

THE HIGH COURT OF THE WESTERN PACIFIC

(CRIMINAL JURISDICTION)

BEFORE: The Honourable Mr. Justice J. Bodilly
exercising jurisdiction under the
provisions of the Western Pacific
(Courts) Order in Council, 1961.

HOLDEN: At Kira Kira in the British Solomon
Islands Protectorate on Friday
the 13th day of January
1967 at 4.30 o'clock in the
afternoon.

REGINA

versus

JACKSON KAOMARA

For the Crown: Inspector Dofar. B.S.I. Police,
Kira Kira.

For the Accused: In person unrepresented.

Interpreter: John Erae (Arusu language)
Sworn on Bible.

Charge explained to the accused: By Court

Accused when called upon to plead says: I did not know
how old she was.

Court enters a plea of: Not Guilty.

Prosecutor: I will call my evidence directly.

PW1 Easter Ri'igaura, (female).

Hawah Village, Arosa, San Christobal.

Sworn on Bible.

One man ~~xxxx~~ spoiled me. It was the accused whom I see in court. At the time I was walking along the beach near the village. I met the accused. He got hold of me and pushed onto the ground and he had sexual intercourse with me. This was at Hawa and happened last year in the month of June. I do not know the date of the day. He had intercourse with me twice. On different dates. The second time was when my father was sick and he sent me in company with the accused to Tawaraha to ^{get} medicine from the dispensary there. I got the medicine and then, with the accused, started back to Hawa. On the way back he got hold of me and again had sexual intercourse. It was by the road side in the bushes. After the intercourse we went on back to Hawa. No one saw us on either occasion. The intercourse was painful. I did not tell anyone about it. It was on a Sunday, after the intercourse, that my mother noticed blood on my private parts. My mother then questioned me. ~~xxxxxxx~~ I do not know how old I am. I had no talk with the accused about my age. We never mentioned age.

No XX by Accused.

By Court: I did not want this intercourse but he pushed me down and then I let him do it.

PW2: Ellen Rahigeni (female).

Hawa Village, San Christobal.

Sworn on Bible.

I am married. My husband's name is Ririana. We live in Hawa. PW1 is my daughter. My daughter was born in 1953. I do not know the date but that was the year.

On a Sunday in June last year (66) I saw blood on the private parts of my daughter. I asked her about it. And after the conversation I told my husband what my daughter had said.

No XX by Accused.

By Court: I have known the accused shortly before this incident occurred. Before the accused had intercourse with my daughter I told him that she was not fit for marriage, yet. I told him that because he was living in our house with my family. He is not related to us. The adoptive father of the accused is a relative of my husband and was living in one house with us. That is why the accused was also there. I had no particular cause to tell the accused that but as he was in the same house I wanted to make sure that he knew she was not old enough for ~~xxxxxx~~ marriage.

XX By Accused with leave:

I told you that in our house. I am not lying. I drew your attention to the fact that my daughter was too young to marry.

J.B.

PW3: Robert Ririana

Hawa, San Cristobal.

Sworn on Bible.

I am married to PW2. We live at Hawa. I have children. PW1 is my daughter. She is 13 years old. She was born in 1953, but I do not remember the date. One day last year my wife reported to me concerning my daughter. I reported to the police.

No XX by Accused:

By Court:

Accused lived in the same house with my family. I never discussed my daughter with him. I never mentioned to him her age.

J.B.

PW4. Reginald Tozaka,

Medical Officer, Kira Kira.

Sworn on Bible.

I remember on 17.8.66 I examined a girl called Easter. (PW1) (W: identified in Court) I first examined her for age and in my opinion she ~~was~~ between 13 and 14 years old. I then examined her private parts. As a result of my examination I concluded that she had had sexual intercourse. I would estimate that the intercourse must have taken place within about a month before my examination. The appearance of the girls private parts was consistent with intercourse. I found no reason to believe otherwise.

No XX by Accused.

J.B.

PW5 Leonard Faidadi.

Police Corporal B.S.I.P. Police, Kira Kira.

Sworn on Bible.

On 20.8.66 at Kira Kira Police station I interviewed the Accused I told him of the allegation against him. After that I cautioned him and wrote down the caution. The accused signed as having understood I also signed. The accused then made a statement in pidgen English. I read it back after writing it down and he agreed it as correct and signed it. I also signed it. I put in the statement in Pidgen (Ex A). Later I made a translation into English which I put in (Ex A')

(Accused shown statement - admits it. Has no objection to admission of statement)

(Statement read)

Ex A
Ex A'

3-5 (A)

Ex A

THE SOLOMONS POLICE

C.I.D. FORM 1.

C.R.B. No. 47/66

PAGE NO. (1)

Statement

Kirakira Police STATION

Eastern DIVISION

20th day of August, 1966

NAME: JACKSON KAOMARA (Age) About 18 Years

ADDRESS: TANARAHU

OCCUPATION: PEASANT

NATIVE OF: TANARAHU, NEAR HADA BAY, San-Cristobal E/District

* It is alleged that between 1st May and 30th June, 1966, at HAWA'a near Marau Bay, San Cristobal, in Eastern District you did unlawful sexual intercourse with a girl name Easter Riigana of HAWA'a village which she is under the age of 15 years. Kapmala

Do you wish to say anything in answer to the charge?

You are not obliged to say anything unless you wish to do so but whatever you may say will be taken down in writing and may be given in evidence.

I wish to make a statement after being cautioned by Cpl. Faidacti of Kirakira Police Station that I am not obliged to say anything unless I wish to do so, but whatever I say will be taken down in writing and may be given in evidence. To show that I understood this caution and I will sign my name.

Kaomara

State in pidgin language use as follows:-
yes hemi tane nae me dain trouble long
this fola girl ia Easter, but me savi anla

IF THE STATEMENT IS BEING TAKEN UNDER CAUTION IT WILL COMMENCE AT* AS FOLLOWS:-
HAVING BEEN TOLD THAT HE (SHE) IS NOT OBLIGED TO SAY ANYTHING UNLESS HE (SHE) WISHES TO DO SO BUT THAT WHATEVER HE (SHE) SAYS WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN IN EVIDENCE, STATES IN (Language used) AS FOLLOWS:-

N.B.

IF THE STATEMENT IS BEING TAKEN UNDER CAUTION IT WILL COMMENCE AT* AS FOLLOWS-
HAVING BEEN TOLD THAT HE (SHE) IS NOT OBLIGED TO SAY ANYTHING UNLESS HE (SHE)
WISHES TO DO SO BUT THAT WHATEVER HE (SHE) SAYS WILL BE TAKEN DOWN IN WRITING
AND MAY BE GIVEN IN EVIDENCE, STATES IN (Language used) AS FOLLOWS:-

N.B.

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Eastern DIVISION

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ADDRESS: TAWARAHIA

OCCUPATION: PEASANT

NATIVE OF: TAWARAHIA, NEAR HADA BAY, San Cristobal E/District:

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Kaomara

State in Pidgin language use as follows:-
yes hemi time now me down trouble lang
this fola girl ia Easter, but me savi only
one time no more, time me two fola go lang

✓ Kaomara

Tawaraha, me two fala came back now from
 Tawaraha, time me two fala go long road
 me askem hem for fake, now hemi willing
 hemi say alright- but hemi shame is much,
 now me take left-hand belong hem, and
 me take go long side road, and me lain
 hem long ground me fake hem, time me
 two fala fake finish me two fala go long
 road far came back long home, me two fala
 kasim water long maran bay me sit-down
 waitin some fala bay long water and this
 fala girl is came fastime long place belong
 me fala, but time girl is say me fake
 long sandbiss hemi bulci- long me no more
 is, me no fake hem long sandbiss,
 me say me two fala fake one time no more.
 And me no talk long hem say you no take
 long daddy and mummy belong you, me no
 say any talk talk become long Ester,
 hem no more let bet- talk talk belong me.

This statement has been read over
 to me and I have had the opportunity to add
 or take from it anything I desire. It is
 a true record and I have made it of my
 own free will.

Kamara

I hereby certify that I have read and
 explain the above statement to the person whose
 name is annexed, and that such person appears
 to understand in respect which he signed with
 his name.

[Signature] Cpl. 102
 20/8/66.

N.B.

ALL ALTERATIONS MUST BE INITIALED BY PERSON MAKING STATEMENT AND PERSON
 RECORDING IT.
 DO NOT LEAVE BLANK LINES OR BLANK SPACES ON LINES.
 EACH COMPLETE PAGE MUST BE SIGNED BY PERSON MAKING STATEMENT AND OFFICER
 RECORDING IT.

me askem hem for fake, now hem telling
hem say alright- but hem shame is much,
now me take left-hand belong hem, and
me take go long side road, and me lain
hem long ground me fake hem, time me
two-fala fake finish me two-fala go long
road for come back long home, me two-fala
kasim water long maran bay me sit down
wainin some fala bay long water and this
fala girl is come fastime long place belong
me fala, but time girl is say me fake
long sandbiss hemi butsi- long me no more
is, me no fake hem long sandbiss,
me say me two-fala fake me time no more.
And me no talk long hem say you no take
long daddy and mummy belong you, me no
say any talk talk alosome long Easter,
hem no more debet- talk talk belong me.

This statement has been read over
to me and I have had the opportunity to add
or take from it anything I desire. It is
a true record and I have made it of my
own free will.

Kaomara

I hereby certify that I have read and
explain the above statement to the person whose
name is annexed, and that such person appears
to understand in respect which he signed with
his name.

[Signature] Cpl. 002
20/8/66.

N.B.
ALL ALTERATIONS MUST BE INITIALED BY PERSON MAKING STATEMENT AND PERSON
RECORDING IT.
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RECORDING IT.

After that statement the accused was released the same day.
He has been on Police bail ever since.

No XX by Accused.

LB.

Prosecutor: That closes my case.

Defence:

Accused, his rights being explained, states " I wish to say nothing".

Accused states: I have no witnesses to call.

Addresses:

Prosecutor: The intercourse is admitted. The age of the girl established by medical ^{evidence} and the evidence of the parents. I suggest that the accused must have known the girl's approximate age. They are both Solomon Islanders. There is also the evidence of the mother of the girl. I submit this is to be taken as true. I submit also that looking at the girl she is clearly under fifteen at least.

Accused: My defence is that I did not know how old she was.

Finding : Guilty.

Reason for finding: Delivered.

As to the intercourse, this is established by the evidence of the complainant child corroborated by the accused's own admission. The age of the child is ~~also~~ established by the evidence of both her parents who are able to speak as to the year of birth but not the date in the year. They are simple cultivators and lack of knowledge as to the exact date of their daughters birth is not surprising. Their evidence is supported by the evidence of the Medical officer ^{PW2} who examined the child for age. I am satisfied, ^{also} having myself seen the child in court, that she is well under 15 years now.

The accused has set up the defence of lack of knowledge under the proviso to the section charged. Under that proviso the burden is on him to show that he had ~~no~~ reasonable cause to believe, and did believe, that the girl was of or over the age of 15 years. ~~He~~ The evidence is that the child did not tell him her age but the mother (PW2) indicated it to him. This in cross examination he has impliedly denied. Whether ~~this~~ the evidence of the mother as to this be true or not, having seen the child there can be no question but that the accused must, had he applied his mind to the question of age at all, have been well aware or at least must have suspected that the child was not 15 years of age or over. He has failed ~~to~~ entirely to produce any grounds in support of his defence under the proviso. I therefore convict him accordingly

Accused in mitigation:

I have nothing to say.

Pros: The accused has no p.c.s. The accused was born in 1949 (17 years old). He is single. Unemployed. His father is ~~is~~ dead, mother alive. He has had one years district school education. He reached Standard II.

Order: Accused to be bound over in own recognaiance for one year under section 36 P.C.

Loelyn Botling

Chief Justice.

13th January, 1967.