

IN THE HIGH COURT OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

Criminal Case Number 150 of 2024

REX -V- WALTER BULHI

Date of Hearing: 7/03/2025 (Oral closing submissions).

Date of Decision: 3/07/2025.

Ms. Mutukera and Ms. Cleven for the Crown.

Ms. Kukura for the Defendant.

KENIAPISIA; PJ:

JUDGMENT

1. Mr. Walter Bulhi (WB) is the father of Ms. Sophia Teu. Ms. Sophia Teu is the mother of Miss. Caroline Alice Gamuha. WB, Sophia and Caroline come from Kolokofa village, Isabel Province. Kolokofa is a village located in the highlands of Maringe, Tirotonna Ward, Isabel Province.
2. Miss. Caroline Alice Gamuha complains that her grandfather, WB had sexual intercourse with her, when WB pushed his finger into her vagina, licked her vagina and took photographs of her inside his small house at Kolokofa village. Mr. WB stands trial for one count of rape contrary to Section 136 (F) (1) (a) and (b) of the 2016 Act. The particulars of offence alleged that WB at Kolokofa village (K) on the 6/2/2024, did have sexual intercourse with Caroline Alice Gamuha, by pushing his finger into her vagina, without her consent and knowing about or being reckless as to the lack of consent.
3. The issue I must determine is **“Whether or not WB had sexual intercourse with Caroline Alice Gamuha by inserting his finger into her vagina, without her consent, and knowing about or being reckless as to the lack of consent”**. The four elements of the offence of rape here are – (i). *identity of the accused*; (ii). *had sexual intercourse*; (iii). *with another person* and (v). *without the other person’s consent*.
4. I will concentrate on the evidence of the complainant, Miss. Caroline Alice Gamuha (Gamuha). Her evidence does not need corroboration, if I am completely satisfied that she is telling the truth (Sections 7, 18 and 19 of the Evidence Act 2009). Based on the particulars of the offence, the type of sexual intercourse alleged involves the *“insertion of WB’s finger into Gamuha’s vagina”*. I have to look for and be satisfied on the criminal standard with the evidence the crown will produce on WB’s finger insertion into Gamuha’s vagina.
5. In her evidence in chief, Miss Gamuha says on the afternoon of 6/2/2024, between 12 pm and 1 pm, she went to her grandfather WB’s house at K. Gamuha’s mother Sophia Teu, gave corroborated evidence that her daughter went to her father’s house to eat rice but stayed

longer than she expected arousing her suspicion. Sophia went out to call her daughter from her father's house. When Sophia Teu reached the side of her father's house, she heard her father saying "You widen your two legs". She was ashamed of her father and walked away instead of going inside the house to confront her father. If she had gone inside the house and confronted her father, this would have been the crown's best evidence of WB's presence at K on 6/02/2024, between 12pm and 1 pm.


6. Sophia Teu said she recognised her father's voice. The defence in cross examination produced evidence that another old man in K who lived next to WB, also had a similar voice.
7. Whilst Gamuha was at her grandfather's house, Gamuha said her grandfather did to her three things – *fingering*, *tongue* and *photo*. In the examination in chief, the witness, Gamuha (complainant) did not elaborate on what *fingering*, *tongue* and *photo* means, in terms of what wrong or bad things or sexual acts that WB actually did to her.
8. It was only when I cross examined Gamuha that she explained what *fingering* means, that WB pushed his finger into her vagina and that *tongue* meant WB licked inside her vagina by means of his tongue. And on *photo*, she explained that WB took pictures of her.
9. I was surprised why Gamuha just jumped straight into evidence saying WB "fingering", "tongue" and "photo" her. I was expecting that she would describe in her evidence in chief, the wrongful sexual acts that WB did to her in private, which constitutes "fingering", "tongue" and "photo". It may be because of the way the prosecutor was asking her questions or was she coached on what to say? I noted that for her age and coming from the village, there would be difficulties in understanding these three big English or Pidjin vocabulary in the sexual context (*fingering*, *tongue* and *photo*).
10. In cross examination whilst answering to my questions, Gamuha seems to understand what *fingering*, *tongue* and *photo* means. This was after I demonstrated these words to her using my *hand* or *fingers*, my *tongue* and my *mobile phone*. I was actually leading her to understand what these three words mean in their sexual connotations. Again, I was left wondering whether she was coached to mention these three words, in the examination in chief.
11. This is a very young girl of around 8 years old and was speaking through an interpreter, who translated her language into Pidjin. She may not fully understand what she was going through in terms of the court process. At the end of a long time in the witness box (2 days), she appeared worn-out. Hence by the time of cross-examination, she basically answered yes to all, if not, most of the propositions that the defence counsel was putting to her, especially on the *alibi* evidence. This actually made the defence's *alibi claim* looked strong and credible. Was Gamuha really tired or just confused or did she not fully understand the court process? All these questions caused me to think twice about the credibility and reliability of her evidence.
12. With the aforementioned, I have some doubts about the credibility and reliability of the evidence from the crown's primary witness, Gamuha, the victim. If I have doubt, slight it may

be, I must give credit to the defendant and acquit him (Regina –v- Tafilanga Snr (2007) SBHC 98; HCS-CRC 329 of 2005 (11 September 2007)).

13. The doctor found that Gamuha's hymen was not intact and that bruises were observed on both *labia minora*. The doctor had thought that Gamuha sustained the bruises from trauma (hit with a hard object or force applied to those parts of the vagina). The bruises were bleeding underneath the skin, the doctor explained. Defence produced evidence that Gamuha fell on a tree, sometimes towards the end of January 2024, whilst swimming at the river and hit her vagina against a tree. Crown denied this. I am not entirely sure about the cause of the bruise(s) and or the broken hymen. Did Gamuha sustain the bruises or broken hymen from falling on the tree at the river or from fingering or from licking? Can fingering and licking cause bruises or falling onto a tree the more probable cause?
14. Furthermore, the defence produced strong evidence in support of its *alibi* claim, which makes me to have a reasonable doubt about WB's presence at K on the 6/2/2024. There are five (5) witnesses (WB included) who gave evidence to support WB's *alibi* claim that he was not present at K village on the 6/2/2024, between 12 and 1 pm. That WB went to attend a mother's union church gathering held at Togasalo village (T) on 1/02/2024 and concluded on 2/02/2024. WB stayed on at T from 3, 4, 5 and 6 of February 2024. On the 6/02/2024, WB left for Salio village. On 7 he went on to Tolana village where he stayed for 4 days drying his Kava before making the final leg of his journey to Buala, where he sold his Kava at Varivao holdings.
15. WB returned to K village on or around the 15, 16, 17/2/2024 and was arrested after a court hearing on customary land dispute. The indispensable evidence adduced from the 5 defence witnesses was, WB was not present at K village on the 6/2/2024. The crown did not rebut the evidence that defence produced in support of the *alibi* claim. Hence the prosecution failed to make me absolutely certain that WB was present at K village on the 6/2/2024, when the alleged incident took place. I noted with particular interest that the *alibi* claim was made right from the very beginning as per the Record of Interview WB gave on 11/3/2024 (see QA 35, 40, 41 and 42).
16. Let me briefly recite the defence evidence in support of the *alibi* claim. Defence witness Juliet Philistus, will call WB her uncle from K. She is married and lives at Salio village. She was at the mother's union gathering held at T on the 1/02/2024 and 2/02/2024 and saw Mr. WB at T also attending the mother's union gathering at T. Then 4 days later Juliet was at her village at Salio on 6/02/2024, when WB arrived at her house and spent the night with her family on his way to Buala to sell his 10 kg bag of Kava produce.
17. The next defence witness is Jimmy Edi. He resides at Tolana village. He saw WB at his village on the evening of 7/02/2024. He said from 8/02/2024 to 13/02/2024, WB rested at Tolana village, sleeping and drying his 10 kg bag of kava on his way to Buala town where he will sell his kava produce.
18. The third witness is Bethlyn Koloniso, who is Sophia Teu's sister and another daughter of WB, who gave evidence that on the 6/02/2024, WB was not present at K because he already left K for T to attend the mother's union church conference and on his way thereafter to sell

his Kava produce at Buala. Additionally, she gave evidence that Gamuha was staying with her on the **6/02/2024** and she did not go to WB's house at K. She was keeping custody of Gamuha after her sister Teu's marriage to Elision.

19. The fourth witness is the sister of WB, **Ms. Rachael Webster**. She lives at K and is the leader of the mother's union at K. She confirmed leading a group of women from K to attend the mother's union program that took place at T from **1 to 2 February 2024**. Rachael said they left K at 10 am on **1/02/2024** and arrived at T at 12 midday. Rachael confirm carrying WB's bag of Kava to assist him, as he accompanied the women from K to go to T and on his way to sell his Kava at Buala. After the program ended on **2/02/2024**, WB stayed behind at T to continue his trip to Buala. Crown could have called another woman from K to rebut this evidence. This witness in my view is the strongest *alibi evidence* that WB produced to support his *alibi* claim, because she assisted WB to carry his bag of Kava and they left K at 10:00 am on **1/02/2024** and arrived at T at 12 mid-day.
20. The fifth witness is the defendant himself **WB**. His evidence was supported by the four above-named witnesses. That he left K on the **1/02/2024**. He went with the mothers from K to T to attend the mother's union church program held at T. After the program ended on the **2/02/2024**, he continued his journey sleeping at villages from T, Salio, Tolana before making the final leg of his journey to Buala. He only returned to K on or around **16 or 17 February 2024**.
21. The ultimate effect of the defence claim of *alibi*, supported by the corresponding evidence before the court, has left me wondering whether or not WB was present at K between 12 mid-day and 1 pm on **6/02/2024**? If he was not present at K, then could he have committed rape on Gamuha? In other words, I have some serious doubts about the prosecution's case. As I said above in paragraph 12, whenever I have a doubt, though slight it may be, I must give the benefit of the doubt to the defendant and acquit him.
22. The prosecution run the argument that I must be very careful with the witnesses for the *alibi* claim because they are all related to the defendant and will apparently be biased to the defendant because, they have an interest in the outcome to see the defendant win this case. I will only say that the defendant does not have to proof anything. The onus is on the prosecution to proof the defendant's guilt on a higher criminal standard. The prosecution did not meet that standard of proof because it failed to call evidence from anyone at K village to disproof defendant's *alibi* evidence (repeat paragraph 15).
23. Accordingly, I will acquit Mr. WB of the charge of rape.



 JUSTICE JOHN A. KENIARISIA

 PUISNE JUDGE