

REGINA -v- LAWRENCE HILOHAONA

High Court of Solomon Islands

(Ward C.J.)

Criminal Case No. 11 of 1991

Hearing: 20 November 1991

Judgment: 20 November 1991

J. Wasiraro for prosecution

C. Tagaraniana for the accused

WARD CJ: This accused is charged with rape contrary to section 129 of the Penal Code.

The prosecution case is short. The alleged victim was collecting fruit in a swamp area when the accused grabbed her from behind and, after a struggle in which they fell a number of times, she was carried to a tree nearby and she began to feel faint. At that point she submitted in the sense that she could resist no longer. She was then raped. During the struggle her dress was torn and afterwards she went home where she said the defendant had tried to kill her.

The defendant was seen by the police and admitted there had been a struggle but that the woman had then said "Come on" and they had consensual intercourse.

He gave evidence on oath and told the Court that he had not grabbed the victim. He had told her he wanted her and held her from the front on her shoulders. There had been a short struggle and she called for other people. However she then agreed and he carried her to a tree and had sexual intercourse. Her dress was torn beforehand and he did not tear it.

The issue for the Court is consent. The sexual intercourse is admitted by the accused but the lack of consent is confirmed by the mother's account of the bruises on the victim. Those bruises and the accused's admissions of a struggle are corroboration of the lack of consent. In the witness box, the victim gave a clear account of the incident. She described a struggle that caused her to fall more than once. Her account of that struggle was similar to the account given to the police by the accused.

However, her account of the final stages were less convincing. Her account was of fainting but she explained that was really that she felt weak and dizzy. If it is correct that she only submitted because of that and because of his attack, the accused will still be guilty of rape. However before I can convict the accused, I must be satisfied he knew she did not consent.

Having considered her account of the last few moments of the attack and the account given by the accused to the police and to the Court, I am not satisfied to the required standard that he did realise or, indeed, that she did not, in the end, consent.

In the circumstances I must acquit the accused of rape.

However the accused has not denied the attack. He clearly struggled with the woman intending to have sexual intercourse with her. I am satisfied beyond any doubt about that and I am also satisfied that struggle continued for longer and was more violent than he has been willing to tell the court.

By section 166 of the Criminal Procedure Code the court can still convict him of indecent assault contrary to section 133 of the Penal Code. On the evidence I have heard, I am satisfied beyond any doubt that this accused did assault the victim with the intention of forcing her to have sexual intercourse. I am satisfied equally that the assault was prolonged and violent and my only doubt relates to the accused's state of mind at the moment immediately preceding sexual intercourse.

That is clearly indecent assault and the accused is convicted under section 133.

SENTENCE

This was a determined, sustained and violent attack on a woman who was alone and relatively defenceless. It was done, I am satisfied, with the intention of having sexual intercourse whether she agreed or not. In your favour I could not be satisfied her resistance continued to the end and so I have only convicted of indecent assault.

However, that assault was a serious one. I accept the victim's account of that attack. As I have said, it was sustained and violent. The result was bruises to her arms and wrists.

I accept you have paid custom compensation in this case. That settles the matter between you and your family and the victim and hers. However, the courts have a duty to protect the public interest. That is to show the disapproval of the public as a whole

and its concern that innocent members of the public are not to be subjected to such attacks.

You also have one conviction for a minor offence of violence.

I allow for the contrition that the payment of compensation must show and the fact you are young and have only one previous conviction. However the minimum sentence for a case of this nature is one of 4 years imprisonment.

Informed of right of appeal.

(F.G.R. Ward)
CHIEF JUSTICE