

**IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA
Criminal Case No. 10 of 2021**



**REGINA
v.
BASIL ULUI & DAVID MAE**

Before: Principal Magistrate Ms. Fatimah Me'ere Taeburi
Mrs. Dalcy B. Oligari (DPP) for the Crown
Mr. Rodney Sholto Manebosa (PSO) for the Defendants

Date of Hearing: 1st April 2021
Date of Sentence: 7th April 2021

SENTENCE

1. The two defendants in this case are juveniles. Mr. Ului was 15 years old and Mr. Mae was 14 years old at the time of offending. The victim is also a juvenile. At the time of the offending, she was 14 years old. To protect the identity of the defendants and the victim, I now make suppression order that their real names and identities will not be published in any other place. In the written version of this judgment, they will be referred to by their initials.
2. Both defendants in this case pleaded guilty to one count each of sexual intercourse with a child under 15 years old contrary to section 139(1)(b) of the Penal Code (Amendment)(Sexual Offences) Act 2016.
3. The section creating the offence 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.*¹

4. In terms jurisdiction, I note that the maximum penalty for the offence is 15 years imprisonment. Although the maximum penalty is beyond my jurisdiction, I can still proceed to sentence these defendants because sections 4 and 9 of the Juvenile Offender's Act which gives me the authority to do so.
5. The counsels in this case have tendered a memorandum of agreed facts on the 1st of April 2021.
6. It is agreed that on the 29th of November 2020, DM met the complainant at Vara Creek in Honiara. They went to an empty house. They went into one of the rooms and had consensual sex.
7. After the sex, DM called BU to come to the complainant. She wanted to get out of the room. DM shut the door and held onto it tightly. She could not come out and she cried.
8. BU then went inside the room and forced her to have sex with him. She was already naked at the time. She followed his instructions and lie down. BU also had sex with her.
9. After the sex with BU, she got up and run outside. She found her clothes, put them on and ran to a neighbour's house. Her mother was there. She told her what had happened.
10. The families of the defendants and the victim had reconciled. Compensation was paid. Red money commonly known in Malaita as *tafuliae* and \$500 was given to the victim's family.
11. Based on these facts, I enter criminal convictions against both defendants.
12. In sentencing them, I consider that in the second incident of sexual intercourse between BU and the complainant, the defendants used force and had taken advantage of the complainant in her most vulnerable state. DM forcibly closed the door and held it tightly to stop the complainant from leaving the room. This was to allow BU to enter. BU used force to have sex with the complainant. She was vulnerable due to her nakedness. They took advantage of her vulnerability. The wisest thing to do in those circumstances would be to cooperate. That was exactly what she did. She cooperated with her offender.
13. I also consider that there was premeditation. From the agreed facts, it is clear that this was a well-planned and well calculated move by the two defendants. DM led

¹ Penal Code (Amendment)(Sexual Offences) Act 2016

her to the house. He had sex with her. He then called out to BU. BU must have been close by because he responded and came into the scene as soon as he was called. The complainant did not know when she met DM and agreed to follow him to the empty house, that there was a devious plan already put in place, for both defendants to have sex with her. She was led into a trap.

14. I consider the effects of the incident on the complainant. Although there are no major physical injuries noted in the medical report, I do accept that all victims of sexual offences suffer some degree of psychological stress.
15. In mitigating I take into account the youthfulness of the accused persons. They are both very young men. I am mindful not to impose a sentence that will destroy their future and the possibilities of rehabilitation. I must however also consider the sentencing principles of retribution, deterrence and prevention.
16. They have both pleaded guilty to the charges when the first reasonable opportunity was presented to them. They demonstrated remorse.
17. They have no previous convictions.
18. I take into account that they have paid compensation in custom. This demonstrates remorse on the part of the offenders and it repairs the relationship between the families. However compensation and reconciliation do not erase the wrongs committed against the complainant.
19. I consider their personal circumstances.
20. I also take into account the maximum penalty and the sentencing options provided in section 16 of the Juvenile Offender's Act.
21. I have said this before in other similar cases and I will repeat myself here, the message must be made clear in our society that anyone who engages in sexual activity with a child will be punished by the Courts. The responsibility to protect our young children from any form of sexual exposure rests on every member of our society. If we do not stand up to protect our children, who else will do it?
22. In my view, the appropriate sentence is as follows;
 - a) DM is sentenced to 2 years imprisonment. 15 months is suspended.
 - b) BU is sentenced to 2 years imprisonment. 15 months is suspended.
 - c) The remainder of the sentences against each of them are to be served in prison.
23. Right to appeal within 14 days.

Dated this 7th Day of April 2021

Fatimah Me'ere Taeburi

Principal Magistrate – Ms. Fatimah Me'ere Taeburi

