

REGINA-v-JOHN DAMARI'I

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Criminal Case No. 83 of 2005

Hearing: 4, 5, 6, 7, 10 and 11 September 2006

Judgment: 2 October 2006

Mr. Ronald Talasasa – DPP for the Prosecution

Mr. I. Khan for the Accused

JUDGMENT

Mwanosalua, J: John Damari'i is the accused and Florence Sogovare is the Complainant in this case. The accused is charged with the offence of rape. The prosecution alleged that the accused raped the Complainant in Honiara on 25 September 2004. That is to say that the accused had sexual intercourse with the Complainant without her consent. The accused denied that allegation and pleaded not guilty to the charge.

The case for the prosecution is that this is a rape case committed by the accused upon a 'best friend', who had known him for sometime, talked to her often, lived as neighbours in one Community and earned his trust as demonstrated by the Complainant agreeing to walk with him a long distance from the betel nut stall at Choviri to Mbokonavera heights to meet Janet at the green tank. The prosecution submitted that lack of consent by the complainant to have sexual intercourse with the accused was confirmed by Janet to the Complainant after the incident, that she, Janet, did not call for the Complainant to meet her at the green tank as claimed by the accused. The case for the accused is that he walked with the Complainant from the betel nut Stall at Choviri to the green tank to wait for Janet. Janet did not arrive, so he asked the Complainant for sexual intercourse. She agreed and he had sexual intercourse with her.

The issue to be decided by this court is the issue of lack of consent by the Complainant to have sexual intercourse with accused. Identity and penetration are non issues, as the accused admitted having sexual intercourse with the Complainant.

The burden of proving the guilt of the accused rests with the prosecution. The prosecution must prove the guilt of the accused beyond reasonable doubt. That means that the prosecution must prove beyond reasonable doubt the

lack of consent by the Complainant to have sexual intercourse with the accused.

While considering my judgment in this case, I bear in mind the type of evidence which would constitute corroboration of a Complainant's evidence in a case of rape. It has been held in a case of rape¹ that to be corroborative, the evidence must confirm:

- (a) sexual intercourse took place;
- (b) that it took place without the Complainant's consent; and
- (c) that the defendant committed the offence.

All these ingredients must be corroborated. The corroboration of one ingredient does not amount to corroboration of the whole offence².

Further, I also warn myself of the danger of convicting on the uncorroborated evidence of a Complainant in sexual offences like this case. In this jurisdiction, the danger is that the girl or woman may give false evidence for various reasons. One of such reasons could have been that the girl or woman has consented to sex but is too ashamed to admit it. An additional danger is that the sympathy excited by the girl or woman who has been the apparent victim of a rape may make her evidence, whatever its accuracy, more acceptable to the judge. Nevertheless, after reminding myself of this warning, I may still convict the accused on the uncorroborated evidence of the Complainant if I am satisfied that that the Complainant was telling the truth³.

The main witness for the prosecution in this case is the complainant. Her evidence is that she has been living with her parents at Choviri since 1993. She was a good friend, and neighbour of the accused. On the night of 25 September 2004, she was with Mary and Mostyn at a betel nut stall at the side of the road close to her house at Choviri. While she was there, Angela and the accused arrived. Angela told her that she had news for her. As she sought particulars of that news, Angela told her "Dami", meaning the accused. The accused then told her that he would tell her the news when everyone at the betel nut stall had gone away.

¹ *James [1970] 55 Cr. App. R.299*

² *West [1984] 79 Cr. App. R.45*

³ *Jones [1925]19 Cr. App. R.40; Freebody [1935]25 cr. App. R.69; Winfield [1939]4 All. ER.164; Burges [1956]40 Cr. App. R.144; Gammon [1959]43 Cr. App. R.155; Trig [1963]47 Cr. App. R.94; Marks [1963]Crim L.R.370; Henry and Manning [1968]53 Cr. App. R.150.*

When everyone had left the stall, the accused told her that he had been drinking with Janet. The accused told her that Janet was waiting for her at the green tank at Mbokonavera heights; and that he had come to take her to see Janet. They then left Choviri and walked all the way to the green tank to see Janet. It was a moon light night. Janet was not at the green tank when they arrived. They went passed the green tank and sat down at a spot about twenty metres away from the green tank.

She saw a hilux parked at a distance of about seven metres from them. There were people sitting in the hilux. The accused left her and walked to the hilux where he spoke to a person in the vehicle. He then left the hilux and returned to her. Upon reaching her, he said he was tired of waiting and asked her for sex twice. He asked her to suck his penis. She refused and screamed out. She screamed out many times. She ran away from him but he ran after her and restrained her from leaving by pulling on her clothes. He then threatened to kill her if she left him. He forced her to the ground. He pulled her hair and ~~penet~~ her head towards his penis and told her to suck it. She refused to do so. But she eventually gave in to suck his penis when he issued further threats to haul her down the hill and break the bottle which he was then holding on her head.

The accused then asked her for sexual intercourse with him after she had oral sex with him. She refused, but he forced her to lay down on the ground, removed her pant, widened her legs apart, mounted her and penetrated her vagina with his penis as she struggled. She left the scene soon after the accused had sexual intercourse with her and went to Janet's house. She asked Janet if she had been drinking with the accused. Janet said, "no". She slept with Janet that night but did not tell Janet about the sexual acts which the accused did to her. She left Janet early next morning and went to see Daralyn Kisini, her cousin sister. She then complained to Daralyn Kisini that the accused forced her to suck his penis and had sexual intercourse with her the previous night.

At the close of the prosecution case, advocate for the accused conceded that the accused had a case to answer. The accused elected to give an unsworn statement from the dock. His evidence is that Janet shouted to Angela to tell the Complainant to accompany him to the green tank to wait for her. So he and Angela came to the betel nut stall where Angela relayed that news to the Complainant. The Complainant and himself then walked to the green tank to wait for Janet. They waited for Janet when they arrived, but she did not come. He then asked the Complainant for sex, and she agreed. They each removed their own clothes and had sex. They wore their clothes after sex and returned to Choviri where they went to their respective houses. The accused maintained that he had sexual intercourse with the complainant with her consent. He denied the Complainant ever struggled and attempted to ran away from him when he was with her.

I accept the following evidence. The Complainant is eighteen years of age and has been living at Choviri for a long time. She was at the betel nut stall near the road at Choviri on the night of 25 September 2004. She was selling betel nut. Angela and the accused came to the stall. Angela told her that the accused had news for her. The accused then told her that he had been drinking with Janet earlier on and that Janet was waiting for her at the green tank at Kaibia heights. That he had come to take her to see Janet at the green tank. On receiving that news, the Complainant and the accused walked from Choviri to the green tank to see Janet. It was a moon light night. When they arrived at the green tank, there was no sign of Janet there. They went passed the green tank to an open space on a ridge. They sat at the side of a ridge more than twenty metres away from the tank. A hilux with people sitting in it was parked some eighteen metres away from them. The accused left the complainant and walked to the hilux. He spoke to a person in the hilux and returned to the Complainant. A while later, the accused had sexual intercourse with the Complainant.

The complainant alleged that the accused had sexual intercourse with her without her consent. The prosecution pointed to a piece of evidence as corroborative evidence of the Complainant's evidence of lack of consent to that sexual act. That piece of evidence is that after the incident, the Complainant went to Janet's house and asked Janet whether she called for her to go to the green tank, to which Janet answered "no". This piece of evidence is incorrect. The correct evidence is that the Complainant merely sought clarification about whether Janet had been drinking⁴ with the accused and not whether Janet had called for her to meet her at the green tank. Janet told the Complainant that she did not drink with the accused. I do not think that this evidence would constitute corroborative evidence of lack of consent by the Complainant. I think corroborative evidence of the Complainant's evidence of lack of consent could well be supplied by medical evidence of injuries to the body of the Complainant. There was no such medical report in this case. Corroborative evidence could also come from the people who were in the hilux who might have heard the Complainant screaming. There was no such evidence adduced from the people who were in the hilux.

Daralyn Kisini gave evidence of the complaint made by the Complainant. Again, I do not think this evidence of complaint is capable of amounting to corroborative evidence of lack of consent. The rule is that corroborative evidence must come from an independent source⁵. Thus, in *Christie*⁶ the defendant was charged with indecently assaulting a small boy. The boy's mother and a police officer gave evidence of a Complainant by the boy

⁴ See page 11 of the Transcript.

⁵ *Christie* [1914] AC545; *Whitehead* [1929] IKB99

⁶ *Christie* [1914] AC545

shortly after the incident. The judge directed the jury that this evidence was capable of corroborating the boy's account. The House of Lords held that this direction was wrong. The evidence adduced by Daralyn Kisini came from the Complainant herself. It did not come from an independent source. I disregard Daralyn Kisini's evidence.

There is no evidence to corroborate the evidence of the Complainant that the accused had sexual intercourse with her without her consent in this case. As I have said above, corroborative evidence could have been supplied by medical evidence of injuries to the body of the Complainant and from the people sitting in the hilux. As it was a moon light night, these people would be in a position to see what the accused was doing to the Complainant and hear her screaming that night. According to the Complainant, the owner of the hilux was residing at Choviri at the time of the incident. I am not so sure about the truth of her evidence that the accused had sexual intercourse with her without her consent. I am unable to exercise discretion to convict the accused upon her evidence alone. There was no evidence confirming her version of the alleged rape. The prosecution have not proved that the accused had sexual intercourse with the Complainant without her consent beyond reasonable doubt. The accused is acquitted of rape. I order accordingly.

Francis Mwanalua
Puisne Judge