

**IN THE CENTRAL MAGISTRATES' COURT
OF SOLOMON ISLANDS**

Criminal Jurisdiction

Criminal Case No. 1042* of 2020

On the 27th day of April 2020
Before Mr. Ricky Iomea, Deputy Chief Magistrate



Ms. Letiara Pellie for the Prosecution
Ms. Emy Pisiania Rusi for the Accused

BETWEEN: REGINA Complainant
AND: BILLY KO Accused

SENTENCE

- 1) The accused Billy Ko has been charged with one count of Indecent act without consent contrary to section 138 (1) (a) and (b) of the Penal Code. On the 23rd of March 2021, he admitted that offence by pleading guilty to the charge on arraignment. Today is for the Court to sentence him on that charge.
- 2) The particulars of the offence are;

"That Billy Ko of Bethel village, Fataleka in Malaita Province, on the 1st of November 2020, at Tasahe B, West Honiara in Guadalcanal Province committed an indecent act on Elwyna Natei by uttering the words "me laik fuckem you" without her consent and at that time knew about or was reckless as to the lack of consent.
- 3) The facts of the case as agreed by parties is that; on the 1st of November 2020 at about 6:00 am, the Complainant was sleeping alone inside her family home at Tasahe B while her family members went to church.
- 4) While she was sleeping, she heard someone came into their family home and so she stood up and walked towards the door. She then heard the defendant called out her name and her mother's name.
- 5) Consequently, she opened the door and the defendant walked inside and held the Complainant's hands and he pushed her on top of her bed and he uttered the words "me laik fuckem you" which can be translated as "I want to have sexual intercourse with you."
- 6) The Complainant struggled to remove the defendant's hands from her but the defendant overpowered her. She tried to shout but the defendant closed her mouth with his left hand and he used his right hand to hold her neck.

- 7) The Complainant struggled with the defendant for about 2 minutes and eventually the defendant got tired and escaped.
- 8) The Complainant reported what the defendant did to her uncle on the same day and they later reported the matter to the Police.
- 9) The maximum penalty for the offence of Indecent act without consent contrary to section 138 (1) (a) and (b) of the Penal Code (Amendment) (Sexual Offences) Act 2016 is 5 years imprisonment. The only form of punishment available under this section is one of imprisonment. The maximum penalty is reserved only for the worst type of offending. I am of the view that this case does fall within the worst type category.
- 10) The offending is aggravated by the fact that the accused committed the offence against the complainant when he was alone in her home. The fact that he entered the house when the door was opened and immediately held the complainant's hands and pushed her on top of her bed implies that he knew that the complainant was alone and reflects pre-planning. He took advantage of the complainant's vulnerable situation of being alone to commit the offence. It can also be safely assumed from the circumstances that he was never invited into the home that morning. He, clearly had invaded the privacy of the complainant in her family home and disturbed her from her sleep. The defendant had used force in restraining the complainant in order to fulfil his selfish sexual desire. It was only fortunate that the complainant resisted through struggle and prevented the defendant from committing other serious acts against her.
- 11) I am of the view, having regard to the facts or the circumstances of the offending and the aggravating factors present in this case, I am of the view that the appropriate starting point is 18 months imprisonment.
- 12) I also take into account the mitigating factors presented on behalf of the Accused. They are; he is a young man of 25 years and a first time offender. He has a 2 year old child who is cared for by his sister. He has pleaded guilty to the offence at the first available opportunity.
- 13) The Accused had allowed his bad intention to dictate his action. I believe he now realizes that intentionally or recklessly saying words to the complainant, in a sexual manner is against the law and an invitation for serious consequences.
- 14) In view of the mitigating factors, I will deduct 6 months from the head sentence of 18 months. The total effective sentence to be served is 12 months imprisonment. I am of the view that this is an appropriate sentence in this case and one that is

punitive and should personally deter the Accused and other like-minded members of the public from committing such offences in the future.

- 15) This sentence is back-dated to commence on when he was first remanded in custody for this offence.

