

**REGINA .V. HELTON RUBEKOLO**

**High Court of Solomon Islands  
(Palmer CJ)**

**Criminal Case Number 463 of 2004**

**Date of Hearing: 6<sup>th</sup>, 7<sup>th</sup> November 2006**

**Date of Sentence: 8<sup>th</sup> November 2006**

**Mr. Henry Kausimae for the Crown  
Mrs. Mirriam Lidimane for the Defendant**

**Palmer CJ.:**

The defendant Helton Rubekolo ("Helton") was initially charged with the rape of a twelve year old girl (hereinafter referred to as "the Victim") and committed to the High Court for trial. On his arraignment however, the rape charge was dropped and substituted with charge of defilement of a young girl under the age of 13 years, to which he entered a guilty plea.

The facts reveal that the offence was committed in circumstances where both parties were alone in a bush garden. Helton had gone to the Victim's garden at her request to help in writing a letter for her. Whilst in the garden the rain started to fall and so they took cover under some makeshift shelter which Helton had quickly put up for them. When waiting for the rain to stop, their conversation led to the Victim exposing her breasts to Helton which aroused him and culminated in them having consensual sexual intercourse, although consent is not a defence to this offence. The Victim took her letter and they parted taking separate roads. Helton has not contacted her since.

The matter was not reported to Police until a separate incident occurred, which brought this matter to light and Helton was charged. The manner in which he has been charged has been referred to by Mrs. Lidimane as a factor in mitigation and which I take note of. I am informed that others who were implicated in a similar offence have not been charged or have had their charges dropped.

I note you are remorseful over what has happened and that you have personally taken the time to sign a letter of apology to the court. You acknowledged that what happened is wrong in law but that you pointed out it was not deliberate. At the time of commission of the offence you were not aware it was an offence. You also rely on the fact that the girl took the lead most of the time and that she was a willing participant throughout. Whilst that is not a defence, it is relevant to her character and the circumstances in which the offence was committed. She had arranged for you to meet at the garden at her request and that her subsequent actions tempted you. I note what your Counsel has submitted on your behalf that the girl looked big for her age and that she was not inexperienced in sexual matters.

I note your age at that time as a young man of 23 years but also your physical size which your Counsel also pointed out would give you the appearance of a

young man at that time. You could have avoided going to an isolated place alone in the first place and thereby avoided the temptations and pitfalls which followed.

I note in your favour the delay factor in this case. The offence was committed in December 2002 some four years ago and that it has taken all this time to come to reach the courts. Since then both you and the Victim have moved on in life. You now have a young family to look after and they look to you for support. I agree with your Counsel's submission that you should be encouraged to move on with minimum disturbance to your young family and your efforts to make a new start. You have not had any further contacts with the Victim after that incident.

I give credit for a guilty plea and that you are a first offender; you have not been to court before. I also give credit for the fact that there is an absence of any aggravating factor in this case. No threat, force or any form of intimidation or trickery was used, it was consensual throughout. It was also a one off situation and since arrest you have cooperated with police. There has been no repeat offence with the Victim. I also bear in mind that apart from the age difference, you were not in a position of trust, like a brother, uncle, teacher or priest.

Taking all those factors into account, whilst the law views this offence as a very serious offence, each case has to be considered on its merits. This is one of those cases which must be viewed as being at the lower end of the scale.

The fact it was consensual is not a defence. The purpose of this law is not merely to protect young girls from men but if necessary from themselves.

This type of offence will attract an immediate custodial sentence but bearing in mind the powerful mitigating factors in your case any sentence of imprisonment imposed should be suspended. I am satisfied a sentence of 4 months is appropriate in this case but to be suspended in full for 12 months.

You have a right of appeal to the Court of Appeal if you disagree with this sentence.

**Orders of the Court:**

- 1. Enter Conviction for the offence of defilement.**
- 2. Impose sentence of 4 months.**
- 3. Suspend sentence in full for 12 months.**

**The Court.**