

REGINA -v- NIULIFIA AND IDU

HIGH COURT OF SOLOMON ISLANDS.  
(KABUI, J.).

Criminal Case No. 318 of 2003

Date of Hearing: 17<sup>th</sup> November 2004.

Date of Sentence: 18<sup>th</sup> November 2004.

*H. Kausimae for the Crown.*

*M. Ipo for Niulifia.*

SENTENCE

Kabui, J. You pleaded not guilty to raping the complainant on the night of 4<sup>th</sup> April 2003 in the Town Ground field in Honiara. You had consumed alcohol as well as the complainant, but separately and at different times. Both of you were conscious though under the influence of alcohol. The complainant was a member of a group of young persons who had decided to sit in the Town Ground field and continued to consume alcohol as they had somewhat earlier started in the grounds of the Art Gallery. You and your brother, Idu, (now acquitted) had likewise been drinking elsewhere and were making your way towards the Town Ground area. You and your brother came into contact with the complainant's group in the Town Ground field through one of the complainant's group asking you for a lighter. You asked them for coke to mix it with the hot stuff that you had with you. You then saw the complainant and Josephine lying on the ground. On being told that they were drunk, you suggested that someone with money should go and buy some sugar. Walter Nadu went and brought sugar and water which you mixed and passed on for the girls to drink which they did and then vomited. They then sat up. You then left them and later came with another boy and claimed that the girls were your sisters. That was a lie on your part. You and another then threatened the complainant's group with words and moved towards them aggressively, shouting, "kill them". One of you threw bottles at them and one of you kicked Walter Nadu who ran away, followed by Bruce Rawson. At that time, only Chris Tevata, the complainant and Josephine were left. You dragged the complainant from Chris Tevata, her boyfriend, and disappeared towards the goal posts and the road going up to Leggakiki. You raped her near the Christmas tree that stands northwards of the road going to Leggakiki. You forced her to the ground after removing her clothing and had sex with her without her consent. You had acted like the Good Samaritan in the Bible in the first place but you changed your mind afterwards by attacking the complainant's group. Your motive for the attack was clearly to take away the girls by force from their friends. You abducted the complainant which

is an offence, contrary to section 139 of the Penal Code Act (Cap. 26), carrying a maximum penalty of seven years imprisonment. You have not been charged with that offence. There is no evidence to suggest that the complainant had spoken to you personally in any form of conversation which you might have mistaken to be some form of an invitation to have sex with her that night. You might well have thought that she was a kind of loose girl because she had been drinking with boys in the night. The fact was that she was Chris Tevata's girlfriend and not a loose girl as you might have believed. Even a prostitute is protected by the law in that no prostitute is allowed to be raped by any man. That is the law of this land. You simply did not respect other people's rights to live a peaceful and happy life. You used force to achieve your wish to have sex with the complainant without her consent. Abducting the complainant by dragging her away into the dark some distance away from her friends and raping her in another place so that her friends could not see her or rescue her was not called for on your part. What you did is also against our custom in North Malaita. You know as well as I do that in our society no man is allowed to show disrespect in whatever manner to or indecently misbehave towards any woman whether married or not married for all women do have fathers, brothers, uncles, guardians and other relatives to whom the wrongdoer is answerable in custom. What you did is a dangerous thing to do in North Malaita from which you and I do come. You would be attacked if you did not pay adequate compensation promptly. So, you yourself do know that what you did to the complainant was wrong even under your own custom. I have taken into account that you have no previous convictions, that you are young about 24 years of age, that you have a younger brother at home, that you expressed remorse and do have ageing parents. I have also taken into account the cases cited by your lawyer showing the various sentences imposed by the High Court in some rapes cases. Those cases do not represent an exhaustive list of sentences in rape cases in this jurisdiction. The various sentences imposed in the past in rape cases have not shown any marked consistency but that each sentence passed did reflect the facts of each case and the discretion of the trial judge in deciding which sentence was appropriate in the circumstances of each case.

Your case is rather similar to the facts in **R. v. Peter Sikele, Jack Igi Sade and Jeobesi Aludanio**, Criminal Case No. 8 of 1984, (unreported) though the victim in that case had not been abducted. In that case, the victim was with her boyfriend in a car in the vicinity of Ports Authority at night time when the two prisoners arrived drunk in a taxi. The prisoners forced the victim to have sex with them, one after the other, without her consent. The boyfriend ran for help and soon the Police arrived and arrested them in the same area after they walked away from the victim. One prisoner was sentenced to 6 years and the other to 5 years respectively. Attacking women in isolated spots at night with boyfriends or just friends whilst the attacker is or attackers are under the influence of alcohol is a bad attitude. To do so is a criminal act against the law. If the woman needs

help, help her and move on. Do not molest her because she is drunk or appears to be a loose woman or her friends could be threatened and would run away from her leaving her unprotected so that she becomes an easy prey. Do show respect to others and their women. Do not hurt them because you feel that you are stronger than them. The law has long arms and can reach all criminals no matter how long it takes to catch them. I have taken into account the fact that the complainant suffered no physical injuries but certainly experienced fear and helplessness. She was frightened of you because you took her by force away from the company of her friends. It was obvious that you had planned to attack the complainant's group. You had been with them, you left them and returned and attacked them and took away the complainant by force. Whilst I would wish to be lenient on you, I do not really know how I would in your case, given the manner you expedited your plan to take away the complainant from her friends, disorientated her and raped her. It is true, you used no weapons. It is true that she sustained no physical injuries. The absence of those two factors does not make the rape a reasonable rape. I feel the appropriate sentence in your case is 6 years imprisonment, effective from the day you went into custody for this offence. You are entitled to appeal against this sentence, if you wish to do so.

F.O. Kabui  
Puisne Judge