REGINA -v- WILSON IROI

**High Court of Solomon Islands**
**(Muria J.)**
Criminal Case No. 17 of 1991
Hearing: 18 October and 6 November 1991
Judgment: 8 November 1991

J. Wasiraro for the prosecution
A. Radclyffe for the Accused

MURIA J: The accused is charged with two counts of defilement contrary to section 134(1) of the Penal Code that he on 6th February 1991, at Honiara, had unlawful sexual intercourse with the complainant, a girl under the age of 13 years and secondly, that he on 22nd March 1991, at Honiara, had unlawful sexual intercourse with the compalainant, a girl under the age of 13 years.

The offence of defilement of girl under 13 years of age is created by section 134(1) of the Penal Code which provides that:

> *"134 (1) Any person who has unlawful sexual intercourse with any girl under the age of thirteen years is guilty of a felony, and shall be liable to imprisonment for life.*
>
> *(2) Any person who attempts to have unlawful sexual intercourse with any girl under the age of thirteen years is guilty of a misdemeanour, and shall be liable to imprisonment for two years.*
>
> *(3) It is no defence to a charge for an offence under this section to prove that the girl consented to the act."*

The prosecution's case is that the accused and complainant first met on New Year's night at White River. The complainant was then still attending Bokonavera Primary School and was doing her Grade 5. Since then the accused and complainant used to see each other. On 6th February 1991 the accused met the complainant at the NPF Plaza where the accused proposed that they go to the NBSI Mess. Willingly the complainant followed the accused to the NBSI Mess. This was about 9 a.m. While at the Mess the accused asked the complainant to have sexual intercourse with him. The complainant at first refused but later accepted after the accused repeated his request.

They had sexual intercourse in Room No. 7 which was an empty room. The complainant told the accused before intercourse that her age was 12 but that the accused said it was alright. The complainant was willing to have sexual intercourse and did have sexual intercourse with the accused. After that they fell asleep and woke up about 6 p.m. and left the Mess.

The next incident the prosecution said, was on the evening of 22nd March, 1991 when the accused met the complainant again at the NPF Plaza and then they proceeded to the NBSI Mess. The complainant willingly followed the accused to the Mess. When they reached the Mess, they went into an empty room, Room No. 11, where they had sexual intercourse. The complainant was willing to have sex after the accused asked her. They slept in the room and later on in the night they had sexual intercourse again. Once again the complainant was willing. They left the Mess early the next morning.

In support of its case, the prosecution called the complainant's mother and a medical statistical officer.

The mother gave evidence that she gave birth to the complainant on 15 August 1978 at Central Hospital. The mother also gave evidence that on one occasion upon seeing her daughter (the complainant) not turning up at home, she went out searching for her. That was this year. She eventually found her daughter in a house at the College where the accused was staying. The mother then confronted the accused who said something to the effect "mi wrong now". While the mother was confronting the accused, she saw her daughter running away out of the house.

The medical statistical officer gave evidence of the official record he kept which showed that the mother (PW2) gave birth to a baby girl on 15th August 1978 at Central Hospital, Registered No. 3950B. There was no challenge to the evidence of the mother and the medical statistical officer. Therefore, I accept their evidence.

It is not in dispute that the complainant was under the age of 13 years at the time of the alleged incidents. I find therefore that at the time of the first alleged incident, the complainant was 12 years, 5 months 3 weeks and 1 day old and at the time of the second incident, I find that the complainant was 12 years 7 months and 1 week old. What is disputed by the accused are the alleged acts of sexual intercourse on 6th February 1991 and 22nd March 1991.

At the end of the prosecution case, I rejected a "no case" submission by Mr Radclyffe. The accused then exercised 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.

Mr Radclyffe submitted that the evidence for the prosecution of sexual intercourse came from the complainant only and that her evidence was not sufficient to prove the elements of the offences charged beyond reasonable doubt. It was further submitted for the defence that the complainant's evidence as to the times of the sexual intercourse was conflicting. Further, Mr Radclyffe submitted, that the complainant had the days and dates mixed up and that she told the police she was 13 years of age whereas she told the accused she was only 12 years old. When asked why she said "13" to the police and "12" to the accused, she was not able to give any explanation. The complaiant told the police that the accused was the first boy she met when in fact it was another man (who had already been dealt with by the Court) who first had sex with her. All these, Mr Radclyffe submitted, made her evidence so unreliable that it would not be safe to convict the accused on the evidence of the complainant alone and in particular, since there was no corroboration of the complainant's evidence.

Mr Wasiraro for the prosecution agreed that there was no corroboration as to the victim's evidence on the sexual intercourse. However counsel submitted that the Court can still convict on the uncorroborated evidence of the victim and that there was sufficient evidence to ground a conviction.

I remind myself that 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 which provides that:

*"(2) Every person who is charged with a criminal offence -*

*(a) shall be presumed to be innocent until he is proved or has pleaded guilty;"*

It has now become necessary for me, firstly, to decide whether I accept the complainant's story and other evidence (if any) called by the prosecution.

As to the first incident on 6th February 1991, the complainant gave her account of what happened on oath. She met the accused at the top floor of NPF Plaza. The accused asked her to accompany him to the NBSI Mess which she did. This was about 9

a.m. At the Mess the accused open the door to an empty Room No. 7 and they both went into that room. While in that empty Room No. 7, the accused asked the complainant to have sex. The complainant did not refuse but she said to the accused that she was 12 years old, to which the accused replied "it's all right". The complainant removed her jean-trousers while the accused also removed his trousers and they had sexual intercourse. After sexual intercourse, they remained in Room No. 7 until evening and when it was dark they left the Mess. The complainant went to catch a bus at the bus-stop opposite the High Court Building.

In cross-examination, the complainant's account of the meeting at the NPF Plaza and the subsequent account of what happened at Room No. 7 at the NBSI Mess was never challenged by the defence. There was nothing to contradict the evidence that after they met at NPF Plaza the accused and the complainant went to NBSI Mess where they had sexual intercourse. The defence was simply a denial of any sexual connection with the complainant and attacked the complainant's story by suggesting to her that her story was a made-up one. This, counsel for the defence said, was because she was not consistent when she told her age was "13" to the police whereas, to the accused, she said her age was "12". As to which day of the week was 6th February, she said it was Friday whereas the 6th February 1991 was in fact a Wednesday. Also the defence sought to discredit the complainant's evidence by showing that she was not consistent when she told the police that the accused was the first boy she had an affair with whereas in fact one Sam Ramo (the co-accused who had pleaded guilty and already dealt with) was the first boy she had sex with. Those inconsistencies, submitted defence counsel, show that her evidence could not possibly be relied upon to safely convict the accused. In other words, the defence was relying on those inconsistencies to show that the complainant should not be believed.

In a similar attack, the defence also sought to discredit the complainant's evidence surrounding the incident on 22nd March, 1991. In addition, the defence put forward the suggestion that on 22nd March 1991, the accused was away in Brisbane and that the 22nd March was a Friday and not Saturday as the complainant said. As the accused did not give evidence himself nor called any other evidence, I am unable to place any reliance on the suggestion that he was in Brisbane on 22nd March. The question of whether the 22nd March, 1991 was a Friday or Saturday does not stand much weight against the uncontradicted evidence of the complainant as to what happened in the empty Room No. 11 on 22nd March 1991.

I have considered the inconsistencies put forward by counsel for the defence which in effect is on attack on the complainant's credibility rather than on the substance of her evidence. I accept that the demeanour of a witness can have some significance in determining whether or not he is telling the truth. But how much value

is there in placing undue reliance on the demeanour of a witness in abnormal situations such as in an interrogation of witnesses in a police station or in a court room setting in order to assess the credibility of the witness? I venture to say that in order to decide on the credibility of a witness one must, among other things, take into considerations the personality, the character and motives of the witness.

In the present case I have given the most objective thought on the credibility of the complainant and having done so most anxiously in the light of the uncontradicted evidence of the complainant there is no room left for me to doubt that she was telling the truth when she described in details what took place in those empty Rooms 7 and 11 at the NBSI Mess. Accordingly I believe the complainant's account that sexual intercourse occurred between the accused and the complainant at NBSI Mess in Rooms 7 and 11 on 6th February 1991 and 22nd March 1991 respectively.

On the question of corroboration, I warn myself of the danger of convicting the accused on the uncorroborated evidence of the complainant. It has been a well settled rule that has the force of law that in cases of sexual nature it is dangerous to convict on the testimony of a complainant alone. However if after considering this warning most carefully the court is completely sure that the complainant is telling the truth it may convict on the evidence of the complainant alone: ***R -v- Gere (1980/81) SILR 145.*** In the present case the mother's evidence of confronting the accused about taking and hiding her daughter (the complainant) was not challenged. The undisputed evidence of the other was that upon finding her daughter in the house at the College with the accused she confronted the accused and the accused replied "me wrong now".

I find the mother's unchallenged testimony to be of considerable support to the complainant's story of her association with the accused as well as her evidence of residing with the accused for about one week after the 22nd March incident. Even if the mother's evidence does not bear direct support to the complainant's accounts of the sexual intercourse on 6th February and 22nd March, I find her evidence displaces the suggestion that the complainant invented the whole story about her association with the accused. I believe the mother's evidence that upon seeing her daughter not returning to her house she went about searching for her daughter whom she found with the accused at the College. Upon confronting the accused, about the matter the accused said "me wrong now" which is a pidgin expression of an admission.

Accordingly on the evidence before me I am satisfied beyond reasonable doubt that the accused had unlawful sexual intercourse with the victim on the date mentioned in the information and the accused is guilty on both counts.

**Verdict of Guilty.**

## SENTENCE

In the cases of this nature where the accused plead not guilty, they lose the benefit of a plea. The obvious reason is because they make the victim go through the ordeal of giving evidence in court. In your case, by your plea of not guilty, the court had the benefit of seeing and assessing the girl. The fact that the Court had been given that benefit has helped you considerably.

It is obvious that the girl though young, has throughout been a willing party to the whole affair. Despite the fact that she knew she was 12 years old and she told you of it, she was prepared to have sex with you, not once but twice. She displayed all signs of her willingness to be corrupted by you as well as the other man. There is no doubt that your association with the complainant stopped only because her mother found out.

The purpose of the law in this area is to protect young girls from men as well as to protect them from themselves.

You were old enough to know that when she told you she was 12 years old, you should have resisted the temptation. You did not resist and as a result you have now been found guilty of a serious offence for which an imprisonment sentence is inevitable.

I accept that it was another boy who first corrupted the girl but you did also after that other boy, not once but twice. I consider your good character and your work. I very much bear in mind the fact that you have a wife and two children to take care of. In addition I take into account the character of the girl. All these circumstances enable me to pass a sentence which is much less than normal for this type of offence.

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| **On Count 1** | - | **9 months imprisonment** |
| **On Count 2** | - | **9 months imprisonment** |

Both sentences are concurrent to each other.

I have considered whether or not to suspend in whole or in part your sentences. If it was not for the hardship that your absence in custody would produce on your two young children, I would have no hesitation in ordering that you serve your sentences.

With much reluctance I order that both sentences be suspended for one (1) year in full after balancing your interest as against the interest of the community. This should be an incentive to you to avoid trouble. It is not a "soft option". In fact it places a heavier burden on you even though you still have your freedom.

After much weighing and balancing I come to the conclusion that in the interest of the community and yours, that interest may be better served by releasing you into the community with the knowledge that should you re-offend, you will be liable to the original sentences.

Both sentences to be suspended for 1 year.

[Informed of right of appeal]

**(G.J.B. Muria)**
**JUDGE**