

REGINA -v- JOHNSON TOME

High Court of Solomon Islands

(Ward C.J.) sitting in Tulagi

Criminal Case No. 24 of 1990

Hearing: 12 April 1991

Judgment: 12 April 1991

DPP, F. Mwanosalua for prosecution

J. Muria for the Accused

WARD CJ: The accused is charged with defilement contrary to section 134(1) of the Penal Code.

The victim in this case, Martha Totu, was, at the time of the alleged offence, 10 years old.

When she was called to give evidence I was not satisfied she understood the nature of the oath and the additional obligation to tell the truth required by it and so I heard her evidence unsworn.

In the witness box she was shy, detached and gave the impression of having low intelligence. It became clear that she was inclined to agree with almost anything put to her even if it contradicted her previous answers. Having gone over her evidence, I feel I can rely on it as credible only to the extent that she clearly took a ride with the accused in his canoe and that, once they arrived at Selema, he took off his clothes and some form of indecency occurred that involved his penis and her vagina and resulted in some bleeding from her vagina. Also that she had no sexual relation with any other person.

Even to that extent, her evidence must be corroborated and I shall return to that later.

Immediately after the incident, the victim went to where her parents were working in their garden. She was clearly distressed and told her father that Tome had fucked her. She said her vagina was hurting because of Tome's penis. Such a complaint is not corroboration but is evidence of consistency. To the extent that it shows her consistency in the matters I have described, I accept it as such.

The girl was seen by a nursing officer 4 days later. He found that her hymen was still present but was ragged and broken. He explained that meant some foreign object had been inserted but that could only have happened once as more frequent intrusion would mean the hymen would no longer be visible.

The accused was seen by the police on 10th January and made a statement under caution. He admitted taking her to Selema in his canoe and touching her breasts but then admitted more in a short further statement under caution. He admitted he lay her on a log, opened her thighs and exposed his erect penis. He said he pushed it into her vagina but it did not fit and so he pulled it out.

That statement is clear corroboration of the girl's evidence. It is not necessary for corroborative evidence to corroborate every particular of the victim's account. If the girl speaks of full penetration but the accused only admits actions short of penetration, the court may still accept the victim's account. However, in this case, the girl's evidence of penetration was not consistent or credible. She changed her account more than once and, in the end, the court was left with the impression she was, herself, unsure. Although the accused stated that when his penis would not fit "me pushim out" I feel he may be admitting no more than an attempt at penetration.

The medical evidence clearly takes it further. The condition of the hymen indicates penetration on one occasion. However the only link with the accused in relation to that is his account. I accept that the penetration and bleeding occurred at the time of this incident but I must further be satisfied beyond reasonable doubt that it occurred by the penis of the accused.

The accused elected to give no evidence and so I must take the evidence as I find it. The medical evidence is clearly of penetration and the accused, although his comments are ambiguous as to penetration itself, does not seek to suggest he used anything other than his penis. In the circumstances it would be unrealistic to consider that, if there was penetration, it occurred by any other object.

I am satisfied beyond any reasonable doubt that the accused did penetrate this little girl with his penis and he is convicted as charged.

SENTENCE

You have been convicted of a very serious offence.

I give you credit for the fact -

- that you have no previous convictions
- that you admitted the offence immediately
- I accept that you desisted when the girl cried - a factor that assists you a good deal
- you have paid compensation and by that showed some contrition.

On the other hand, this was a very young child. Having seen her in court it is clear she was so young and effectively slow witted that she could be made to do anything without any need for force. Apart from that factor there is very little to separate this from a case of rape. Clearly you used your age and the awe a girl like this would have of a man so much older than her to make her comply. There is no suggestion she was willing or even understood quite what was happening.

You have a right to make the prosecution prove its case but in so doing you made a very young girl go through the ordeal of giving evidence.

In all the circumstances, the minimum sentence I can pass to reflect the seriousness of this offence is one of five years imprisonment.

Informed of right to appeal.

(F.G.R. Ward)  
CHIEF JUSTICE