



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 1024 of 2020

REGINA

-V-

MICHAEL GIANO

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mrs Dalcy B Oligari of the Office of the Director of Public Prosecutions

Mr Ben Alasia, Principal Legal Officer, Public Solicitors Office for the Defendant

Date of Sentencing and Mitigation: 17th December 2020

Date of Sentencing: 21st December 2020

Notice: This copy of the Court's Reasons for Judgment/Sentence is subject to formal revision prior to publication.

SENTENCE

INTRODUCTION

1. Mr Michael Giano (the defendant) was charged with one of count of Indecent Act contrary to section 139(2) (a) of the *Penal Code* [Cap 26] (as amended) by the *Penal Code (Amendment) (Sexual Offences) Act 2016*.¹ He pleaded guilty to the said offence and I now convict him accordingly.

FACTS

2. The defendant's name is provided above and he is from Nimo Village in the Temotu Province. He is 38 years of age.
3. The complainant is SD. She was 11 years of age at the time of the offending earlier this year.

¹ *Penal Code (Amendment)(Sexual Offences) 2016*

4. The defendant is the uncle of the complainant.
5. The offence occurred at Tuvaruhu residential area in Honiara.
6. The defendant resides in the same house with the complainant at Tuvaruhu.
7. The incident occurred on the 11th of September 2020, when the defendant took the defendant to the Lodge and proceeded to touch her vagina.

DISCUSSION AND ANALYSIS

8. Section 139(2)(a) of the *Penal Code* [Cap 26] as amended by the *Sexual Offences Amendment Act 2016*² provides as follows:

Sexual intercourse or indecent act – child under 15

(2) A person commits an offence if the person commits an indecent act on or in the presence of a child who is under 15 years of age.

Maximum penalty:

- (a) if the child is under 13 years of age – 7 years imprisonment; or*
- (b) ...*
- (c)*

AGGRAVATING FACTORS

9. The aggravating factors are as follows:
10. **Maximum Sentence.** The maximum sentence for the indecent act under section 139(2) (a) of the *Penal Code* [Cap 26] as amended by the *Penal Code (Amendment) (Sexual Offences) Act 2016* is 7 years imprisonment.
11. **Young age of the victim.** The victim was only 11 years old at the time of the offending and this early experience of this crime will have adverse emotional and mental effects on her. He took advantage of the victim's age and vulnerability.

² *Penal Code Sexual Offences Amendment Act 2016*, s 139(2) (a)

12. **Age Disparity.** The victim was 11 years of age and the defendant was 38 years of age at the time of offending. The age disparity is around 25 years which is quite a big difference.
13. **Nature of the touching or sexual act is serious.** The touching of the vagina is quite invasive when comparing it to the touching of breasts. This exposed the child to sexual activities which is too early for her to comprehend at her age.
14. **Pre-meditated.** The defendant took her to a lodge or house which means it is away from the actual residence to fulfil his sexual desires and thoughts.
15. **Breach of trust.** The defendant is related to the victim as an uncle. He is responsible both in custom and in law to take care and protect the victim. He also lived in the same house with the victim when he committed this offence which means he had breached the trust that the family had on him as a relative and uncle to the victim.

MITIGATING FACTORS

16. The mitigating factors are early plea and genuine remorse; first time offender, cooperation with the Police, personal circumstances, and pre-sentence custody.

SENTENCING PRINCIPLES

17. The sentencing principles such as deterrence, retribution or punishment, and rehabilitation must be taken into account and weighed against the facts
18. It is generally accepted that when imposing a sentence, each case must be decided on its own facts, merits and circumstances.

Comparative Sentences

19. In the case of *R v Puisasa* [2019] SBMC 21; Criminal Case 190 of 2018 (3 May 2019)³, the accused was charged and pleaded guilty to a count of indecent act on a child under 13 years of age contrary to section 139(2)(a) of the *Penal Code* as amended by the *Penal Code (Amendment) (Sexual Offences) Act 2016*.⁴ The accused was sixty years of age whilst the victim was 9 years of age at the time of the offending. Basically, the accused took the victim inside his bedroom and closed the door, and then undressed the victim and placed her on the bed. The accused then blind-folded the victim using his shirt and he used his fingers to touch her vagina. He then made the victim to wear her clothes again and she left. The accused was sentenced to ten months imprisonment.

³ *R v Puisasa* [2019] SBMC 21; Criminal Case 190 of 2018 (3 May 2019).

⁴ *Penal Code* [Cap 26], s 139(2)(a) (As amended)

20. In *R v Kaneta* [2019] SBHC 51; HCSI-CRC 112 of 2018 (3 July 2019);⁵ the defendant was sentenced to two years for an indecent act without consent contrary to section 138 of the *Penal Code* [Cap 26] as amended by *Penal Code (Amendment)(Sexual Offences) Act 2016*, and 6 years imprisonment for having unlawful sexual intercourse with a person who is under 15 years of age. This present defendant was charged under section 139(2) of the *Penal Code* [Cap 26] as amended by *Penal Code (Amendment)(Sexual Offences) Act 2016* is. However, the case of *Kaneta* is important for comparative purposes.
21. In *R v Poloso* [2019] SBMC 13; Criminal Case 324 of 2018 (22 February 2019)⁶; the accused was sentenced to twelve months imprisonment for indecent assault.
22. In *Regina v Rukaræ* [2016] SBMC 14; Criminal Case 511 of 2015 (9 June 2016)⁷, the defendant is the grandfather of the 10 year old victim. The accused was charged with two counts of indecent assault contrary to section 141(1) and 141(3) of the *Penal Code* [Cap 26]. The Court sentenced the defendant to 3 years imprisonment and 1 year imprisonment respectively which were to be served concurrently. The grandfather and the victim lived in the same house. The defendant in *Rakuræ* was charged under the old *Penal Code* [Cap 26] prior to the enactment of *Penal Code (Amendment)(Sexual Offences) Act*, however, it is important to note how the courts have dealt with similar offences in the past.
23. Hence, the sentencing tariff for an offence commenced under section 139(2)(a) of the *Penal Code* [Cap] as amended by *Penal Code (Amendment)(Sexual Offences) Act 2016* is an immediate custodial sentence ranging from 10 months and up to around 3 years.
24. In this present case, I note that the touching of the vagina is an aggravation and it is more invasive compared to the touching of the breasts.

Starting Point

25. After having taken into account the circumstances of the case, and the aggravating factors in this present case, I am of the view that a starting point of 36 months is appropriate for this present case.
26. I will proceed to consider the mitigating factors and give due allowances.

27. **Early Guilty plea and Genuine Remorse.** The defendant entered an early guilty plea. This saves the Court's time and resources of having to conduct a trial in this case. More importantly,

⁵ *R v Kaneta* [2019] SBHC 51; HCSI-CRC 112 of 2018 (3 July 2019)

⁶ *R v Poloso* [2019] SBMC 13; Criminal Case 324 of 2018 (22 February 2019).

⁷ *Regina v Rukaræ* [2016] SBMC 14; Criminal Case 511 of 2015 (9 June 2016).

this saves the victim the trauma of coming to court to recount what had happened to her. I deduct 10 months to reflect this.

28. **First time Offender.** The defendant is a first-time offender which means that he has no past criminal conviction. I deduct 2 months to reflect this.

29. **Cooperation with the Police.** He cooperated well with the police and admitted to the commission of the offence. This is consistent with the guilty plea. The offence was recently committed on the 11th September 2020 and it has now reached the sentencing stage. I deduct 2 months.

30. **Personal Circumstances.** The defendant committed the offence whilst he is 38 years old. He is single and has no previous conviction. I deduct 2 months.

31. **Pre-Sentence Custody.** The defendant has been remanded since the 29th October earlier this year and this period shall be taken into account in the final orders. The sentence can either be retrospectively commenced (backdated) or deducted.

32. Thus, I am satisfied that twenty months (20) months (1 year and 8 months) imprisonment is proportionate to the severity of the offence.

CONCLUSION

33. This present case involved the touching of the victim's vagina by the defendant. He took her to the lodge close to their house to ensure that there was no one so that he could do what he did without any disturbance.

34. Sexual offences are arguably increasing throughout Solomon Islands and this is becoming very concerning. The laws are in place to protect all kinds of people from all walks of life and more especially the vulnerable people such as the elderly, the females and the young children.

35. A person who commits any form of sexual offence against a vulnerable victim such as this 11-year-old victim must expect an immediate custodial sentence. The defendant has no right to touch the victim's private part like that and he has corrupted her mind with the exposure to such unwanted and indecent touching.

36. The recent amendments to the *Penal Code* [Cap 26] in 2016 by the *Penal Code (Amendment)(Sexual Offences) Act 2016*⁸ is a legislative response to the call by various stakeholders, non-governmental organizations, religious groups, and advocates that sexual offences had been increasing and there was a general perception that the courts had been issuing very lenient sentences on sexual offences. Hence, it is my role to align my sentences to the core objectives of the *Penal Code (Amendment) (Sexual Offences) Act 2016* and to issue a sentence that reflects the intention of the Legislature.
37. A parent would not want his or daughter to be treated badly as such with sexual violence at an early age. The only appropriate sentence in such cases is one of immediate custodial sentence.
38. In view of the above, I hereby sentence Mr Michael Giano to 20 months (1 year and 8 months) imprisonment with immediate effect for one count of indecent Act contrary to section 139(2)(a) of the *Penal Code* [Cap 26] as amended by the *Penal Code (Amendment)(Sexual Offences) Act 2016*.
39. The sentence imposed should serve as a personal deterrence to the offender and also the general public that any form of sexual violence is not tolerated in a modern, democratic and civilized Solomon Islands.

ORDERS

40. The orders of the Court are as follows:

[1] The offender Mr Michael Giano is sentenced to 20 months (1 year and 8 months) imprisonment with immediate effect for one of count of Indecent Act contrary to section 139(2)(a) of the *Penal Code* [Cap 26] (as amended) by the *Penal Code (Amendment) (Sexual Offences) Act 2016*.

[2] Time spent in custody, if any, must be deducted accordingly or it must retrospectively be commenced on the 29th October 2020, being the date of first remand.

[3] A suppression order is hereby issued with respect to the name of the victim which effectively and indefinitely suppressed the name of the victim to be published in any means or form.

[4] Right of Appeal within 14 days.

⁸ *Penal Code (Amendment) (Sexual Offences) Act 2016*.



**PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT**