

IN THE CENTRAL MAGISTRATE'S COURT  
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

*Criminal Case No. 6 of 2019*



REGINA

v

BP, FM AND JP

**Date of Hearing:** 27 March 2020

**Date of Sentence:** 7 April 2020

Ms. Belapitu for the prosecution

Mr. S. R. Manebosa for BP

Mr. B. Alasia for FM

Mr. B. Harunari for JP

**SENTENCE**

1. The three defendants are juveniles and for purposes of this sentence, their names will be suppressed and will be referred to with their respective initials as 'BP, FM and JP' or interchangeably, as young offenders. For the victim, I will refer to her as a 'young girl' or 'victim'.

2. In this case, the Court will sentence three young offenders respectively aged: BP-14years, FM-16years and JP-13years at the time of offending, for an offence of sexual intercourse<sup>1</sup>, where all the parties including the 13 year old girl, were willing participants and acted together in full and unanimous consent at the time of the offending. The maximum penalty for this offence is 15 years imprisonment. In a broader sense, the age of consent is negatively prescribed under this law in that a person commits an offence of sexual intercourse with a child under the age of 18 whether or not the child agrees or consents to the relevant act.<sup>2</sup>
3. As the facts of the case revealed, these young offenders and the young girl all went together to an empty Rest House at Ghole village in the Central Islands Province and entered in one of the rooms through the roof. When they all inside the room, each took turn to have sex with her. This occurred during the day on 20 December 2018.
4. It is silent on the facts how this case was reported since the offending occurred in a closed room and by consent of the parties as revealed in evidence. Whether it was reported due to someone had intervened or disturbed them during the course of the sexual activity or as a result of the complainant's sexual complaint after the incident, remains a hovering question. There are more questions than answers. This omission is unfortunate and tantamount of producing half-baked information to the Court to understand the entire circumstance of the case for purposes of imposing the appropriate sentence. I think it is good practice for counsels to provide sufficient information in the 'Agreed Facts' that detailed the

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<sup>1</sup> Contrary to section 139 (1)(b) of the *Penal Code (Amendment)(Sexual Offences) Act 2016*.

<sup>2</sup> See section 139 (3) of the *Penal Code (Amendment)(Sexual Offences) Act 2016*.

offending and its surrounding circumstances, and at the same time reflected the agreement of facts for admission by the Court by both parties.

5. I understand that all parties including the victim had agreed to have sexual intercourse, and this raises the question of whether these young offenders could be punished at all for an activity that they, including the victim, had agreed to do according to their own wishes and desires. In other words, one can view that they have exercised their individual rights to do such immoral act based on their self-autonomy. This perception unfortunately is not recognised and is forbidden in child protection law. Regardless of their consent, it has been an established law that sexual intercourse involving a child is always forbidden. The law views a child less than 18 years of age as a vulnerable person and incapable of giving a consent. The child's immaturity makes him/her physically and emotionally vulnerable to exploitation and abuse.
6. The policy underpinning the enactment of the *Penal Code (Amendment)(Sexual Offences) Act 2016*, inter alia, is to protect young children under the age of 18 from being sexually manipulated, abused, violated and exploited. Hence, a child is incapable to give valid consent to sexual intercourse and that incapacity to give consent is protected under this law. This law is the voice of Solomon Islands for child protection.
7. Sexual activity is reserved for adults or is regarded as an adult domain within social structures such as marriage for example. Hence, it is taboo or forbidden for children to involve in that activity to put it in that neutral term. Regardless of the child's wishes, a person participates in a criminal act if it is carried out with a child since this amounts to a failure to respect the compulsory zone of 'noninterference' the law has drawn around the

child as defined unilaterally by the child's biological age. Viewed in this context, even though in this case the parties had consented with each other, sexual intercourse with the child herein will always be damaging to her physical and psychological development. It is simply abusive. Therefore, it is only right that the law must prohibit such immoral activity when involving a child.

8. This case speaks volume of the need for parents in our communities to break the silence or cultural barriers and bring to table educational conversations with children in their teens about the need to refrain from immoral or sexual acts when approached by the opposite sex or sexual perpetrators. It is not only proven scientifically that sexual acts can distort or disrupt the development of the child, but as we speak, it is a crime under the *Penal Code (Amendment)(Sexual Offences) Act 2016*. In order to better protect our children from any forms of sexual abuse in our communities, they should have the voice to say 'no' to any sexual invitation and be able to make an informed decision to guard themselves when the occasion arises. However, that cannot occur if they do not have the confidence to say so. Therefore, it is prudent for today's parents to recalibrate and not to shirk away from their parental duties, but to be vigilant in educating or empowering their children about the need to say 'no' to any sexual invitations at a tender age.
9. There are at least two aggravating factors in this case. First, the victim was a 13 year old girl at the time of the offending. That young age is self-explanatory of her vulnerability to be enticed and persuaded to have sexual intercourse with these young offenders. Second, there were three persons who took turn to have sex with her. This shows she had been sexually abused by three different persons at the material time. A young girl of such

very tender age to be abused in this like manner is uncalled for and deplorable. This is a sustained child abuse and has the potential to distort or even harm her aspects of development into adulthood.

10. These young offenders are juveniles and therefore, when it comes to sentencing, the principles of deterrence and retribution are less significant. Great emphasis must be given by allowing them an opportunity to reform their characters to conform to the norms of the societies and ultimately, to become law abiding persons following their confrontation with the law. This position is advocated by *John Tii v Regina*<sup>3</sup>, where the Court of Appeal stated:

*“Rehabilitation and reintegration into the community are particularly important in the case of young offenders. It is in the public interest that as well as in the interest of the offender that a young offender become a law abiding and contributing member of his community.”*<sup>4</sup>

11. In criminal prosecution, the best interest of young offenders must be of paramount consideration and that imprisonment can only be used as a ‘last resort’ if there are no other appropriate ways or methods to deal with the offender. This principle accords well with Solomon Island’s international obligation and in particular pursuant to Article 37 (b) of the *United Nation Convention of the Right of the Child (CRC)*. Solomon Islands is a member of the CRC since 1995, and had pledged full support to comply and implement the principles of the CRC in its state practices. Unfortunately, there were many instances of sentences for non-grave crimes involving

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<sup>3</sup> SICOA CRAC No. 14 of 2016 delivered on 5<sup>th</sup> May 2017.

<sup>4</sup> At paragraph 24 of the judgment.

juveniles where the Courts have reversed that principle and used imprisonment as the 'first resort' which did not reflect well on Solomon Island's state practices when it comes to Country Reporting to the Committee on the Rights of the Child.

12. Sexual intercourse is not a grave crime under section 2 of the *Juvenile Offenders Act 1972*. Hence, for this case, I see fit that the spirit of the *Juvenile Offenders Act 1972* and the CRC must be adhered and implemented and that, imprisonment can only be invoked as a means of last resort.
13. The case of *R v Faenle*<sup>5</sup> has been referred to as providing good indication for the appropriate sentence for this present case. It is a case where the Court imposed 2 years concurrent sentence fully suspended for 2 years for two counts of sexual intercourse offences where the accused (19 years at the time of offending) and the victim (less than 15 years of age) were willing participants to the offending. This sentence reflected the nature of the case where the offending occurred with the consent of the participants.
14. Considering these young offenders have pleaded guilty to the charge; they are first time offenders; have cooperated well with the police; there is no assault suffered by the young girl since the sexual intercourse was done consensually and a significant delay of almost 15 months has been taken to finalize this case, I see no reason why I should differ or depart remarkably from the sentencing approach taken by the Court in *Faenle*<sup>6</sup>. It is my view that since the offenders herein are juvenile, section 16 (k) of the *Juvenile Offenders Act 1972* is an appropriate method of dealing with these young

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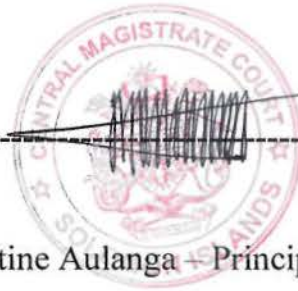
<sup>5</sup> [2019] SBHC 76.

<sup>6</sup> *Ibid.*

offenders and therefore, I sentence each of them under section 44 (a) of the *Penal Code* to 1 year imprisonment fully suspended for 1 year on the condition that each of them must be of good behavior during the operational period. If any of them breaches this condition, he will be called upon to serve the term in full forthwith.

15. 14 days right of appeal applies.

16. Bail to be refunded forthwith.



(Augustine Aulanga - Principal Magistrate)