

**REGINA**

**-V-**

**SPARTACUS BOSEVOLOMO**

**HIGH COURT OF SOLOMON ISLANDS  
(PALMER CJ.)**

**Criminal Case Number 180 of 2019**

Hearing: 9 December 2021  
Sentence: 10 December 2021

*Mr. A. Meioko for the Crown;*  
*Mr. D. Kwalai for the Defendant.*

**Palmer CJ.**

1. The defendant has been charged with two counts against a child "V1" being, one count of indecent act on a child contrary to section 139(2)(a) of the Penal Code and one count of sexual intercourse, contrary to section 139(1)(a) of the Penal Code as amended by the Penal Code (Amendment) (Sexual Offences) act 2016 ("the Act"), and another separate two counts of indecent act against a child "V2" contrary to section 139(2)(a) of the Act.
2. The defendant was initially charged with one extra count of indecent act and one count of rape in respect of V1 and an additional count of indecent act in respect of the second victim. These were *inter alia* contained in the information filed on the 17 July 2021. He had pleaded not guilty to those charges and a trial scheduled to take place this week at Gizo.
3. On the 8<sup>th</sup> December 2021, a *nolle prosequi* was entered, the defendant discharged of the offences, and in lieu thereof an amended information filed containing the current charges. He was re-arraigned and entered guilty pleas to all the charges.
4. The offence of sexual intercourse as it relates to a child below the age of 13 years, carries a maximum sentence of life imprisonment. In respect of the offence of indecent act where the child is below the age of 13 years, the maximum sentence is 7 years.
5. The maximum sentence of life imprisonment reflects the seriousness and concern with which Parliament holds in respect of this type of offences and the need to protect young girls from the predatory activities of men. Young children of tender age fall within this category. The same law also provides that consent is not a defence. Sexual intercourse with a child below the age of 15 years (previously described as defilement) does not need evidence of lack of consent. It has long been the law that a child below the age of 15 years cannot consent and so the fact of sexual intercourse and the child's age is sufficient to found a conviction.

6. There are good reasons why such a law is in place and the courts in this country have repeatedly stated that those who commit this type of offence should expect an immediate custodial sentence. There are however varying degrees of seriousness and each case has to be considered on its own merits and an appropriate sentence imposed.
7. The court in dealing with this type of offending is obliged to bear in mind the concerns and disapproval of the community and the need to protect young girls (children) in our society. The courts have a duty to ensure there is sufficient general and specific deterrence in the community by the type of sentences that are imposed. These should send out a clear signal to the community that this type of offending is not only wrong but that the attitudes and behavior of men towards young girls and children in our community need to change.
8. The starting point in this case without any aggravating or mitigating features, in a non-contested case should be eight years. Where aggravating features exist, there should be an increase in the sentence of imprisonment to be imposed.

**The brief facts.**

9. The two victims are both very young children at 8 years and 12 years respectively. At the time of commission of offences, the defendant was married to the mother of the children. He was therefore in a position of trust towards them as their step-father. He was 37 years old at the time of commission of the offences in 2017 and 2018.
10. In relation to the first victim, the defendant called the victim to go to him in his room and when the victim entered the room, the defendant had already pulled down his trousers and exposed his penis to the victim.
11. With regards to the second incident of sexual intercourse, the defendant called the victim into his room before undressing her and licking her vagina with his tongue.
12. In relation to the second victim, the indecent act occurred at night while out fishing when the defendant told the victim to hold the fishing line in his hand but instead gave his penis and so when she sought to hold the fishing line it was his penis that she held.
13. With regards to the second incident of indecent act, this occurred when they were washing and scrubbing their boat, the defendant came from behind and grabbed her breasts.

**The aggravating features in this case.**

14. I thank counsel for providing written submissions and case authorities for my consideration. There are several aggravating features inherent in this case. In both incidents, the victims were very young children at 8 years and 12 years respectively. This places them at a very tender and vulnerable age at the time of the commission of the offences. Their young age is a very serious aggravating feature<sup>1</sup>. Their innocence and childhood had been traumatized and corrupted by the actions of the defendant in this case.

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<sup>1</sup> R. v. Ligiau and Dori [1986] SBHC 15

15. The second aggravating feature relates to the disparity in age, the defendant being 37 years at the time of commission of both offences. With regards to the first victim, this is an age difference of 29 years and with the second, 25 years.
16. The defendant was a mature person at the time of the commission of the offences and places him in a position of trust and responsibility over the victim. He failed to take care of both children as an older and more mature person.
17. The third aggravating feature is the position of trust and responsibility as a step-father to both victims, which he took advantage of and abused. He breached the family trust and confidence placed upon him as a step-father to the children.
18. The fourth aggravating feature is the emotional and psychological harm caused. Although no report has been provided on the possible psychological harm caused there is bound to be some form of trauma and harm caused and which may take many years to heal. This is referred to by the Court of Appeal in *R. v. Liva*<sup>2</sup> when it reiterated what it had earlier said in *R. v. Bonuga*<sup>3</sup> and I quote:

*"There may have been no evidence that the victim suffered severe or lasting psychological harm. However, we consider that judicial notice needs to be taken of the devastating effect on the victims of sexual offending, especially young victims as in this case. The physiological trauma cannot be ignored."*

19. These aggravating features collectively merit the increase of an additional two years raising the sentence to 10 years for the offence of sexual intercourse.
20. On the other hand, I note his mitigating factors and balance these against the aggravating features in this case. Credit is given for his guilty plea at the first opportunity, which apart from the utility of saving court time and expense, saves the complainants from the distress of having to relive the trauma from the witness box. In particular, the saving of court time in this circuit has enabled the court to attend to other cases timely.
21. A guilty plea is also demonstrative of remorse on his part and a realization and acceptance of the error of his ways and his determination not to re-offend. I accept his prospects of rehabilitation is good. He has moved on in his life, started a new relationship with another woman and is expecting a child with her.
22. I note he has paid compensation to the family of the first victim in the sum of \$10,000.00.
23. I note that he has no previous convictions and has not been in trouble with the law before. Credit is given for this.

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<sup>2</sup> [2017] SBCA 20

<sup>3</sup> [2014] SBCA 22

24. I take into account his personal circumstances, that he is a private businessman, a fisherman by profession as well as providing transport services. He has assisted police in providing transport for witnesses from Choiseul to Gizo.
25. He has also continued to assist the mother of the victims, but separately in relation to his child with her. He provides money and helps to pay for the school fees of his child. He also supports his elder parents.
26. I note that there has been delay in the progress of this case since 2017 but that also needs to be balanced with the fact that it has been in the cause of a not guilty plea entered and having a trial fixed. In any event throughout he has been on bail. I note he has spent time in remand of some 3 months.
27. In relation to his personal circumstances, while these are noted, it needs to be borne in mind that in relation to sexual offences, these are bound to have less impact than in other serious crimes. This was noted by Ward CJ as he then was, in the case of Regina v. Ligiau and Dori<sup>4</sup> as follows:
- "In sexual offences as a whole and rape and attempted rape in particular, matters of mitigation personal to the offender must have less effect on the sentence than in most other serious crimes."*
28. These were reiterated by Pallaras J. in Regina v. Phoboro<sup>5</sup> in which he also stated:
- "... It is well established that in cases of sexual assaults, matters personal to an accused are likely to have less impact on the sentence than with other serious offences."*
29. In balancing the aggravating and mitigating factors in this case, it is important to keep in mind that the courts have a duty to protect the helpless, the weak and vulnerable members in our community, these include little children, by ensuring that an immediate custodial sentence is imposed for this type of offending. It also has a duty to send out a clear message to the community by the type of sentences that are imposed, including lengthy prison sentences. Each case however, has to be determined on its own merits and an appropriate sentence imposed that balances the elements of retribution, deterrence, prevention and rehabilitation.
30. Taking all the mitigating factors into account, I deduct 3 years for the guilty plea, 1 year for the delay and another year for other mitigating factors, leaving a total sentence of 5 years in relation to the offence of count 2, that of sexual intercourse.
31. In relation to the offences of indecent act, I am satisfied the following sentences be imposed. For count 1, 12 months, count 3, 18 months and count 4, two years.
32. I have carefully considered as well whether the sentences in relation to the two separate victims should be made consecutive as the logical step to take, however, in considering the totality principle and that the ultimate sentence to be imposed should not be seen to be excessive and a crushing penalty, bearing in mind the mitigating factors in this case as opposed to the aggravating features, I am satisfied that a

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

<sup>5</sup> [2013] SBHC 8

total sentence of 5 years would not only be appropriate for the overall criminality of all these offences but also not a crushing penalty.

33. I am also satisfied that the period spent in custody is to be deducted from the sentence imposed and that the defendant has a right of appeal if aggrieved by this sentence.

**Orders of the Court:**

**1. Enter conviction in respect of the first victim (V1) as follows:**

- (i) For count 1, indecent act with a child under 15 years, contrary to section 139(2)(a) of the Penal Code as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016;**
- (ii) For count 2, sexual intercourse with a child under 15 years, contrary to section 139(1)(a) of the Penal Code as amended by the Penal Code (Amendment) (Sexual Offences) act 2016;**

**2. Enter conviction in respect of the second victim as follows:**

- (i) For count 3, indecent act with a child under 15 years, contrary to section 139(2)(a) of the Penal Code as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016;**
- (ii) For count 4, indecent act with a child under 15 years, contrary to section 139(2)(a) of the Penal Code as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016.**

**3. Impose sentences as follows:**

- (i) Count 1: 12 months;**
- (ii) Count 2: 5 years;**
- (iii) Count 3: 18 months; and**
- (iv) Count 4: 24 months.**

**4. Direct that the sentences in counts 1, 3 and 4 to be served concurrent to the sentence imposed in count 2, the total sentence to be served therefore is 5 years.**

**5. The period spent in custody is to be deducted from the sentence.**

