

IN THE HIGH COURT OF SOLOMON ISLANDS

Criminal Jurisdiction

CRC. No. 354 of 2024

Rex v. Barnabas Roroa'a

Date of hearing: 27th October 2025

Date of Judgment: 2nd December 2025

For the Crown: Mutukera Luza

For the Accused: Hauirae M

JUDGMENT

Kouhota PJ:

Introduction

The accused Mr Barnabas Roroa'a was charge with one count of rape contrary to section 136 F (1) (a) (b) of the Penal Code (Amended) (sexual offences Act) 2016. The section states as follows;

"A person commits an offence if the person has sexual intercourse with another person'

- (a) Without the other person's consent; and
- (b) Knowing about or being reckless as to lack of consent

Maximum penalty life imprisonment.

Since the compliant is a young age girl, for purpose of suppressing her identity, I will refer to her only using the initials of her name which are H.H. or the complainant.

Brief Facts

The complainant is said to be 15 years old at the time of alleged rape and was a standard six student at Bishop Eppalle School. She was residing at Hatanga Area at Tinge Ridge at the time of the alleged offence. The accused Barnabas Roroa'a was a neighbour also residing at Hatanga area, Tinge ridge

The Complainant alleged that on 27th May 2024 at Lela beach, the accused raped her by pushing his finger and penis into her vagina. The Complainant and her mother reported the alleged rape

to the police on 3rd June 2024, the accused was charged for rape contrary to section 136 F (1) (a) (b) of the Penal Code (Amendment) (Sexual offences) Act 2016

The accused denied the charge thus putting the burden on the prosecution to prove the charge against the accused.

The charge

In order for the accused to be convicted of rape contrary to section 136 F (1) (a) (b) of the Penal Code (Amendment) (Sexual offences) Act 2016, the prosecution must prove the elements of the offence which are;

- (1) That the accused had sexual intercourse with the complainant and;
- (2) Without her consent and knowing about or being reckless as to lack of consent.

The prosecution evidences

The prosecution called 4 witnesses to give evidence in support of the prosecution case. The first prosecution witness (PW1) is the complainant's mother, Pricilla Teku. Her evidence was that on Wednesday she went with her children including the complainant to school. On their way to school she noticed that the complainant was not working properly. She asked her what happened to her. H.H replied that her private part is itching. PW1 said to her that she must have gone with a man and continue to ask her who she went with. The complainant however did not tell her mother who she went with. She eventually told PW1 on Thursday night when she continues to asked her, that she went with Barnabas's twin. PW1 took the complainant to Sef ples and later reported the matter to the Police Sexual Unit. The rest of her evidence regarding the rape allegation are hearsay thus I will not rehearse them in detail and will not take them into consideration.

After this PW1 got the accused mobile number from PW3. When she got the accused mobile number, she then called the accused and told him to pay compensation \$10,000.00 and 5 shell money.

PW2 is the complainant Miss H.H. Her evidence was that, after school on Monday 27th May 2024 she came to the road and saw the accused's taxi. She said the accused called her into the taxi so she went into the taxi and the accused told her he will drop her off at her house. When she got into the taxi, the taxi drove down to Rove and on to White River. When the taxi did not turn up the road to Tasahe B, she asked the driver where they were going. Accused said to her that they just go first and he will drop her later. The accused drove on towards Kakabona side. Complainant said when they drove past White River, she was afraid and wanted to get out but the car doors was locked so she could not open it.

On the way the accused stopped at Tanagai and went out to a shop while she remains in the car. The accused came back with two soft drinks, he went and bought from the shop. She said the accused was away to the shop for 5 minutes. The accused came back into the car and drove down. She said while going the accused was telling her about a time he went and asked compensation from a Kakabona man who had banged his car.

When they arrive at Lela beach the accused told her, this is Lela beach and went and parked the car at the bottom of a tree. She told the Court that the accused then open his door and came to her at the back seat of the car where she was sitting. He came and sat with her and kissed her mouth and sucked her left breast. She said the accused took off his shirt and told her to get her clothes off as well. The accused then laid her down and pushed his finger into her vagina and she felt pain. After this the accused took of his cloths and lay on top of her and pushed his penis into her vagina. He then moved his buttock up and down many times (copulated) and he ejaculated on her thighs. She said she saw white liquid sperm came out of his penis. After this he wore his cloths and she also put her cloths back on. Then the accused told her, that what they did, nobody should know but only the two of them and God. She said she did not like what the accused did to her.

After this the accused went back to the front of the car and drove back. She said the accused, while driving back he was telling her stories but she was afraid and just cried. They drove up to White River and then to Tasahe B where the accused dropped her at her house. She did not see her mother when they arrived but said she saw her uncle but not sure if her uncle saw them. She only saw her mother at night when she came out of her room.

She did not tell her mother why she is not walking properly when her mother asked her on their way to Bishop Eppalle School. She eventually told her mother (PW1) what happened on Thursday, three days after the incident when her mother continue to asked her why she was not walking properly and asked her what happened to her. She told her mother PW1, that she went with Barnabas's twin brother. She told the Court she spends two weeks at Sef ples and after they had examined her, she and her mother went to the Police at Rove and reported the case to the Police. She said she knew Barnabas because he was their neighbour and she usually saw him went past their house. She accompanied the police and show them where she said the accused went and parked and the accused raped her and the police took photographs of the area. The photographs were tendered as evidence.

When she was cross examined, she said the accused did not threaten her or holding a knife but she was just frightened and did not shout. She said she did not remember going with the accused to Tenaru or that the accused had given her any money. She also said she never used teacher's mobile phones to call the accused.

The third prosecution witness is Mr Claudius Torani. He did not give any relevant evidence to the allegation in this case. His evidence was that he knew the accused and the complainant. They were neighbours at Tasahe B, Hatanga area. He told the court that PW1 called him and asked questions about the accused. PW1 told him to tell Barnabas to give compensation \$10,000 but forgot how much shell money PW1 wants as compensation. He said after this Barnabas and his elder brother came to Houtarau's house and talked about the issue. He said after he heard PW1's brother in-law went and got compensation from Barnabas's father but he did not know how much.

The fourth prosecution witness PW4 is Esther Nevenger. She is the nurse in charge of the Sef Ples clinic. She had examined the complainant and filled in the standard report form. Her evidence about the alleged rape is mostly hearsay and the Court will not take them into account. The Court however consider her evidence on the examination she carried out on the complainant and her findings on the nature of the injuries she found on the complainant's vagina.

The Defence Evidence.

The accused and four other witnesses gave evidence for the accused. The first defence witness DW1 is Warren Fanasia. DW1 is an officer of Solomon Telkom. He is a Telkom engineer who looks after international and local mobile phone calls. He told the Court that they kept records of all mobile phone calls. He said the record of the calls can only be access on the permission of the manager and the legal officer. He told the Court it is impossible to alter or tamper with records of the calls. He confirms that he made a sworn statement which he signs his signature on. His sworn statement and annexures were tendered as part of his evidence and marked D1 and D2. The annexure is the record of call to and from the accused's mobile phone **7194859** between 1st May 2024 and 1st June 2024.

According the evidence of DW1 and the records of the phone calls annexure marked D2. On 22/5/2024, at 13.57.40 mobile number 7413956 called the accused mobile number 7194859. There was another call one minute later at 14.00 hrs from mobile number 7413956 to the accused mobile number 7194859. On the same day at 14.17.22, the accused mobile number 7194859 called back number 7413956. The call lasted 1 minute 25 seconds. On 24/5/2024 at 13.49.17 mobile number 7413956 called the accused mobile number 7194859. The records show that on 24/5/2024 the mobile phone 7413956 called mobile phone number 7194859 call lasted 1 minute 23 seconds

The second defence witness DW2 is Assumpthar Helena Fina she is a teacher at Bishop Eppalle Primary school. The complainant H.H. is a student in her grade 6 class. She gave evidence that she cares for the welfare of her student and sometimes she would lend her phone to students who wish to contact their parents. The records show that on 22/5/2024 at 13.57.40 her mobile phone number 7413956 called the accused mobile phone number 7194859, the call lasted 22

seconds. The record also shows that on 22/5/2024 at 14.00 her number called phone number 7194859, the call lasted 17 seconds. Then on the same day, mobile phone number 7194859 at 14.17.12 called her number 7413956, the call lasted 1 minute 25 second.

DW 2 said she remembered that she gave phone to H.H when H.H asked her to use her phone. She said she did not know the accused and whether it was him that H.H called.

DW3 is Bennet Kuper. She is a teacher at Bishop Eppalle Primary division. She told the Court that as teacher she cares about the welfare of the students. She said sometimes she gave her mobile phone to student who wish to contact their parents or guardians. She told the Court that on 27th May- 2024 her mobile phone number 7381599 called mobile phone number 7194859. She said she did not know who owned that number. She remembered she gave her phone to the complainant to call her mother. She said she know the complainant and said the complainant also has a younger brother at Bishop Epalle school.

The 4th Defence witness is DW4 is Jude Ramosupa the accused biological brother. His sworn statement was file on 16/10/2025. He gave evidence that on 20/5/2024 between 1 and 2 p.m. He was at their car park cleaning his car. While there he saw H.H dropped from the accused's car and the accused was in a hurry to this house. He said few minutes later he saw the accused reverse his car and came and picked H.H. and left. Later that evening he asked the accused why he dropped H.H. and picked her up again and left. The accused told him that he is dating H.H.

The accused also gave evidence under oath and was cross examined on his evidence. The accused gave a very detailed story but his evidence relevant to the allegation of rape can be summarised as follows.

His evidence was that on 20th May 2024, he went to play pass at Rove. He remembered that his stall has run out of cloths so he drove up to his house to get money to pay new cloths. When he drove up to his house at Tinge ridge, he saw the complainant H.H sitting at the bottom of a tick tree at the side of the road. He stopped and asked her where she is going and H.H replied that she is going back to her house. H.H came to the car, opened the door and went inside and sat on the back seat. Accused said to H.H, I haven't seen you last week so H.H. replied that she was at Mbuva valley. Accused told her that he is going to his house to get some money to buy cloths. When H.H heard what the accused said she said she will follow him because she did not want to walk. On their way the accused told her to drop so she dropped when the accused went to his house and get his money. He then drove back and picked H.H. and drove to Rove. When driving down accused said he was wondering why H.H. was willing to go with him. Accused then told H.H. that he is going to Henderson and asked H.H. if she wants to follow him and H.H. said yes. Accused said to her that her mother might find her but H.H. said, she is used to getting home late arriving at 3 or 4 pm when she went out with friends.

On their way to Henderson, they stopped at Bahai and get two fish and chips. Accused said when they get to AJ mall, he told H.H. that they are going to Tenaru so H.H. said for what, so the accused told her that he like her and H.H just smiled. Accused then asked H.H. if she have a boyfriend and she said she has two boyfriends. The accused asked H.H to be his girlfriend so H.H agreed. Accused said when H.H finished her fish and chips he told her to drink because she knows what will happen.

When they arrived at Tenaru they went and parked at the bottom of a rain tree. The accused said he went to the back of the car and sat with H.H. and they hugged each other and kissed then they have sexual intercourse. Accused said when he pushed his penis into her vagina, H.H did not struggle and the accused felt that she is not a virgin. Accused said he saw H.H. as a big girl and said her breast already hangs down and her vagina is hairy. When he asked H.H her age she said she is 17 years.

After this they drove back to town and he gave his phone number to H.H. They agreed that if H. H's mother at any time missed her and left, she can call the accused to pick her up. They drove on to White River and the accused went and dropped her at her house at Tasahe B.

Accused said on Wednesday he picked H.H. in front of the Bishop Eppalle school hall and went dropped her home. Accused confirmed that his phone number is 7194859. On 22/5/2024 at 13.37.40 H.H used mobile phone number 7314956 to call his number.

On 24//24 at about 14.13.49, H. H. called the accused and told him to come and picked her up but the accused said he was busy so he did not pick her up that day. Accused said H.H told him she was using her teacher's phone.

On 27/5/24, at 13.47.57 H, H called the accused using phone number 7381599 and told the accused to picked her up. Accused said that day he was at home and he came down after 1.30 and waited at the canteen for her to call. When he received the call from H.H., she told him to pick her up. Accused drove down and saw H.H. with some girls wearing the same uniform on the road. When H.H. saw his car, she came straight to the car and went into the car and sat on the back seat. They drove down to Rove and when they approached Bulk shop, accused asked H.H. if they can go to the sea side so she said alright. Accused asked her why she and her friends were laughing so she said on their way they saw two of their classmates meeting at the side of the road.

They drove down o White River and down to Kakabona. On the way they stopped at a shop at Tanagai and the accused went out and bought two soft drinks, came back to the car and gave one to H.H. They drove down to Lela beach and parked underneath a tree near the sea with the front of the car facing the western side. Accused said he opened the driver's door and asked H.H. to take off her clothes so they can go back quickly but H.H did not immediately remove her cloths

so he told her he is going to sit on the tree stem and wait. Accused said he went and sat on the stem and he waited for about 3 minutes and then came back to the car and saw H.H already naked. He got into the car and they kissed and hugged each other and he was holding her breast and he told her they will do what they did at Tenaru again. Then they had sexual intercourse. He climbed on top of H.H and pushed his penis into her vagina and copulated until he ejaculated. Accused then told H.H to put on her cloths and he also put on his cloths. Accused told H.H to come out and relaxed but H.H said she was afraid someone who know her might be around and see her. After this they drove back and the accused went and dropped her at her house at Tasahe B. Accused said he consider H.H. as his girlfriend.

The evidence of the accused and the complainant H.H about their trip to Lela beach are the same except on few things, like what happened before they had sexual intercourse. The accused described what the complainant did, shows consent, these are that she removed her cloths herself, that there was no struggle, shouting or resistance. HH said she did not shout or struggle because she was afraid the accused might kill her and disposed of body and nobody will know. There is no dispute that the accused had sexual intercourse with the complainant. The only dispute is whether sexual intercourse was consensual.

Assessment of the Evidence

I had the opportunity to observe the witnesses and their demeanour when giving evidence under oath. In observing the complainant, I noticed she had shown signs of confusion and a slow thinker. Having considered her hear demeanour, I do not accept her evidence as credible. Her story did not add up or make sense. She said when the accused dropped her off after raping her, her uncle was at the house. If it was true, she has been raped she should be very upset or angry and immediately report to her uncle that the accused raped her. She should also report to her mother as soon as she gets to their house. She did not tell her mother even when her mother persistently asked her. She only told her mother 4 days after the incident that she went with Barnabas's twin which a lie. In her evidence she told the Court she knows the accused Barnabas because he was their neighbour and he always go past her house. I consider her evidence about going with Barnabas's twin as a clear and outright lie to her mother.

I am more convinced by the evidence of the accused. His evidence is clear and consistent and makes more sense than that of the complainant. His evidence was not shaken under cross examination. I believe his evidence about taking the complainant to Tenaru and having sex with her at Tenaru. I also believe the accused evidence about having sexual intercourse with the H.H.at Lela beach at the location he showed the Court. I believe that the complainant consent to have sex with accused, not only at Lela beach but also at Tenaru. I do not believe the complainant's evidence.

I also believe that it was the complainant who had used the two teacher's mobile phones to call the accused phone number as shown in the evidence of DW1, DW2 DW3.

Experience in Solomon Islands have shown that allegations of rape can be made by women or girl for various reasons. They include when a woman or girl thinks that her husband, boyfriend or relatives are likely to find out the affair so they make allegations to hide their shame or embarrassment. Thus, in cases of rape, the Court must be cautious because it is only humane that some girls or women will try to shift the blame on the man to protect themselves from anger, shame or embarrassment. I believe this case is such a case. I therefore, find the accused not guilty of rape and he must be acquitted.

Conviction of a lesser Offence

The prosecution however, submitted that if the Court did not find the accused guilty of the offence for which he was charged, which is rape under section 136 F (1) (a) (b) of the Penal code (Amendment) (Sexual offences) Act 2016, the Court should convict the accused of a lesser offence under section 139(1) or section 140 of the Penal Code (Amendment) (Sexual Offences) Act 2016. Section 139 states.

“A person commits an offence if the person has sexual intercourse with a child under 15 years of age”

The birth certificate of the complainant tendered as evidence, confirm that she was born on 5th September 2008. This means she turned 15 years old on 5th September 2023. The alleged offence took place on 27th May 2024, by that time the complainant was 15 years and 8 months old. Therefore, she is no longer a child under 15 years of age is exclude under section 139 (1) of Penal Code (Amendment) (Sexual Offence) Act 2016. In that respect since the complainant is no longer a child under 15 years of age, the accused cannot be guilty of an offence under section 139(1) of the Penal Code (Amended) (Sexual Offences) Act 2016.

Section 140 (1) of the Penal Code (Amendment) (Sexual Offences) Act 2016 which the prosecution also submit that accused should be convicted under, states as follows:

“A person commits an offence if:

- (a) The person has sexual intercourse with a child who is at least 15 years of age but under 18 years of age; and**
- (b) The person is in a position of trust in relation to the child.”**

The use of the word **“and”** connecting sub section (a) and subsection (b) means both conditions in subsection (a) and subsection (b) must both be present for a person to be convicted under section 140. This means that person who had sexual intercourse with a child who is at least 15 years of age but under 18 years of age must also be in a position of trust in relation to the child

In the present case there is no evidence that the accused is any position of trust in relation to the complainant. He is not related to her or has any authority or responsibility for the complainant's wellbeing. For these reasons the accused cannot be convicted of an offence under section 140 of the Penal Code (Amendment) (Sexual Offences) Act 2016.

Verdict- Accused not guilty and is acquitted.

IRA.

