

**ROYWIN OSCAR, LAWARD HUPA, KOHESI JOBIN, ITU FRED,  
BRANTON BRADLEY, PATSON MUMU FRED, EDMOND HUPA, MAZI  
STANLEY AND WALTER SISILI -v- REGINA**

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

Criminal Appeal No. 494 of 2005.

Date of Hearing: 31<sup>st</sup> January 2006.

Date of Judgment: 3<sup>rd</sup> February 2006.

*P. Bannister for the Crown.*

*E. Garo for the Appellants.*

**JUDGMENT**

**Kabui, J.** There are nine appellants in this appeal. Each of them appealed against the severity of his sentence. The offence committed by each of them was defilement of a girl under the age of thirteen years.

**The Facts.**

There was a film show at Patu village on Ranogga Island on Christmas Day in the evening. The victim was at the show when Edward Hupa took her away and had sexual intercourse with her in the bush. After that, she returned to the show. After the show, Walter Sisily met her and another girl. Walter Sisily then took her and had sexual intercourse with her in a kitchen.

On 28<sup>th</sup> December 2004, she went to her girl friend's house and she met Larward Hupa, Roywin Oscar and Maji Stanley. Maji Stanley took her into Mevi Bruce's house and sexual intercourse with her there. Roywin Oscar and Larward Hupa did the same to her in that same house.

On 4<sup>th</sup> January 2005, Kohesi Jobin took her and had sexual intercourse with her at Patu village. After that, Itu Fred did the same to her in the same village. Branton Bradley did the same to her on her way home from Patu village.

In mid-January, 2005, Kohesi Jobin again had sexual intercourse with her. Maji Stanley also did the same to her a second time. Patson Mumu Fred also had sexual intercourse with her in January, 2005.

In May, 2005, Kohesi Jobin did have sexual intercourse with her the third time. Fred Itu did also have sexual intercourse with her in May, 2005.

The victim was of the age of twelve years and six months at the times the appellants were having sexual intercourse with her.

**The sentences passed by the learned Magistrate Court.**

Roywin Oscar was sentenced to two years imprisonment. Larward Hupa was sentenced to two years imprisonment. Kohesi Jobin was sentenced to one year imprisonment for count one and one year imprisonment for count two but this sentence was ordered to be suspended for two years. He was further sentenced to one year imprisonment for count three. The sentences for counts one and three

were to run consecutively making the total sentence being two years imprisonment.

Itu Fred was sentenced to two years imprisonment for count one. For count two, he was sentenced to one year imprisonment but was suspended for two years. The effective sentence was therefore two years imprisonment. Branton Bradley, Walter Sisily, Patson Mumu Fred and Edward Hupa were each sentenced to two years imprisonment. Maji Stanley was sentenced to two years imprisonment for count one and one year imprisonment for count two. The sentence of one year imprisonment for count two was suspended for two years. The effective sentence is therefore imprisonment for two years.

#### **Juvenile status of some of the appellants.**

Kohesi Jobin, Patson Mumu Fred, Maji Stanley and Edward Hupa are young persons under section 2 of the Juveniles Act (Cap. 14). One of the options open to the Court is to order a custodial sentence under section 16(i) of the Juveniles Act. This is clearly what the Magistrate did in this case after conviction. The learned Magistrate did take into account all the mitigating factors at page 2 of his sentencing judgment, including the juvenile status of some of the appellants.

The learned Magistrate was right when he decided that custodial sentence was inevitable in the case before him. I agree with him entirely.

#### **The length of each sentence imposed.**

The real issue in this appeal is the length of the term of each sentence seen in the all the circumstances of the case. Roywin Oscar, Larward Hupa, Itu Fred and Branton Bradley, though are twenty years of age in each case, are just past the teenage threshold. The appellants are in general all young persons. Pleading guilty and being of good character in each case of the appellants would normally attract discounts in the sentencing tariff. Youth is a further discount for the appellants.

#### **The sentencing policy in defilement cases.**

In **Mulele v. DPP, Poini v. DPP** [1985/6] S.I.L.R. 145, the Court of Appeal states that each case must depend on its own facts but matters such as disparity of age, abuse of position of trust, pregnancy and the character of the victim are to be considered amongst other matters. In this case, the disparity of age is not substantial, there was no breach of trust and the victim was not made pregnant. The victim had been a willing party on each occasion of sexual intercourse but there is no evidence to suggest that she was promiscuous. The appellants were just as blameworthy as the victim herself. I cannot understand how one incident of sexual intercourse with one of the appellants had led to the multiplicity of others on subsequent different occasions.

It is also pertinent to point out that in **Berekame v. DPP** [1985/6] S.I.L.R. 272, the Court of Appeal re-affirms that appeals on severity of sentences are not normally allowed unless it is found that the trial Magistrate or judge had erred by "**acting on the wrong principle or had overlooked or understated or misunderstood some salient feature of the evidence.**" (page 273).

This is not the case here. The learned Magistrate had taken into account all the relevant factors which called for mitigation of sentence, including taking note of

the fact that one of the appellants was a juvenile and the rest were young persons.

**What else then can be done by the appeal court in a situation, if it needs be, where the trial magistrate or judge had considered all the relevant mitigating factors correctly?**

The short and simple answer is to dismiss the appeal. In fact, it is not as easy as it is said. There are appeals where taking into account the totality of the circumstances of the case, the appeal court may think it should substitute its own decision in the light of the total circumstances of the case before it. **Berekame v. DPP** cited above is one such example where the Court of Appeal reduced the sentence imposed by the High Court though it found that the High Court committed no error in the sentencing principles it applied to the facts of the case.

At page 275, the Court states-

**"...The court in this case would come to its own decision on the appropriate sentence for this particular case. Whilst we agree that the Chief Justice has taken into account all the relevant factors and agree with him on the approach taken by him on the purpose of the section as intended by the Legislature, that is, for protection of young girls, we consider that 18 months was excessive within the circumstances of this case. We would quash the sentence and substitute a sentence of 9 months to run from the 17<sup>th</sup> February 1986..."**

**Should this appeal to be allowed?**

Clearly, the term "juvenile" is interchangeable with the term "young person." I think the learned Magistrate made an error by saying that there was only one juvenile and the rest were young persons. In fact, those who were young persons under the age of eighteen years were Kohesi Jobin, Patson Mumu Fred, Edward Hupa and Maji Stanley. They were all juveniles at the time they committed the offence. Roywin Oscar, Larward Hupa, Itu Fred and Branton Bradley were all of twenty years of age (the twenty year olds). Walter Sisily was twenty-three years of age when he committed the offence. They were adults at the time they committed the offence. In any case, the learned Magistrate did take into account their youth as a mitigating factor, including Walter Sisily who was then known to be seventeen years of age. The learned Magistrate took the view that being juveniles was not a bar to being sent to prison for the offence they committed and he did send them to prison. I agree.

However, in this case there were no aggravating factors in the commission of the offence as far as the juveniles were concerned. That is, the juveniles were just a little older than the victim. Disparity of age is negligible. There was no abuse of any position of trust and the victim had not been made pregnant. The fact that the victim could be said to be partly blamed is equally cancelled out by the conduct of the appellants as well. They too were interested in the victim. There is also no proof that the sexually transmitted disease found in her body had come from any of the appellants.

I feel that in the circumstances of this case, the sentences imposed on those of them who were juveniles were excessive. I hereby quash the sentences imposed by the learned Magistrate on Kohesi Jobin, Patson Mumu Fred, Edward Hupa and Maji Stanley and substitute the following sentences.

In the case of Kohesi Jobin, I sentence him to nine months imprisonment for count one, nine months imprisonment for count two and nine months imprisonment for count three.

These sentences are to run concurrently. The effective sentence is therefore nine months imprisonment.

In the case of Patson Mumu Fred, I sentence him to nine months imprisonment.

In the case of Edward Hupa, I sentence him to nine months imprisonment.

In the case of Maji Stanley, I sentence him to nine months imprisonment for count one and nine months imprisonment for count two, both sentences to run concurrently. The effective sentence is nine months imprisonment.

Each of them went into prison custody on 18<sup>th</sup> August 2005. Each of them has now served five months and seventeen days as of today. Each of them must have now realized the consequence of his conduct by being in prison custody for the last five months. I am sure it is not a pleasant experience. It seems to me that there is no likelihood of re-offending by any of them though the possibility is there. It is however a remote one in my view. It is foolhardy for any of them to get his fingers burnt again over the same girl. I think each of them has been punished enough by being in prison custody for the last five months. They should now be released from prison. There is nothing more to be gained by continuing in prison custody. Each of them has got the message. I hereby for this reason suspend the remaining part of the sentence of nine months imprisonment in each case for a period of twelve months.

The effect of suspending the remainder of the nine months sentence of imprisonment for each of these juveniles is that each of them will be set free from prison custody when this Court rises.

The twenty year olds are Roywin Oscar, Branton Bradley and Larward Hupa. Their age gap is the only consideration that separates them away from the juveniles. They are much older than the victim. Walter Sesily was twenty-three years old at the relevant time. He too was much older than the victim. His age is what separates him from the juveniles and the twenty years olds. Apart from that, the circumstances of the case are the same. There is no evidence to suggest that the appellants had deliberately exploited the victim in terms of her youth. I think the sentences imposed upon Roywin Oscar, Itu Fred, Branton Badley and Larward Hupa by the learned Magistrate were excessive in the circumstances of this case. I hereby quash these sentences.

Opportunity and willingness by the victim were the factors that had contributed to the commission of the offence by all the appellants. There is no evidence suggesting common intention to abuse the victim in terms of a conspiracy. I do not think I should regard the difference in age between the juveniles and the twenty year olds and Walter Sesily who was twenty-three at the relevant time as a factor in determining the sentences I should impose upon the twenty year olds and Walter Sesily. Each of them though older than the juveniles had committed the same offence in full in much the same way as the juveniles had done. I will treat them the same as the juveniles in terms of sentencing. Therefore, in lieu of the sentences imposed by the learned Magistrate, I hereby sentence Roywin Oscar, Branton Bradley, Larward Hupa, and Walter Sisily to nine months imprisonment each.

In the case of Itu Fred and in lieu of the sentences imposed on him by the learned Magistrate, I sentence him to nine months imprisonment for count one and for count two, nine months imprisonment both to run concurrently.

They too went into custody on 18<sup>th</sup> August 2005 and have served in prison five months and seventeen days to date. I will also suspend the remainder of the term of the sentence of nine months imprisonment imposed on each of them for a period of twelve months for the same reasons I gave in the case of the juveniles in this appeal. Like in the case of the juveniles, they will be set free when this Court rises.

There is however a word of warning. Each of them must not offend so as to warrant imprisonment during a period of twelve months from today otherwise he will be called back to complete his term of nine months imprisonment that I have imposed. The suspension of the remainder of the sentence of nine months imprisonment in each case is still a punishment except that the remainder of the sentence in each case is not being served in custody. It is not an encouragement to re-offend or to be boastful about in the village.

### **Conclusion.**

The orders of this Court therefore are-

1. **All the sentences imposed upon the appellants by the learned Magistrate are quashed.**
2. **In lieu of them, I impose the following sentences-**
  - (a) **in respect of Kohesi Jobin, nine months imprisonment for count one, nine months imprisonment for count two and nine months imprisonment for count three, all to run concurrently;**
  - (b) **in respect of Patson Mumu Fred, nine months imprisonment;**
  - (c) **in respect of Edward Hupa, nine months imprisonment;**
  - (d) **in respect of Maji Stanley, nine months imprisonment for count one and nine years imprisonment for count two, both sentences to run concurrently;**
  - (e) **in respect of Roywin Oscar, nine months imprisonment;**
  - (f) **in respect of Larward Huta, nine months imprisonment;**
  - (g) **in respect of Itu Fred, nine months imprisonment for count one and for count two, nine months imprisonment, both sentences to run concurrently;**
  - (h) **in respect of Branton Bradley, nine months imprisonment;**
  - (i) **in respect of Walter Sisily, nine months imprisonment.**
3. **The remainder of sentence being served in the Rove Prison is suspended in each case for a period of twelve months from the date hereof.**
4. **All the appellants are to be released from prison upon the rising of this Court.**

The appeal is allowed.

**Frank O. Kabui**  
**Puisne Judge**