

IN THE HIGH COURT OF SOLOMON ISLANDS (KIRA KIRA CIRCUIT)

CRIMINAL JURISDICTION

Criminal Case Number 435 of 2024

REX -V- SAMSON KERE

Date of Hearing: 7.11.25

Date of Decision: 12.11.25

Counsel; Mr. Vaike and Mr. Fanasia Junior for the Crown.

Counsel; Mr. Ma'ungatonu for the Defendant.

KENIAPISIA; PJ:

SENTENCE

Introduction

1. By verdict delivered on **3.10.25**, I convicted you, Mr. Kere, of sexual intercourse with a child under 15 years. The child was actually 13 years of age or the offender is a person in a position of trust in relation to the child, contrary to Section 139 (1) (a) of the Penal Code (Amendment) (Sexual Offences) Act 2016¹. I convicted you, Kere, of this substitute offence or crime after the crown failed to satisfy me on the criminal standard of the initial charge of persistent sexual abuse (rape) of a child on 3 or 4 separate occasions contrary to Section 142 (2) and 136F (1) (a) and (b) of the 2016 Act.
2. This is a substitute offence or crime that the Court has power to convict Kere of without being *charged* and *tried* separately – Section 142 (1),(2),(3),(4) and (5) read together with Section 139 (1) (a) of the 2016 Act.
3. Similarly, I also convicted Kere of another second substitute offence or crime without being *charged* and *tried* separately for an indecent act on or in the presence of a child who is under 13 years of age, contrary to Section 139 (2) (a) of the 2016 Act.

Punishment for the substitute offence conviction under Section 139 (1) (a) of the 2016 Act

¹ Hereafter referred to as “the 2016 Act”.

4. The maximum punishment for the first substitute offence is life-imprisonment because the sexual intercourse was committed on a child under 15 years and or the offender is a person in a position of trust in relation to the child. Here the victim was 13 years old (under 15 years old) and the defendant, Kere, was the grandfather of the victim.
5. This is a serious offence as *prima facie* reflected in the punishment Parliament prescribed. It demonstrates that the legislature's motive is to deter and condemn those who choose to engage in sexual intercourse with a child under 15 years and are in a position of trust in relation to the child victim, as in this case, where the victim was under 15 years (13 years to be exact) and the defendant was her own grandfather (Kere).
6. Having sexual intercourse with a child under 15 years is also serious because it will have a long-term daunting effect on the victim (shame and stigma). The victim's moral intactness, sanctity, virginity and sense of belonging or pride, or her human dignity have been murdered rather ruthlessly.
7. The Court of Appeal recognised the seriousness of sexual abuse of a child under 15 years by setting a higher starting point sentence of 8 years (*Sinatau, Court of Appeal, 2023*). Here the victim was 11 years old. My starting point sentence is therefore 8 years.
8. I determine the following serious aggravating factors:-
 - (i) Young age, 13 years.
 - (ii) Age disparity.
 - (iii) Position of trust breached.
 - (iv) Pre-planning.
 - (v) Vulnerability and weakness.
 - (vi) Offence committed in the safety of the home at night.
 - (vii) Psychological harm and trauma.
9. For all of the above 7 serious aggravating factors combined, I will increase the starting point sentence by 8 more years (about 1 year for each aggravating factor). Increases due to serious aggravation should be made in years rather than in weeks and months (*Bade, Court of Appeal, 2023*). That will come to 16 years aggravated head sentence before mitigation.
10. I also identify the following mitigating factors to reduce the aggravated head sentence:-
 - (i) First time offender with no previous conviction – 2 years.
 - (ii) Compensation – 1 year.

- (iii) Rehabilitation and no delay as submitted by defence – 2 years. There was no delay here.
 - (iv) Personal circumstances – 1 year.
11. I will impose a 10-year sentence term (16 years aggravated head sentence minus 6 years mitigated head sentence). This is a case where the aggravating factors far outweigh the mitigating factors. That is why I consider personal circumstances in mitigation. Normally personal circumstances of the accused person should have less effect in mitigation for sexual offences (*R-v- Wilfred Ba'ai, Court of Appeal, 2014*).

Punishment for the substitute offence conviction under Section 139 (2) (a)


12. The maximum punishment for the second substitute offence is 7 years because the indecent act, was committed on a child, who was under 13 years of age.
13. The seriousness of this offence was that the grandfather was acting irresponsibly, inappropriately and immorally before his own granddaughter, by going into her bedroom at night and asking to have sex with her, but she refused.
14. I will put the starting point sentence for this offence at 3 years because it has a lower maximum punishment sentence term of 7 years only.
15. I determine the same serious aggravating factors for the offence under *Section 139 (1) (a)* above (repeat paragraph 8). The only other additional aggravating factor is repetitive offending of the same victim.
16. For all of the above 8 serious aggravating factors combined, I will uplift the starting point sentence by 8 more years (1 year for each aggravating factor). Increases due to serious aggravation should be made in years and not merely in weeks and months (*Bade, Court of Appeal 2023*). That will bring me to 11 years aggravated head sentence prior to mitigation.
17. I also determine the same mitigating factors above for the second offence (repeat paragraph 10). The final head sentence after mitigation is 5 years (11 years aggravated head sentence minus 6 years mitigated head sentence).
18. I will make the 2 sentences to run concurrent because of the single transaction principle. The sentence for the second substitute offence will run concurrent to the sentence for the first substitute offence. That means Kere will serve 10 years only instead of 15 years if the sentences were made consecutive. Crown agreed with a concurrent sentence.

Conclusion and Orders

19. As I stand back and look at the circumstances of this case and ask whether the merits justify the sentence term imposed, I can say the sentence is justified in terms of the seriousness of the first offence conviction (life-time imprisonment as the maximum), long term impact on the victim, and the need to give out a deterrent message to the accused and the public. The sentence term reflects the gravity of the offence and accords well with Parliament's legislative intent to protect women and girls (children) under the 2016 Act.

20. This court has a duty to see that the punishment it imposed gives out a powerful deterrent message to prevent the commission of such crimes by making it clear to you and others with similar impulses, that anyone who yields to this kind of crime will face severe punishment.

21. **Mr. Kere I sentence you to 10 years imprisonment subject to any more deductions for pre-trial detention time as the Correctional Service may determine from their records.**


A circular seal of the High Court of Tuvalu is centered on the page. The seal features a central emblem with a crown and two figures, surrounded by the text 'THE COURT OF TuVALU' at the top and 'HIGH COURT OF TuVALU' at the bottom. A handwritten signature in black ink is written across the seal. A horizontal dashed line is drawn across the seal, and a solid horizontal line extends to the right from the end of the signature.
JUSTICE JOHN A KENIAPISIA
PUISNE JUDGE