REGINA -v- FOUKWASI

High Court of Solomon Islands
(Muria ACJ)
Criminal Case No. 23 of 1991
Hearing: 16 June 1992 at Auki
Judgment: 17 June 1992

J. Faga for the Prosecution
J. Remobatu for the Defendant

MURIA ACJ: The accused **CLIOPUS FOUKWASI** had been charged with the rape of **JOYCELYN AUOLO** contrary to section 129 of the Penal Code. It was alleged by the prosecution that the accused had sexual intercourse with the victim on 22 September 1990 without her consent.

The onus is on the prosecution to prove beyond reasonable doubt all the elements of the offence. If the Court has any doubt, though slight it may be, the benefit of such doubt must be given to the accused.

The facts of the case briefly are that on 22 September 1990 at about 6.00 p.m. the victim went by canoe from her village, Hanoru to Talila to buy goods from the store. The victim bought soap and a packet of sugar and returned. On the way she met the accused at sea at Wasufu Point.

The prosecution case is that when the accused met the victim, he asked her for sex and when she refused, the accused then threatened her. Having threatened the victim who paddled ashore, the accused then grabbed the victim on the beach and forced her onto the ground. On the third struggle with the victim, the accused overpowered the victim. The accused laid on the victim, unbutton his trousers and pushed his penis into the victim's vagina, achieving full penetration. After he achieved sexual satisfaction, the accused stood up and left. The victim stood up and the accused gave her a $1.00 coin and told her not to report the matter. Upon arriving at her home at about 7 p.m., the victim cried and reported to her parents about what the accused did to her.

The accused's case on the other hand is that he and the victim on two previous occasions had sexual intercourse. The first time was sometime prior to 28 August 1990 at the victim's mother's coconut plantation. There the accused said that he and the victim had sexual intercourse. The victim said that she had other married men before. The accused and victim then met again on 28 August 1990 and had sexual intercourse, after which the victim asked to be paid $10.00. But as the accused only had $1.00, he gave her the $1.00. The victim then asked the accused to set a date on which they would meet again, so that he would give her the balance of $9.00.

The accused further stated that on 22 September 1990 when he met the victim he asked her for sex again. The victim insisted tha she be given the balance of $9.00 before they had sex and if the accused did not give the $9.00 she would report him to her parents. As the accused did not have $9.00 they did not have sexual intercourse on 22 September 1990. The victim went to her home and the accused went away as well. The accused insisted that the victim reported the matter to her parents because he did not pay her the $9.00 and that she falsely accused him of having sex with her on 22 September 1990.

The prosecution called five witnesses including the victim. The accused also gave evidence on oath.

I find on the evidence the following facts established beyond any doubt whatsoever. The victim and the accused met on 22 September 1990 at sea at Wasufu Point and then went ashore; the victim made a report to her parents; compensation was paid by the accused; and PW4 had never received the $1.00 coin which was said to have been handed to him by the victim or her mother as evidence of payment from accused to the victim.

The prosecution case rests on the evidence of the victim and the accused's statement under caution.

The crux of the victim's evidence is that the accused met her at Wasufu Point and asked her for sex which was refused. The accused by force had sex with her and before she left, the accused gave her a $1.00 coin to "**shut her up**".

As it is clear that the accused denied having sex with the victim on 22 September 1990 it is necessary that the prosecution must prove tha sexual intercourse took place on 22 September 1990. They must do so beyond reasonable doubt. If sexual intercourse is proved then the question of consent must be considered.

The evidence of sexual intercourse came from the victim and that the $1.00 coin goes to prove that the accused had sexual intercourse with her. It was a payment alleged to have been made by the accused after he had sex with the victim. I consider the question of the payment of $1.00 is crucial in this case to support the victim's story. This is so because the accused denies having sexual intercourse with the victim on 22 September 1990 while the victim says he did and followed by the payment of a $1.00 coin.

The victim's evidence was that the $1.00 which she said the accused paid her was handed to her mother (PW3). She also stated that it was her mother who gave the $1.00 over to police as exhibit. The victim's mother (PW3) however, gave evidence that the $1.00 was given to the police by the victim herself as exhibit. The mother stated that the police officer to whom the $1.00 was given is S/Sgt Christopher Daoburi who recorded their statements. I am not certain which of the two versions I should accept.

Unfortunately the position about the $1.00 becomes even more grey when S/Sgt Christopher Daoburi (PW4) gave evidence on oath and stated that he had never received a $1.00 coin from the victim's mother nor from the victim herself. There is nothing before the Court to show that the police officer's evidence on oath is to be disbelieved. In fact it is to the contrary.

Just to complete the picture, although not necessary, no $1.00 was produced to the Court.

On may ask a number of questions, has the $1.00 coin ever been given to the victim? If so, when was it given? Where is the $1.00 coin? Why did the victim and her mother said that they handed it to the police when S/Sgt Daoburi denied ever receiving the $1.00 coin from either from the mother or from the victim? The answer to those questions may well remove any doubt the Court may have. I do not know. Perhaps the explanation about the $1.00 payment is that given by the accused in his evidence on oath. Again I do not know.

The prosecution relies also on the Cautioned Statements of the accused. The first Cautioned Statement taken on 29 September 1990 does not carry the prosecution case any further on the question of whether or not sexual intercourse took place between the accused and the victim.

The accused's second Cautioned Statement taken on 28 November 1990 is, if any thing, is exculpatory, particularly the questions and answers relied upon by the prosecution. Those questions and answers are:

"*Q.2* *How many times did you manage to have sexual intercourse with Aulolo (victim) at Wasufu Point?*

A. *It is true that I asked her to have sexual intercourse with her, and so I have sex with her once.*

Q.4 *Did you give $1.00 to the victim and why?*

A. *It is true that I gave her $1.00 because she asked for it.*

Q.5 *When you and victim struggled at Wasufu Point were you aware of her skirt/underpant torn?*

A. *No, both of us not even struggle, her skirt was not broken and she was not wearing any underpant.*

Q.6 *Upon evidence Police collected, you and victim (Auolo) have sexual intercourse two times, is it true?*

A. *No."*

The accused's answers to the above questions, I feel, do not add any extra weight to the prosecution case. At their highest, those answers are a meagre and a scanty evidence of an act of sexual intercourse taken place between the victim and accused and does not support the allegation of a non-consent.

Apart from those evidence which I have just dealt with, there is no other evidence which the Court can usefully consider in the issues raised. The evidence is just not there.

Even if I accept that sexual intercourse took place, the prosecution will have to show that it took place without the victim's consent. I think the prosecution will have even a harder row to hoe here. The evidence, that the victim's clothes were wet and that she cried when she got home are not necessarily evidence of rape. A woman may do such things for a variety of reasons. This is why corroboration is called for in cases of sexual nature. The rule of practice on corroboration which has the force of law has been repeatedly applied in this jurisdiction. See the case of ***R -v-Gere (1980/81) SILR 145.*** In that case, Daly CJ said at pp. 145 - 146:

> *"Before I turn to the details the allegation I must remind myself of two important matters of law. The first is that the burden of proof of all the elements of the charge is on the prosecution. Before I can convict the accused the prosecution must make me sure that he is guilty. The second is that this is a complaint of a sexual nature made by a 16 year old girl. I must therefore give myself a strong warning of the dangers of convicting an accused on the testimony of such a complainant in the absence of what I prefer to call supporting evidence. That is evidence from a source independent of the complainant which supports her account as to the matters in dispute. I must look very carefully for such evidence. However even if I find there is no such supporting evidence if, after considering the warning I have given myself*

most carefully, I am completely sure that the complainant is telling he truth then I may nevertheless convict on her evidence alone."

I too give myself the warning as stated by Daly CJ in the above case.

In this case, I find it extremely unpersuaded that sexual intercourse took place on 22 September 1990 between the accused and the victim. But even if I do find that sexual intercourse did take place, I am far from convinced that it took place without the consent of the victim. Moreso, having searched the evidence, I am bound to say that I find no corroboration to the victim's story.

The accused is an unimpressive witness on the witness box. But however I find him to be so unattractive, the fact remains that he is an innocent man until his guilt is proved by the prosecution on admissible evidence before the Court.

The evidence adduced against the accused in this case falls short of establishing this accused's guilt. I am left with a doubt hanging over my mind as to the accused's guilt and the law obliges me to give the accused the benefit of that doubt.

The prosecution have not proved the charge against the accused beyond reasonable doubt and the accused must be acquitted of rape.

(G.J.B. Muria)
ACTING CHIEF JUSTICE