



**IN THE CENTRAL MAGISTRATES' COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**

Criminal Case No. 354 of 2021

REGINA

-v-

CHRISTOPHER MENAGA

Date of plea: July 6, 2021
Date of hearing: July 6, 2021
Date of sentence: July 21, 2021

Mr. Nickson Tonowane for the Crown
Mr. Bobby Harunari for the Accused

SENTENCE

Introduction

- [1] Mr. Christopher Menaga, you appear before this court today for sentence, after which you have pleaded guilty to an offence of *indecent act without consent* contrary to section 138 (1) (a) and (b) of the Penal Code (Cap. 26), as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016. The court have informed you on the date of plea, that an imprisonment term is inevitable in your case, hence, your remand on July 7, 2021. For this reason, I now register conviction on your own guilty plea. This is the analysis and discussion for your sentence.
- [2] A name suppression order is issued to protect the victim's status and dignity. The order shall affect the victim's name, village and other personal information. Consequently, the victim shall be referred to, in this sentence as "F K", who is from [name withheld] village, Russell Islands, Central Province.

Personal Circumstance

- [3] The Accused's full name is: Christopher Menaga, a 56 year old man from Kaluman Settlement, Pavuvu Island, Russell Islands, Central Province.
- [4] The victim is a 14 year old girl [name withheld] who is from [name withheld] village, Russell Islands, Central Province.

Agreed facts

- [5] On March 8, 2021, at around 4:00pm, the victim was cooking cassava in their kitchen at [name withheld] village. When the cassava was cooked, she prepared it for dinner by transferring it onto a tray. While she was transferring the cassava onto the tray, she saw the Accused walking towards the kitchen, and to where she was standing.
- [6] The Accused went to the victim and asked her for betelnut lime, to which she replied to him that, there's no betelnut lime. The Accused replied; *Okay*, and moved close towards the victim's back.

He then used his left hand to touch the victim's left breast without her consent. The victim was shocked, as she thought the Accused already left.

- [7] After the incident, the victim informed her mother, and her Mother then went and reported the matter to the Police.

The Maximum punishment for offence of Indecent Act

- [8] The available punishment for the offence of *Indecent Act*, was increased by the Amendment¹, and under section 138 (1) (a) and (b), where the victim is 14 years during the commission of offence, an imprisonment of 7 years. The increased from 5 years to 7 years reflects the seriousness of such an offence, and how the community regards Indecent Act offences. The amendment make it obligatory upon the courts to give effect to the concerns of Parliament in the most effective way, and by making a comparison of the worst possible case to the one before court.
- [9] In the Australian High Court case of *Markarian v The Queen* (2005) 228 CLR 357² at [30]–[31], Gleeson CJ, Gummow, Hayne and Callinan JJ said:

Legislatures do not enact maximum available sentences as mere formalities. Judges need sentencing yardsticks. It is well accepted that the maximum sentence available may in some cases be a matter of great relevance ...

It follows that careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly, because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick.

Aggravating Factors

- [10] From the agreed facts, the following are verified as aggravating factors in his case:
- a. The age disparity of 42 years – The Accused is a 56 year old person, who undoubtedly an elder in his community, and the victim was 14 years old at the time of offending. This is a clear age gap of 42 years, and the Accused has abused his maturity when he gave in to his immoral and lustful desires, to prey on the vulnerability of the victim. He was expected to exhibit the most rightful, appropriate and sensible conduct possible, instead his action was completely off the mark.
 - b. Element of pre-planning – There was some form of pre-planning, if not, substantial in his case. He knew full well that the victim had no betelnut lime, and that she was alone at the kitchen. Yet he proceeded close to her back to touch her left side breast. Undoubtedly, I accept that, there was some form of careful thinking before the execution of the illegal act.

Mitigating Factors

- [11] The following are matters that supports his mitigation:
- a. Unequivocal guilty plea and remorsefulness – you have entered an early guilty plea, which has saves the courts time, resources, and avoid the victim to recount on the uncomfortable

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

²(2005) 228 CLR 357; [2005] HCA 25 ('Markarian')

incident. You appeared remorseful and accept consequences for your wrongs, which I must give you full credit as provided in *Qoloni*³.

- b. First-time offender – This is your first encounter with the law, and for the past 55 years, you have been a law-abiding citizen.
- c. Cooperation with police during investigation – you have admitted to the offending during the investigation stage, which has led to a timely and quick completion of your matter.

Case Authorities

- [12] In *R v Tekau*⁴, the Accused was found guilty after trial for an offence of indecent assault. The facts revealed that the accused indecently assaulted his step-daughter while the family was sleeping together in their bedroom. The accused caressed her step-daughter's breast while she was fully clothed. The step-daughter was 13 years old at the time of offence. The court found that he was in a position of trust, and there was a significant age disparity. The court imposed a 12 months' imprisonment term, and partly suspended 8 months. Thus, the accused served the 4 months imprisonment term.
- [13] As highlighted in the case of *R v Tekau* (supra), the Court set its starting point at 18 months' imprisonment. Comparing it to the one at hand, it can easily be concluded that the circumstance of the offence, and relationship of the accused to the victim cannot be said to mirror that of *Tekau*. Hence, any starting point in this case must fall below.

Criminal culpability, and starting point

- [14] Being an elderly person in your 50's and the fact that you approached the 14 year old victim while she was alone in the kitchen demonstrate your criminal culpability. I acknowledge that it was a fleeting touch on the victim's left breast while she was fully clothed. Accordingly, I place your culpability on the lower end of the tariff, and pitch the starting at 4 months imprisonment.

Sentencing consideration

- [15] Two (2) months is added to the 4 months imprisonment to consider the aggravating factors. I deduct 2 months to consider his early guilty plea. Further 2 months is deducted to consider he being a first offender, and his cooperation with police during investigation. In total, 4 months is reduced, hence, he shall serve the remainder of 2 months.

Sentence remarks

- [16] I hope this case brings some warning to you, or perhaps, a turning point in your life. You should now realize how your lustful and immoral desires have led to your incarceration. While I recognize that it was a fleeting touch on her breast, an elderly person of your age should never have embarked on such disgusting conduct.
- [17] As a father to your children, it is equally important to note that you are a father to your community. From now on, you must learn to control your lustful thoughts and urges so that you can avoid going beyond the forbidden boundary, which would only lead you back to this court. If it struggles you to endure such behaviour, then it would be proper to seek divine intervention.

³ [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)

⁴ [2019] SBMC 24; Criminal Case 52 of 2015 (10 May 2019)

Sentence orders

[18] Upon considering what I have discussed earlier in this sentence, I make the following orders:

- 1.1. I hereby sentence the you, Mr. Christopher Menaga to **2 months imprisonment.**
- 1.2. The sentence to commence from date of first remand.
- 1.3. Right of appeal applies within 14 days of this sentence.
- 1.4. Conviction is entered.
- 1.5. Order accordingly.

THE COURT



Mr. Leonard B. Chite
Principal Magistrate
Central Magistrates' Court

