

IN THE HIGH COURT OF SOLOMON ISLANDS.

(Faukona, DCJ).

Criminal Case No. 630 of 2021.

**R V GOLDEN WAL.**

Mr. Jonathan L. Auga for the Crown.

Mr. J. Brook for the Defendant.

Submissions date: 10<sup>th</sup> March 2025.

Sentence date: 8<sup>th</sup> September 2025.

**SENTENCE AFTER TRIAL.**

**Faukona, DCJ.**

**Introduction.**

1. The defendant was charged with two Counts of rape contrary to section 136 F (1) (a) & (b) of the Penal Code, as amended by Penal Code ( Amendment) (Sexual Offences ) Act 2016. The maximum sentence for the offence of rape is life imprisonment.
2. Upon arraignment, the defendant entered a plea of not guilty to the first Count. The second Count was Nollie and withdrawn and the defendant acquitted.

**Facts.**

3. It was alleged that on 4<sup>th</sup> June 2021, the defendant went to the complainant's home by canoe. The complainant's home is located beside the sea or along the seas coast. The complainant was outside cutting cut - nuts for herself and her baby when the defendant arrived. At that time no one else was at home except for the complainant and her child.
4. On arrival a conversation ensued between the defendant and the complainant and subsequently ended up in the complainant's kitchen where the defendant raped the complainant by pushing his penis into her vagina.

5. Eventually the Court found on 31<sup>st</sup> July 2024 after trial, that the defendant was guilty of rape.
6. The issue now is for this Court to determine the rightful sentence that fits the crime.

**Sentencing Principle.**

7. When determining an appropriate sentence, the Court must maintain a balance approach to sentencing.<sup>1</sup>The principle that guides in excise of discretion are; deterrence, protection/prevention, rehabilitation and retribution<sup>2</sup>. A judge ought to decide which principal to apply. In some cases, a judge will give a balance consideration, in others a judge will emphasize one principal.
8. The question the Court must ask itself is whether the public interest in this case will be served by retribution and deterrence of the offender and others from committing this sort of offence, or whether the public interest will be better served by the rehabilitation of the offender<sup>3</sup>.
9. The principles of sentencing that should be considered are; retribution, deterrence, prevention and rehabilitation.<sup>4</sup>

**Sentencing Method.**

10. The case of Bara V R<sup>5</sup>, the Court of Appeal set out the process a sentencing judge should follow. First a sentencing judge should identify a starting point. From the starting point, there will be an adjustment to take into account the aggravating factors which make the offending more serious, then consider the mitigating features which may serve to suggest that a sentence is too harsh.

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<sup>1</sup>. R V Timothy Sulega (unreported Criminal Review Case No. 113 of 1999).

<sup>2</sup>. R V Maeli Rinau Unreported Criminal Review Case No. 18 of 1996).

<sup>3</sup>. R V Sergeant (1975) Cr App R 74.

<sup>4</sup>. (2018) SBCA 10; SICOA-CRC 36 of 2017 (11 May 2018)

11. After identification of aggravating and mitigating features and how they affect the starting point reference should be made, if applicable, of an early guilty plea. Where a discount should be given that should be indicated. Where no discount is to be given a reason for that should appear in the remarks made in the sentencing. Where no allowance is to be made for pre-sentence period of custody reasons should be given.
12. Finally, the totality of the sentence should be examined to ensure that the end results properly reflect the criminality involved in the offending.

**Starting Point**

13. Both Counsels agree to the Court of Appeal ruling in *Bade V R*<sup>6</sup>, that the starting point for contested rape of an adult is 8 years imprisonment. In the current case we are dealing with an adult victim. Therefore, the starting point should be 8 years imprisonment.

**Aggravating Factors:**

14. The defendant committed the act of rape in the kitchen of the victim's family. The evidence reveal he dragged the victim into the kitchen. At that time, her two years old baby was standing in front of the kitchen door crying and looking at them. The victim's eldest son also witnessed what happened to his mother. The son was called as witness in Court.
15. The action of the defendant was disrespectful, ignoring the presence of the children purposely to fulfil his sexual ego. That is serious, it's a no care attitude with no second thought that he was breaking the law.
16. There is element of physical violence present to some degree. The veracity of it can be calculated by evidence when the defendant holding strongly onto her hand, pinching her, pushing and dragging her to the kitchen where he raped her.
17. The victim has reasonable expectation of safety in and around of the vicinity of her home, unfortunately was abused by the defendant. The sanctity of her home was not respected including the children who were in actual fear and distressed of what they witnessed.

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<sup>6</sup>. (2013) SBCA 39.

18. The victim is a young mother of 2 children. Her age is 27 years old. The defendant's age is 50, a difference of 23 years. The defendant is the complainant's uncle who is a senior member of the family. His actions amount to grave breach of trust. As a mature member of the family he is expected to take care and offer security to protect his niece, instead he breached that family obligation by abusing it.
19. There is no doubt the defendant had been aware of the complainant's vulnerability yet he exploits it for his own pleasure. She is a woman suffering from health pre-existing condition, specifically epilepsy. Actually, the defendant took advantage of the weak state of mind of the complainant, which therefor exacerbate the seriousness of the offence.
20. In court she expressed her dislike, disappointment and would not dare to look at the defendant's face because he had done something wrong to her. Potentially that is a symptom of being psychologically harm, even though the incident occurred 2 and half years ago before trial commenced.
21. The defendant's action reflects lack of empathy, causing emotional distress to the complainant and her children. And even coming to court to relief the trauma through giving oral evidence in court.
22. The defendant is a repeated offender. He was previously committed an offence of rape as well. He was convicted on 8<sup>th</sup> September 2021 and was goaled for 3 years. On 1<sup>st</sup> February 2023 he was discharged from prison.
23. It appears the defendant had committed this offence on 4<sup>th</sup> February 2021, one and half months before he was arrested and kept in custody for another offence he committed until he was convicted and imprisoned for 3 years since September 2021. That clearly shows while the other offence was investigated the defendant committed this offence. That reflects the defendant's evil desire for other women and girls is very strong. He could be described as a man crave for immoral and sexual activities, and indeed prone great risk to community at large.
24. Having consider those aggravating factors I incline to increase and I do so by increasing the head sentence by 7 years, making it a total of 15 years as head sentence.

**Mitigating factors.**

25. I noted the special circumstances of the defendant as an unemployed person, a breadwinner, an assistance Pastor of SSEC Church in his village. I do not think I would consider those personal facts at all. They are facts he should have considered before he committed the crime of rape or any other offence for that matter.

If the defendant is an assistant Pastor after he had committed this offence, he should tell the truth in court rather than denying it and stand on his righteousness which ultimately

was found guilty. This commentary does not deny his right to plea. However, his Church members should have a hint that he has a case hovering above his head, he should not have been elected as an assistant Pastor.

26. There is argument about the issue of delay which the defense Counsel has raised. The defense Counsel has also raised that there is delay in delivering the judgment.
27. From those arguments it is necessary to outline to ascertain whether there is real unacceptable delay. The offence was committed on 4<sup>th</sup> June 2021. At the initial stage this case was managed by 3 judges before I took over the file on 18<sup>th</sup> September 2023, a trial was commenced on 12<sup>th</sup> March 2024. A judgment was delivered on 31<sup>st</sup> July 2024.
28. As to the history of the case, it began with a PI conducted on 19<sup>th</sup> October 2021. On 25<sup>th</sup> October 2021 the PI papers were sent to the Office of the DPP and the High Court. The first Information was file by the DPP on 10<sup>th</sup> January 2022. The first call over date in the High Court was on 5<sup>th</sup> September 2022 before Justice Bird. On the same day the defendant was arraigned and entered a plea of NG to both charges of rape. At that time of plea, the defendant was still serving 3 years imprisonment sentence at Rove of an offence he was convicted of on 8<sup>th</sup> September 2021. However, he was discharged from Rove prison on 1<sup>st</sup> February 2023.
29. After being discharged the defendant lived in Honiara without any address known to Police Makira so that he could be served with summons to attend court.
30. The Crown has furnished some explanation as to delay. First Police couldn't locate the defendant in early 2023 and secondly the illness of the complainant that she had contracted epileptic decease when she was a child. Therefore, a report from Dr. is necessary to qualify her whether she is a fit person to give evidence in the witness box.
31. I noted there is a minute fraction of delay in administration of the case. The defendant has also contributed to delay in terms of his location in early 2023. So far as delay by the court as alleged by the defense Counsel in delivering judgment, a delay for 4 months and 2 weeks is not an unreasonable delay. There are judgments delivered by this court more than that period.
32. I will only allow one month and 2 weeks delay to be deducted from the sentence. This figure is arrived at after acknowledging that judgment should be delivered within 3 months.
33. Having considered the mitigating factors the only deduction I would make is one month and two weeks.
34. This sentence reflects the seriousness of offending. The victim is a person under medical condition of epileptic decease and mental incapacity. The defendant has knowledge of

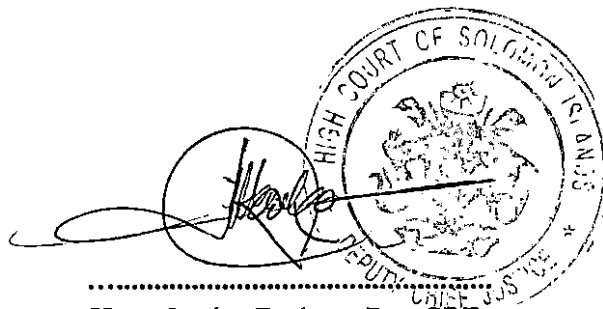
that because they are related and they live in the same area. However, despite that knowledge the defendant capitalized on it and raped the complainant.

35. Not just that, but the defendant has a previous conviction of a sexual nature which he was goaled for 3 years. This sentence is aimed at deterring the defendant from repeating the same offence or similar and to safe guard the community from a ploy of the defendant in exploiting girls and women to fulfil his evil sexual desire. Indeed, he is an all-time risk to his entire community. Perhaps with the length of the period a lesson should be realized.
36. Public deterrence is also conveyed. Should any community member or the defendant himself yield to any such evilness the courts will not lenient to anyone but to enforce the law to its fullest.

**Orders:**

1. The defendant was found guilty after trial of the offence of rape.
2. The defendant to serve 15 years in prison
3. One and half month delay be deducted from 15 years.
4. The defendant to serve 14 years, 10 months and 2 weeks in prison.
5. The sentence will run from the date the sentence is delivered.

**The Court.**



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Hon. Justice Faulkona Rex CBE.  
**DEPUTY CHIEF JUSTICE.**