

REGINA -v- TIBON OGE

HIGH COURT OF SOLOMON ISLANDS.
(KABUI, J.).

Criminal Case No. 396 of 1999.

Date of Hearing: 20th September 2004

Date of Sentence: 21st September 2004

R. Barry for the Crown.

Maelyn Samuel (Mrs) for the Accused.

SENTENCE

Kabui, J. You were convicted of the offence of rape yesterday by this Court. It is now my duty to pass sentence on you this morning. The offence of rape is a very serious offence indeed for which the prescribed penalty is life imprisonment under section 137 of the Penal Code Act (Cap. 26), "the Code." The High Court judges have stated this many a time in this jurisdiction. The appropriate sentence imposable in any particular rape case is a matter for the trial judge to decide, depending upon the circumstances in each case. The sentences passed by the High Court judges in this jurisdiction in rape cases vary from case to case. Sentencing practice is not a mathematical formula that the judge applies and gets the same result all the time. Factors such as retribution, deterrence and rehabilitation are relevant considerations in passing the appropriate sentence. Life imprisonment is the maximum penalty for rape but section 24(2) of the Code does allow the trial judge to impose any sentence that is less than life imprisonment prescribed by the Code. Subsection 2 enables the trial judge to pass any sentence less than life imprisonment that befits the circumstances of each case. I recently imposed a sentence of 4 years imprisonment in R. v. John Iroi, Criminal Case No. 250 of 2003. The facts of that case are similar to the facts of your case. However, there is one fundamental difference. In your case, this charge of rape had been hanging over your head for 5 years for no fault of yours. Your case is a difficult one to deal with for two reasons. First is that the inordinate delay in prosecuting your case for 5 years is contrary to section 10(1) of the Constitution which demands that every person who is charged with a criminal offence must be fairly tried by a court of law within a reasonable time. The delay of 5 years by the Prosecution of your case is a point in your favour when considering the length of any custodial sentence I should impose on you. The second reason that makes your case a difficult one to decide is that because of the delay by the Prosecution, your circumstances had changed over the years for the good of

yourself. Your counsel urged me to consider suspending any custodial sentence that I would impose on you for the second reason stated above. I will consider your changed circumstances first to see whether they befit the consideration of a suspended sentence. A suspended sentence under section 44(1) of the Code only applies if the term of imprisonment imposed by the court is not more than 2 years. This means that if I should impose a term of imprisonment in your case for more than 2 years, the suspended sentence option would not apply to your case. For this reason, your counsel was in effect asking me to impose a custodial sentence of 2 years or less and then to suspend it for a period of 1 year but not exceeding 2 years. It cannot be anything else.

I have studied your case. You were committed to stand your trial in the High Court on 9th November 1999, three months after you committed the offence. You were first summoned to appear in the High Court on 6th November 2000. You attended court but no lawyer from the Prosecution appeared. Your case was adjourned and you appeared again on 11th November 2000. Your case was adjourned and you appeared again by counsel on 15th February 2001. Again, your case was adjourned and you appeared by counsel on 23rd March 2001. Your case recently came on for direction hearing before the Chief Justice on 23rd July 2004 and again on 6th August 2004. The gaps between adjournments were considerable. You had waited for justice to take its course within a reasonable time but to no avail. You had not been told of the reasons for these long delays or these long gaps between the adjournments. In the course of things, you got married, 2 years after you committed the offence. You now have 2 children of the marriage. One is 3 years old and the other is 2 years old. The third is expected in December this year. In 2002, tired of waiting, you recommenced your studies at the Solomon Islands of Higher Education (SICHE) in the School of Finance and Administration. In fact, you had enrolled in 1999 but had to withdraw to await your trial in Court. You are now only 3 months away from graduating in December this year most likely with flying colours. In his report on you, the Head of the School of Finance and Administration, John Ipo, states that you are an A grade student, scoring As and Bs consistently throughout the semesters. Another report comes from your Youth Pastor, Nacanieli Seru, a Fijian clergyman, of the Bible Way Centre in Honiara. He says you are now a changed man. You are now part of the youth campaign in his church against, Aids, marijuana, domestic violence and smoking through your music and singing about these evil habits. The President of the Restoration of Music Industry (ROMISI) says you are a member of his organization and a lead singer in a religious band, called the Revelation. The report from the Chief Health Promotion Officer, Mark Tehe, also speaks well of you as being the moving force in your music against Aids, marijuana, domestic violence and smoking in the health campaign against these evil habits. Eddie Omokirio, the Coordinator of Futsal says you have contributed to the

game of soccer and points to your potential in that regard. The picture I get from these character reports is that you are a talented young man of great potential in the fields of your interest. At your trial, some exhibits were missing and likewise the originals of the sketch plan and the record of your interview with the Police were not produced for obvious reason, though copies were produced. Your antecedents were not known and were not produced by the Prosecutor. For this reason, I will regard you as a first offender with no previous convictions. Your case had become stale for no fault of yours. I think it is not right that you should be held in suspense for 5 years and the law blames you for moving on in life as you have done and catching you by the wrong foot and then penalizing you with imprisonment by depriving you of all that you have gained and achieved in life over the last 5 years. However, you should not remain unpunished for what you had done to the complainant. I will send you to prison for a term of 2 years to be suspended for 2 years with effect from yesterday. This means that you will not go to prison but are expected to live a straight life for the next 2 years. If within that period of 2 years, you commit another offence punishable by imprisonment, you will be called up by the Court to serve the suspended sentence or any other penalty that the Court may wish to impose on you that time. I feel that the sentence that I have imposed on you is a just one in your case. Even if you had been convicted and sentenced in 1999 or in 2000, you would have gone out of prison in June, 2000 anyway when the MEF opened the Rove Prison and let out all the inmates there. You would have been unlawfully free at large for no fault of yours defeating the whole purpose of sentencing criminals. That was the position until the arrival of RAMSI in this country. You are lucky that you do not go to prison this time. But the threat of going to prison will be hanging over your head for the next 2 years, depending on your conduct for that period of time. I hope you learn your mistake and stay clear of the law for the sake of yourself, your family and your community. The order of this Court therefore is that you be sentenced for a term of 2 years to be suspended for a period of 2 years with effect from yesterday.

F.O. Kabui
Puisne Judge