OLOMANE -v- DIRECTOR OF PUBLIC PROSECUTIONS

High Court of Solomon Islands
(Ward C.J.)
Criminal Case No. 10 of 1990
Hearing: 12 June 1990 at Auki
Judgment: 12 June 1990

P. Kee for the Appellant
A. Rose for the Respondent

WARD CJ: This is an appeal against conviction of the appellant on 6 charges of defilement of a girl below the age of 15. The sexual intercourse was admitted and the only matter in dispute was the age of the girl.

The decision was based entirely on the evidence of the father who, in evidence in chief, said she was born on 19th June 1975. The incidents of sexual intercourse occurred between 1st March 1989 and 30th August 1989. He also explained the previous child had been born on 16th May 1970. However in cross examination he said that he had been away from the family from mid 1972 to 1974 and that he thought there was a three year gap between his first and second child.

In his judgment the learned Principal Magistrate points out that the birth date in 1975 would make the girl under age but the date three year after the first born would put her over age.

He continued -

"Does this contradiction raise a doubt as to the Father's stated birthdate of June 1975. If it does then I must acquit because if I have any reasonable doubt the Defendant is entitled to the benefit of that doubt. This is the burden of proof on the prosecution."

That was the correct test and he then went on to examine the father's evidence -

"I will examine the Father's evidence. He says that Bradley was born on 16/5/70. This has not been challenged. He says he went to Honiara in 1972 and stayed there until 1974. He was not challenged on this point. He was asked if he returned at all to his family during 1972 and 1974. He says he did not. He then says Margaret was born in 1975, about a year after his return from Honiara. The Father says all the children are his. This has not been challenged. As a matter of mathematics and common biological science Siosi could not have fathered a child born in June 1973 if he left his family in the middle of 1972. He would have had to have left his family in late 1972 say October. His evidence was quite clear that he left in the middle of 1972 not the end of that year. Likewise his return to his family has been put at I believe June 1974. This was not challenged. It would be perfectly possible for him to have fathered a child born in June the following year 1975. It is

quite clear then that he was mistaken as to the age difference. Is that mistake sufficient to render his evidence unsatisfactory? I do not believe so. He has given Margaret's birthdate as 1975. Other evidence he has given and not challenged supports this date most strongly.

Normally an inconsistency in evidence would raise a strong presumption of doubt. Here, though, the other evidence of the father is sufficient for me to say that I have no doubts about the birthdate he gave for Margaret namely 22/6/75"

Mr Kee for the appellant has pointed out that, in effect, the learned magistrate is taking the expression "mid 1972" as being a definite date in June. He argues that is not a reasonable interpretation. As the phrase is, in itself, imprecise, it cannot be held to a strict meaning. Similarly the answer by the father that there was about 3 years between the first and second born cannot be taken precisely or ignored.

By allowing an adjustment of a month each way, he points out a period of gestation of 280 days would be possible and result in a birth in 1973. In that case, one of the matters of evidence that allowed the Magistrate to feel the father's evidence was acceptable and that he was mistaken about the three years may be impeached.

In any case, a trial court is entitled to accept part and reject part of a witness' evidence. The magistrate applied the correct test and looked at all the evidence to decide where the truth lay. He had evidence on which to base that decision and normally in such cases this court will not interfere.

However, in this case it goes a little further. One of the factors he decided was support for the father's evidence was capable of an alternative interpretation. It affected a vital part of the evidence against the accused and I feel that it must cast a doubt on the magistrate's findings.

Despite the advantage the trial court has by seeing and hearing the witnesses, this court can quash a decision if it is left, after a consideration of the evidence presented at the lower court, with a real doubt. In this case, the conclusions regarding the "three years" phrase and the expression "the middle of June" do not depend on an assessment of the credibility of the witnesses but on the magistrate's interpretation. I feel there is sufficient ground for an alternative interpretation to that made by the learned magistrate and that alternative would be favourable to the accused.

Having reached that conclusion I feel there is insufficient evidence to support the father's evidence and I therefore allow the appeal. The convictions are quashed.

(F.G.R. Ward)
CHIEF JUSTICE