REGINA -v- STEVEN ARIKI

High Court of Solomon Islands
(Ward C.J.)
Criminal Case No. 23 of 1990
Hearing: 15 November 1990
Judgment: 21 November 1990

J. Wasiraro for the prosecution
A. Radclyffe for the Accused

WARD CJ: This accused is charged with rape and, in the alternative, unlawful sexual intercourse on 3rd April 1990 with a girl between 13 and 15 years of age although the statement and particulars of offence do not correspond. In fact the indictment is very carelessly drafted. The statement of offence refers to an offence under section 155(a) of the Penal Code. That section creates the offence of gross indecency and has no lettered paragraphs. I can only assume it is meant to be 135(a) in which case the wording of the particulars of offences is correct that is that the accused had sexual intercourse with a girl between 13 and 15 years. However, it will mean the wording of the statement of offence is incorrect relating as it does to section 134.

He is also charged with an earlier case of unlawful sexual intercourse with the same girl the Count for which repeats the mistakes in count 2.

The evidence of rape depends entirely on the complainant. She described how, on her way to school in the morning, the accused grabbed her, removed her brushing knife and used it to

threaten her. He led her to a disused house and there had sexual intercourse against her will a number of times. Her final account in cross examination was of five incidents, in chief it had been four and in her statement three.

Despite the fact that, at one stage the accused went to sleep, she was too frightened to attempt to escape. Eventually the accused gave her the knife and told her to go home. On the way she met her grandmother and made a complaint to her. There is no corroboration of her evidence. The accused was seen by the police and denied lack of consent.

The grandmother gave evidence that the girl was crying when she approached her but any possible corroborative value of that was lost when the same witness eventually agreed that the girl only cried after the grandmother had enquired in a cross tone why she was not at school.

The accused was interviewed by the police and admitted not only this incident of sexual intercourse but an earlier one.

At that point the complainant had not told them of an earlier incident but, when she was then asked about the earlier incident, she told of it in terms that amounted to rape. However, that incident has only been charged as unlawful sexual intercourse. In court she was asked by the prosecution, after she had described the incident of 3rd April 1990, whether she had known the accused before and she denied it. Equally a suggestion by the defence drew a denial at first.

I found her evidence on the rape unconvincing. In fact in some ways her evidence was far more consistent with consensual sexual intercourse. Far from the usual picture of a rapist, it appears the accused came unarmed and carrying a mat to place on the ground for the girl to lie on.

I cannot be satisfied to the required standard, or at all, that the accused raped the girl and he is acquitted on count 1.

The sexual intercourse on both counts was admitted by the accused to the police. In court the accused elected to remain silent and call no evidence.

The only question is the age of the girl.

The prosecution called a witness who had held the girl when she was baptised. At the time, the child was about 1 month old. That witness could not remember the date save that it was "between '77 and '78".

Another witness was called to produce the entry in a register of baptisms but he had only a photocopy. The defence rightly objected that was not admissible when better evidence had been available. The witness was able to recall the date from the document but that cannot be admissible either. Clearly the defence have no way of testing the strength or validity of his memory or the document he was recalled.

Thus, the Court is left with the evidence of the woman who held the child. I accept her evidence as being truthful if vague. Taking the dates to the accused's advantage, the oldest the child could be on 3 April 1990 would be 13 years and on that evidence and my view of the girl she was under 15 years old on 3 April 1990.

There is no dispute about the other ingredients of the offences and the accused is convicted on counts 2 and 3 of an offence under section 135(a) of the Penal Code.

SENTENCE

I sentence only for the offences of which he has been convicted.

I also base my sentence on the fact the accused claims to be only 16 years. He is a juvenile - and appears it - but he had already been to prison more than once.

I feel a case where the accused and the victim are so close in age requires far less serious penalty.

Each count 6 months imprisonment concurrent but consecutive to sentence he is now serving.

Informed of right to appeal.

(F.G.R. Ward)
CHIEF JUSTICE