

**IN THE HIGH COURT  
OF SOLOMON ISLANDS**

*Criminal Case No. 394 of 2009*

**REGINA -v- JOHN MEMEA**

**Date of Hearing:** 14 and 15 September, and 4 October 2010

**Date of Decision:** 6 October 2010

*Mr. J Seuika for Crown*

*Mr. S Valenitabua and Mr. S Aupai for Defendant*

**DECISION FOLLOWING TRIAL**

**Cameron PJ:**

1. John Memea is charged with the rape of Judith Ngatulu (the complainant), said to have occurred in the late evening of Sunday 5 August of 2007 at KHY Hostel, Gizo. The evidence of the complainant was that she was on holiday in Gizo at the time and that she was living with her sister in her sister Toka's bedroom located upstairs in that hostel. There was one other bedroom upstairs, which was shared by a Rhoda Vavala and a Jimmy Tavake, (who I infer was her partner). Those two bedrooms were divided by a common wall. There were other bedrooms downstairs which were also occupied.
2. The complainant's evidence was to the effect that in the late evening of Sunday 5 August 2007, she was alone in her bedroom playing cards when her neighbour Rhoda Vavala came to her and warned her that there was a man wandering around the building and that she should secure her door. She also told the complainant that the man's name was Memea. Rhoda Vavala then removed from the complainant's bedroom the baby that the complainant had been looking after for its mother. The complainant said that after Rhoda left she then pushed a gas cylinder she had in her room up against the door to keep it shut as there was no lock on the door. She said that after that a person began pushing the door open.

3. Her evidence was to the effect that she tried unsuccessfully to push the door closed while he was pushing it open with the result that the person entered the room. It is common ground that the person who entered the room was in fact the accused John Memea. The complainant said that he was holding a pinch bar (which I infer from the evidence is equivalent to a crow bar) and some scissors in his hand and that he entered and then blew out the candle, there being no power in the room although light was coming in from the window. She stated that he then spoiled her card game, that is disordered her cards. She said that Memea then asked her for sex to which she responded as follows: "I said to him you are a married man and you are drunk so I don't want you to do things like that to me and I don't know you."
4. Under cross-examination, she gave a similar but not identical version of her response as follows: "I said to him I never wanted you to come and I know you are a married man, they told me that, and I didn't know him well and I am under my sister's protection here." The complainant said that John Memea did not then ask for sex again. What he did was threaten her with the pinch bar saying that if she shouted out then he would hit her with that. Then he lifted her skirt, pulled down her panties, pushed her down, told her to spread her legs, and tried to push his penis into her vagina. That attempt was unsuccessful so he asked her to put her legs on his shoulders, but she would not do that. He then asked her to put his penis in her vagina, which she did. He then ejaculated inside her. She was crying and frightened throughout this process. After the sex he stood up, pulled his pants up, said thank you and told her not to tell anyone. The complainant still, crying, spoke to Rhoda Vavala a short time later, saying that she had been raped and that this wouldn't have happened if they had helped her. Rhoda Vavala then suggested and orchestrated a report of the incident to police later that night.
5. The accused version of what happened is quite different. He gave evidence that he attended her room that evening by invitation from her earlier that evening at the food market at Gizo. He admitted he was drunk at the time. He said that there was nothing blocking the door to her room and he was able to freely enter and shut the door. He then asked her for sex, saying that when they kissed earlier that evening it had made him feel like having sex. He said she responded as follows: "Hey, I'm frightened of the people and my sister, they might report me to my sister." The accused said he then asked a second time saying: "Please, I will do it fast and then I will go." To that he said she again responded that she

was frightened of her sister, at which time he pleaded with her saying please twice. This time he says she said: "In that case do it fast and then leave the room."

6. The accused said consensual sex then took place on the floor and not the bed, as the complainant had refused the suggestion of doing it on the mattress on the bed, telling him that it was her sister's bed and that the accused had dirty clothing. He said he ejaculated during sex and then got up and left, thanking her and telling her to say to anyone who asked that he was just playing cards with her. He admitted having a short stick in his hand of a diameter approximately that of his little finger and around 1.5 feet long. He said that because he was drunk he couldn't explain why he was carrying a stick. I note that it was common ground that no pinch bar was ever found either at the hostel or at the accused's house, despite a search by police. Nor were scissors found. The stick the accused said he was carrying was also not found at the hostel or anywhere else.
7. In assessing these two different versions, I take particular note of what the complainant said in her evidence in-chief about her prior knowledge of John Memea when he entered her room that night. She said that she had seen him at the market that same evening, that she did not know his name, but that her neighbour Rhoda Vavala had told her prior to his entry into her room that the man's name was Memea. Thus her evidence was to the effect that she recognised the person who entered her room as the man she had seen at the market, and that shortly before his entry and at the time the baby was removed from the room, Rhoda told her that the man's name was Memea. Significantly, the complainant gave no evidence in examination in-chief of any previous contact that evening with John Memea prior to his entry into her room.
8. Thus what the Crown would have the Court believe at the conclusion of the evidence it presented from its main witness, the complainant herself, was that there had been no prior contact whatsoever between the complainant and the accused. Thus, what the Crown wished the Court to conclude was that a complete stranger unknown to the complainant but for a sighting of him at the market, forced his way into her bedroom, threatened her with the pinch bar and raped her. The complainant gave this evidence confidently and without faltering. It was clear from the medical evidence that the complainant had had sex that

night. Thus, it seemed at the conclusion of the evidence-in-chief of the complainant that there was a very strong case indeed against John Memea.

9. However, a quite different picture emerged during cross-examination. When pressed, the complainant admitted that an exchange had taken place between she and the accused earlier that evening at the market. At first she only admitted to smiling at the accused at the market. She said "He spoke to me but I just smiled and walked past." When pressed further she admitted to this exchange: "I spoke to him when he spoke to me, he said 'oh girl I like you' so I spoke back to him in a way that he wouldn't get angry as he was drunk." She was not asked to and nor did she elaborate on the words she actually used to the accused.
10. Significantly, the accused gave evidence of a much fuller exchange between he and the complainant at the market that evening. He stated that she had told him that she had seen him dancing at the Gizo Hotel Night Club the night before, (being a Saturday night), and that he was good dancer. He said that he then told her that he liked her and that she laughed at that and then he suggested that he meet her at the hostel later, to which she said "Yes, you come." The accused said that when he got there later, he looked around the building and saw through an open door her playing cards in her room with Rhoda, that he called out from the door for her to come out of the room, that she came into the corridor, that a few words were exchanged including her telling him "It's hard for you to come because there are men in the room," to which he replied "If that's the case I will go back and come back again." Before leaving her this first time he asked her for a kiss and when she consented, they kissed. He then came back a little later and went straight to her room and opened the door and went inside, there being nothing obstructing the opening of the door.
11. Thus the accused version was of a prearranged meeting at which she succumbed to his pleas for sex but only on the basis that he did it quickly. As stated, in cross-examination the complainant admitted that earlier that evening "She spoke to him in a way that he wouldn't get angry because he was drunk." She agreed she told police in her statement of 6 August 2007 "I identified him, his name is known to me as Meme, the same man who asked me to have a relationship with me when I and my two cousin brothers met him early this evening about 1900 hours when we came down to see Pelican Express." Thus the complainant told police that the accused had asked her earlier that same

evening for a relationship, whereas she told the Court that what he said was "Oh girl I like you." Of course her telling police he asked for a relationship is consistent with the accused's version of he having suggested to the complainant that they meet later that evening.

12. I find that the accused's evidence on this point, being consistent with what the complainant told the police, is to be preferred to that of the complainant. I consider that particularly in her evidence in-chief and then in her cross-examination the complainant was deliberately down playing her involvement with the accused earlier that evening. This raises a question about how truthful she was to the Court about the incident itself.
13. Other significant factors which concern me about the Crown's evidence are these:
  - a. First, if there was a high level of concern about John Memea's presence in the building (which Rhoda Vavala's evidence pointed to); why did the complainant not leave her room and join Rhoda at the time she received the warning about his presence in the building, especially as her door had no lock. Instead she chose to remain alone in her room. A possible explanation is that she was willing to meet with John Memea in accordance with an earlier understanding.
  - b. Secondly, if as asserted by Rhoda Vavala she had in fact seen John Memea hiding something under his shirt before he entered the complainant's room, why was that fact not conveyed to the complainant by Rhoda at the time she issued the warning to the complainant? One would have expected it to be. It remains a possibility that she saw no such thing especially as her partner Jimmy Tavake said he saw John Memea outside the KHY Hostel at about the same time and said nothing of him carrying anything.
  - c. Thirdly, if there was a high level of concern about John Memea's presence in the building, why did Rhoda Vavala who gave evidence of seeing John Memea entering the complainant's room and/or her partner Jimmy Tavake not directly intervene after John Memea had entered the complainant's room, by for example, simply knocking on

the door and ascertaining what was going on. In Rhoda's evidence and Jimmy Tavake's statement they said that had alerted various members of John Memea's family who lived nearby of his presence at the hostel. However, after that they said that they remained in the bedroom adjoining the complainant while John Memea was still inside that adjoining room. This inaction leaves open the possibility of knowledge on the part of Rhoda of a willingness on the part of the complainant to meet with the accused.

- d. Fourthly, Rhoda Vavala's evidence was that she saw John Memea simply open the door of the complainant's room and go inside. Her evidence as to his entry to the complainant's room was "When I brought the baby to her mother, that's when John Memea passed behind me and shut the door." The complainant on the other hand described what happened as follows "I was playing cards, I stood up from playing cards, he's struggling to push the door open so I put gas cylinder more securely up against the door and then when I went to secure gas cylinder at the door, he pushed the door open and came inside." Thus on the complainant's version there was a struggle, whereas Rhoda Vavala's evidence was simply that he went into the room and shut the door as she went out with the baby. This is a significant discrepancy and I prefer the evidence of Rhoda Vavala on this point. As stated earlier a characteristic of the complaint's evidence was to down play her involvement with the accused and asserting a forcible entry into her room would be consistent with that aim.

14. I have not overlooked the evidence that while crying, the complainant told the second person she encountered after the alleged incident, Rhoda Vavala, that she had been raped. It was the evidence of Rhoda Vavala that she then instigated a reporting to the police of the matter that night. Indeed, it seems that she was the driving force behind the complaint rather than the complainant herself.
15. The complainant was subsequently examined by a registered nurse at the Gizo Hospital that same night, who made a report in effect confirming that the complainant had recently had sex. There was no opinion that the complainant

had been raped. On 8<sup>th</sup> August 2007, 2 days later, the complainant was examined by Doctor Michael Buin of the Gizo Hospital. His report stated that there was no evidence of recent rape or trauma.

16. While the recent complaint to Rhoda Vavala is consistent with what the complainant told the Court, it is also clear from the evidence and I find that the complainant would have known and been concerned that if her sister found out about she consorting with a man in her sister's room then she would be in trouble. The evidence raises the possibility that the complainant in alleging rape was attempting to deflect the anger that would otherwise be directed towards her for consorting with a man in her room
17. I note finally that the accused willingly made a statement to police on 7 August 2007 in which he admitted sex with the complainant but said it was consensual and as a result of a prearranged meeting. His evidence in Court was consistent with that version.
18. For all these reasons and particularly because of the tailored evidence which the complainant gave, I am left with a reasonable doubt as to whether the version of events as asserted by the complainant was accurate. I am unable to exclude the possibility that the accused's version was correct, namely that the complainant, though initially reluctant, eventually agreed to consensual sex. Thus, the Crown has failed to prove beyond reasonable doubt that the accused John Memea raped Judith Ngatulu and I therefore find him Not Guilty and acquit him of that charge.

**BY THE COURT**

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**Justice IDR Cameron  
Puisne Judge**