

**IN THE HIGH COURT
OF SOLOMON ISLANDS**

Criminal Jurisdiction

REGINA -v- EMMANUEL MOKU

Dates of Hearing: 14-17 June 2010 and 20 July 2010

Date of Decision: 13 September 2010

*Ms. R. Olutimayin
and Mrs. N. Kesaka for Crown
Mrs. L. McSpedden
and Mr. R. Tovosia for Defence*

DECISION AFTER TRIAL

Cameron PJ:

- 1 The accused Emmanuel Moku is charged with the rape of Aritake Erekana, said to have been committed on 23 August 2008. He denies the charge and stood trial.
- 2 It is common ground that on 23 August 2008 the complainant, then aged about 15 years, attended with a number of other girls an organised Catholic girls camp on Loga island in the Western Province. The camp was for the duration of a weekend, with those attending staying there overnight on Saturday 23 August.
- 3 That Saturday night, at about 7 or 8 o'clock in the evening, the attendees were inside the house in which they were staying, which house overlooked the seashore some 50 metres away. The leaders of the church group were with the female attendees.
- 4 At this time one of the attendees, Jane Rubi Ta'am ('Rubi'), told the complainant that she was wanted outside. I note that there was evidence that camp rules prohibited the girls leaving the house without permission at night. Despite this, the complainant did go outside, where she found the accused waiting for her. The two then went down to the beachfront. The accused was 23 years old at the time. Upon the complainant's absence from the house being noticed, a group including the group leader Maria Tekemes went outside to look for her. Members of the group were calling

out to her, and after some delay she answered their calls and approached the group from the direction of the beach. She was fully clothed. She then went inside the house and was spoken to by Maria Tekemes.

- 5 At issue is what occurred on the beach while the complainant was with the accused. The complainant gave evidence that without her consent the accused took off all her clothes and lay on top of her and had sex. She stated that when her clothes were being taken off the accused was hitting her on both sides of her body with one hand, and in the other hand he was holding a beer. She said that when the accused had finished he walked away. She said that during this ordeal she did not shout out because she was afraid.
- 6 The accused admits being with her on the beach that night. He made an unsworn statement to the court to the effect that he had gone to that island that night with a friend Sebastian, who wished to collect some money from a third person. The accused said that the complainant was his girlfriend at the time. The accused asked Rubi to go inside the house and fetch the complainant. When she came out they walked to the beach and sat and cuddled and kissed on the beach, but that is all. In his written interview with police dated 9 September 2008 he also denied having sex with the complainant that night.
- 7 In assessing the credibility of these two quite different versions, the evidence given by the complainant about what she did after the alleged incident is important. She first said that she slept, and if this was referring to the time while she was still on the beach then it is not at all convincing. However, I consider that she was referring to what she did once back inside the house, and therefore make no adverse finding against her on this basis.
- 8 She then gave evidence to the effect that when spoken to by Maria Tekemes inside the house, she described to her in some detail how she has been raped by the accused on the beach. This can be contrasted with the evidence of Maria Tekemes. Maria Tekemes said that she had heard from Rubi that the complainant had been with the accused outside, and that she had questioned the complainant about that once back inside the house. She said that the complainant remained silent and did not answer her questions, and said nothing about having been raped.
- 9 Thus on the other hand the complainant's evidence is that she had described in some detail to Maria Tekemes how she had been

raped on the beach by the accused, and on the other hand Maria Tekemes' evidence is that the complainant said nothing to her about what she had been doing outside. Maria Tekemes was of course the leader of the camp. Maria Tekemes' version is consistent with her evidence about what happened the next day, following the conclusion of the camp. She said she visited the complainant's parents, and what she told the complainant's mother was that the complainant had made a mistake at the camp, and that she had gone outside. The mother gave evidence along the same lines. I accept the evidence of Maria Tekemes as to her discussion with the mother.

- 10 I observe that had Maria Tekemes been told of the alleged rape the day before, one would have expected her to have told the complainant's parents about this, or at the very least to have alluded to a serious incident having occurred. Further, had Maria Tekemes been told of the alleged rape, then one would have expected that as camp leader she would have taken active steps to better secure the girls inside the house and to put in train steps to have the alleged offender apprehended. There is no evidence of her doing any of this.
- 11 I therefore accept Maria Tekemes' evidence as to her talk with the complainant once back inside the house. I do not accept, then, that the complainant said anything about the alleged rape to the camp leader Maria Tekemes that night. There was evidence from Maria Tekemes that she believed the complainant may have been frightened of her when the discussion took place. If that was so, a possible explanation for this is that the complainant knew that she had breached camp rules by leaving the house at night without permission. In any event, the significant point is that the complainant told the court that she had described the rape to Maria Tekemes once back in the house, when I find in fact she had not. I do not accept that there has been simply a mistaken recollection by the complainant, because the non-disclosure of a rape said to have just occurred to a camp leader who is asking what happened would be a significant event, and surely readily recalled. Thus the reliability of the complainant's evidence is seriously called into question by her not telling the truth about the encounter with Maria Tekemes that night.
- 12 The complainant also gave evidence of having the next day told her mother and father about being raped. It is clear the mother had already been visited by Maria Tekemes earlier that day, and been told by her that their daughter had made a mistake at the camp. The mother agreed in evidence that she and the father

were angry with the daughter, and the mother agreed that they forced the daughter to tell them what had happened. It is at that time, according to the parents' evidence, that the complainant told them she had been raped by the accused. The defence sought to have the evidence of recent complaint ruled inadmissible on the ground that it was not freely given. I consider the mother's words that "we forced her" was merely referring to parental pressure being applied to have their daughter tell them what had happened, rather than being a reference to physical force or mental duress. I therefore consider the evidence is admissible, and is consistent with the complainant's version given in the court as to what occurred on the beach that previous night.

- 13 However, another factor that concerns me about the complainant's evidence relates to the fact that she first told the court that though she knew the accused at the time of the incident, he was not in fact her boyfriend. However, in cross examination she admitted twice that he was in fact her boyfriend at the time, and answered a further question expressly premised on her being her boyfriend without a denial of that fact. I find that the accused was the boyfriend of the complainant at the time of the incident. The fact that she expressly denied that in her evidence in chief is of concern, because the denial was self-serving, and being untruthful on a potentially important point such as that means that additional caution has to be exercised in assessing the truthfulness or otherwise of her other evidence.
- 14 Another cause for concern with the complainant's evidence is her version of what happened when she was raped. As stated, she said that the defendant removed her clothes without her consent and raped her, and while doing this he had a beer in one hand and was slapping her on both sides of the body. While I accept that there is scope for a complainant who has been raped to be unclear later as to the exact sequence of events, the overall impression one gained of the stated antics of the accused was that it would not have been physically possible for him to have done all these things at the same time. It is a further reason to call into question the complainant's evidence.
- 15 I further note that initially the complainant's version of events was that following the rape the accused walked off and she was left naked on the beach. Later she changed her evidence, saying that the accused had helped her to dress after the incident. I do not consider that such an inconsistency would arise from a lack of recall on the part of the witness, and so points to a deliberate change of story on her part.

- 16 I note, too, that the evidence of the complainant was exceedingly drawn out, in that there were extraordinarily long pauses between simple questions and the answers given. Also, it was clear that the complainant was for a considerable time reluctant to give to the court her version of events at all. I did not perceive that she was upset in giving her evidence, although it is possible that she was, and indeed at one point during her evidence the prosecution drew my attention to the fact that the witness appeared to be sleepy. Whatever the real reasons for her behaviour in the witness box, the overall impression she created was of an unconvincing witness.
- 17 I note for completeness that a medical examination of the complainant on 2 September 2008 was inconclusive as to whether she had been raped.
- 18 The defence case was that the complainant fabricated her evidence as to the rape to cover up her misdemeanour in leaving the camp house at night without the camp leader's consent. The defence submitted that by telling this story to her parents the complainant deflected her parents' anger from her to the accused.
- 19 While I am not prepared to make a finding that the defence theory of the case is correct, for the reasons given I am of the view that the complainant's evidence cannot be safely relied upon, and that accordingly the Crown has failed to establish beyond reasonable doubt that the accused raped the complainant. The accused Emmanuel Moku is therefore acquitted of the charge of rape.

BY THE COURT

Justice IDR Cameron
Puisne Judge