

Vued
5/03/21
E. L. L.



**IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA
Criminal Case No. 1069 of 2020**

**REGINA
v.
James AFIA**

Before: Principal Magistrate Ms. Fatimah Me'ere Taeburi
Ms. Gaytaba Waletofea (DPP) for the Crown
Mr. Bobby Harunari (PSO) for the Defendant

Date of Hearing: 4th March 2021
Date of Sentence: 5th March 2021

SENTENCE

1. The prisoner pleaded guilty to one count of indecent act with child under 15 years old contrary to section 139(2)(b) and one count of incest contrary to section 163(2)(b) of the Penal Code (Amendment) (Sexual Offences) Act 2016.
2. The counsels for both prosecution and defence agreed to the following facts;
3. On an unknown date in September of 2020, the prisoner went inside his daughter's bedroom whilst she was sleeping and touched her breasts.
4. On the 24th of September 2020, he again went into his daughter's bedroom. He sucked her breasts, touched her vagina and performed oral sex on her. Her mother was not at home during these incidents.
5. During these incidents, the victim was 14 years old.
6. Prior to the amendments to the sexual offences in the Penal Code, the act of oral sex would have qualified as an offence of indecent act. However the new amendment has defined 'sexual intercourse' to also include the act of 'cunnilingus', which is oral sex performed on a female.

7. Section 163 (2) of the Penal Code (Amendment) (Sexual Offences) Act 2016 defines the offence of incest as follows, "A person commits an offence if the person has sexual intercourse with another person who is a close family member of the person."
8. I am satisfied that the facts agreed to meet all the elements of the offence of incest.
9. I am also satisfied that the agreed facts meet all the elements of the offence of indecent act on a child under 15 years of age.
10. Section 136B of the Penal Code (Amendment) (Sexual Offences) Act 2016 defines indecent act to mean "...an act of a sexual nature..... other than sexual intercourse, which a reasonable person would consider to be contrary to community standards of decency".
11. It is my view that in a reasonable person's perspective, the act committed by the prisoner, namely touching his daughter's breast, is against community standards of decency.
12. I therefore convict the prisoner on both charges against him.
13. In sentencing him, I take into account that he pleaded guilty to the charges. It shows that he regrets his actions. It also saves the victim the stress of testifying in court. It saves time and resources that would have been otherwise expended.
14. I consider his personal circumstances. He is from Kwareasi Village in the Central Kwara'ae, Malaita Province. He is 47 years old. He is married and has 6 young children to look after. He has no formal education and he is a farmer.
15. He is man of previous good character. This is the first time that he has come into contact with the Law.
16. I was told by both counsels that he has reconciled with his family and has paid customary compensation of about \$1000 or \$1100. I accept that compensation and reconciliation in custom is a manner in which disputes are resolved in our societies. It shows remorse on the part of the offender. It however does not erase the wrong that has been committed. Although the prisoner has repaired relationships in custom, he must still face the consequences of his actions in Law.
17. In sentencing him I also consider the breach of trust involved in this case. The faith and trust that the victim once had in her father is now completely shattered. Although the prisoner has mended the relationship between him and his family, one thing is certain, the relationship between him and his daughter can never be the same again.

18. I consider the age disparity. The enormous difference in the age of the prisoner and his daughter is an aggravating factor. It shows that the prisoner took advantage of his position of authority in the family to satisfy his own desires.
19. The fact that the acts of indecency were repeated is also an aggravating feature.
20. I agree with the prosecutor that the facts of the case show that there was clearly pre-planning. The offences occurred during the times when the victim's mother was in Honiara. The offences occurred at night time when every other members of the family are fast asleep. There was clearly premeditation.
21. In sentencing this prisoner, I must be able to teach him specifically that what he has done to his daughter is wrong by all standards in the society of human beings. I must also be able to send the message clearly to like-minded offenders.
22. I must repeat the remarks made by His Lordship Justice Pallaras (as he was then) in the case of *Regina v Gole* where it was stated,

Men who have been given the blessing of fatherhood can no longer abuse and destroy that privilege and the notion that they are free to have sex with their own children must be expunged from the male psyche. Their children are not to be regarded as the possessions of the father for him to do with as he pleases, for if he does not stand up for the dignity and human rights of his child, then who is there to do so?

23. The maximum penalty for the charge of incest is 10 years imprisonment. The maximum penalty for the charge indecent act is 7 years imprisonment.
24. I have considered the submissions and case authorities submitted by counsels. I agree that the range of sentences for incest is 3 ½ years to 5 ½ years imprisonment.
25. In my view the appropriate sentence in the circumstances of this case is as follows;

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| Count 1 – indecent act – | 1 ½ years imprisonment |
| Count 2 – incest – | 3 ½ years imprisonment |
26. Both sentences are to be served concurrently.
27. Time spent in custody is included.
28. Right to appeal within 14 days.

Dated this 5th Day of March 2021



Principal Magistrate – Ms. Fatimah Me'ere Taeburi