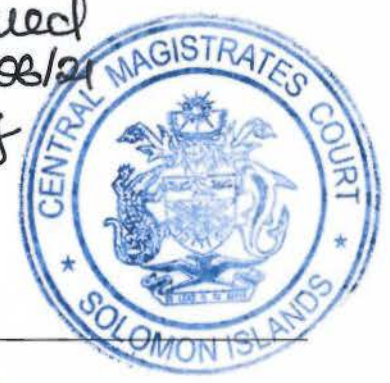


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**IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA
Criminal Case No. 1080 of 2020**

**REGINA
V
RANDY DALTON HUGO**

Before: Principal Magistrate Ms. Fatimah Me'ere Taeburi
Ms. Geitaba Cleda G. Waletofea (DPP) for the Crown
Mr. Frank Brennan Kama (PSO) for the defendant

Date of Hearing: 22nd June 2021
Date of Judgment: 23rd June 2021

SENTENCE

PM Taeburi,

1. The defendant is charged with one count of indecent act contrary to section 138(1)(a)(b) of the Penal Code (Amendment)(Sexual Offences) Act 2016.
2. He pleaded guilty to the charge.
3. The facts in the case are that the complainant is a 13 years old girl. She is the niece of the accused. She is the daughter of the accused's sister in law. He told the complainant to massage him in a room and in the process of massaging, asked the complainant to touch her body in exchange for \$50. The complainant refused and left. He reconciled with the complainant and her family and paid compensation in custom in the sum of \$2200.
4. These are the aggravating factors in the case;
5. There was premeditation. The accused sent other children away. He then called the complainant into the bedroom. He initiated the plan for the complainant to massage him. Clearly the offending was premeditated and planned.

6. There was an attempt to sexually exploit a 13 years old child using money. It is clear that the suggestion of the \$50 was to entice the complainant.
7. There is a substantial age disparity. The accused is a mature man whilst the complainant is a child. He took advantage of the complainant's youthfulness and innocent in an attempt to satisfy his sexual urges.
8. There is a breach of trust. Although the matter has been reconciled, the trust and relationship between the accused and the complainant can never be the same again because of what had happened.
9. I take into account the following mitigating factors;
10. The defendant pleaded guilty. He demonstrated remorse. The remorse felt was also demonstrated through the defendant's own words in court and through the act of reconciliation. He has saved time and resources that would have been otherwise expended. He has also saved the complainant the ordeal of testifying in court. I give him credit for admitting the allegations.
11. He has no previous convictions. He has been a person of previous good character.
12. I take into account that he did not persist in his advances towards the complainant. He did not use physical force in any way. He did not physically touch the complainant. When she refused, he did not persist.
13. I consider the reconciliation. The compensation paid in the sum of \$2200 is substantial in my view. I accept that relationships have been repaired. I repeat the remarks made in the case of *Regina v Asuana* where it was stated, "any custom compensation must be considered by the court in assessing sentence as a mitigating factor but it is limited in its value. The court must avoid attaching such weight to it that it appears to be a means of subsequently buying yourself out of trouble."¹
14. The defence counsel argued that I should invoke section 35 of the Penal Code and refuse to enter conviction against this defendant.
15. I consider the provisions of the s.35 of the PC.² I cannot describe the circumstances of this case as extenuating. I also cannot describe this case as a trivial matter. In fact this

¹ [1990] SBHC 52; HC-CRC 34 of 1990 (12 October 1990)

² S.35 Penal Code Cap 26

Where, in any trial, the court thinks that the charge against the accused person is proved but is of the opinion that, having regard to the character, antecedents, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge either absolutely or conditionally.

case is quite serious. It is a sexual offence matter. It involves a mature man in a position of trust intending to use his authority and money to make sexual advances and to sexually exploit a 13 years old child.

16. It is also my view, that there is nothing extraordinary about the character, antecedents or health of the defendant.
17. I therefore refuse to use section 35 of the PC. I enter conviction against the accused.
18. The maximum penalty for this offence is 7 years imprisonment.
19. I take into account the sentences imposed for similar cases in the Magistrate's Court and in the High Court. I agree that the facts of this case is less serious compared to others.
20. The message must be made clear in our societies. Our children must be protected from sexual predators. These types of cases are prevalent in our societies. There is a need for both specific and general deterrence.
21. In my view, the appropriate sentence is 3 months imprisonment. He has spent sometimes in custody. The number of days spent in remand is included in the sentence.
22. Right to appeal within 14 days.

Dated this 23rd Day of June 2021



Principal Magistrate Ms. Fatimah Me'ere Taeburi