

REGINA V. JOHN MAETARAU

High Court of Solomon Islands

(Ward C.J.)

Criminal Case No. 4 of 1990

Hearing: 3rd April 1990

Judgment: 4th April 1990

P. Watts for the Accused

A. Rose for the Prosecution

WARD CJ: The accused, John Maetarau, is charged with raping Filistus Selea on 11th January 1990.

The evidence depends largely on the complainant. She is a young married woman who had her second child only two months before. She had gone to stay at her father's house for a short time and the accused was also staying there. In the morning of the 11th she got up and spoke to the accused about grating some coconut and she and a few others then ate.

Afterwards the two adults who were present apart from herself and the accused, namely her father and a cousin brother called Laea, left. There were some children still there, the oldest of which was about 5 years old.

The complainant was breast feeding her baby when, on her account, the accused came into the room and asked her for sexual intercourse. She declined and he then grabbed her legs, pulled her from the baby, held her hands, covered her mouth, lifted her skirt and his lavalava and raped her. She did not scream because he covered her mouth at one stage and after he took his hand away she still did not.

When he finished, she noticed she was bleeding and, by the time she had gone to a nearby village and spoken to the third

prosecution witness, that witness noticed fresh blood on the front and back of her lavalava.

The reason for the bleeding was revealed the next day when she was examined by the Gynaecologist at the Central Hospital. He found that, although she had no signs of external injury, there was bruising at the entrance to the vagina and, inside, there was a circular tear 3 - 4 cm in length that involved the full thickness of the vaginal surface. The injury was, in the doctor's opinion, the result of forced intercourse.

The accused was seen by the police and made a statement under caution on 17th January. He told the officer that he had started a relationship with the complainant and, on that morning, he had had sexual intercourse with her with her consent. He said that, just afterwards, Laea had returned.

The same case was put to the witnesses. The complainant denied any earlier relationship with the accused and also denied any consensual sexual intercourse. Equally Laea denied returning to the village at that stage. He agreed he came later because he went to the nearby village to which the complainant had gone to complain and he and others from that village went to see the accused. The girl to whom the complaint was made told the court of the victim's demeanour. She was, she said, clearly upset.

The accused elected to give no evidence himself or call any witnesses. Therefore, I must decide, on the prosecution's case, whether I am satisfied to the required standard that they have proved the case against the accused and whether they have disproved consent. The burden lies on the prosecution throughout.

I accept that sexual intercourse occurred and I accept the injury was caused as a result of the forceful nature of that intercourse.

Mr Watts urged the court and suggested to the doctor that the injury could be a persistent result of her recent childbirth. The doctor was adamant it was a recent injury and I accept his evidence and his reasoning on that fact. Mr Watts suggests, that, even so, the circumstances of the sexual intercourse with children around and a risk of discovery by the adults returning caused him to rush it and so use more force than usual. The doctor insisted such an injury could only occur from forced sexual intercourse. I cannot accept that. I accept that consensual sexual intercourse may involve sufficient force to cause such an injury and thus the case depends on whether the prosecution have disproved consent.

The complainant was an extremely good witness. She was quiet and emphatic. On two occasions she appeared to show inconsistency in her evidence but, on both, I am satisfied she had misunderstood the question and her answer was clarified.

There is no corroboration and I warn myself of the dangers of accepting her evidence without it. However, I found her a credible and convincing witness. Her account was confirmed in the evidence of her demeanour and complaint when seen by the third prosecution witness. The matters put in support of the defendant's case to the witnesses were denied and denied convincingly.

I have absolutely no hesitation in saying that I am satisfied there was no consent by the victim. I am satisfied beyond any doubt that this accused forced her to have sexual intercourse and she was unwilling throughout.

I am satisfied he raped her and he is convicted accordingly.

#### SENTENCE

This was a case of breach of trust. The closeness of all the people living in that house was such that temptation was

likely but all decent people are entitled to assume they can trust others to overcome it. This girl was injured badly but I accept that was more likely to be an unexpected chance.

I allow for your youth, your previous lack of conviction for such offences and the fact you did not go in the witness box.

All allow me to reduce the sentence to the minimum appropriate.

5 years imprisonment.

(F.G.R. Ward)  
CHIEF JUSTICE