

IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA
Criminal Case No. 1072 of 2020



REGINA
v.
JOHN WALEANI AND JOHN WAEKEA

Before: Principal Magistrate Ms. Fatimah Me'ere Taeburi
Ms. Elma Rizzu (DPP) for the Crown
Mr. George Taedi (PSO) for John Waekea
Mr. Donation Houa (PSO) for John Waleani

Date of Hearing: 16th March 2021
Date of Sentence: 26th March 2021

SENTENCE

1. The two defendants pleaded guilty to one count each of sexual intercourse with a child under the age of 15 years contrary to the Penal Code (Amendments) (Sexual Offences) Act 2016.
2. The Crown's case is that Mr. Waekea is the principal offender. Mr. Waleani is charged under section 21(b) for enabling the principal to commit the offence.
3. The counsels filed and tendered a summary of agreed facts on the 16th of March 2021. The facts agreed to are as follows;
4. The two defendants and the complainant were students at the Saint Joseph's Tenaru School in Guadalcanal.
5. Mr. Waekea was 17 years old at the time of the offending. Mr. Waleani was 14 years of age and the complainant was 13 years old at the time.
6. The facts against Mr. Waekea, the principal offender is that he had sexual intercourse with the complainant in the cocoa plantation at Tenaru.
7. The facts against Mr. Waleani is that he accompanied the complainant earlier that afternoon before the sexual encounter between her and Mr. Waekea. The agreed

facts also show that Mr. Waleani suggested to the complainant that they use a short cut that goes through the cocoa plantation. Mr. Waekea met them along this short cut. Mr. Waekea said something to Waleani. The complainant did not hear what was said between the two boys. There is also no other evidence of the words spoken between the two. Immediately after the brief conversation, Waleani left Waekea and the complainant in the cocoa plantation.

8. Mr. Waekea and the complainant had sexual intercourse in the plantation.¹

9. The two accused are young persons under the definition and interpretation of the Juvenile Offenders Act. In terms of jurisdiction, although the maximum penalty for the offences for which these defendants are charged is 15 years imprisonment, this court can proceed to hear and dispose the matter under sections 4 and 9 of the Juvenile Offenders Act.²

10. The offence of sexual intercourse with a child under 15 years of age is created in section 139(1)(b) of the Penal Code (Amendment)(Sexual Offences) Act 2016. The section provides,

(1) A person commits an offence if the person has sexual intercourse with a child who is under 15 years of age.

Maximum penalty:

(b) if the child is between 13 and 15 years of age – 15 years imprisonment.

(2) It is not a defence to a charge for an offence under this section to prove that the child consented to the relevant act.³

11. Section 21(b) of the Penal Code provides,

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say –

(b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence.⁴

12. There are numerous cases in this jurisdiction that discusses the operations of section 21 of the Penal Code.

¹ Refer to agreed facts filed 16th March 2021

² Juvenile Offenders Act, section 4 and section 9.

³ Penal Code (Amendment)(Sexual Offences) Act 2016

⁴ Penal Code [Cap 26] section 21.

13. In the case of *Regina v Oeta*, the court stated the following,

The crucial elements prosecution is required to prove under section 21(b) are that the acts or omissions of the defendants were for the purpose of enabling or aiding the suspect to kill the deceased.

To prove that prosecution is required in any event to show the existence of a joint or common enterprise.⁵

14. His Lordship also posed the following questions,

Was there a common or joint enterprise? Is there evidence of a common intention to carry out a common purpose?⁶

15. His Lordship pointed out the following elements which are crucial to the operations of section 21(b) of the Penal Code,

Prosecution alleges there was a pre-concert plan agreed upon outside the CID office between the defendants and the suspect to kill the deceased. They allege there was a meeting of the minds, a consensus before the plan was effected. What happened thereafter was done in furtherance of that common purpose or design.⁷

16. Section 22 of the Penal Code provides the legal definition of a common purpose. It states,

Offences committed by joint offenders in prosecution of common purpose.

22. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.⁸

17. It is clear from the provisions of the law, that the prosecution needs to prove by way of evidence or in this case agreed facts, that there was a common intention between the two defendants to the commission of the offence. It is crucial that the Crown show that there was a meeting of the minds or a consensus before the offence was committed. The crown must show that the commission of the offence was a mere act of fulfilling the common intention.

⁵ [2004] SBHC 123

⁶ Ibid

⁷ Ibid

⁸ Penal Code [Cap 26] section 22

18. I have properly read the agreed facts submitted in this case and I cannot find one shred of fact that discloses that there was a common intention between the two defendants. The facts show that there were words spoken between the defendants prior to the act of sexual intercourse but the words spoken were not disclosed. In these circumstances, I cannot be satisfied that Mr. Waleani possesses the necessary state of mind at the relevant time.
19. I also cannot draw an inference based on the circumstances that there was common intention. The inference that there was consensus between the defendants prior to the act is not the only reasonable inference that I can draw from the agreed facts. There are other inferences open to this court including the possibility that Mr. Waleani had no knowledge that Mr. Waekea and the complainant were about to have sexual intercourse.
20. Based on this analysis, I am not satisfied that the facts prove the elements of section 21(b) of the Penal Code against Mr. Waleani. I therefore acquit him.
21. I am satisfied that the facts prove that Mr. Waekea had sexual intercourse with the complainant, a child under the age of 15 years. I therefore convict Mr. Waekea on one count of sexual intercourse with child under 15 years contrary to section 139(1)(b) of the Penal Code (Amendment) (Sexual Offences) Act 2016.
22. In sentencing Mr. Waekea, I take into account the age of the complainant. Mr. Waekea must have known or ought to have known her age given that they attend the same school. The argument that he was not aware that having sexual intercourse with a girl of such tender age amounts to a criminal offence will not suffice because ignorance of the law is not an excuse.
23. I consider the effects of the incident on the complainant. She provided a victim impact statement which was tendered by consent in court. In the victim impact statement, she went to great lengths to discuss the shame, embarrassment and stigma that she endured as a result of the rumours that were spread of her sexual encounter with Mr. Waekea.
24. I consider Mr. Waekea's age. He is also a very young person. I take into account that he pleaded guilty to the charge. He is a first time offender.
25. I also consider the impacts that the incident has on his life. His lawyer has informed that Mr. Waekea has been removed from school because of this incident. I consider his personal circumstances.
26. I make these remarks that the responsibility to protect our young children from any form of sexual exposure rests on every member of our society. The courts must be able to impose sentences that send a message to the society that people who engage

in sexual activities with children will be punished. If we do not stand up to protect our children, who else will do it?

27. I consider the sentences passed by other courts for these types of cases. I also consider the principles of deterrence, retribution, rehabilitation and prevention.
28. In my view, the appropriate sentence is 1 ½ years imprisonment. Given the juvenile status of the offender, I suspend one year of the total sentence under section 44 of the Penal Code.⁹ He is to serve 6 months in prison. After he is released from custody, he is to enter into a bond to be of good behaviour for 1 year of his release in his own recognisance and in the sum of \$300.
29. Right to appeal within 14 days.

Dated this 26th Day of March 2021



Principal Magistrate – Ms. Fatimah Me'ere Taeburi

⁹ Penal Code [Cap 26] section 44.