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CHRISTOPHER SAKA

HIGH COURT OF SOLOMON ISLANDS
(PALMER CJ.)

Criminal Case Number 147 of 2019

Hearing: 20 September 2022

Sentence: 23 September 2022

Ms. P. Tabepuda for the Crown;
Mr. D. Kwalai for the Defendant.

*Pellie L. for the Crown.
M. Manaka obo*

Palmer CJ.

1. You have been charged with the offence of sexual intercourse with a child under the age of 15 years contrary to section 139(1)(a) of the Penal Code as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016, (“the **Penal Code Amendment Act 2016**”) and have entered a not guilty plea when arraigned. A trial accordingly has been convened and you have been found guilty and convicted.
2. The maximum sentence which can be imposed under paragraph 139(1)(a) of the Penal Code Amendment Act 2016 is life imprisonment, where the child is below the age of 13 years or, the offender is in a position of trust to the child.
3. It is not in dispute that in this instance, the child victim in this case is below the age of 13 years to wit, 10 years old and so the maximum sentence applicable is life imprisonment.
4. This maximum penalty 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 some men. This applies in particular to young children of very tender age, as in this case. In *Regina v. Hoka*¹, Pallaras J. addressed this issue in his sentencing remarks at paragraphs 14 and 15, and states at paragraph 16:

“This Court has a small but vital role to play in this process. It is to deliver fair and just penalties befitting the crime in a manner that will serve the long accepted need to impose sentences in appropriate circumstances that will act as both general and

¹CRC 159 of 2011, 10 December 2012 (Pallaras J.).

specific deterrents. The community has a right to expect that of its Courts and the Courts must respond appropriately."

5. The Courts are obliged to impose appropriate sentences that reflect both general and specific deterrents in each case consistent with this widespread public concern in the community.
6. In *Pana v. Regina*², the Court of Appeal also expressed its concerns about this "*alarming level of sexual violence*" in Solomon Islands and the need to consider increases in penalties. At paragraph 13, the Court noted the close parallel between offences of rape and defilement with the maximum penalty in both being the same, that of life imprisonment. The Court said:

"However, the circumstances in cases of defilement can be so different from one offence to another in respect, for example, of the ages of the victims, the likelihood that the accused is in a position of trust and the nature of that trust and the long-term detrimental effects on the victims that the courts must continue to assess the appropriate sentence on the nature and individual circumstances of the case before it."

7. It is accepted that each case has to be considered on its merits. The Court of Appeal went on to state at paragraph 16 as follows:

"We suggest that, in all but the most exceptional case, the sole fact that the child is below the age of consent should in itself bring the starting point to eight years whether conviction is for rape or defilement. The actual age of the victim should still be taken into account as a possible aggravating factor over and above that."

8. I am satisfied the starting point in this case without any aggravating or mitigating features and in particular where the case has been contested, should be 10 years. Where aggravating features exist, as is the case here, there should be a corresponding increase in the sentence of imprisonment to be imposed.
9. I thank counsel for providing written submissions and case authorities for my consideration, which have been quite helpful.
10. I note the presence of the following additional aggravating features in this case, which are not disputed. First, is the *actual age* of the victim at 10 years, which places her at a very tender and vulnerable age at the time of commission of the offence. Her tender young age is a very serious aggravating feature, with her innocence being forcefully violated and in terrifying circumstances.

² [2013] SBCA 19; SICOA-CRAC 13 of 2013 (8 November 2013)

11. The second aggravating feature is the disparity in age of 12 years with the defendant being 22 years at the time of the commission of offence.
12. The third aggravating feature relates to the particular circumstances of offending, which occurred at night time (very early in the morning) and when the victim was still asleep. This would have been a harrowing and terrifying experience for this young child on waking up to find an intruder lying on top of her. The effect of this appears to be still felt by this victim.
13. Directly related to this is the home invasion breach caused by the Defendant to commit the crime. The victim was entitled to feel safe, secure and protected in the enclosure and privacy of her home and not be suddenly shocked on waking up to find an intruder lying on top of her and being forcefully violated in such a horrible manner.
14. The fourth aggravating feature is obviously the distress and emotional damage caused to the victim. This emotional and psychological harm is bound to take many years to fully heal and overcome/
15. Taking all those aggravating features together, another 3 years should be added bringing the total sentence to one of 13 years.
16. I turn to the mitigation factors and note as follows. First, that the Defendant has no previous convictions and has not been in trouble with the law before; this is his first time to appear in court.
17. Secondly, his young age as a young man with his prospects for rehabilitation being reasonable.
18. Third is the delay, although I note he has been on bail for most part of this. As well the delay can be attributed to the impact of the Covid-19 pandemic. I take that into account.
19. I deduct 2 years for his mitigation.
20. The courts have a duty to send out a clear message to the community that those who commit this type of offence can expect an immediate and lengthy sentence to be imposed depending on the circumstances and merits of each case, and balancing the elements of retribution, deterrence, prevention and rehabilitation.
21. I am satisfied the period spent in pre-trial custody should be deducted from the final sentence of 11 years imposed.
22. He has a right of appeal if aggrieved by this sentence.

Orders of the Court:

1. **Enter conviction for the offence of sexual intercourse with a child under the age of 15 years contrary to section 139(1)(a) of the Penal Code as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016, ("Penal Code Amendment Act 2016").**
2. **Impose sentence of 11 years imprisonment.**
3. **The period spent in custody (about 3 months and 25 days) is to be deducted from the sentence imposed.**

SIR ALBERT R. PALMER CBE

The Court.