IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Keniapisia J)
COURT FILE NUMBER:	Criminal Appeal Case No. 62 of 2024 (On Appeal from High Court Criminal Case No. 128 of 2024)
DATE OF HEARING:	21 October 2025
DATE OF JUDGMENT:	31 October 2025
THE COURT:	Muria P Gavara-Nanu JA Morrison JA
PARTIES:	REX -V - GABRIEL SIPOKOLO
ADVOCATES: APPELLANT: RESPONDENT:	 L. Pellie E. Rusi
EX TEMPORE/RESERVD	RESERVED
ALLOWED/DISMISSED	ALLOWED
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JUDGMENT OF THE COURT

1. The Respondent was charged with two counts of rape contrary to s. 136F (1) (a) (b) of the *Penal Code [Cap. 26]*, as amended by the *Penal Code (Amendment) (Sexual Offences) Act, 2016.*

2. In the first count, he was charged that he had sexual intercourse with MM, a girl under the age of 15 years without her consent between 1st January 2021 and 31st December 2021.

3. In the second count, he was charged that he had sexual intercourse with MM, a girl under the age of 18 years without her consent between 1st January 2022 and 31st December 2022.

4. The Respondent was tried on 14th and 15th August 2024. On 24th August 2024 he was acquitted of the two counts of rape, but was convicted of two lesser offences of sexual intercourse with a girl under the age of 15 years and 18years, contrary to ss. 139 (1) (b) and 140 (1) (b) of the *Penal Code*.

5. The victim was 14 years old at the time of the first offending and at the time of second offending, she was 15 years old.

6. As it can be noted, the offences were committed on the same victim.

7. The maximum penalty for this offence is 15 years imprisonment.

Background

8. The victim was the daughter of the Respondent's sister therefore she was his niece. At the time of offending the victim was living with the Respondent and his children, who were 2 boys and 3 girls. The Respondent's wife died in 2015. There was an age difference of 26 years between the victim and the Respondent. The victim continued to live with the Respondent and his children even after the offences were committed. The Respondent made the victim pregnant twice while she was living with him and she gave birth to two children. The Respondent denied fathering the two children but said that he was happy to take care of them because they were "innocent".

9. The primary judge said in his judgment that the Respondent and the victim were living as husband and wife.

10. The victim left the Respondent after complaints were made about their relationship.

11. The Crown is appealing the sentences imposed on the Respondent by the primary judge as manifestly inadequate.

Sentence

12. In sentencing the Respondent, the primary judge considered the following aggravating factors: -

    (i) There was breach of trust by the Respondent.

    (ii) The offending was repeated.

    (iii) The victim suffered psychological harm.

    (iv) The big age difference of 26 years.

    (v) The offending occurred inside the Respondent's home.

13. The primary judge considered the following mitigating factors: -

    (i) The Respondent was a first time offender.
    (ii) The Respondent paid compensation.
    (iii) The Respondent co-operated with the police.
    (iv) The Respondent and the victim were living together in a marital relationship.

14. The primary judge set the starting point for the sentences for the two counts at 8 years. The primary judge the uplifted the starting point by 2 years to 10 years for the aggravating factors. The learned primary judge said the uplift could not be more than 2 years because the Respondent and the victim were living together as husband and wife. However, the learned judge also said the Respondent continued to commit the crime of having sexual intercourse with an underage girl in their continued relationship. His Lordship then

deducted 4 years from 10 years because the Respondent was a first-time offender *viz;* he had no prior convictions. His Lordship made another deduction of 4 years for the other mitigating factors. His Lordship said the remaining 2 years was for the first count. Then for the second count, his Lordship added 1 year because he said the repeated offence on the same victim was more "harmful" than the first count. Thus, the sentence for the second count was increased to 3 years. The learned primary judge ordered that the sentences be served concurrently because both offences arose out of a single criminal enterprise, *viz;* marriage. His Lordship then deducted 1 year for the pre-trial custody period and said the Respondent would serve the custodial sentence of 2 years imprisonment.

15. In his concluding remarks on sentence, his Lordship said: -

> ***"Sentence to be made concurrent***
>
> *The final head sentence for the first lesser alternative offence is therefore 2 years. For the second lesser alternative offence, I will add one more year because offending on the same person a second time is more harmful than the first. For the second lesser alternative offence, I impose 3 years imprisonment sentence (sic.). I will make the sentence for the first offence to run concurrent with the sentence for the second offence because both offences arose out of one criminal enterprise (marriage relationship). The final head sentence to serve concurrently is 3 years. Then I will deduct 1 year for time spent in pre-trial custody. The end result is a 2 years custodial sentence term (sic.).*
>
> ***Conclusion and Orders***
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> *As I stand back and look at the 3 years custodial sentence, it is appropriate to the circumstances of this offending. I found in the main verdict that the complainant and the accused were married in custom and were living together as wife and husband. They got married in October 2021 and separated only in August 2023 due to some disagreements. The marriage, however, violated the 2016 Act because the complainant was a child under the age of consent.*
> *To act as deterrence to the accused and people out there who may overlook the legal fact that marrying a child under 15 years or 18 years is a crime, a custodial*

sentence is warranted, even though the sentence may appear lenient. Another factor explaining the leniency is Mr Sipokolo was acquitted of the two original serious charges of rape and instead convicted of two lesser alternate offences proved from the evidence produced for the two offences originally charged and dismissed. I will sentence Mr Sipokolo to 2 years imprisonment. This term starts to run from 18/09/2024 because Sipolo was remanded since 18/09.2023. Orders accordingly. (Our underlining).

Grounds of appeal

16. The Appellant raised two grounds of appeal. The first ground is that the primary judge erred in his application of the sentencing principles. The second ground is that the sentence of three years imprisonment imposed on the Respondent by the primary judge is manifestly inadequate.

17. The Appellant seeks orders under s. 21 (2) of the *Court of Appeal Act*, for this Court to set aside the 3 year sentence imposed by the primary judge and substitute it with an appropriate sentence.

Submissions

(i) By the Appellant

18. Ms. Pellie of Counsel for the Appellant submitted that the learned primary judge erred in considering extraneous or irrelevant matters which resulted in the Respondent's sentences being made manifestly inadequate. It was submitted that the primary judge overemphasized the fact that the victim and the Respondent were living together as husband and wife and allowed the relationship to mitigate the Respondent's sentence. It was submitted that the primary judge fell into a series of errors in exercising his sentencing discretion. Ms. Pellie submitted that even the 3 years sentence imposed for the second count was manifestly inadequate. Ms. Pellie relied on *Neneke v. R* [2024] SBCA 24; SICOA-CRAC 41 of 2023 (14 October 2024). It was submitted that the sentence of 9 to 10 years imprisonment would be a fair punishment for the Respondent.

19. Ms. Pellie agreed that the victim of the two counts being the same, the sentences for the two counts were properly made concurrent.

(ii) By the Respondent

20. Ms. Rusi for the Respondent submitted that the primary judge applied the totality principle when imposing sentences on the Respondent. It was submitted that the offences the Respondent was convicted of were committed while the victim and the Respondent were living together as wife and husband thus, sentences of 2 years for the first count and 3 years for the second count were fair. It was submitted that in applying the totality principle, the primary judge ordered the sentences for the two counts to be served concurrently. Ms. Rusi relied on *Sobana v. R* [2024] SBCA 16; SICOA-CRAC 42 of 2023 (14 October 2024) and argued that offences having been committed on the same victim, the sentences were properly ordered to be served concurrently. It was also submitted that the fact that the victim and the Respondent were living as husband and wife was a mitigating factor which justified a lenient sentence.

Consideration

21. It is trite law that this Court could interfere with the sentence if the primary judge erred in the exercise of his sentencing discretion. See, *Neneke v. R* (supra). On the question of whether the sentences for the two counts should be made concurrent or consecutive, this Court in *Laui v. Director of Public Prosecution* [1987] SBHC 4 set down some the guidelines. The Court said: -

> *"When sentencing at the one time for two or more offences, the court will always need to consider whether to make the sentences concurrent or consecutive. The question that must be decided by the court in this regard is whether or not the offences were committed in the course of a single transaction. If they were, the sentences should be concurrent. If not the consecutive sentences are appropriate subject to the overall total.*
>
> *The test of a single transaction is not just a matter of time but whether the offences really form part of a single attack on some other person's right. Thus, two separate offences even if occurring close together in time, for example, taking a vehicle without consent and then driving it dangerously, would merit consecutive sentences. On the other hand, the sentences for a series of assaults against the same person even though spread over a lengthy period of time should properly be made concurrent".* (Our underlining).

22. These principles are trite and have universal application. For example, in *Tremellan v. The Queen* [1973] PNGLR 116 (10 November 1972) Papua New Guinea Supreme Court in considering whether concurrent or consecutive sentences should be imposed by a court in a particular case said:-

> *"Although it is neither desirable nor possible to lay down any all-embracing rule as to when sentences for two or more convictions should be made concurrent, sentences should generally speaking be made concurrent where a congeries of offences is committed in the prosecution of a single purpose or the offences arise out of the same or closely related facts."* (Our underlining)

23. The Court went on to say: -

> *"It cannot be said that the cases show any clearly discernible principle governing the making of sentences cumulative or concurrent. So much depends upon the facts of each particular case and the way in which the judge approaches the imposition of sentence. However, we feel that generally speaking sentences should be made concurrent where a congeries of offences is committed in the prosecution of a single purpose or the offences arise out of the same or closely related facts".* (Our underlining).

24. Having regard to these principles, we note that the primary judge made the sentences for the two counts concurrent because they were committed when the victim was living together with the Respondent and the victim was same. In the period, the victim also gave birth to two children who were said to have been fathered by the Respondent. The reason the two sentences were ordered to be served concurrent was the victim and the Respondent were living together as husband and wife, although the primary judge also said the Respondent was committing the crime he was charged with in that relationship.

25. Having considered the materials before the Court, we find that the sentences imposed on the Respondent did not sufficiently reflect the aggravating factors. Thus, we find the sentences are manifestly inadequate. We also find an element of inconsistency in the way the sentences were given. We make this finding from the concluding remarks the primary judge made in announcing sentences. However, this is inconsequential because of the conclusion we have reached. We note that the offences were committed on the same

victim and therefore the sentences could be made concurrent. Both counts carry the maximum penalty of 15 years imprisonment. Going by the sentencing ranges for this type of offending in this jurisdiction, we are of the opinion that both offending attract the starting point of 8 years each. The aggravating factors in our view far outweigh the mitigating factors. Thus, in the circumstances we uplift the sentence for each count by 3 years. Thus, the total sentence for each count is 11 years. For the mitigating factors, we deduct 1 year for each count. Thus, the total sentence for each count is 10 years. This will lift the aggregate sentence to 20 years. Applying the totality principle so that the sentence is no crushing on the Respondent, we reduce the aggregate sentence by 8 years. This leaves the Respondent to serve the total custodial sentence of 12 years imprisonment.

26. We consider this sentence fair because there was a serious breach of trust by the Respondent. The offending was not just repeated, it continued for a long time for at least a year. The victim was vulnerable, and the offences were committed in the Respondent's house. The Respondent had full control over the victim in the period she was living with him.

27. Furthermore, the victim was pregnant twice during the time she was living with the Respondent and gave birth to Respondent's two children. The Respondent denied that he fathered the two children but we find the denial an attempt to avoid the responsibility of caring for them. The relationship between the Respondent and the victim eventually broke down because of complaints and disagreements. They no longer live together. This means the victim will fend for herself and the two children. She will bear the psychological scar from these offences for the rest of her life. She will also live with shame and the stigma that her own uncle had repeatedly abused her for over a year and impregnated her not only once but twice. Her chances of having proper marriage have been permanently destroyed by the Respondent. These are very serious aggravating factors which in our view warrant a strong sentence.

28. The sentence we have ordered in our view fits the crime it should send a clear message to the public that those who commit similar crime will face equally strong punishments.

29 In the result, the Court makes following orders:-

1. The appeal is allowed.

2. The sentences imposed by the primary judge are set aside.
3. The Respondent will serve 12 years imprisonment, which will run from the day the Respondent was sentenced.

30. Orders accordingly.

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Muria P

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Gavara-Nanu JA

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Morrison JA