
A No
Q She said you removed her clothes?
A If she told me to remove it , I would.
Q She also told the Court you opened her legs?
A No
Q Then you had sex with her?
A Yes, I did
Q She was kicking (struggling) during sex?
A No
Q Serah told the Court she was kicking?
A Not true
Q Serah wanted to call out but you blocked her?
A No
Q Serah told the Court you blocked her mouth, she could not call out?
A No, I don't know
Q You know well Serah is paralysed?
A The other side only
Q I put to you it was you who opened her legs and had sex with her?
A No, she opened her legs
Q You stopped her from telling on you after sex?
A No
Q Serah told this Court that you stopped her from telling?
A I did not tell her.
Q Serah cried at the time?
A No

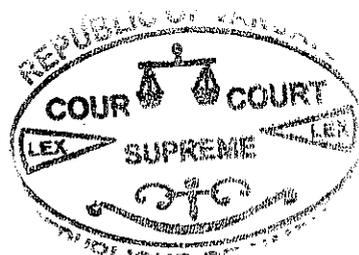


- Q She cried because you forced her to have sex?
 A I did not force her to have sex.
 Q Serah did not tell you to hurry?
 A Yes
 Q When Lesbeth saw the two of you, Serah asked what you would do then?
 A I did not say anything.
 Q Serah told the Court it was you who told her to go into the house?
 A No
 Q Who is lying , you or Serah?
 A Serah is lying.
 Q You removed her clothes and pushed her to the basket on the bed?
 A No
 Q Serah never hanged onto you?
 A She hanged onto me.
 Q I put it to you that because of her disability you took advantage to have sex with her?
 A I cannot say.
 Q I put to you that you forced Serah?
 A No

19. Mr Rantes did not re-examine the defendant.

Discussion

20. First Issue: Whether the defendant had sex with the complainant on 6th November 2023?
 This was a non- issue as admitted by the defendant
21. The second Issue: whether there was consent?
 Prosecutions submitted the evidence of the complainant was credible showing she did not consent to the sexual intercourse by the defendant on 6th November 2023. Mr Rantes on the other hand submitted the court should accept the evidence of the defendant as credible to find that there was consent and to find the defendant not guilty as charged.
22. I accepted the defendant's evidence and submissions. I found the defendant told a more truthful version of the story. He started from the beginning right to the end, stating where he was, where he wanted to go, how he had gone by the complainant's house and how it was her who gave the invitation to approach her saying: " you traem kam". This was an invitation, offer and a suggestion.
23. The complainant on the contrary started her story with John going to her house and removing his clothes and hers, sex took place. The complainant's evidence was discredited by Mr Rantes during cross-examination when she accepted that the defendant asked her for sex but because the kitchen had no door, she proposed they go into the other house instead. It was her proposal to go into the house, that she would go in first and John would follow. When he did, she instructed him to lock the door.
24. The complainant told the Court the defendant beat her with a stick but I was not satisfied with her evidence. I had doubts about her evidence about being beaten by a stick or knife, that she was forced or that her mouth was blocked with the defendant's hand.



25. She said she was afraid of the defendant however her actions were inconsistent. She had the opportunity to walk away, instead she went into the house she could have locked the door and be safe inside the house but she did not. She confirmed in cross-examination that she left the door unlocked so that the defendant could follow her in. if she was afraid of John as she said, she did not answer when Lesbeth called her when sexual intercourse was taking place. Those actions or omissions show the complainant was not telling the truth.
26. As a person with some disability I had to be cautious about accepting her evidence as the truth unless her evidence was corroborated. Lesbeth, the complainant's small mum did not give evidence to support the complainant's case despite making a statement to the Police. The Chief, Peter lalu was not questioned by Police to confirm the complainant's evidence that there was a meeting after the chief was alerted. The father of the complainant did not make any statement to confirm the complainant had told him about what the defendant did to her.
27. For the standard of proof to be fully satisfied by Prosecutions, those evidence were essential and necessary.
28. Finally for the third element: whether the defendant had reasonable belief the complainant had consented. For the same reasons I have already given in the preceding paragraphs, I was satisfied from the actions and omissions of the complainant that the defendant had reasonable belief the complainant had consented to sexual intercourse.
29. For those reasons I was not satisfied the Prosecution had proved the second and third elements. I found no evidence of force, threats or intimidation of any kind. I was satisfied from the evidence of the defendant that sexual intercourse between him and the complainant on 6th November 2023 was consensual. I accepted the submissions made by Mr Rantes and rejected the Prosecution's submissions.
30. Accordingly I returned the verdict of not guilty and acquitted the defendant of the charge, and ordered that he be released forthwith from custody.

Dated at Isangel, Tanna this 16th day of March 2026

BY THE COURT


Hon. Justice Oliver A Saksak

