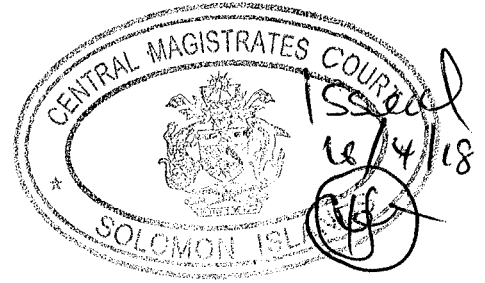


**IN THE CENTRAL MAGISTRATES COURT)
OF SOLOMON ISLANDS AT HONIARA)**



(Criminal Jurisdiction)

Criminal Case No: 137/2018

REGINA

-V-

GILBERT OKE

SENTENCING RULING

Ms. Ratu for the Office of the Director of Public Prosecution

Mr. Ruele for the Defendant

Sentencing Ruling: 16th April 2018.

CHARGE:

The defendant in this case is Mr. Gilbert OKE. He has been charged with the following offences:

1. 1 count of incest by male contrary to section 163 of the Penal Code dated 01st to 31st July 2004.
2. 1 count of incest by male contrary to section 163 of the Penal Code dated 01st to 31st August 2004.
3. 1 count of incest by male contrary to section 163 of the Penal Code dated 01st to 30th September 2004.
4. 1 count of incest by male contrary to section 163 of the Penal Code dated 01st to 31st October 2004.
5. 1 count of incest by male contrary to section 163 of the Penal Code dated 01st to 31st November 2004.

The defendant had pleaded guilty to all the charges and convicted for the 5 counts of incest on his own guilty plea.

BACKGROUND:

It must be noted that this used to be a Lata Circuit matter and was recently transferred in the last court circuit as the Defendant lives in Guadalcanal Province and it is a guilty plea matter which only has the mitigating submissions left to address before I proceed with the sentencing ruling.

FACTS:

The defendant is the father of the Victim in this case named Ms. Hellen LAUNGELE. She was living with her parents at Nyivale village during the times of the offending in 2004. She was 15 years old at the time of the offending.

1. Count 1- for this first incident, there was a death in the defendant's family which they attended to. A few days thereafter, the Defendant went to the garden with his daughter the victim. When they got there, he told her to go into the bush with him. He further instructed her to remove her clothes and to lie down. She refused but he exerted force on her so she complied. He removed his trousers and lay on top of her and pushed his penis into her vagina and ejaculated on her thighs, cleaned it and then wore his trousers back. He told her not to tell her mother and he left.
2. Count 2- this happened in the family garden again. As they were returning from the victims mothers village, the defendant pulled her into the bush near their family garden. She refused but he forced her. He undressed himself and ordered her to do the same. He laid on top of her, pushed his erected penis into her vagina and had sexual intercourse with her until he ejaculated.
3. Count 3- the victims uncle Mama TOLIE was living with their family at that time. The defendant told him that he would go with the victim to get potatoes at their garden. They left and got to the garden. He told her to remove her clothes and he had sex with her again like how he did it in the previous incidents.
4. Count 4- for this incident, the defendant told the victim to go into the bush again. He ordered her to remove her clothes. Out of fear she undressed herself and again he had sex with her.
5. Count 5- this occurred at night. The victim was in the family home when the defendant called out for her. He called her into the outdoor kitchen where he removed her clothes though she refused it. He had sex with her in that kitchen.

AGGRAVATING FEATURES:

1. The prosecution has impressed me with their sentencing submissions highlight these which defence also acknowledge. The most obvious aggravating feature for such matters is the breach of trust.
2. The age disparity is 34 years as the Defendant was 49 at the time of the offending while his daughter- the victim was 15 years old.
3. It was ongoing (on a monthly basis) from July to Nov 2004. Clearly repeated trauma against the Victim.
4. The defendant had a knife with him during the incidents in the gardens (Counts 1-4).
5. The psychological impacts on the victim will be with her for the rest of her life.
6. The use of force is also evidently present in all the incidents as the victim had refused but the defendant forced her. This adds to the already existing trauma she experienced with having her father doing all these to her.

7. For the 5th count, it was committed at night so that is an additional aggravating feature for that incident and in the family's outdoor kitchen.
8. There is some evidence of preplanning as the defendant led the victim to the different locations during the incidents.

MITIGATING FEATURES:

1. Defence on the other hand, submitted on mitigation on the following grounds:
 - a. He is a first time offender.
 - b. His early guilty plea shows remorse and acknowledgment of the wrongs committed.
 - c. There was some delay in this case.
 - d. The defendant and victim have reconciled and paid \$500 to the victim and his family and has since been in good relationship with the victim.

PERSONAL CIRCUMSTANCES:

1. He is currently 59 years old.
2. He has 7 children and 2 grandchildren. 2 of his children and 2 grandchildren attend school. The 2 grandchildren are those of the victim in this case.
3. He is unemployed but is quite weird that he is also the breadwinner for his family as stated above.

SENTENCING ANALYSIS:

Those I have pointed out above are those I have placed my mind to. I feel the urge to address the delay factor first before going into my analysis.

Delay- the incidents occurred in 2004, reported in 2005, defendant arrested and charged in 2010 and case was sent to ODPP in 2012. That took about 8 years of delay which are not the defendant's fault so must be mitigating for him. I am further informed by prosecution that the defendant pleaded guilty in 2015. He was supposed to return the day after pleading guilty but he never did, circuits later he did not attend as well until now that he is finally here in Honiara and has come for his case. I will therefore consider in my analysis and what is before as the law on this issue of delay is settled, and I follow suit on analysis for such matter. 8 years delay is evident before me (time of incident to case reaching ODPP), from year 2012, 2013 and 2014- ODPP has acknowledged their contribution in delaying the matter but stated that this was only mentioned as there was no Residential Magistrate at Lata during those years. The 8 years plus these 3 years would be 11 years of delay which is not the defendant's wrong doing or contribution for it to be delayed in such manner. The remaining years from 2015 to this date have been the defendant's fault as he never returned to court after plea and was difficult to find for the summons to have him before me for sentencing ruling. Therefore delay would be the 11 years which I must consider for the benefit of the defendant's sentencing ruling.

I now go into the analysis of the substantive offending of each count.

In my view, a custodial is inevitable as enunciated by the courts time and time again. I agree and it is binding on me to consider the same. Such offending must be condemned as fathers blessed with having children should be responsible in carrying out their fatherly roles with love and care and protection. They are the head of the family and to fall short in such manner as seen in this case, is nothing more than being inhumane and selfish. To lash out on daughters the way the defendant had done using force and having a knife with him for the 3 counts and doing it continuously is just outrageous. Such fathers must be taken out from the society so they can spend time to think in custody over all that they have done to come to understand the detrimental effects on the victim of their crime. He has gravely breached the trust that the victim has on him as the father and that is not taken lightly by this court.

The mitigation provided by his counsel is accepted in full on the other hand. The reconciliation and living peacefully and other mitigating factors being advanced by the counsel to validate to a certain extent as to why they think the sentence should be 2 years to be wholly suspended is considered in light of the circumstances of the offending. I also note the case authorities by both counsels and appreciate their assistance in providing these.

This offence in my view calls for strong deterrence message and I must therefore have this on my mind as I deliberate over them. It also calls for retribution to a certain extent. In my view, the offending's are serious types of this offending. They were pre planned as well as the defendant takes the lead in taking the victim to the locations of where the offending's took place. This is horrendous. Since I take these as the serious kinds of these offending's, I will now go into the calculations of the sentencing I see is appropriate for the defendant.

In my view the starting point for the offending's before me should be 4-5 years for each count. Considering all aggravating features that are obviously outweighing the mitigating factors, I would place each of the count at 4 years and 6 months each. For the mitigating factors and delay in the case which is 11 years as I have calculated earlier on, I will arrive at negative 7 years. This is unreasonable and will serve no justice if the defendant will go just plainly because of the delay of 11 years.

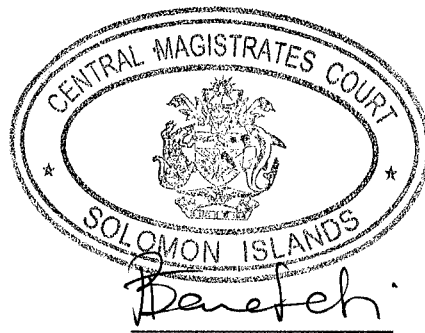
I will therefore deduct 2 years in reflection of the delay that this case has come through. This will therefore result in a 2 1/2 years' imprisonment term.

I have also noted the submissions on concurrent and consecutive sentencing. I note in my calculation for this case, that if I follow the rule of one transaction, one victim on the same date, I will arrive at a crushing penalty for the defendant. I will therefore make it all concurrent to each other as there is still one victim, one offending all carried out in a monthly consecutive manner.

COURT ORDERS:

I therefore order the following:

1. Count 1- 2 ½ years' imprisonment
2. Count 2- 2 ½ years' imprisonment
3. Count 3- 2 ½ years' imprisonment
4. Count 4- 2 ½ years' imprisonment.
5. Count 5- 2 years and 8 months imprisonment.
6. That the sentences be served concurrently as consecutive will have crushing effect on the defendant. And the offending's were committed against one victim, same offending over the course of 5 months consecutively. He will serve 2 years and 8 months imprisonment.
7. I am unable to order for any suspension of sentence as clearly the defendant had possessed a knife or a weapon during three of the offending's (Counts 1-3) as the agreed facts state that he had this during the garden incidents. The 4th incident was just in the bush and the last was in the kitchen outdoors.
8. Right of appeal by both parties to be exercised within 14 days from today.



Tearo Beneteti

(Ms)

Principal Magistrate