

REGINA -v- HENRY SUUMANIAHIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Criminal Case No.313 of 2003

Date of Hearing: 28th October 2004Date of Sentence: 1st November 2004*M. MacColm for the Crown*
*S. Lawrence for the Prisoner*SENTENCE

Kabui, J. You pleaded not guilty to raping Valentine Baomaole (the complainant) on 22nd August 2003 at the Botanical Garden just below Rove Police Headquarters and the Rove Prison Compound. That is to say that you had sexual intercourse with her without her consent. You had tricked her into submitting to having sexual intercourse with you without her consent. After four days of trial, I found you guilty of raping the complainant and convicted you of that offence. It is now my duty to pass sentence on you for raping her as required of me by the law. You used no physical force against her and she sustained no physical injuries. However, you used the threat of being arrested and detained by the Police if she did not agree to have sex with you. You had told her that you were a security officer attached to RAMSI doing security work at the Botanical Garden. You had told her that she was trespassing in the Botanical Garden. You had used a toy mobile phone which resembled a real one to convince her of your identity and status by talking into it in her presence. You appeared to her to be calling the police to come and arrest her for detention for trespassing in the Botanical Garden. You had told her that such arrest and detention would be avoided only on the condition that she had sex with you. You had told her to lead you to the place where she and her boyfriend had been together with the intention of making her feel guilty about having sex with her boyfriend on that spot and then let you do the same to her. You had chosen not to let her know that you had seen her and her boyfriend making love and thus avoid creating fear in her mind that you also wanted to do the same to her. Instead, you dwelled on the pretext that they had trespassed and they were in trouble with the law. The complainant believed you though your threat was empty of any truth. By accusing her of trespassing, you had created a situation of trust in that she trusted you as a security officer that what you were saying to her and doing to the moment of having sex with her were true. The Botanical Garden is not private property. It has no private security. You know that fact otherwise you would not have pretended to be the security personnel there in the first place. Government assets are protected by the Police whether they are regular police or special constables. A police officer is in a position of trust when dealing with members of the public. A police officer must not abuse that trust when dealing with a female complainant or female suspect or prisoner etc. You had posed as a police officer though you were not one in uniform but your conduct had created that situation of trust. The question of you not being in uniform is irrelevant because at that time a lot of Police Constables did not wear any Police uniform and yet were carrying out police duties. You are a matured person and the complainant being a teenage school girl trusted you and believed you. She apologized to you for the trespassing but you did not accept it. You did not stop there. You continued to speak into your toy mobile phone to back up your threat of arrest and detention. The fact that that day was a RAMSI field day in Honiara with a lot of overseas army personnel and the fact that Rove Police Headquarters and the Rove Prison Compound were just below the Botanical Garden made your pretext believable and lent support to your claimed status as a police officer or at least a police constable, nothing less. You had played a clever trick on her and it worked perfectly well for you as you expected

and to your advantage. I have taken into consideration that you had not used physical force on the complainant nor did she sustain any physical injuries. I have also noted your circumstances as a husband of a wife and a father of two children. I disregard your previous convictions as none of them was an offence of a sexual nature. This is your first offence of a sexual nature. It is however a very serious offence indeed which calls for a custodial sentence. The facts of your case are not on all fours with any previous rape case in this jurisdiction. The mitigating factors in your case are unfortunately not compelling. In **The State v. Peter Kaudik** [1987] PNGLR, 201 Amet, J. of the National Court of Papua New Guinea adopted and applied the guidelines for sentencing in rape cases set out in **R.v. Billam** [1986] 1 WLR 349 which were adopted and applied in **The State v. John Aubuku** [1987] PNGLR 267 by the Supreme Court of Papua New Guinea. In this jurisdiction, the same position was taken by the then Ward, CJ in **R. v. Ligiau and Dori** [1985/86] SILR 214. In **The State v. John Aubuku** cited above, the prisoner was a police officer who had raped a married woman suspect in custody of the Police. The police officer had used a knife against the woman into submission and then raped her. The trial judge sentenced him to 10 years imprisonment. He appealed against the severity of the sentence and his appeal was dismissed. The tariff for rape cases in Papua New Guinea is comparatively high due to the prevalence of rape in that country. You are not a police officer but you knew the status of a trained police and the trust the community have in a police officer as a law enforcement authority in the community. You clothed yourself with that status and authority and presented yourself as such to the complainant. The complainant believed you because of that and so far as she was concerned you were a police officer clothed with trust and authority. Only you alone knew that you were a bogus police officer. That is the only difference between yourself and a real police officer who abuses the trust that members of the public have in a police officer. The fact that you posed as a police officer made you a police officer no different from a real one in the eyes of the complainant. If you had been a real one, the situation would have been graver like the police officer in Papua New Guinea who had been sent to prison for 10 years for raping a married woman suspect in Police custody. I think the appropriate sentence I should impose on you is a term of 5 years imprisonment effective from the date you went into custody for this offence. I order accordingly. You of course do have the right to appeal against this sentence.

The procedure before sentencing.

I have noticed that the practice that I was familiar with has changed either deliberately or has fallen into disuse since I was a Crown Prosecutor in the mid 1970s to the early 1980s. The practice in this jurisdiction then was that before sentence was pronounced, the Crown Prosecutor would present the antecedents of the prisoner to the judge, followed by the police officer in charge of the Criminal Records Office at Rove Police Headquarters, confirming by evidence on oath from the witness box that the prisoner did have previous convictions or not and then produced the formal record of that fact. The formal record of previous convictions is a form filled in with the relevant details of previous convictions, if any. After that, the case for the Crown was closed. Defence counsel would then confirm the record of previous convictions, if any, and then proceed to address the judge on mitigation. The judge would consider the appropriate sentence and pronounce it in open court. This practice was based upon the practice in England with modifications otherwise the practice is the same in essence. (See **Practice Direction** [1955] 1 All. E. R. 386 modified in **Practice Direction** [1966] 1 W. L. R. 1184). The position has not really changed in England at least up to 1992. I am not aware of any recent Practice Direction by previous Chief Justices in this jurisdiction which has changed the position in this jurisdiction that I have stated above. In this case, the record of previous convictions was simply tendered by the Prosecutor to the judge. Another record of previous convictions was treated in the same manner but more surprisingly, that record did not bear the signature of a police officer in charge of the Criminal Record Office at Rove Police Headquarters. Defence counsel did not dispute these previous convictions so no point of contention arises. However, the point is that the proper procedure must be applied so that local young lawyers do learn the

correct way of practice in this jurisdiction. Whilst a number of counsels from different States in Australia are now appearing in this jurisdiction, they must be careful not to introduce practices of other jurisdictions to confuse and in time overlay the practice in this jurisdiction. Changes are welcome but they must be done in the proper way and by the proper authority. Having said this, I do not know whether the Criminal Record Office at Rove still exists and is still functioning as before. If it still exists and is still functioning, it should be given further support to continue its work.

F.O. Kabui
Puisne Judge