

REGINA -v- RAYMOND PULUHENU

High Court of Solomon Islands

Criminal Case No. 33 OF 1991

Hearing: 22 January 1992 at Gizo

Judgment: 23 January 1992

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

The victim in this case, Poilini Sofu, was said to be under the age of 13 years at the time of the alleged offence. As the accused pleaded not guilty, the victim was called and gave evidence on oath.

In the witness box the victim gave her account of what had happened. She stated that on a Thursday morning in the month of September 1990, she went to the river at Manegisi to wash clothes. While she was there the accused came behind her and upon reaching her at the river, the accused asked her to go to the bush. She refused as well as frightened. The accused then pulled her by the right hand into the bush, some distance away from the place where she was washing her clothes. While in the bush and still standing the accused removed her clothes and made her lay down. The accused then removed his trousers and laid on top of her and had sexual intercourse with her. After the accused had sex with her, he threatened to kill her should she reported the matter to her father. The accused then left. When the accused left, she discovered blood from her vagina.

The victim did not report the matter to her father until her father learnt of the incident himself from other people. When her father asked her about the incident, the victim then told her father about it. It was then that her father reported the matter to the police.

The victim's father gave evidence on oath and he swore that his daughter was the third born child from his first marriage. He also stated on oath that his daughter, the victim, was born on 5 January 1978 at Gizo Hospital. He stated that when he first went to Manegisi in 1976 to work with the Forestry Division his first wife was still with him and they were there together with their first two children who were born in 1972 and 1974 respectively. He further stated that only his first child was born in Malaita and all the others were born here in Gizo, Western Province. He said he was not able to

recall exactly the dates of births of all his children but nevertheless he had them recorded in his note book which he kept at home. The actual Hospital Birth Record Books for his first five children are kept by his first wife.

When cross-examined as to why he was not able to recall exactly the dates of births of his other children except that of the victim, the father stated that this incident made him look at his record and made him remember well that his daughter, Poilini, was born on 5 January 1978. I must say that I was impressed by the manner the father gave his evidence.

The accused elected to exercise his right under section 10(7) of the Constitution which provides that:

"(7) No person who is tried for a criminal offence shall be compelled to give evidence"

The accused did not testify and called no evidence. Thus I must take the evidence as I find it.

The burden is on the prosecution. The accused does not have to prove anything. As I have said in *R -v- WILSON IROI Crim. Case No. 17 of 1991* (Judgement given on 8 November, 1991):

"... the burden is on the prosecution throughout to satisfy the court beyond reasonable doubt of the guilt of the accused. If there is doubt, slight though it might be, the accused must be given the benefit of that doubt. The overriding guiding principle in all criminal trials must be that a person charged with a criminal offence must be presumed to be innocent until proved guilty or has pleaded guilty. That principle is enshrined in section 10(2)(a) of the Constitution...."

The defence in this case does not dispute that the accused had sexual intercourse with the victim on the particular day stated by the victim. The accused admitted in his cautioned statement that he had full penetration of the victim's vagina at the time he had sexual intercourse with her.

The defence however submitted that there is insufficient evidence to establish that the victim was at the time of the incident a girl under the age of 13 years. Mr. Remobatu submitted that the victim's evidence as to her age cannot be relied upon and it has no value as evidence of her own age. Counsel further argued that, equally the father's evidence of the victim's age cannot be relied on since he failed to produce the record in which he keeps the dates of birth of his children. Further counsel argued that

the failure by the father to produce his note book deprived the defence the opportunity to cross-examine as to the authenticity of the entries in that note book. As such, counsel says, the father's evidence must be of little value.

In so far as the victim's evidence regarding her age, I would agree with counsel that such evidence can be of little value but only where the victim has no basis upon which she can reliably ascertain her age. It cannot be said that in all cases the victim's evidence as to her age must be disregarded as having no evidential value. In this case the victim's evidence of her age may well have little weight on its own but I cannot accept that her father's evidence about her age is of little or no value at all. In fact, it is to the contrary.

The father gave firm and consistent evidence that his daughter was born on 5 January 1978 at Gizo Hospital. There was no evidence to contradict his evidence on this point. The fact that he could only recall the victim's date of birth now clearly and not the others does not in my view make it any less of value than if he had also recall the dates of births of all his other children. The father has all his children's dates of births recorded in his notebook and there is no reason for him to memorise them all. The reason why the victim's date of birth stands out clear in his memory is because of what happened to the victim, his daughter and that has given him all the reason to check his record and ascertain his daughter's date of birth. With respect, the father's explanation is a perfectly reasonable one.

As I have already said, there is not a drop of evidence to shed any doubt as to the truth of the father's evidence that his daughter, the victim, was born on 5 January 1978. The Court is therefore left with that evidence as the date of birth of the victim and must be accepted. I am satisfied beyond reasonable doubt that the victim was born on 5 January 1978 which means that she was only 12 years 8 months old at the time of the incident.

The medical report does not take the matter further one way or the other on the question of the age of the victim. If anything the report confirms penetration of the victim's vagina sometime prior to November 1990.

The accused having admitted having sexual intercourse with the victim and the prosecution having satisfied the court beyond reasonable doubt that the girl was born on 5 January 1978, the prosecution has discharged the burden of proving the guilt of the accused.

I am therefore satisfied beyond reasonable doubt that the accused had sexual intercourse with the victim who was at the time a girl under the age of 13 years and he is convicted as charged.

(GJB Muria)

J U D G E