

**IN THE HIGH COURT OF SOLOMON ISLANDS**

**CRIMINAL JURISDICTION**

**Criminal Case Number 531 of 2023**

**REX -V- BENJAMIN ARATE'E**

**Date of Hearing: 19/03/2024 (Last written submission).**

**Date of Ruling: 5/04/2024.**

*Counsel; Ms Luza for the Crown.*

*Counsel; Ms Happilyn for the Defendant.*

**KENIAPISIA; PJ:**

**SENTENCE**

1. By information filed **26/10/2023**, the defendant, Mr Arate'e was charged with one count of persistent sexual abuse of a child contrary to Section 142 (2) and Section 139 (2) (a) of the Penal Code Act (Cap 26) as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016 – hereafter referred to as “**the 2016 Act**”. It is persistent sexual abuse because the information contained 6 separate incidences of sexual abuse, which Mr Arate'e committed on the complainant/victim.
2. Mr Arate'e took his plea on the **27/11/2023**, where he pleaded guilty to the charge of persistent sexual abuse, in respect of the separate incidences. I convicted the accused on his entering of a guilty plea. Now I have to determine the appropriate punishment to impose.
3. Following the guilty plea and conviction, Counsel also filed summary of agreed facts. I will adopt the summary of agreed facts: -
  - (i) The defendant is Benjamin Arate'e AKA Ali (“the defendant”) of Kwa Village, West Kwara'ae, Malaita Province. He is 24 years old.
  - (ii) The complainant is Jovina George. She is 8 years old. She was residing with her grandmother, Mrs Hellen Maesua at Panatina and was attending grade one (1) at Panatina Primary School at the time of the alleged offending.
  - (iii) The defendant had no permanent job but worked as a part-time carpenter for the complainant's grandmother, Mrs. Hellen Maesua.
  - (iv) The defendant lived in the same house as the complainant at the time of the offending.
  - (v) That the defendant committed persistent sexual abuse on the complainant at her grandmother Hellen Maesua's residence at Panatina area.

**First incident**

- (vi) The first incident happened on an unknown date between 1<sup>st</sup> January 2023 and 19<sup>th</sup> June 2023 early in the morning. The complainant was sleeping in the sitting room at her grandmother Hellen Maesua's house at Panatina. At that time, the complainant's grandmother went to the hospital. The defendant touched the complainant's vagina over her clothes while she was sleeping. The complainant woke up and saw the defendant.

**Second incident**

- (vii) The second incident happened on an unknown date different to the date in the first incident, between 1<sup>st</sup> January 2023 and 19<sup>th</sup> June 2023 at day time. This happened again at the sitting room at the complainant's grandmother Hellen Maesua's house at Panatina. The complainant was alone at the house at that time. The defendant committed indecent act on the complainant by touching her vagina over her clothes.

**Third incident**

- (viii) The third incident happened on an unknown date different to the dates in the first two incidents, between 1<sup>st</sup> January 2023 and 19<sup>th</sup> June 2023 at day time. The complainant was alone in the kitchen at Hellen Maesua's house at Panatina. The defendant approached her and touched her vagina over her clothes. The defendant told her not to tell anybody about what he did on her.

**Fourth incident**

- (ix) The fourth incident happened on another unknown date, different to the dates in the first three incidents, between 1<sup>st</sup> January 2023 and 19<sup>th</sup> June 2023. The complainant was sleeping inside her bedroom at Hellen Maesua's house at Panatina. The defendant entered the room and touched the complainant's vagina over her clothes. The complainant woke up and saw the defendant.

**Fifth incident**

- (x) The fifth incident happened on another unknown date, different to the dates in the first four incidents, between 1<sup>st</sup> January 2023 and 19<sup>th</sup> June 2023 in the night. The complainant went to turn on the water. The defendant followed her up the ladder and touched her vagina over her clothes. At that time, the complainant's aunt Doreen Musuota was standing at a sink outside the house having her bath when she saw what the defendant did on the complainant.
- (xi) On that same night the defendant escaped from the complainant's grandmother's residence at Panatina to another unknown location.
- (xii) The matter was reported to the sexual assault unit, Rove Police Headquarters, on June 20, 2023. The investigation was carried out by the sexual unit team, assisted by Naha Police Stations officers.
- (xiii) The defendant was arrested by the police and formally remanded in custody on 27<sup>th</sup> June 2023. He was remanded in custody till to date.

***Starting point sentence***

4. Both Counsel agreed that the starting point sentence for this offending is 6 years. With respect Counsel got it all wrong. For the Court of Appeal binding decision of *R-v- Sinatau*<sup>1</sup> and *R-v- Pige*<sup>2</sup>, both being most recent Court of Appeal pronouncements, stated that the starting point sentence for unlawful sexual intercourse of a child under the age of 15 years, where the child is below the age of consent, the starting point must always be 8 years. Accordingly, I put the starting point sentence at 8 years, because the victim here was only 8 years old, well below the age of consent.

***Aggravating factors***

5. Then I will lift the starting point upwards due to the presence of serious aggravating factors: -
- (i) **Person in a position of trust** – the agreed facts showed that the defendant lived with the victim and her grandmother, Mrs Hellen Maesua, at her Panatina residence. That the defendant is unemployed and only worked as a carpenter on Mrs Maesua's house. I imply that the defendant as an adult is a person to whom the victim was dependant in some practical domestic ways. This is because the defendant is an adult (24 years) and the victim was only a child of 8 years. I can safely make this implication on the basis of the definition of person in a position of trust in Section 136 (c) of the 2016 Act, where it says a person is in a position of trust in relation to a child, if the person holds a position of trust or authority in relation to the child or if the child is dependant in any way on the person (My underlining). My view in implying is that living together in the same house, which belongs to the victim's grandmother, the child would no doubt depend on the defendant in some practical domestic ways meaning that they live together, sleep together, eat together and talk together as co-habitants in the same house. And the child would undoubtedly look up to the 2 adults (the defendant and grandmother) with trust and dependency in some practical domestic ways (like give her food, give her shelter and give her companion and security).
  - (ii) **Very young age of the victim** – at 8 years I would say the victim was at a very young sexual age, not to be tampered with through any unlawful sexual intercourse or indecent sexual act. The 2016 Act was enacted with the objective to keep intact the sexual sanctuary of young girls from sexual pollution like what the defendant did to the victim here – touching the child victim's private part – which is sexual intercourse within the parameters of Section 136 (d) (1) (a) of the 2016 Act.
  - (iii) **Disparity of age** – agreed facts tell us that the accused was 24 years old. Victim was 8 years. An age difference of 16 years. Being an older person living together in the same house, the victim would expect the defendant to be responsible and accountable to protect her from this type of sexual offending (Rex-v- Komaia (2021) SBHC 96).
  - (iv) **Psychological harm and trauma** – I will take judicial notice of this long-term degrading impact on the victim despite lack of medical and professional evidence. (R-v- Bonuga (2014) SBCA 22, SICOA-CRAC 12 of 2014 (17<sup>th</sup> October 2014)).

<sup>1</sup> SICOA-CRAC 9027 of 2023 (13<sup>th</sup> October 2023).

<sup>2</sup> SICOA-CRAC 9014 of 2023 (13<sup>th</sup> October 2023).

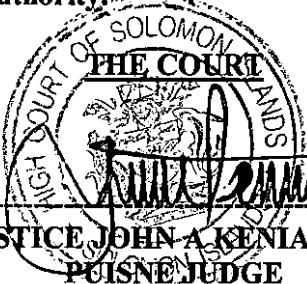
- (v) **Repetitive offending and pre-planning** – there were 5 separate occasions of sexual intercourse, where the defendant touched the vagina of the child victim. As an elderly person residing in the same house, the accused should be a role model to the child in good moral values and teaching and not teach her indecent sexual ways like touching her vagina. This case was full of pre-planning because the defendant would look for times when the house was empty to exert his sexual desires on the child.
  - (vi) **Vulnerability of the victim** – the offending occurred at times when the victim was home alone in the care of the defendant, or in specific vulnerable state for example, asleep or climbing the ladder, when the grandmother was not at home. Such vulnerable situations limited the ability of the victim to protect herself.
6. For the above 6 serious aggravating factors combined, I will lift the starting point sentence to 16 years, also noting that the maximum penalty is life imprisonment for an offence under Section 142 (2) of the 2016 Act.

***Mitigating factors***

7. But then the defendant is entitled to mitigation factors that will reduce the sentence downwards: -
- (i) **Early guilty plea** – this is the most rewarding mitigating factor for the defendant. Early guilty plea saves Court time and saves the victim from the trauma of reciting her ordeal in the witness box. I will deduct 30% which worked out to be 4 years.
  - (ii) **First time offender with no previous convictions** – I will deduct 1 year.
  - (iii) **No use of violence and remorseful** – I say remorseful because an early guilty plea also show that he realises his wrong doing, was remorseful in accepting the wrong he did and was willing to bear the consequences of his wrongful actions. I deduct 1 year.

***Conclusion, final head sentence and orders***

8. The final head sentence I will impose on the defendant is 10 years. This will prohibit or deter like-minded offenders from meddling with the sexual purity of female child victims. Defendant is entitled to pre-trial custody reductions (if any) to be ascertained by the relevant Correctional Authority.

  
JUSTICE JOHN A KENIAPISIA  
PUISNE JUDGE