

**IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

Criminal Case No. 917 of 2020



REGINA

v

D. A

Date of Hearing: 8th February 2021

Date of Sentence: 10th March 2021

Mr. Venon E. Taupongi for the prosecution

Mr. S. R. Manebosa for the young offender

SENTENCE

1. The young offender in this matter is 16 years of age while the victim is a 13 year old child. Hence, for the purpose of this sentence, their names will be suppressed and will be respectively referred to as "D. A" or "young offender" and "the victim".
2. D. A comes from Ambū in the Langalanga region in Malaita Province. He was charged and pleaded guilty for having forced sexual intercourse with a 13 year old girl. This is an offence and is recognised under section 139 (1)(b) of the Penal Code as amended by the Penal Code (Amendment)(Sexual Offences) Act 2016. The maximum penalty for this offence is 15 years imprisonment. However, it is acknowledged that there is no legislative mandatory minimum sentence for sexual offences in Solomon Islands and therefore, the court still retain the discretion to impose a sentence that fits well the

circumstance of a case, taking into account the common law principles of deterrence, rehabilitation, retribution and parsimony.

3. The facts of this case shows that before the incident, D. A and the victim knew each other as school mates. They both attended Mbokona School together. Last year (2020), D. A attended form one while the victim attended grade 5.
4. D. A was living with his brother at Taba'a settlement while the victim was living with her parents at Mbokona.
5. On 19th September 2020, around 9:00pm, the victim went to pay top-up at a canteen at the Central Bank area at Mbokona. On her way back to house, she was followed by D.A. D. A called out to her to wait for him. She did not stop and continued to walk. D. A called out to her the second time. It is unclear whether she responded to D. A, but from the facts, it revealed that D. A asked her to follow him to an empty house beside the main road.
6. She followed while D. A took the lead to that house. When they were inside the house, D. A asked her to remove her clothes but she refused and turned to escape from him. As she was about to escape, D. A held her skirt and pulled her back, and laid her on the ground.
7. When she was lying on the ground, D. A inserted his penis into her vagina and moved his buttock in sexual motion while at the same time, he was holding or fondling her breasts.
8. The victim felt pain to her vagina when he continued to have sex with her. After the sexual intercourse, he told her to wear her clothes and they both walked to the main road and they separated.
9. It is unclear from the facts about the behaviour of the victim after the incident, resulting in the matter reported to the police. But it is implicit from the facts that she reported what D.A had done to her to her family members, resulting in the apprehension of D.A the following day (20/09/2020).

10. Following the incident, the victim was taken to Seif Ples clinic for medical examination. The medical report did not reveal any swelling, bruising or even any injuries, except that the hymen was opened with a conclusion that the victim was sexually abused prior to the incident.
11. Police investigation commenced and he was charged with one count of sexual intercourse with a child under 15 years of age, contrary to section 139 (1)(b) of the Penal Code as amended by the Penal Code (Amendment)(Sexual Offences) Act 2016. He appeared on 21st September 2020 at the Central Magistrates Court and was released on cash bail including some strict bail conditions. Thereafter, the matter proceeded with court mentions. On 18th December 2020, he was arraigned and pleaded guilty to the charge. By pleading guilty, he admitted committing the offence.
12. On 8th February 2021, the matter proceeded with hearing of sentencing submissions before Principal Magistrate Hollison and by concession of parties, this matter was reallocated to me for sentence.
13. This is the court's verdict on sentence:
14. The offence of sexual intercourse with a child is considered a serious offence under section 139 (1)(b) of the Penal Code as amended by the Penal Code (Amendment)(Sexual Offences) Act 2016. The purpose of this law is to protect children from sexual exploitation by males in particular. Sometimes, the sexual abuse can be from their close relatives or immediate family members which is now common not only in the urban areas but in the villages as well. Anecdotal evidence showed that sexual abuse on children can have a profound impact on their physical and mental health that can be long lasting. Other consequential impacts of sexual assault on the victims are many and very damaging. The court is therefore tasked to protect young children by imposing a deterrent sentence to sexual perpetrators from committing this heinous crime in the communities.
15. However, since the present offender is a juvenile, this court is mindful not to impose a sentence that will have a criminogenic effect on him which will be detrimental to

his rehabilitation. The sentence to be imposed must strive to foster his rehabilitation and reintegration into his community so that at the end of the day, he becomes a useful member of the community.

16. I accept the submission that he is 16 years of age at the time of committing the offence and so, he is a juvenile. I also accept his guilty plea and being a first time offender. I also consider in his favour that he is currently a Form 2 student at Mbokona Secondary School and therefore, his right to education must also be considered as well. He was also remorseful for what he did. I also accept that a compensation payment in the sum of \$1,000 was paid to the victim's family at the Central Police Station. Compensation payment is part of our customary law for mending of relationship between the disputing/conflicting parties. I do not have any evidence that their relationship is still hostile at the moment and therefore, this compensation payment might have normalised their relationship. I also consider the delay of about 6 months taken to have this matter finalised. I give him full credit for these factors and they are accordingly taken into account for purposes of his sentence.
17. I understand he was influenced by peers from his neighbourhood in Honiara and that he started to misbehave after his parents had separated and divorced. These were the contributing factors that influenced his behaviour into the offending as highlighted in his Social Welfare Report.¹ That report also disclosed that he has plan to further his education if he has a chance in the future.
18. I have also considered the circumstance of the victim as disclosed in the Victim Impact Statement.² This incident has significantly distorted her life she used to be before the incident. Now, she was stigmatised and isolated from her friends since her friends would talk at her back about what had happened to her. After school, she could not able to spend time with her friends but had to go back home immediately. This might be to avoid being ridiculed or scolded by her friends. However, this incident has also positively changed her behaviour. Her mother became so close to her that before

¹ Dated 15/10/2020

² Dated 18/02/2021

because of the need for close supervision and also, she now learned to always listen and obey her mother than before.

19. I find the young age of the victim an aggravating factor. Also, this offender also held or fondled her breasts while he had sex with her which is an act of sexual indignity on her in person. She is too small and even considered a 'child' to be exposed to these immoral acts. The Victim Impact statement also revealed that the victim suffered emotional harm and now isolated and even stigmatised as a result of this incident. These are the aggravating factors as recognised in the case of **R v Ligiau and Dori**.³
20. The range of sentences imposed on juveniles for unlawful sexual intercourse following a guilty plea is from suspended sentence to 5 years imprisonment. Of course, each case has to be decided on its own circumstances. Some of these cases involving juvenile offenders pleading guilty to rape or unlawful sexual intercourse are stated below.
21. In **Regina v N⁴**, the accused who was about 16 years old, was sentenced to 5 years imprisonment with half of the term served in his community on good behaviour bond for the rape of a 6 year old infant. The accused committed the offence when he entered the victim's house at night and raped the victim while she was sleeping. The victim contracted sexual transmitted disease as a result of the offending. The sentence in this case reflected the commission of the offence as a result of house intrusion; the very young age of the victim; the offence occurred during the night and the fact that the victim had contracted sexually transmitted disease from the offence.
22. In **Regina v Bosamete⁵**, the accused, a 16 year old, was sentenced to 4 years imprisonment for rape and 6 months imprisonment for indecent assault, committed on a 4 year old child. The court took the age difference between the accused and the victim, and some form of penile penetration including the indecent holding of the victim's vagina when handed the sentence. However, since the accused had spent 2

³ [1986] SBHC 15; [1985-1986] SILR 214 at page 2

⁴ [2012] SBHC 103

⁵ [2017] SBHC 106

years and 6 months in custody, the court made an order for his release at the pronouncement of his sentence.

23. In **Regina v S.M**⁶, the accused who was 17 years old at the time of the offending, was charged with two counts of having unlawful sexual intercourse with a girl under 13 years of age pursuant to the Penal Code (Amendment) (Sexual Offences) Act 2016. He was sentenced to 12 months concurrent imprisonment term for each count. The respective offending occurred as a result of consensual sexual intercourse and the payment of compensation by the accused family, thereby greatly reducing the sentence.
24. In **Regina v M.R**⁷ the accused, a 16 year old, committed unlawful sexual intercourse with a 13 year old girl. The incident occurred when the victim returned home after school and went to the seaside after her mother and brother for fishing. On her way, the accused appeared from a nearby bush. There, he came straight to her. He held her hand and asked her to follow him. She remained quiet and just followed him and eventually had forced sex on her. The victim became pregnant as a result of this offence. In that case, there is no reconciliation payment despite the victim was his first cousin sister. Due to the accused pleaded guilty, no prior conviction and being a first time offender, the court sentenced him to 12 months imprisonment.
25. I approach this case with the observation made by Mahoney JA in **C**⁸ where his Honour stated:

“In sentencing the court must, in my opinion, take a firm grasp of reality. It is not to be circumscribed in what it does by artificial presumptions. On the other hand, a sentencing judge will not jump to conclusions or act upon ‘what everybody knows’ or upon what accords with current fashion in thinking. The judge must act upon the realities of each case.”⁹

⁶ [2018] SBHC 114

⁷ CMC-CRC No. 1238 of 2018

⁸ (1994) 75 A Crim R 329

⁹ At pages 316 - 317

26. In this present case, I find this is a forced sexual intercourse. This young and gullible girl was deceived into following this offender to the empty house at this late evening under the pretext that he was her school mate. She followed her out of that respect. However, she realised that she was deceived into something terribly bad to her in person when she was asked to have sex. It was when she objected and turned to escape that she was pulled by her skirt and finally got raped. This must have been a sleazy and horrendous experience for this small girl to be overpowered by this offender at that odd place during that night. In my view, the circumstance of this case is serious. This offender should know that this girl is not an object to satisfy his immoral desires. She is a human and a precious soul in the community, equally important to him. Hence, despite he is a juvenile, the circumstance of his offence is characterised by forced sexual intercourse and exploitation of a child. Hence, it is my duty, as mandated by the law, not to condone this kind of barbaric sexual violence against this child. The sentence I will impose on this offender must have an effect of changing his behaviour - to put a full stop to it.
27. I now turn to the question of what sentence is appropriate for this offender. I understand that he is not a child but a young person at the time of the offending, as defined under section 2 of the Juvenile Offenders Act.
28. Section 12 (2) of the Juvenile Offenders Act states “(2) No young person shall be sentenced to imprisonment if he can be suitably dealt with in any other way specified in section 16.” Section 16 in effect provides for the methods of dealing with young persons during sentencing, as follows:
- (a) by dismissing the case; or
 - (b) by discharging the offender on his entering into a recognisance, with or without sureties; or
 - (c) by dealing with the offender under the provisions of the Probation of Offenders Act; or
 - (d) by committing the offender to the care of a relative or other fit person; or
 - (e) by ordering the offender to pay a fine, damages or costs; or

- (f) by ordering the parent or guardian of the offender to pay a fine, damages or costs; or
- (g) by ordering the parent or guardian of the offender to give security for his good behaviour; or
- (h) by directing that he be released on his entering into a bond to appear and receive sentence when called upon; or
- (i) by committing the offender to custody in a place of detention; or
- (j) where the offender is a young person, by sentencing him to imprisonment; or
- (k) by dealing with the case in any other manner in which it may be legally dealt with.

29. I am mindful of the basic principle in criminal prosecution that the best interest of a young offender 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 under Article 37 (b) of the United Nation Convention of the Right of the Child (CRC).
30. Given that there is need to deter unlawful and/or forced sexual intercourse in the country even if the offender is a juvenile, it is my view that a custodial sentence is appropriate. This is to echo to the public at large that sexual intercourse with a minor is an abhorrent crime. Young children particularly the female children of this country should live in a free life society without fear of being molested and abused. The court must rise to that call by providing them that enabling environment through the imposition of a deterrent sentence so that any likeminded offender who thinks young female children are sexual objects must face the full force of the law. By doing so, we are not only protecting the current generation of children from sexual abuse and exploitations but for their children and their children’s children.
31. I am inclined to follow the precedent set in **Regina v Bosamete**,¹⁰ where the court set 2 years as starting point for a guilty plea for an aggravated rape involving a juvenile.

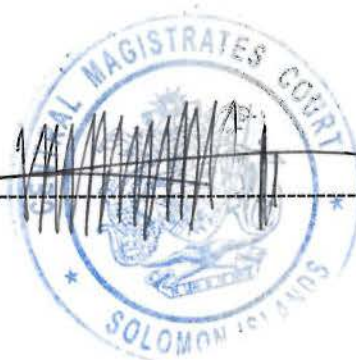
¹⁰ See fn 5 above

I adopt this starting point for this case. I increase this term by 8 months to reflect the aggravating factors for this case. However, this term is reduced by 8 months to reflect his mitigating factors and more significantly, for being a juvenile.

32. The final sentence for this offender is **2 years imprisonment**, without suspension. It is my view that sexual violation or exploitation of young children in Solomon Islands should be condemned to its fullest. The court as the implementer of the law should take the leading role in denouncing this crime and this can be realised through the imposition of the sentence that reflects the objective seriousness of this offence. To see a young convicted offender who sexually molested a child walks free in the society will definitely an insult to the eyes of the law in its dispensation of justice to the victims of crime. Because of the nature of this case is serious, I do not think a suspended sentence is appropriate.
33. 14 days right of appeal applies.

Orders of the Court

1. **D. A is sentenced to 2 years imprisonment without suspension for one count of sexual intercourse with a child under 15 years of age, contrary to section 139 (1)(b) of the Penal Code as amended by the Penal Code (Amendment)(Sexual Offences) Act 2016.**
2. **Time spent in custody (if there is any) is to be deducted.**
3. **14 days right of appeal applies.**
4. **Cash bail of \$500 to be refunded.**



(Augustine Sylver Aulanga – Principal Magistrate)