

REGINA -V- GEOFFREY BASIOTA

High Court of Solomon Islands
(Muria, CJ.)

Criminal Case No. 21 of 1995

Hearing: 29 November 1995

Judgment: 22 December 1995

J. Faga for Crown
P. Lavery for Accused

MURIA CJ: The accused Geoffrey Basiota has been charged with the offence of rape contrary to section 129 of the Penal Code. It is alleged that accused, on 21 March 1995, had sexual intercourse with Marrie Ludawane without her consent. The accused has pleaded Not Guilty to the charge.

What the Prosecution must prove beyond a reasonable doubt.

Before I turn to the details of the allegation, I must remind myself of two important matters of law. Firstly, the burden of proving all the elements of the charge lies on the prosecution. That the prosecution must do so beyond a reasonable doubt. Secondly, this is a complaint of rape made by a 11 year old girl. As such I must warn myself of the dangers of convicting the accused on the evidence of such a complainant in the absence of corroborating evidence. The supporting evidence in this sense must come from a source independent of the complainant and supports her account of what happened. However, if I find that there is no such supporting evidence but that, after considering the warning carefully, I am completely satisfied and sure that the complainant is telling the truth, then I can still convict on the evidence of the complainant alone. I will revert to those legal issues later on in the course of this judgement. For the moment I now turn to ascertain what the case is against the accused.

The Prosecution Case.

The prosecution in this case have set out to prove that the accused did rape the victim. To do so, the prosecution must prove that the accused had sexual intercourse with the victim on the evening of 21 March 1995. The prosecution must also prove that the sexual intercourse was without the consent of the victim and that the accused knew or was aware that victim was not consenting at the time he had sexual intercourse with her. Sexual intercourse is disputed by the accused and so that must be proved by the prosecution.

It is also part of the prosecution case that the accused had devised a plan to lure the victim into going out with him. Having done that, the accused took the victim to the sea side at Kukum and there had sexual intercourse with her without her consent. The accused denied luring the victim but rather, it is said, the victim willingly followed the accused to the seaside so that she could be given a custom medicine to help her gain more knowledge and find a good husband in the future.

The fact of sexual intercourse is denied in this case by the accused. However he said that what had happened was that he only used his fingers to insert them into the victim's vagina. The prosecution does not agree with that version and sought to prove that the accused had used his penis to penetrate into the victim's vagina. The prosecution therefore must prove all the elements of rape in this case.

The evidence

The evidence of PW1 (Victim's mother) and PW4 show that the accused accompanied PW1, PW1's husband, PW4 and his wife from Point Cruz to their house at Kukum. This was about 6.30 pm on 21 March 1995. The victim was at the house when they arrived.

The accused had already been drinking earlier and upon arriving at the house, he gave \$30.00 to PW4 to go and buy some more beers. PW4 went and he returned with 12 cans of VB beers. The accused together with PW4 and his father, as well as the victim were sitting under a tree outside the house. At that time only the accused and PW4 were drinking.

While they were sitting outside under the tree, the victim had come playing cards and she was playing. The accused saw the victim playing joined her. By then it was about 7.00 pm. Just then the accused and the victim stopped playing cards and went to the store where the accused bought himself a packet of cigarette and a packet of twisties (chicken flavour) for the victim. The story given by the prosecution as to what happened thereafter differs from that given by the accused as contained in his record of interview.

The accused's story is that at the store, the accused gave the victim \$5.00 because she asked for money and that she asked the accused how he gave custom medicine to some children to help them have good knowledge at school. After hearing that, the accused said, he and the victim went to his aunty's house opposite Kukum Market where he told her to wait while he went to the seaside to find the custom medicine. He said he returned with four leaves (custom medicine). He chewed two of the leaves while he rubbed the other two leaves on the victim's body. He also said that he rubbed the victim's body with the mashed leaves from his mouth. It was then, he said, that he became tempted to do wrong to the victim and so he pushed his right fore finger into the victim's vagina to stimulate her. When he did that, he said, he felt blood shot out from her vagina. The victim cried and he said he felt sorry for the victim, so he led her to the main road where a taxi came and the victim was taken away.

The story about the \$5.00 differs from that which the victim gave. The difference is only as to the place where the \$5.00 was given. The accused says that it was given to the victim at the store while the victim says that it was given to her at the road on their way back after he had sexual intercourse with her at the seaside. One thing that is clear, though, is the fact that the accused gave \$5.00. But if it is necessary to conclusively decide on the point as to where the \$5.00 was given, I would have no hesitation in finding that it was given to the victim at the place where she said it was given to her. Her evidence has the support of

PW3 who stood not far from them when the accused gave the money, although he was not able to say if it was a \$5.00 note or \$2.00 note, but that it was a note money.

The accused's story about going to his aunty's house at Kukum contradicts with what the victim said in her evidence. Her evidence was that from the store, he and the accused went down to the seaside, having held her hand and led her down to the seaside. The accused's story cannot be believed on this point for two reasons.

Firstly, the accused said he left the victim in her aunty's house while he went to get the leaves (medicine) and then he returned with the leaves and rubbed the leaves on the victim's body and followed by pushing his fingers into her vagina and that made her cry. The accused's story seems to say that what he did to the girl was at the place where he left her. That was at his aunty's house. If that was so, then there must be people in that house who could have disturbed him from doing what he was doing to the victim or at the very least, heard the victim crying. No body in his aunty's house or even nearby houses heard the victim cried for the simple reason that the accused and the victim were not at his aunty's house that evening. The fact is that from the store the accused led the victim down to the seaside that evening and not to any other place as defence counsel would have liked this court to believe.

Secondly, PW3 heard the victim cried and he went to where the cry was coming from and saw the accused, naked and lying on top of the person who was crying moving his buttocks up and down in a sexual intercourse motion. PW3 heard the cry and saw all that at the seaside and not in some house belonging to the accused's aunty. Defence counsel's submission about the accused and victim going to the accused's aunty's house is totally unacceptable.

I now turn to one of the central issues in this case, and that is, whether the accused had sexual intercourse with the victim. The evidence for the accused contained in his record of interview is that he simply pushed his right fore finger into the vagina of the victim and stimulated her. The victim, on the other hand in her evidence said that when they got to the seaside the accused told her to remove her clothes which she refused. She sat quietly. The accused then removed his shirt first and then he removed her clothes and made her lay down on the grass. Then the accused removed his trousers and laid ontop of her. While he laid on top of her, he told her that she would have good education and would marry a good man with a good job.

The next thing the accused did was that he took the mashed leaves in his mouth and rubbed it on his penis. Then he pushed his penis into the victim's vagina with great force. This caused severe pain to the victim and she cried. According to the victim, he then used his tongue to lick her vagina, and then turned her around and pushed his penis to her anus. After he did that he again turned her around, laid ontop of her and pushed his penis into her vagina again.

All through this time the victim was in agony of pain and was crying. She said that in her painful agony she saw a vision of her deceased sister coming to her help. She cried also to see her deceased sister. If

anything is to be deduced from that then it can only be a clear indication that this 11 year girl was at the time going through what can only be described as a traumatic and an extreme painful experience.

The defence insisted that there was no penetration by the accused's penis into the victim's vagina in this case. If there was any penetration then it was only through the use of the accused's finger. On this, I shall turn to the evidence of PW9, the doctor who examined the victim, about 3 hours after the alleged incident.

The doctor's evidence revealed that the victim when brought to the hospital was frightened and depressed. Her clothes had multiple blood stains on the front and back. There were also multiple bruises on her back and chest. On examination of the pelvic and vagina it was revealed that the victim's perineum was blood stained; there was active bleeding from the vagina; the hymen was ruptured and penetrated; there were four(4) vaginal lacerations: a 2 cm laceration on posterior fourchette of the vagina, a 3 cm laceration on the right vaginal wall, a 3 cm laceration on left vaginal wall and a 2 cm laceration on the posterior fornix (below cervix); there were 2 strands of adult blood stained hairs removed from the vagina (4 cm long); and mucoid substance was present in the vagina but no spermatozoa was present. The doctor concluded that his findings were highly consistent with forceful penetration of the vagina. He also described the effect of the vaginal injuries as well as the psychological trauma sustained by the victim as "most severe and devastating."

In cross examination by defence counsel as to whether the injuries found would also be consistent with the use of finger inserted into the victim's vagina, the doctor said that a mere insertion of the finger into the vagina could cause injuries but such injuries would not be severe. According to the doctor, the size of the injuries suffered by the victim in this case would be inconsistent with the use of fingers and that they would be more consistent with a penis forced into the victim's vagina. The victim's vagina had been forced opened as was revealed by the injuries which were both outside and inside passed the hymen.

I do not think it is necessary to repeat the rest of the doctor's evidence. But I should add that when his evidence is put together with that of the victim the truth of what happened to the victim that evening of the 21 March 1995 becomes even more clearer.

Much had been urged by defence counsel as to the lack of sexual experience of the victim so that she could not have distinguished between a penis and finger. But this 11 year old girl saw the accused rubbed his penis with the mashed leaved before pushing it into her vagina. As he was doing that he used his two hands to support himself. She was there and she saw and felt what the accused was doing to her. She does not need to show to this Court that she needs sexual experience to tell the truth of what she saw and felt done to her.

I have no hesitation whatsoever that she was telling the truth. She had been made to go through the trauma she had suffered on 21 March 1995. Considering her age and inexperience in court drama she had been firm in her evidence in court. I believe her account and I totally reject the accused's story as had been put to this Court.

I have given myself the warning of convicting on uncorroborated evidence of the victim in a case such as this. But I can still convict if I am completely sure that the victim is telling the truth which in this case I am. But for the sake of argument, if I were to look for corroboration, I would have found it in PW1's evidence who saw the blood dropped from the victim's vagina and from PW4 who also saw the blood. Both these two witnesses saw the victim's physical condition, her hair, her clothes and her general distressed condition. Again PW3's evidence is the clearest of any corroboration needed (if at all). He heard the cry; he went over and saw the accused naked lying on the victim who was crying; he saw them come out from where they were and he recognised the accused whom he later identified at an ID Parade. All those evidence clearly add more concrete to the truth of what the victim had told this court, that is, this accused had sexual intercourse with her.

As to the question of consent, I again refer to the evidence of the victim herself, PW1, PW3, PW4, and PW9 (the doctor). PW1 noticed the untidiness of the victim's body and clothes and the injuries on her body. The victim was told to remove her clothes but she refused. It was the accused who removed her clothes and forced her to lay down. The accused forced his penis into her vagina causing her to suffer severe pain. She sustained multiple injuries to her back and chest. The doctor categorised the effect of the injuries on the victim as most severe and devastating. When one puts all these facts together, it would be nonsense to suggest that this 11 year old girl had given her consent to be molested. Any such suggestion would be devoid of merit. The only conclusion possible is that the victim had been subjected to force to have sex with the accused and that the accused had sexual intercourse with her without her consent.

Generally it is true to say that if no force was used then there would be no need for resistance and if no resistance then it is reasonable to conclude that there was consent. But the evidence pointing to the use of force upon the victim in this case is so overwhelming and that in the circumstances of this case must surely run counter to any suggestion that consent was given.

Counsel for the accused suggested that when the victim said that the accused pushed his penis "long cunt bilong me", she meant that the accused only pushed his penis toward her vagina. I do not accept that such was the correct interpretation of what the victim had said. To say in Pidgin that someone, particularly a man "go long woman" in a sexual context it does not mean to simply go to the woman but rather it is a way of saying that the man had sex with the woman. In this case when the victim said that the accused pushed his penis "long cunt bilong me", she was saying that the accused pushed his penis inside her vagina. She later said so in her evidence that the accused pushed his penis inside her vagina and that it was very painful to her.

As to the suggestion by the prosecution that the accused deliberately lured the victim into having sex with him, I do not think it matters. The facts as I have found have clearly concluded the case against the accused and the question of whether or not the accused lured the victim would not make the slightest difference.

The defence also sought to rely on the fact that the victim at first told her mother when she was asked where she had been and said that she and the accused had been to the accused's aunty's house. I accept that she said so at first but it is clear that, that was because the accused had told her to do so. It would not be too difficult to imagine a young girl of the victim's age feeling obliged to say what she was told to say out of fear as well as out of shame. I do not think the defence can make much mince out of this fact in this case.

The accused's case here is simply that he did not have sexual intercourse with the victim and that all that he did was pushed his right fore finger into the victim's vagina. I am afraid, the evidence presented by the prosecution against the accused in this case is beyond challenge by the defence. The prosecution evidence is so overwhelming that no reasonable tribunal of fact would ever accede to the story as portrayed by the defence. I certainly do not.

On the evidence before the Court, I am satisfied that the prosecution has proved each and every element of the charge against the accused and this the prosecution has done so beyond a reasonable doubt. consequently I find the accused guilty of the rape of this 11 year old girl and I convict him as charged.

Verdict: Guilty of rape.

(Sir John Muria)
CHIEF JUSTICE