

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Talasasa J)
COURT FILE NUMBER:	Criminal Appeal Case No. 12 of 2024 (On Appeal from High Court Criminal Case No. 256 of 2023)
DATE OF HEARING:	14 October 2025
DATE OF JUDGMENT:	31 October 2025
THE COURT:	Muria P Gavara-Nanu JA Morrison JA
PARTIES:	S L -V - REX
ADVOCATES:	
APPELLANT:	B. Ifuto'o
RESPONDENT:	H. Naqu
EX TEMPORE/RESERVED	RESERVED
ALLOWED/DISMISSED	ALLOWED
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JUDGMENT OF THE COURT

1. The appellant was convicted in the High Court on one count of Persistent Sexual Abuse of a child contrary to *sections 142(2) and section 163(2) of the Penal Code (Amendment (Sexual Offences) Act 2016*. The appellant pleaded guilty to the charge. The learned judge sentenced the appellant to 33 years imprisonment.

Brief Factual Background

2. The victim is the biological daughter of the appellant. She was born on 6 August 2006. The first incident of sexual abuse occurred in 2018 when the appellant had intercourse with the victim who was barely 12 years old then.
3. The second incident of sexual abuse took place in 2019 when the appellant had sexual intercourse with the victim who was then only about 13 years old and attending 5th Grade at School. Then the third incident of sexual abuse was when the appellant had sexual intercourse with the victim in 2022 when the victim was attending Form 2 at High School.
4. The appellant has now appealed against severity of sentence of 33 years imprisonment imposed against him. He was granted leave on 13 August 2024 to appeal against sentence.

Grounds of Appeal

5. The appellant raised four grounds of Appeal namely:
 - “(1) That the sentencing Judge erred in setting a starting point of 10 years instead of 8 years, a guideline set by the Court;
 - (2) That the 30 years uplift for aggravation features is excessive in the circumstance;
 - (3) The sentencing Judge erred in law when he took into account the aggravating features twice.

- (4) The sentence of 33 years imprisonment imposed by the sentencing Judge was manifestly excessive in the circumstances.”

Submission

6. The appellant’s submission is that the sentencing judge was wrong to fix the starting point at 10 years. Support for the appellant’s case is placed on *Pana -v- R¹* and *R -v- Sinatau²*. The appellant’s contention is that the starting point should be 8 years following the two cases referred to. Counsel for the appellant further submitted that any departure from the 8 years established in *Pana* and *Sinatau* must set out the reasons for doing so as stated in *Sobana -v- R³* and *Neneke -v-R⁴*.
7. On the other hand, the respondent’s submission is that the offence of Persistent Sexual Abuse of a Child is a very serious offence, as the law punishes an offender in such a case with imprisonment for life. So although *Pana* and *Sinatau* speak of 8 years as a starting point for such offence, it does not preclude the Court from setting a starting point higher than 8 years as done in *Sobana -v-R⁵*.
8. With regards to Grounds 2 and 3, Mr. Ifuto’o submitted that the 30 years uplift for aggravating factors is excessive and that in doing so, the learned sentencing judge took into account twice the aggravating features. Ms. Naqu of Counsel for the respondent conceded that 30 years uplift for aggravating features is excessive and that the appropriate uplift should be 18 years following *Sobana*.
9. The respondent concedes the appellant’s contention in Ground 4 that that sentence of 33 years imprisonment is manifestly excessive. Ms. Naqu, however submits that with an uplift of 18 years for aggravating factors, a reduction of 3 years for mitigation should give the end sentence of 15 years which Counsel says, is appropriate in this case.

¹ [2013] SBCA 19; SICOA-CRAC 13 of 2013 (8 November 2023)

² [2023] SBCA 38; SICOA-CRAC 9027 of 2023 (13 October 2023)

³ [2024] SBCA 16; SICOA-CRAC 42 of 2023 (14 October 2024)

⁴ [2024] 24; SICOA-CRAC 41 of 2023 (14 October 2024)

⁵ [2024] SBCA 16; SICOA-CRAC 42 of 2023 (14 October 2024)

Analysis

10. This is a single Count of the Offence of Persistent Sexual Abuse of a Child with three separate acts of sexual abuse which can rightly be regarded as a continuing offence. It is in this regard that the sentencing judge must impose a sentence that reflects the appellant's overall criminal offending. However, before the sentencing judge gets to that stage, it is important that he sets the starting point first for an offence under section 142 (2) of the Penal Code (Amendment) (Sexual Offences) Act 2016.
11. Sections 142 (2) sets out what constitutes the offence of persistent sexual abuse of a child, that is to say; *"if a person engages in an act in relation to a particular child that constitutes a sexual offence on 3 or more separate occasion occurring on separate days during any period."*
12. The appellant, in the present case, had sexual intercourse with the victim who is his biological daughter first in 2018, again 2019 and the third time in 2022. The complaint by the appellant is that the sentencing judge was wrong to set the starting point of 10 years. Mr. Ifuto'o strongly submitted that the sentencing judge was wrong to do that. Counsel contended that the sentencing judge's action was a departure from the established position laid down in *R -v- Sinatau*⁶ and *Pana -v- R*⁷. It is submitted by Mr. Ifuto'o that the two cases cited established that the starting point is 8 years where the offence of rape or defilement involves a child who is below the age of consent and the sentencing judge in this case erred in law when he set the starting point to 10 years.
13. First thing first. The case of *Sinatau* is concerned with an offence under section 139(1)(a) and (b) of the Penal Code where the accused was charged with two counts of having sexual intercourse with a child under the age of 15 years, and to which he pleaded guilty. The case of *Pana* is concerned with section 141 (1) (indecent assault) and section 142 (1) (defilement) of the Panel Code. The appellant in that case pleaded guilty to one count of indecent assault and one count of defilement. Counsel for the

⁶ [2022] SBCA 38; SICOA-CRAC 9027 of 2023 (13 October 2023)

⁷ [2013]19; SICOA-CRAC 13 of 2013 (8 November 2023)

appellant suggested that following *Sinatau* and *Pana*, the learned sentencing judge should set the starting point in this case to 8 years.

14. We do not think that Counsel's suggestion should succeed for the following reasons. First, both *Sinatau* and *Pana* were not charged under section 142(2) with Persistent Sexual Abuse of a Child. As such the considerations in those two cases are not applicable in offending under section 142 (2). Different considerations must apply when setting a starting point on sentencing for an offence of Persistent Sexual Abuse of a child under section 142 (2) of the *Penal Code (Amendment) (Sexual Offences) Act 2016*.
15. Secondly, section 142 has been enacted to cater for a particular situation where a child has been repeatedly sexually abused "*over a period of time*" and the child is unable to remember the particulars of each of the individual act of abuse since it happened many time and over a period of time. The Prosecution of individual and separate acts of abuse in such situations would not be possible because the child could not remember them, and all that the child could say is that it "*happened many times.*" So section 142 was created to enable the prosecution to overcome the evidentiary hurdles arising because the child could not remember the details of each incident due to the repetitive nature of the abuse over "*a period of time*". These are the exceptional circumstance that section 142 was enacted to handle and therefore the considerations in the cases of *Sinatau* and *Pana* do not fit in.
16. It must also be remembered that the case of *Bade -v- R*⁸, a case often cited by Counsel as authority for a starting point of 8 years in rape cases, applies to the circumstances clearly set out in that case, including one offender, one adult victim. The other important ratios in *Bade* is that the uplifts in sentencing in rape cases must be in '*years*' not in months. One precedent cannot simply be plucked out and pasted in it, as applicable to another case. The salutary principle is that each case is determined on its own

⁸ [2023] SBCA 39; SICOA-CRAC 9017 of 2023 (13 October 2023)

circumstances; *Osifelo -v- R*⁹; *Tamaika -v- R*¹⁰; see also *Trading Company (Solomons) Ltd -v- PKP Pacific Sales Ltd*¹¹.

17. This Court pointed out in *Tamaika*:

“We are mindful of the valuable guidance derived from sentences passed by the Courts in previous cases. There is however, a need to point out the difficulty the court faces in simply comparing the present case with previous cases unless the factual circumstances of those cases are similar to the present case. See R v Ome [1980] SBFCA 3; [1980 - 1981] SILR 27 (27 June 1980). It must be remembered that each must be considered under its own factual circumstances and to take heed of the caution expressed in Kaboa v R [1980] SBF 1; [1980 - 1981] SILR 43 (27 June 1980) that sentencing is not a “mathematical exercise” whereby the parties to the case are attempting to resolve the “one size fits all” conundrum”

18. We are grateful for Counsel for their brief submission on *Aligao -v- R*¹² at the request of the Court.

19. In that case the accused was charged originally with 5 counts of indecent assault and 39 counts of rape committed upon his step-daughter over a period of 12 years from 2002 to 2014, starting when his step-daughter was 7 years until she was 18 years; 20 of the 39 counts of rape could not be proved and he was acquitted of the 20 counts. His depraved acts of sexual abuse of his step-daughter caused his daughter to become pregnant twice, first when she was 13 years and second, when she was 18 years. The relevance of *Aligao* in the context of the present appeal case is that a category of offending of a high magnitude deserves a higher starting point than 8 years. This Court stated that in such a case the appropriate starting point is 16 years. However the more relevant aspect of *Aligao* to this present case is the fact of the inability of the prosecution to sustain a case against the appellant on 20 counts of rape because of evidential difficulty faced by the prosecution. This was plainly due to the fact that his step-daughter was unable to remember the details of the 20 counts since they happened

⁹ [1995] SBCA 11; [1995] 3 LRC 602 (12 October 1995)

¹⁰ [2024] SBCA 32; SICOA-CRAC 7 of 2023 (1 August 2024)

¹¹ [1981] SBHC 13; [1980 -1981] SILR 172 (13 July 1981)

¹² [2024] 15; SICOA-CRAC 31 of 2023 (14 October 2024)

many times, over a long period of time. Section 142 was enacted in 2016 to deal with such a situation.

Starting Point for section 142 Offending

20. The starting point for offending under section 142 plainly cannot be 8 years whichever way one looks at it. As we have seen the 8 years in *Bade*¹³ is for one single incident count and one victim. We feel that we can take 8 years as the baseline incident, not a starting point, in the process of ascertaining the starting point for the offence of Persistent Sexual Abuse of a Child under section 142 (2) offending. Thus, for a guilty plea and first offender, the starting point in this case is set as follows:

“First incident	8 years
Second incident,	add 3 years
Third incident,	add 5 years
Total	16 years as the starting point”

21. The starting point for the offence of Persistent Sexual Abuse of a Child with three separate incidents, the starting point is 16 years. From the baseline incident of 8 years the total number of year to be set as a starting point depend on the number of incidents the offender perpetrated by the offenders. In this case, from that starting point of 16 years, uplift for aggravating factors and reduction for mitigating factors are to be made. The seriousness of the offence under section 142 is the repetitiveness of the incidents of offending. The sentencing judge has the discretion to add the number of years to account for each succeeding incident in ascertaining the starting point.
22. In view of the process, we just set out, the appropriate starting point in this case is 16 years, and not 10 years as fixed by the sentencing judge.
23. Grounds 2 and 3 considered together complained of the uplift for aggravating features to 30 years which accounted for aggravating feature twice. The respondent conceded

¹³ [2023] SBCA 39; SICOA-CRAC 9017 of 2023 (13 October 2023)

that the uplift of 30 years was excessive and that the sentencing judge was wrong to account for the aggravating factors twice as was noted in *Sobana -v- R*¹⁴. We agree.

24. In view of the error as found in grounds 2 and 3, we are clearly of the view that the sentence of 33 years imposed by the learned sentencing judge is manifestly excessive. With the starting point set at 16 years, the appropriate uplift for aggravating factors should be 10 years making it 26 years. The plea of guilty which is the only real mitigating factor in this case should reduce the sentence by 30% giving the sentence of 17 years.

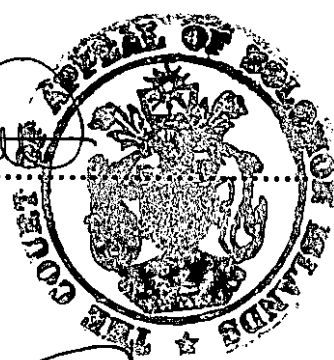
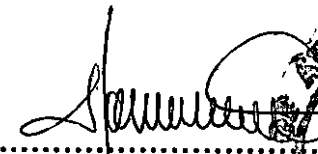
25. Legally the appellant is a first offender since he has no previous recorded conviction at the time of his trial at which he pleaded guilty. However, the Court can still treat his repeated pattern of offending, as his persistent criminal behaviour which must reflect in his sentence. In this present case, we feel that the appellant can earn no benefit from his first legally recorded conviction.

26. For the above reasons, we allow the appeal and order as follows:

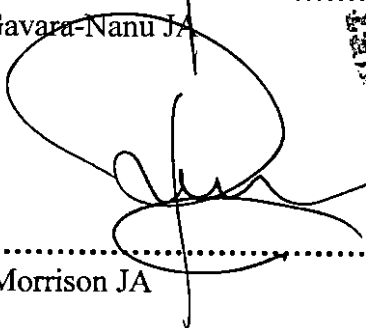
1. Appeal allowed
2. Sentence of 33 years is quashed and substituted with a sentence of 17 years imprisonment.
3. Pre-sentence period in custody to be deducted.



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Muria P



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Gavara-Nanu JA



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Morrison JA

¹⁴ [2024] SBCA 16; SICOA-CRAC 42 of 2023 (14 October 2024)