

REGINA -v- FIASI ALUALU AND SUSUI BAKELOA

HIGH COURT OF SOLOMON ISLANDS  
(F.O. KABUI)

Criminal Case Numbers 214 and 215 of 2004

Date of Hearing: 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> & 22<sup>nd</sup> April 2005 at Auki

Date of Sentence: 22<sup>nd</sup> April 2005 at Auki

*Henry Kausimae for the Crown*

*Michael Ipo for the 1<sup>st</sup> Accused*

*Raucliffe Ziza for the 2<sup>nd</sup> Accused*

SENTENCE

**Kabui, J:** The maximum penalty for rape is imprisonment for life. That is how serious the law regards rape. This Court however has the discretion to send you to prison for a term of years under section 24 (2) of the Code. How the Court exercises its discretion depends upon many factors – always mitigating factors such as a guilty plea, no previous convictions, youth, family background, remorse, and so on are taken into account by the Court. I note that you are both of good character with no record of any previous convictions. You Susui Bakeloa have got married and yet to have children. You Fiasi Alualu have engaged to a girl with the view of marrying her. Both of you are young persons under the provisions of the Juvenile Offenders Act (Cap. 14) and I regard you so. That is, both of you appear to me to be under 18 years of age in the absence of birth certificates. The Juvenile Offenders Act is a special law to protect children and young persons such as you are from being treated as adults. Section 12(2) of that Act does not allow young persons such as you are to be sent to prison if can be avoided under section 16 of that Act. That section gives me options to apply in your case. One of these options is sending you to prison if that option cannot be avoided in the circumstances of your case. Rape is extremely serious. As said by Ward, C.J. in *R. v. Ligian and Dori*, Criminal Case No. 35 of 1986 and repeated in this jurisdiction many a time,

“...Rape is an extremely serious offence. It is an offence of violence based on a selfish disregard of the rights and feelings of another and is likely to cause, more than almost any other offence, serious and long -standing harm to the victim. The problem in sentencing for such an offence is that, when the court is faced with a contrite offender, too often mitigating factors are allowed to push consideration of the victim and the offence itself into the background. In sexual offences as a whole, and rape and attempted rape in particular, matters of mitigation personal to the offender must have less effect on the sentence than in most other serious crimes...”.

So, you being young persons can be sent to prison under the Act. I think custodial sentence in your case is inevitable for rape. The question that I have to decide now is for how long you should be imprisoned. Young persons had been sent to prison in the past in this jurisdiction for offences such as breaking and entering, unlawful wounding, common assault, stealing from houses etc (see **R v. B. M** (C/A 2 and 3 of 1982) (unreported), **R v. William Hebala Gina** (C/A 12 and 13 of 1982) (unreported), **R v. John Sutea** C/A 5 of 1983 and **R v. Moses Futai Su'u** C/A 11 of 1983 (unreported), **Obed Belama v. DPP** (C/A 13 of 1984) (unreported) and **T.N & M v. DPP** (C/A No. 40 of 1985) (unreported). The sentences in these cases were however short. Your case falls into a different class of offence. You treated your victim with contempt and disrespect. You used force to achieve your objective. I take into account that your victim sustained no physical injuries so as to call for medical attention. Both of you had gang raped her and she felt much discomfort and indignity. You had tried to influence her not to report the rape to her relatives. You have caused much pain to your parents. The victim is your neighbour living in the same village. You have caused, by your action, a feeling of disharmony in your community. You have been bad neighbours in your community. The community at large cannot tolerate your behaviour. I will send each of you to prison for 3 years from today. Your youth and good character have influenced me to be lenient towards you. This sentence will serve as a reminder in your community that raping any woman of any age group cannot be tolerated by the law. You are entitled to appeal against this sentence.

**Frank O. Kabui**  
**Puisne Judge**