

**IN THE SOLOMON ISLANDS COURT OF APPEAL**

<b>NATURE OF JURISDICTION:</b>	Appeal from Judgment of the High Court of Solomon Islands (Maina J)
<b>COURT FILE NUMBER:</b>	Criminal Appeal Case No. 06 of 2025 (On Appeal from High Court Criminal Case No. 503 of 2024)
<b>DATE OF HEARING:</b>	16 October 2025
<b>DATE OF JUDGMENT:</b>	31 October 2025
<b>THE COURT:</b>	Muria P Gavara-Nanu JA Morrison JA
<b>PARTIES:</b>	REX  -V -  J H
<b>ADVOCATES:</b>	
<b>APPELLANT:</b>	N Tonowane
<b>RESPONDENT:</b>	B Alasia
<b>EX TEMPORE/RESERVED</b>	RESERVED
<b>ALLOWED/DISMISSED</b>	ALLOWED
<b>PAGES</b>	1 - 16

## **JUDGMENT OF THE COURT**

1. On 28 February 2025 the appellant pleaded guilty to five counts of rape contrary to s 136F(1)(a) and (b) of the Penal Code.
2. He was sentenced on 6 March 2025 to:
  - (a) on count 1, nine years' imprisonment;
  - (b) on each of counts 2-5, eight years' imprisonment; and
  - (c) the sentences on counts 2-5 were to be served concurrently with the sentence on count 1.
3. The Crown appeals against the sentences, contending that they are manifestly inadequate. In particular:
  - (a) the sentence on nine years on count 1 is manifestly inadequate;
  - (b) the sentences for each of counts 2-5 are manifestly inadequate;
  - (c) the overall sentence of nine years' imprisonment is manifestly inadequate; and
  - (d) the learned sentencing judge erred by failing to properly apply the sentencing approach or principles.
4. The respondent raped the one victim five times in three separate time periods: in calendar year 2022, calendar year 2023 and between 1 January and 31 August 2024.
5. The agreed facts were:
  - (a) the respondent was 37 years old in 2022, then 38 and 39 in the subsequent years;
  - (b) the victim was 10 and in grade 3 at the time of the first rapes in 2022; she was in grade 5 and aged 12 in 2024;

- (c) the respondent is the victim's biological father; she was his first-born child;
- (d) sometime in 2022, the first incident occurred; the respondent called the victim into a room where he locked the door; he removed her clothes and held her vagina; he licked or sucked her breasts and kissed her;
- (e) when she cried he slapped her mouth and told her not to tell anyone;
- (f) he then pushed his penis into her vagina;<sup>1</sup> it was very painful;
- (g) she did not agree to what was done, but submitted out of fear and respect for is position of authority, trust or responsibility;
- (h) the second and third incidents in 2023 occurred when the victim's mother was at work;
- (i) the respondent held the victim's vagina, sucked her breasts and kissed her;
- (j) he then pushed his finger in and out of her vagina, and pushed his penis into her vagina;<sup>2</sup>
- (k) she was afraid and did not want, or agree to, what was being done, but was afraid to tell anyone because the respondent told her he could kill her if she did;
- (l) the fourth and fifth incidents occurred in 2024; the respondent did the same thing as before; he removed her clothes, and pushed his finger in and out of her vagina, while sucking her breasts; he then pushed his penis into her vagina, which was very painful;<sup>3</sup>
- (m) she did not agree to what was happening;

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<sup>1</sup> Count 1, penile rape.

<sup>2</sup> Count 2, digital rape; Count 3 penile rape.

<sup>3</sup> Count 4, digital rape; Count 5 penile rape.

- (n) the victim left to live with her aunty because she could no longer stay with her parents; and
- (o) in June 2024 she told her mother and aunty what had happened; she went to the police.

### **The approach of the sentencing judge**

6. The learned sentencing judge noted the plea of guilty and recited the agreed facts. His Lordship then noted that:

- (a) the maximum penalty for rape is life imprisonment;
- (b) the respondent had been charged under s 136F(1)(a) and (b) of the Penal Code which did not contain the element of biological parent as is the case in s 163 of the Code; however, the fact of being the biological parent had been held to be an aggravating factor under s 136F;
- (c) the sentence was upon the agreed facts;
- (d) the seriousness of the offence of rape as stated in *R v Ligiau and Dori*,<sup>4</sup> namely that it is an offence of violence based on a selfish disregard of the rights and feelings of another, and is likely to cause serious and long-lasting harm to the victim;
- (e) as was said in *Pana v Regina*,<sup>5</sup> the victim's age should be taken into account as an aggravating factor, with the effect greater the younger the child;
- (f) the agreed start point for the sentence was eight years;<sup>6</sup>

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<sup>4</sup> [1985-1986] SILR 214.

<sup>5</sup> [2013] SBCA 19.

<sup>6</sup> *Pana v Regina* [2013] SBCA 19.; *Bade v R* (2023) SICOA – CRAC 9017 of 2023; *R v Sinatau* (2023) SICOA CAAC 9027 of 2023.

- (g) the respondent is the parent of the victim, who was 10 at the first offence, and 12 at the last; that the fact that the offender was the victim's father was an aggravating factor and also an indication of the offence's seriousness and concern to the community;
- (h) there was a breach of trust and the victim was vulnerable;
- (i) the respondent took advantage of his own disgraceful act which occurred in the family home;
- (j) as a consequence of the offending conduct the respondent's wife and her relatives did not want to reconcile with the respondent;
- (k) as a mitigating actor the respondent was a first-time offender and entered an early plea; and
- (l) the increase of sexual abuse against children was of concern; the sentence should send a clear message to others.

7. Having recited those matters the learned sentencing judge then announced the sentences. His Lordship went on:

"33. I noted that the sentences are excessive for the five counts to be served by the defendant."

8. Nothing more was said on that topic. Order No 4 was in these terms:

"The sentences are excessive, the principle of totality is applied with Counts 2, 3, 4 and 5 to be served concurrent to Count 1.

**Mitigating factors urged for the respondent**

9. Before the learned sentencing judge the following factors were urged as mitigation:

- (a). he was a first time offender;
- (b). it was an early guilty plea;

- (c). he was remorseful;
  - (d). he had spent about five months in custody;
  - (e). he had attended rehabilitation courses; and
  - (f) there was no reconciliation with the victim and her other family.
10. The Crown urged the following aggravating factors below:
- (a) the young age of the victim; she was 10 years old at count 1, 11 years old at counts 2 and 3, and 12 at counts 4 and 5;
  - (b) the breach of trust involved;
  - (c) the age disparity; the victim was 10 at the start and the respondent was 37;
  - (d) the psychological and emotional effect on the victim;
  - (e) the fact that the offences occurred in the family home;
  - (f) the offending for counts 2 and 3 occurred at night, after the mother left for work;
  - (g) the repeated offending, on four occasions; and
  - (h) the offending was pre-meditated.
11. The Crown contended for sentences of: 12 to 15 years for counts 1, 3 and 5 (penile rape) and 10 to 12 years for counts 2 and 4 (digital rape). The defence advanced no suggested sentences.

**The appellant's contentions**

12. The seriousness of the offence of rape against children is demonstrated by what was said in *Pana v Regina*.<sup>7</sup>

“Any civilized society must protect its children from the predatory activity of some adults. Crimes against children must be regarded more seriously because of those considerations.”

13. The learned sentencing judge erred in respect of count 1, in that:

- (a) notwithstanding that there was reference to certain aggravating factors and mitigating factors, no reasons were given to explain the uplifts His Lordship had in mind for aggravating factors, nor allowances for mitigating factors; *Taiga v R*<sup>8</sup> is authority for the proposition that a sentencing judge must expose the reasoning behind the sentences imposed, including quantifying the uplifts for aggravating factors, and the allowance for mitigating factors; and
- (b) a proper quantification of aggravating factors should have lifted the start point from eight years to 16 years; further, allowance for mitigating factors should have taken the 16 years down to 12 years.

14. The learned sentencing judge erred in respect of counts 2-5 in that:

- (a) for the same reasons as listed for count 1, no reasons were given to explain the uplifts His Lordship had in mind for aggravating factors, nor allowances for mitigating factors;
- (b) there was no evident consideration of other aggravating factors or psychological harm in respect of counts 2-5, especially given they were repeated offences; *Alu v Regina*<sup>9</sup> and *Sobana v R*<sup>10</sup> are authority for the proposition that the fact that an offence is a repeat offence on a child means the breach of trust and psychological harm is all the greater, and a matter of considerable aggravation;

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<sup>7</sup> [2013] SBCA 19 at [27]. See also *R v Sinatau* [2023] SBCA 38 at [2].

<sup>8</sup> [2023] SBCA 5.

<sup>9</sup> [2016] SBCA 8.

<sup>10</sup> [2024] SBCA 16.

(c) the end sentences should have been: count 2, 14 years; count 3, 15 years; count 4, 16 years; and count 5, 17 years.

15. *Sobana v R*<sup>11</sup> is authority for the proposition that where there are multiple counts against the one victim, the Court should look at the most serious of the charges as the lead sentence. That means that His Lordship should have selected count 5 and imposed 17 years as the head sentence, with all other sentences to run concurrently.

### **The Respondent's submissions**

16. In the written submissions the Respondent contended that there was no error in the sentencing discretion, and the sentences are not manifestly inadequate because:

(a) in paragraphs 19 and 20 of the sentencing Reasons, the learned sentencing judge correctly identified eight years as the start point, by reference to *Pana v Regina*,<sup>12</sup> *Bade v R*<sup>13</sup> and *R v Sinatau*;<sup>14</sup>

(b) at paragraph 29 of the Reasons the learned sentencing judge stated:

“I have considered the aggravating factors with the circumstances of the case drawn from the facts, the defendant is the father of the victim, breach of trust or responsibility towards the victim. With the mitigating factors. The defendant is the first offender, entered guilty pleas on the five charges that spares the court’s time and costs of a full trial.”

(c) at paragraph 13 of the Reasons the learned sentencing judge stated that “it is my view the appropriate sentences to impose for this defendant is nine years for Count 1 and 8 years for each of Counts 2, 3, 4 and 5”; that shows His lordship considered all aggravating factors; and

(d) for the same reasons there was no error in respect of counts 2-5.

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<sup>11</sup> [2024] SBCA 16.

<sup>12</sup> [2013] SBCA 19.

<sup>13</sup> (2023) SICOA – CRAC 9017 of 2023.

<sup>14</sup> (2023) SICOA – CAAC 9027 of 2023.

17. However, in oral submissions Mr Alasia made an important series of concessions, namely that there were errors in the sentencing and this Court had to correct that errors. Mr Alasia is to be commended for such forthright advocacy, which is welcomed by the Court. Specifically, it was submitted that:

- (a) there was error in respect of counts 2-5, in that, in each case, there should have been a higher starting point than eight years;
- (b) the start points should have been:
  - (i) count 2, 11 years;
  - (ii) count 3, 12 years;
  - (iii) count 4, 13 years; and
  - (iv) count 5, 14 years;
- (c) in each case, counts 2-5 should have been subject to an uplift for aggravating factors, of three years;
- (d) then, in each case, counts 2-5 should have been subject to a decrease for mitigating factors, of one year;
- (e) the result is that the appropriate sentence for each of counts 2-5 was:
  - (i) count 2, 13 years;
  - (ii) count 3, 14 years;
  - (iii) count 4, 15 years; and
  - (iv) count 5, 16 years;

- (f) accepting that the aggravating factors outweighed the mitigating factors, count 1 should have had a start point of 11 years, with an uplift for aggravating factors of three years, and a decrease for mitigating factors, of one year;
- (g) consequently, the appropriate sentence for count 1 was 13 years;
- (h) to account for the principle of totality all sentences should be served concurrently.

### **Consideration**

18. The Crown challenges the sentences imposed on two bases:
- (a) they are manifestly inadequate; and
  - (b) there was an error by failing to apply the proper sentencing approach or principle, which resulted in an inadequate sentence.
19. The tests for the two grounds are essentially the same. When manifest inadequacy is the ground, it is not enough to show only that the result arrived at below is markedly different from other sentences. Appellate intervention is justified if, in all the circumstances, the appellate court concludes that there must have been some misapplication of principle. A Crown appeal on the ground that the sentencing judge mis-applied the sentencing principles is the same.
20. When one examines the sentencing remarks, the following observations may be made:
- (a) the learned sentencing judge did advert to aggravating factors, such as:
    - (i) the offender being a parent of the victim;<sup>15</sup>
    - (ii) the age of the victim;<sup>16</sup>

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<sup>15</sup> Reasons, paragraphs 2, 22, 24, 29.

<sup>16</sup> Reasons, paragraphs 12, 15, 24.

- (iii) breach of trust or responsibility;<sup>17</sup>
  - (iv) the victim's vulnerability;<sup>18</sup>
  - (v) age disparity;<sup>19</sup>
  - (vi) psychological and emotional effect;<sup>20</sup>
  - (vii) commission of the offence in the family home;<sup>21</sup>
  - (viii) repeated commission of offences;<sup>22</sup> and
  - (ix) pre-meditation;<sup>23</sup>
- (b) the learned sentencing judge did advert to mitigating factors, such as:
- (i) the early guilty plea;<sup>24</sup>
  - (ii) the respondent was a first offender;<sup>25</sup>
  - (iii) his remorse;<sup>26</sup>
  - (iv) the five months in custody;<sup>27</sup>
  - (v) his attendance at a rehabilitation course;<sup>28</sup>
  - (vi) his intention to reconcile which had been rebuffed.<sup>29</sup>

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<sup>17</sup> Reasons, paragraphs 13, 16, 29.

<sup>18</sup> Reasons, paragraph 26.

<sup>19</sup> Reasons, paragraph 13.

<sup>20</sup> Reasons, paragraph 13.

<sup>21</sup> Reasons, paragraph 13.

<sup>22</sup> Reasons, paragraph 13.

<sup>23</sup> Reasons, paragraph 13.

<sup>24</sup> Reasons, paragraphs 4, 17, 29.

<sup>25</sup> Reasons, paragraphs 17, 29.

<sup>26</sup> Reasons, paragraph 17.

<sup>27</sup> Reasons, paragraph 17.

<sup>28</sup> Reasons, paragraph 17.

<sup>29</sup> Reasons, paragraph 17.

- (c) reference was made to the starting point of eight years, and the authority for that,<sup>30</sup> and
- (d). reference was made to the fact that the aggravating factors would increase the sentences, whilst mitigating factors would reduce them.<sup>31</sup>
21. However, there is no explanation by the learned sentencing judge as to how he arrived at the sentences. All that is said is:
- “30. The increase of sexual abuse of child 10 years and or below the 18 years these days should also be our concern. While the court does it’s part with the interpretation of the law, any sentence the court would impose should also send clear message to anyone who wish or intend to involve in such behaviours that the court is concern with increased number of sexual offence coming to the court and will send people to prison who commit these type of offences.
31. It is therefore my view the appropriate sentence to impose for this defendant is 9 years for Count 1 and 8 years for each count 2, 3, 4 and 5.
32. And accordingly, I sentence the defendant ... to imprisonment for Count 1 – 9 years and Counts 2, 3, 4, and 5 to 8 years for each of the 4 counts.
33. I noted that the sentences are excessive for the five counts to be served by the defendant.”
22. Order No 4 was in these terms:
- “The sentences are excessive, the principle of totality is applied with Counts 2, 3, 4 and 5 to be served concurrent to Count 1.
23. That passage simply does not expose what aggravating factors were applied, namely whether it was some factors, and which, or all. Nor does it expose what mitigating factors were applied, namely whether some factors, and which, or all.
24. Nor does it expose the uplift (if any), nor the decrease (if any). Since the learned sentencing judge did seem to adopt a start point of eight years, one is left to speculate

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<sup>30</sup> Reasons, paragraphs 19-20, referring to *Pana v Regina* [2013] SBCA 19, *Bade v R* (2023) SIOCA, CRAC 9017 of 2023 and *R v Sinatau* (2023) SICOA, CAAC 9027 of 2023.

<sup>31</sup> Reasons, paragraph 23.

how the offset of aggravating and mitigating factors came to a net increase of one year for count 1, and none for each of counts 2-5.

25. Further, there is no explanation at all why the uplifts (if any) and decreases (if any) in the sentences on counts 3 and 5, each which was a count of penile rape, ended up with a sentence less than for count 1, also a count of penile rape.
26. Further, there is no explanation at all why there was no apparent uplift for count 5, even though it was the last of the five rapes. The repetitive nature of the offending culminated in the events the subject of count 5 (another penile rape), and by then the victim was 12, and all the more susceptible to falling pregnant.
27. The total lack of explanation runs contrary to established principles, as explained in *Tii v Regina*,<sup>32</sup> *Bara v Reginam*,<sup>33</sup> *Alu v Reginam*<sup>34</sup> and *Sobana v R*.<sup>35</sup>
28. Whilst it may be right to say that mitigating factors are equally important to aggravating factors,<sup>36</sup> that does not mean that they are weighed equally. Here, in our view, the aggravating factors far outweighed the mitigating ones. The respondent was a 37 year-old man who, in a clearly pre-meditated way, raped his own 10 to 12 year-old vulnerable daughter, repeatedly, in her own house, at night while her mother was out, in a despicable breach of trust, inflicting untold psychological and emotional damage,
29. By contrast, all that could be said for him was that he pleaded guilty thereby demonstrating remorse, and he had been in prison for five months where he did a course. The respondent was described in submissions as a first-time offender, but that is misleading given he offended repeatedly over several years. That factor does not amount to anything of value in terms of mitigation.<sup>37</sup> The same may be said of the suggestion that he desired to reconcile but had been rebuffed. There is no surprise in that and the improbability of reconciling with the victim and her mother is such there is no real mitigatory effect in it.

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<sup>32</sup> [2017] SBCA 6 at [21]-[23].

<sup>33</sup> [2018] SBCA 10 at [15]-[18].

<sup>34</sup> [2016] SBCA 8 at [18].

<sup>35</sup> [2024] SBCA 16 at [11].

<sup>36</sup> *R v Peter Taku* (Unreported, CC 3 or 1995, Palmer J, at p 3).

<sup>37</sup> See *Sobana* at [...].

30. We now turn to the concessions made in the submissions by the respondent.
31. We are not persuaded that there should be differential starting points for counts 2-5.
32. In *R v Sinatau*<sup>38</sup> this Court stated that for a non-contested rape involving a child, the start point should be eight years. *Sinatau* involved a charge under s 139 of the Penal Code. Here the charges are under s 142, which specifically applies to multiple (at least three) sexual offences.
33. *Sobana v R*<sup>39</sup> was a case under s 142, a section introduced to recognise the extreme harm that a course of sexual offending can have on a child. In *Sobana* the Court noted:

“Both counsel submitted that a starting point should have been eight years. That would be so for a single incident”.

34. Then, addressing the sentencing approach on the specific charges, this Court said:

“For the first incident a starting point of 8 years imprisonment would have been appropriate. The uplift for the aggravating factors of offending in the family home, the breach of trust and the undoubted psychological harm and finally the disparity in age would require an uplift of at least four years.

That starting point would need a further increase if the sentencing were on just the first two incidents because the breach of trust and the psychological harm must be all the greater for repeated offending on the child in his own family. For the third incident the criminality must then take into account the effect of the course of conduct and although we do not know whether the pregnancy was the result of the offending on the earlier occasions or the final occasion it is certainly a major aggravating factor that would need to be applied to the totality of the offending. For these reasons we consider the 18 year starting point taken by the judge was available to him after taking into account all the aggravating factors when standing back viewing the offending as a whole. From that point allowance should be made for the mitigating factors. The most important of these was the guilty plea. ...

Your personal circumstances do not warrant much discount at all because of the nature of your offending. While the Appellant did not have previous convictions, he chose to offend after the first incident. ...

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<sup>38</sup> [2023] SBCA 38.

<sup>39</sup> [2024] SBCA 16.

The starting point of 8 years' imprisonment is increased to 18 years to reflect the total criminality after taking into account the aggravating factors. Three years is deducted to reflect mitigating factors, in particular the guilty plea entered. The appeal is allowed. The final sentence is reduced to 15 years imprisonment."

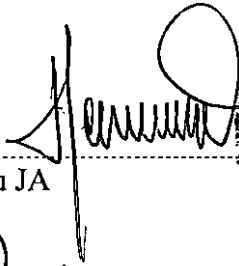
35. Whilst on one view *Sobana* seemed to accept the proposition that variable start points might apply in cases under s 142, we do not consider this to be the appropriate occasion to lay down such a principle when the point has not been fully argued. Such a change in approach is better done when the point has been fully articulated and argued.
36. We therefore do not accept that the respondent's submission to that effect should be adopted. Rather, as *Sobana* stated, an increasing uplift should be adopted for aggravating factors because of the repeated occasions of offending.
37. Adopting that approach, the proper application of the aggravating and mitigation factors should have lead to the following:
  - (a) on count 1 (penile rape), an uplift for aggravating factors from eight years to 14 years; then a decrease for mitigating factors from 15 years to 10 years;
  - (b) on count 2 (digital rape), an uplift for aggravating factors from eight years to 15 years; then a decrease for mitigating factors from 15 years to 11 years;
  - (c) on count 3 (penile rape), an uplift for aggravating factors from eight years to 16 years; then a decrease for mitigating factors from 16 years to 12 years;
  - (d) on count 4 (digital rape), an uplift for aggravating factors from eight years to 17 years; then a decrease for mitigating factors from 17 years to 13 years; and
  - (e) on count 5 (a penile rape, and the last of a repetitive series of offending conduct), an uplift for aggravating factors from eight years to 18 years; then a decrease for mitigating factors from 18 years to 14 years.
38. As was conceded by the Crown, to account for totality the sentences on all should run concurrently with one another.

39. **Result**

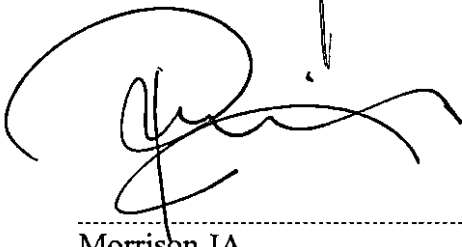
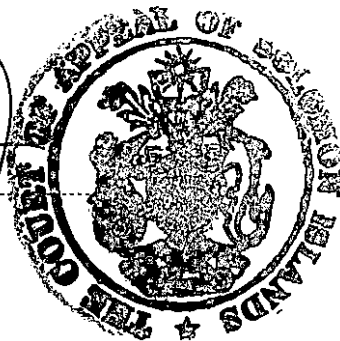
1. The appeal is allowed.
2. The sentences imposed on 6 March 2025 are set aside and in lieu thereof the following sentences are imposed:
  - (a) on count 1, 10 year's imprisonment;
  - (b) on count 2, 11 year's imprisonment;
  - (c) on count 3, 12 years' imprisonment;
  - (d) on count 4, 13 years' imprisonment;
  - (e) on count 5, 14 years' imprisonment;
  - (f) the sentences on each of counts are to be served concurrently with each other.



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Muria P



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Gavara-Nanu JA



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Morrison JA