

REGINA -v- JOHNSON TEHENAPARI

High Court of Solomon Islands

(Ward C.J.)

Criminal Case No. 28 of 1989

Hearing: 15 March 1990

Judgment: 22 March 1990

Director of Public Prosecutions in person

J. Muria for the Accused

WARD CJ: The accused is charged with the rape of Rose Sura on the 21st July 1989.

The girl's evidence was that, on her way back from work she passed the accused and another young man on the road. There was a short conversation of a bantering sort in which he asked her for sexual intercourse. She declined, said she was not a prostitute and he should go to town if he wanted one.

He grabbed her and pulled her into some trees. She struggled free the first time but he pulled her back again, kicked her legs from under her and raped her. She said she felt his penis penetrating her fully and he ejaculated. When it was pointed out that she had said he did not ejaculate in her witness statement she insisted she had always told the police he did.

After the offence he got up and left and she ran to a nearby house. At that house she saw a man she knew and said that the accused had pulled her on the road and raped her. He told the court that she was dirty, had grass in her hair, was crying and upset. He had heard a woman shout before she appeared but had taken little notice.

It was agreed that the distance from the place the girl said she was raped to the man's house was 100 metres. She asked him to escort her to her house which he did and, once there, she repeated her complaint to a girl she knew. That girl also

referred to her clothes being dirty and that she had grass on her face and hair.

She was seen by a doctor 4 weeks later. He saw no sign of trauma and confirmed she was a virgin. He described how she had a thick hymen with only a tiny pinhole opening. He pointed out that hymen was strong and could resist some pressure. He then concluded -

"The finding of a thick hymen with such a small opening would make vaginal penetration impossible during the alleged incident. There had been no previous vaginal penetration."

The prosecution also called the other young man who had been by the road but after a short while sought to treat him as hostile. It is clear he had made an earlier contrary statement and I disregard his evidence.

The accused was seen two days later by a police officer who gave evidence of an admission by him. However the circumstances in which that was made and the lack of a caution cause me grave misgivings as to its value and so I disregard it.

The accused gave evidence on oath. He described how he was at the roadside when the girl passed and asked if they were waiting for girls. This caused him to follow her and ask what she meant. At that, she turned, told him to fuck his mother and his sister and then swung her knife at him as if to cut him. He was angry about this and pulled her to the side of the road. She came back and so he pulled her some distance to a tree where he swung her around. He agrees it was muddy there. When asked why, if he simply wanted to pull her around, he did not do so on the road, he said he took her to the tree because he felt she might have been cut on the road.

I did not believe he was telling the truth. I warn myself of the dangers of accepting the uncorroborated evidence of a complainant in such a case but I am satisfied beyond any reason-

able doubt that she gave a true account. I feel the evidence of recent complaint was also consistent.

I am satisfied so I am sure that he attacked her sexually in the way she describes. My only hesitation relates to the actual sexual intercourse. When the girl described full penetration of her vagina, I believe she was giving a truthful account of what she felt. However the evidence of the doctor leaves me with some doubt as to whether penetration did occur.

In order to establish rape, it is not necessary to prove full penetration but the doctor's evidence referred to the impossibility of vaginal penetration. I feel I must accept that. However, I feel the evidence showed a full attempt at rape foiled only, it appears, by her hymen. That was clearly proximate enough to be an attempt.

I acquit the accused of rape but I am satisfied beyond reasonable doubt that he attempted rape and he is convicted accordingly.

(F.G.R. Ward)  
CHIEF JUSTICE