

R -v- JOHN AUWAHAU

High Court of Solomon Islands

(Palmer J.)

Criminal Case No. 18 of 1993

Hearing: 31 March 1993

Judgment: 6 April 1993

DPP for the Crown

R. Teutao for the Respondent

PALMER J. You have been convicted of rape yesterday and are now before this court for sentence.

I give credit for a change of plea and thus saving the court further time and expense.

Without being repetitive, the offence of rape is a very serious offence. That is why it has a maximum penalty of life imprisonment. The reason would appear to be because the offence of rape cuts across the whole make up of the victim as a woman. It violates not only her body, but her mind and spirit as well.

In the case of *R -v-Ligiau and Dori SILR 1985/86 214* in which two accused were charged for offences of rape and attempted rape, his Honour, Chief Justice Ward adopted the views of Lord Lane CJ in the case of *R -v-Billam (1986) 1 WLR 349* as an indication of what the current practice should be in passing sentence on rape cases. I quote the relevant page:

*"For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the starting point should be eight years.*

*At the top of the scale comes the defendant who has carried out what might be described as a campaign of rape, committing the crime upon a number of different*

women or girls. He represents a more than ordinary danger and a sentence of 15 years or more may be appropriate.

*Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time, a life sentence will not be inappropriate.*

*The crime should in any event be treated as aggravated by any of the following factors: (1) violence is used over and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound the victim; (3) the rape is repeated; (4) the rape has been carefully planned; (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind; (6) the victim is subjected to further sexual indignities or perversions; (7) the victim is either very old or very young; (8) the effect upon the victim, whether physical or mental, is of special seriousness.*

*Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figure suggested as the starting point.*

*The starting point for attempted rape should normally be less than for the completed offence, especially if it is desisted at a comparatively early stage. But attempted rape may be made by aggravating features into an offence even more serious than some examples of the full offence."*

The aggravating feature in that case was the age of the victims which was 12 and 10 years. However, there was no more force used than was necessary, although the accused did threaten to kill the victims unless they submitted. The accused's also did plead guilty to the charges. They were sent to prison; for the rape charge, a sentence of 6 years and for the attempted rape 5 years.

In another rape case in this jurisdiction, the case of R -v- Gere 1981 SILR 145, the accused was sent to prison for 3 years. In that case the accused was the stepfather of the victim who was born to his wife from the wife's first husband. The victim too in that case was a young girl of 16 years old.

The facts in that case showed that the victim and her younger sister were being accompanied that night by the accused and escorted to a village situated in a hilly bush area.

The road they took was a bush road. The 'A' was armed with a bush knife and did use that knife to threaten the victim with and force her to have sexual intercourse.

In another rape case between Kaboa -v- R the court of Appeal reduced the sentence of 10 years imposed by the High Court to one of 7 years. The accused in that case faced 4 other charges of a serious nature together with a rape charge.

The facts of the rape charge involved the rape of a 13 year old girl who was asleep on her bed at the time of the offence and awakened to find the 'A' committing the offence.

The learned Chief Justice had imposed a sentence of 10 years for that rape offence.

That sentence was reduced to 7 years and made concurrent with all the other offences which ranged from 6 months to 5 years.

The accused in that case was described in the court of Appeal judgment as having 'deep maladjustment and a menace to the community'.

The final case I will refer to is the case of Koraua and Kaitira -v- R 1988/89 SILR,4. The 'Appellants' were charged with rape but convicted of attempted rape and sentenced to 4 years and 3 and half years respectively.

The facts showed that the Appellants, complainant and others had been drinking at the White River beach. On the way to the road to catch a taxi one of the appellants asked the complainant to go with him for a talk but she refused. As a result he pulled her to some long grass and had intercourse with her against her will. The reason why the charge was reduced to attempted rape was because the learned Chief Justice could not be sure whether complete penetration had occurred or not.

I have gone to lengths to try and bring out the trend on sentencing as applied by this court in rape cases and the associated facts in each.

I accept the words of Chief Justice Ward in Ligiau and Doris case adopting the statements of Lord Lane in which he set out some guidelines in sentencing of rape cases.

The case of R -v- Gere needs to be distinguished. It would appear to be an anomaly in the sense that the sentence passed was what can be termed as a lenient sentence.

The facts of this case does show that there was no more force used than was necessary to effect the offence.

The trip was supposed to be a normal trip in which you and the victim were to collect some food from Luaniua. You purposely requested this victim that she accompany you to assist you. She did so on a basis of trust and especially when you are an elderly man past your prime of life and that one would have reasonably expected more composure, restraint and respect from you. However, you took advantage of the situation. The timing and the place was just

right for you to do it. It was on a very lonely part so far out at sea that there was no opportunity of being seen, or help obtained, or room for escape for the victim.

It may be that you formed the intention or the plan to rape the victim when you started off from the island. However, I will give you the benefit of a doubt in that and take the view that it was not planned.

You should have come to your senses when the victim refused your approaches to the point of actually jumping out into the sea. That can only mean that there was no consent whatsoever.

I give credit for the fact that no more force than was necessary was used to commit the offence, and only once. Also that no weapon was used.

I do note you have 2 previous convictions but these are minor offences and not related to this. Accordingly I am treating you as a first offender and give due credit for that.

I give due credit for the fact that you are the sole bread winner in your family. I also note what was said by your counsel about the insult in custom that you claim the victim had done to you. And the action that you took was sort of a pay-back for that. However, two evils committed do not make a right. They make a worse evil rather.

Bearing in mind the circumstances and the facts of this case and taking into account your mitigation the appropriate sentence would be one of imprisonment for 4 and half years.

Sentenced to imprisonment for Four and Half years.

(A. R. Palmer)

JUDGE