

REGINA -v- JAMES RASINI AND FOUR OTHERS

High Court of Solomon Islands

(Ward C.J.) sitting in Tulagi

Civil Case No. 25 of 1990

Hearing: 11 April 1991

Judgment: 11 April 1991

DPP, F. Mwanosalua for prosecution

J. Muria for the accused

WARD CJ: The accused are all charged with defilement. In the case of the first and second accused they are charged under section 134(1) of the Penal Code and in the case of the third and fifth accused, under section 135(1)(a).

The majority of facts are not in dispute. The girl, Alice Mildred Sale, was born on 2 April 1977 and the three offences with the first accused occurred in December 1989 and January 1990. The second accused is charged with one incident in January 1990, the third accused with one on 1 May 1990 and the fifth accused with one on 15 July 1990.

The complainant was clear about the dates in respect of the first accused placing one on 13th December, the next between 31 December and 6th January and the last on 3 February. Those dates are admitted. Clearly on all those occasions she was still 12 years old.

When asked the date of her sexual intercourse with the second accused she put it between 3rd and 15th February 1990 and then said about three weeks after her last time with the first accused.

That is the only major dispute in the whole case. The second accused gave evidence in which he admitted the sexual intercourse but insisted it was in late April. He said he could pinpoint the date because he saw the third accused the day that accused had sexual intercourse with Alice which was 1st May. His intercourse was about 2 weeks prior to that. He gave his evidence clearly on that point. His account of seeing the third accused was confirmed by the latter although that is of limited value. The girl I felt was a little unsure when giving the evidence of the date at first but she was adamant in her denial that it was in April. I am uncertain which is the true account and so I must take it in favour of the accused and accept that the prosecution have not proved the offence was whilst the girl was under 13 years old in his case.

Once the date of birth was proved, there was no defence left to the first accused and he is convicted on his own admission of defilement contrary to section 134(1) on each of the first three counts.

As far as the second accused is concerned, he is acquitted of defilement contrary to section 134(1) but by section 169 of the Criminal Procedure Code I may still convict him of an offence under section 135. In relation to that charge, he is entitled to rely on the defence set out in the proviso to section 135(1) as are the third and fifth accused. Everything else is admitted and they all three rely on that defence. The girl was, at the time, at primary school and both the second and third accused said they were aware of that although neither had seen her in her uniform. She said that she was not asked and did not tell any of the accused how old she was.

The second accused said that he thought she was 15 years old. She seemed, he said, big enough to have sex and her behaviour suggested she had been having sexual intercourse a long time. He agreed, however, that he felt she may have been under 15.

The third accused also felt she was 15 and had no doubt. He felt she was a big girl and the way she both suggested sexual intercourse to him and chose the place it should occur supported that view.

The fifth accused similarly thought she was 15 years old. He had not spoken to her before and she spoke almost immediately about sexual matters. When he asked her for sexual intercourse she agreed promptly and he generally felt she was a big girl. He had seen her around before but he did not know she was at school.

In order to succeed with this defence, the court must find that there was reasonable cause to believe and that he did in fact believe the girl was 15 years old or above. The burden is on the prosecution, once the defence is raised to disprove it.

The court has had the advantage of seeing girl. It is now nearly a year since the second and third accused had sexual intercourse with this girl and nine months since the fifth accused. Even now the girl is small and not very well developed. She has virtually no breasts and her general appearance is of a little girl. Even at this time, her appearance is such that, although she could be thought to be 15 years old, it is a matter that would require some enquiry. I bear in mind the fact that the way she acted giving, as it did, the appearance of an experienced girl would help to make her seem older. Her conduct up to the moment of sexual intercourse is also relevant and the fact that she gave the lead much of the time is a strong factor. The fact that sexual intercourse occurred easily is not a factor I can take into account except in considering the girl's character.

I have considered the case against each accused separately. In the case of the second accused she clearly took a very active part in the lead up to sexual intercourse. However, he agreed he thought she may have been 15. I am satisfied beyond any doubt that was something he clearly realised. I accept the matters I have described gave cause to believe she was 15 years but I do not believe the second accused did in fact believe she was that age. He is convicted of defilement contrary to section 135(1)(a).

I have considered all the evidence in relation to the third accused. He also found the girl willing to initiate much of the sexual actions. In his statement to the police he said he knew she was small in size and her breasts not yet developed properly. I am satisfied he knew she was under 15 years and he is convicted as charged.

The fifth accused is a little older than the previous two men. He was 21 years old at the time of the offence. In the witness box he gave the impression of an older and more experienced man. He told of an extremely direct approach by the girl. However, in his case also, I am satisfied he realised she was under 15 years of age. His whole attitude was simply that, as she was willing to have sexual intercourse, he would go ahead. I have no doubt he knew she was young and did not bother to consider it further. He is convicted as charged.

### SENTENCE

In many cases of this type where the accused plead not guilty, they lose any benefit of a plea because they make the girl give evidence. In this case, the fact you pleaded not guilty allowed me to see and assess this girl and it has helped you considerably. It is quite clear she was as much the initiator of these offences as any of you and in some cases, possibly even more. At the same time it has often been said that the purpose of the law is to protect young girls from themselves if necessary. You were all old enough to know you should have resisted the temptation and all must receive a custodial sentence.

The first accused is charged with a far more serious offence and I have to recognise that fact. At the same time it is only a matter of months between him and the others and so it makes little real difference. His sentences must be aggravated by the fact this occurred more than once and that he was the man who first started the girl on her course of sexual experience. On the other hand I accept that when this occurred he regarded the girl as his girlfriend.

In all these circumstances the sentences I pass are less than the normal sentence for this type of offence in men of your age. I have considered your good character and your work.

A1            Count 1        -        9 months imprisonment  
                  Count 2        -        9 months imprisonment  
                  Count 3        -        9 months imprisonment

All concurrent and 4 months of sentence suspended for 1 year.

A2            Count 4        -        6 months imprisonment

Three months of sentence to be suspended for 1 year.

A3            Count 5        -        6 months imprisonment

Three months of sentence to be suspended for 1 year.

A5            Count 7        -        6 months imprisonment

Three months of sentence to be suspended for 1 year.

Informed of right to appeal.

Court:        I cannot leave this case without dealing with the girl. She is much to blame for 4 young men of good character and with work having to go to prison.

She is still under 15 years and I feel she must somehow realise she cannot continue to act in such a selfish way. I note that in case of the fifth accused this occurred after she was discovered.

I intend to bind her over. That is all I can do.

Complainant nothing to say.

Complainant bound over for \$400 for 12 months under section 32(2).

(F.G.R. Ward)  
CHIEF JUSTICE