

REGINA -v- HENRY SUUMANIAHIGH COURT OF SOLOMON ISLANDS
(F.O KABUI)Criminal Case No. 313 ^{or} 2003Date of Hearing: 21st October 2004
Date of Ruling: 20th October 2004*M.J. McCalm for the Crown*
*S. Lawrence for the Accused*RULING

Kabui, J. Counsel for the accused, Mr. Lawrence, did not attack the fact that the Police went to the accused's house without a search warrant. PC Buina in his evidence in chief said that the accused did not object to the Police going to his house to locate and collect the mobile phone that he had told them he had in his house. PC Buina said that when they (the Police) arrived at the accused's house, he asked the wife of the accused whether there was any mobile phone in the accused's house. She said there was one but only a toy one. She gave PC Buina a mobile phone black in colour which PC Buina took back to the Police Station. PC Buina said that apart from himself and the accused, there were two other officers, one of whom was a RAMSI officer who since left the country. PC Buina said in evidence that none of them, Police Officers, went into the accused's house to search for the mobile phone. He said they and the accused were all outside the house when the accused's wife gave him the mobile phone. Evidence obtained without a search warrant is not the issue here. In fact, there was no search of the accused's house to locate the mobile phone. The mobile phone was voluntarily produced to the Police by the accused's wife. The issue of contention is the revelation by the accused to the Police that he had a mobile phone in his house after he had made a caution statement to the Police on 26th September 2003 denying raping the complainant. The accused never said anything about a mobile phone being in his house in his caution statement. Counsel for the accused, Mr. Lawrence, took issue on this point and urged me to disallow the evidence about the collection of the mobile phone from the accused's house by not admitting it in evidence as an Exhibit because it had been obtained by PC Buina in breach of the Judges Rules. There is no doubt that the mobile phone is a relevant piece of evidence in this trial. The caution statement recorded by the Police on 26th September 2003 is in a narrative form and not questions and answers. PC Buina clearly forgot to ask about the mobile phone during the interview with the accused. The accused said in his caution statement that the complainant had consented to having sexual intercourse with him. The mobile phone was, I suppose, irrelevant to mention in the caution statement. The complainant was accusing him of rape so he told the Police in his caution statement his position in that regard. The complainant was accusing him of rape so he told the Police in his caution statement that he did not rape her. The mobile phone is not an element in the offence of rape. It is relevant only because the accused was using it immediately before sexual intercourse took place between him and the complainant. It confirms the complainant's evidence that the man who raped her had a mobile phone. In my view, the Judges' Rules are about the need to allow accused persons to tell their stories to the Police free of threat, intimidation or promises of some sort of advantage or gain perpetrated by the Police to get confessions. I do not think it is fatal under the Judges Rules that further questioning by the Police had revealed the whereabouts of the mobile phone.

The legal position regarding breach of Judges Rules.

In A practical approach to EVIDENCE, by Peter Murphy, Fourth Edition, 1992, the learned author discusses the authorities on this point on page 239. In short, the author says that the

Judges Rules are not law but rules of guidance for the Police. If the evidence is voluntary though made in circumstances in breach of the Judges Rules, it is admissible though the court can throw it out in the exercise of its discretion. The author says that in practice, the courts are reluctant to act if the breach is only technical in nature. The author cites the case of *R. v. Prager* [1972] 1 WLR 260 and part of the judgment delivered by Edmund Davies, LJ reaffirming that the Judges Rules are not law. The fate of evidence allegedly obtained in breach of the Rules all depends upon the circumstances of the case upon which the discretion of the judge is exercised to either admit or exclude the evidence obtained.

The mobile phone is relevant evidence.

The mobile phone alone as evidence against the accused without identification by the complainant and her boyfriend, Fred, of the accused at the separate identification parades would be useless because mobile phones are common in Honiara. Whereas an admission of rape by confession without caution or in breach of the Judges Rules could be fatal to the Crown case. This is not the case here. In fact, a search warrant would have been necessary if the accused did not consent to his house being searched. Search warrants are governed by sections 101 and 102 of the CPC and not the Judges Rules. I am sure a search warrant would have been necessary if the accused did not consent to his house being searched in the first place. The admission of the whereabouts of the mobile phone by the accused had not been the result of force, threats, intimidation or promises of sorts by the Police. Even if the accused denied having a mobile phone, the Police would most likely have searched his house armed with a search warrant or continued to make inquiry about its whereabouts. Apart from confessions of guilt obtained under the Judges Rules, the Police should be at liberty to investigate the case fully in the interest of justice. I will allow the mobile phone to be admitted as being relevant evidence in this trial for the Crown. The mobile phone will be marked as Exhibit B.

The arrest of the accused.

Mr. Lawrence also attacked the legality of the arrest of the accused. PC Buina in his evidence in Chief said that the arresting officer was Sgt. Jonathan Ben who is currently on leave in the Western Province. He has not been called to give evidence of the fact of arrest. Mr. Lawrence raised this issue because of the circumstances, surrounding the arrest of the accused. Miss Kokopu and the complainant had caused a man called Christopher Elibo to be taken to the Police Station from the Market on suspicion that he was the man who raped the complainant. That man was released later from Police custody. Mr. Lawrence would have posed the following questions. On what basis had the accused been arrested? Had he been invited to the Police Station by Sgt. Jonathan Ben? Who gave the information that he was the suspect in this case? In cross-examination, PC Buina said that the complainant had given the Police a description of the man who raped her. This obviously was the basis for his arrest. If he had not been identified by the complainant and her boyfriend Fred, he would have been released also like Christopher Elibo. Clearly, the initiative taken by Miss Kokopu in the first place at the Market had eventually led to the description of the accused to the Police and hence his arrest by Sgt. Jonathan Ben. There is in my view, nothing sinister, or unlawful about the location of the accused and his arrest by the Police. The Police are entitled to follow every lead that way result in the arrest of a suspect in the interest of justice and the community at large. Of course section 5 (2) and (3) of the Constitution do provide protection for any person who is unlawfully arrested or detained by the Police. This application is dismissed.

F.O. Kabui
Puisne Judge