

PHILIP HAGATAKU -v- REGINAM

High Court of Solomon Islands

(Palmer J.)

Criminal Case No. 8 of 1993

Hearing: 14 July 1993

Sentence: 14 July 1993

DPP for Prosecution

C. Tagaraniana for Defence

PALMER J: The defendant has pleaded guilty to a charge of incest contrary to section 156(1) of the Penal Code. The victim was 18 years old when the offence was committed. The maximum sentence that can be imposed in such circumstances is 7 years.

Offences of incest between father and daughter are generally considered more serious in gravity than offences in incest between brother and sister.

The offence of incest in our Penal Code which is derived from the English Law has its roots in the Bible. It is however not altogether foreign and something that was introduced into these islands only when the Christian Gospel was brought to these islands at the turn of this century. In most cultures, incestuous relationships are strictly forbidden in custom. As in the Bible, such relationships will bring a curse into that person's house and family.

So although the defendant may not have been as enlightened as he should be about this offence he should have been aware of the way his society and community would show repugnance and detest at any such activity. It is this customary and religious context that perhaps make such offences to be considered in a more stricter light than say the position is in a westernised society.

In the case of **Director Of Public Prosecution -v- Maesala 1988/89 S.I.L.R. 145** at page 146, the learned Chief Justice, Mr Justice Ward made similar comments about the seriousness in which offences of incest between brother and sister are considered in England as compared to this country.

In that case the brother had been away for some years before returning to his village and lived in the same house with his sister. He knew that the victim was his sister, but allowed their sexual attractions to each other to continue until sexual intercourse occurred. It was submitted that the absence of the brother from the house for some years meant that the normal family relationship between the two did not have as much an inhibiting factor as it would have had had he stayed and grew up in the home with his sister. The sentence imposed was two years.

In the English context, the severity of the sentence will depend to a certain extent on the age of the victim and on the degree of coercion or corruption. (see *Encyclopedia of current sentencing practice*, para. B4 - 2.2, page 2191.)

The offender in this case is a man of mature years (at time of commission of offence he would have been about 52 years old). He has a large family of 8 children. He is therefore placed in a position of great responsibility and trust. He has breached and betrayed that trust, and the question of whether he can ever be trusted not to repeat the same offence is a matter of serious concern. His own family would have been devastated by this. Whether they would be forgiving is another matter. Perhaps that has already been sorted out. However, a custodial sentence must be imposed.

Mention has been made about his age. I do not think that is of any major concern or relevance here.

A custodial sentence may work hardship on his wife and 8 children but it would seem to be in the better interest of his family and himself. An absence by imprisonment should be able to assist in healing wounds and hurts and give opportunity for new commitments to be made.

As to compensation, that is a matter that the offender can sort out himself to fulfil his customary obligations. It seems a bit odd though that he should be paying compensation for an offence in custom that he has done not to a different person but to his own child, and the very person that child should rightly regard as her protector and defender.

I do give credit for the fact that the offence was a one off event. However, it occurred when the mother of the child was away selling produce at the market for the family.

To a certain extent therefore the accused took advantage of that situation.

There is no evidence of consent, but also no evidence of force or coercion used. On that basis I will disregard the use of force or coercion.

The incident would not have come to light had the victim not become pregnant and delivered a dead foetus prematurely only after 22 weeks of pregnancy. To a certain extent therefore the element of remorse or contrition was lacking.

I give credit for the fact that the offender is a man of previous good character with no previous convictions. I also give credit for a guilty plea and thus saving the victim from the embarrassing ordeal of having to give evidence in court about what her own father did to her.

I also take into account that this defendant will bear the scars of what he has done for a long time to come and the devastating effect on her daughter's life and future may continue to haunt him for a long time.

The appropriate sentence is three (3) years imprisonment. Convicted accordingly.

(A.R. Palmer)

JUDGE