

REGINA -v- DAVID MANI

High Court of Solomon Islands  
(Ward C.J.)

Criminal Case No. 13 of 1989

Hearing: 17 October 1989

Judgment: 17 October 1989

A. Rose for the Prosecution

P. Kee for the Accused

WARD CJ: This is a submission of no case by the defence on the basis of a failure by the prosecution to prove the girl's age sufficiently to put the accused to his defence. The evidence of age can be ascertained from two sources:

1. The doctor's report. The report itself is so brief and unexplained as to deserve the description "skimped". It deals mainly with the fact of sexual intercourse but, as to age, it states "My finding is: her approximate age is 11 - 13 years." Later he states "In summary this girl is in my opinion under the age of 14 ....." No reasons are given for either of those conclusions.

If she was 13 years this offence would not be committed. If she was 12 it would. Even when relying on expert witnesses, it is still for the court to decide the issue. On such a bald statement, there is nothing by which I can assess its merit and I found the evidence worthless.

2. PW2 gave evidence that the girl was born in 1977 some time prior to his own daughter's birth in August. His subsequent evidence showed that part of his evidence was hearsay. All he could say was that he went to Honiara in 1975 and returned in 1977. No further dates were elicited. Before he left, Joycelyn was not born and, after he returned, he saw her. When he saw her she had, according to him, started growing up. I do not feel his evidence is sufficient to enable me ever to be satisfied and so I do not feel the accused should be put to his defence.

I consider whether the evidence could be sufficient to establish an offence under section 135(1)(a).

The girl certainly appears to be young and possibly below 15 years now but I do not feel on the evidence, I could ever be sufficiently sure. PW2 was very unconvincing. He could only remember the dates (as years only) of three events in his family - his marriage, the birth of his first child the next year and another birth out of a total of 10 children. The doctor's evidence puts her age within a year of the limit in the section but with, as I have already said, no reasons and I cannot attach any value to that.

The prosecution could, at any stage, have remedied the defect in their case by calling another doctor to examine the girl and give his opinion and reasons. They chose not to do so.

The accused is acquitted.

(F.G.R. Ward)  
CHIEF JUSTICE