



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 424 of 2019

REGINA

-V-

PETER SISIPA

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr J Anisi, Senior Legal Officer, for the DPP

Mr D. Kwalai, Senior Legal Officer, Public Solicitors Office for the Defendant

Date of Ruling: 19th September 2019.

Notice: *This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication.*

SENTENCE

INTRODUCTION

1. The Defendant Mr Peter Sisipa was charged with one of count of Indecent Act contrary to section 139(2) of the *Penal Code* [Cap 26] (As Amended).
2. On or about 4th September 2019, the Defendant pleaded guilty to the said charge.
3. I now convict Mr Sisipa accordingly.

Facts

4. The defendant Mr Sisipa is 19 years of age.
5. The Complainant is a 13 year old female. Her name is suppressed to protect her identity as she is also a juvenile.
6. The defendant is the uncle of the Complainant as he is the brother of the complainant's mother.

7. The alleged offences occurred on 16th February 2019. The defendant was out drinking with some boys outside of their community at New Zealand Camp, Henderson, East Honiara in Guadalcanal Province.
8. Whilst on his way to buy the smokes the defendant stopped at his sister's house.
9. The defendant went into the room of the complainant where she was sleeping and covered the light with a trousers.
10. He then took down the complainant's trousers and laid on top of her but the sister of the complainant by the name of Louise turned to face him and at the time the defendant run away from the room.
11. The complainant woke up and realized that her trousers was lowered and her underpants exposed.
12. This incident happened on the 16th February 2019.
13. The complainant and her sister reported the matter to the Police.
14. The defendant was arrested and remanded on the 29th May 2019.

DISCUSSION AND ANALYSIS

15. Section 139(2) of the Penal Code Sexual Offences Amendment Act 2016¹ provides as follows:

Sexual intercourse or indecent act – child under 15

(2) A person commits an offence if the person commits an indecent act on or in the presence of a child who is under 15 years of age.

Maximum penalty:

(a) if the child is under 13 years of age – 7 years imprisonment; or

16. The maximum sentence for the offending is 7 years imprisonment.

Aggravating Factors

17. The aggravating factors are as follows:

¹ *Penal Code Sexual Offences Amendment Act 2016*

- 1) The complainant is the niece of the defendant. The defendant not only contravened the law but also did not respect close familial relationships and connections.
- 2) The defendant is in a position of trust and has obligations to care and protect the victim. He breached that position of trust and responsibility and violated the sense of safety that the little girl should have inside the walls of her home.
- 3) The age difference between the accused and the complainant. The accused was 19 years old whilst the victim was only 13 years of age at the time of offending.
- 4) The accused was drunk when the offence was committed.
- 5) The offence was done at night time. It was also done whilst the victim was asleep which involves the removal of the trousers.
- 6) Young age of the victim. She was only 13 years old at the time of the offending and this early experience of indecent assault will haunt her for the rest of her life.

Mitigating Factors

18. The mitigating factors are as follows:

- 1) He pleaded guilty to the charges in the first available opportunity and saves the court's time and resources. It is also a sign of remorse and acceptance of the fact that what he did was wrong.
- 2) The defendant is first time offender which means he has no past criminal conviction.
- 3) The defendant has a high chance of rehabilitation and to learn from this incident. He is still 19 years old.
- 4) He cooperated with police and admitted to the commission of the offence. This is consistent with the guilty plea.

SENTENCING PRINCIPLES

19. The sentencing principles which the courts normally take into account when imposing and handing down any sentence are:

- 1) The need for general deterrence.
- 2) The need for appropriate retribution, to punish the offender.
- 3) The need to consider the prospects of rehabilitation.

20. It is generally accepted that when imposing a sentence, each case must be decided on its own facts, merits and circumstances.

Comparative Sentences

21. In the case of *Regina-v-Pana Sentence* [2013] SBHC 88; HCSI-CRC 402 of 2008(16th July 2013)², the defendant was charged with one count of indecent assault contrary to section 141(1) of the Penal Code (count 1) and one count of defilement contrary to section 142(1) of the *Penal Code* [Cap 26].

² *Regina-v-Pana Sentence* [2013] SBHC 88; HCSI-CRC 402 of 2008(16th July 2013)

Concerning the indecent assault (count 11) contrary section 141 of the *Penal Code*, the defendant was sentenced to 2 years imprisonment.

22. In the case of *R v Puisasa* [2019] SBMC 21; Criminal Case 190 of 2018 (3 May 2019)³, the accused was charged and pleaded guilty to a count of indecent act on a child under 13 years of age contrary to section 139(2)(a) of the *Penal Code* (as amended).⁴ The accused was six years of age whilst the victim was 19 years of age at the time of offending. Basically, the accused took the victim inside his bedroom and closed the door, and then undressed the victim and placed her on the bed. The accused then blinded folded the victim using his shirt and he used his fingers to touch her vagina. He then made the victim to wear her clothes again and she left. The accused was sentenced to ten months imprisonment.
23. In the case of *R v Tearofa Tekau* [2019] SBMC 24; Criminal Case 52 of 2015 (10 May 2019)⁵, the defendant was an adult person and also the step-father of the victim who was only 13 years of age. The sexual act involves the touching of the breast when the victim was wearing her clothes. The accused was found guilty and was sentenced to four months imprisonment.
24. In the case of *Regina v Rukaræ* [2016] SBMC 14; Criminal Case 511 of 2015 (9 June 2016)⁶, the defendant is the grandfather of the 10 year old complainant. The accused was charged with two counts of Indecent Assault contrary to section 141(1) and 141(3). The Court sentenced the defendant to 3 years imprisonment and 1 year imprisonment respectively which were to be served concurrently. The grandfather and the victim lived in the same house. In the first incident, the offender showed his penis to the victim, and this was while he was standing close to the victim. In the second incident, the accused silently walked over to her, held her buttock and turned her to face up from her original sleeping position. The accused then pushed his hand into the victim's trousers.
25. In the case of *R v Poloso* [2019] SBMC 13; Criminal Case 324 of 2018 (22 February 2019)⁷; the accused was sentenced to twelve months imprisonment for indecent assault.

Starting Point

26. In the present case, the offender removed the trousers of the complainant and laid on top of her. The present case also did not involve the touching of the victim's private parts. The defendant saw the complainant sleeping and he had taken advantage of the situation which is unacceptable. On the other hand, I note that if the offender was not interrupted, something serious could have happened.
27. Mr Kwai submitted that it is safe to conclude that Sisipa's case is on the lowest scale of severity due to the fact that it only involves the removal of the complainant's trousers was done. He further submitted that the present case is less serious compared to past indecent assault cases that went before the courts in this country. It was contended that the criminality involved in the present case is less serious from the other cases that have been dealt with by the courts of this country because there was no touching of

³ *R v Puisasa* [2019] SBMC 21; Criminal Case 190 of 2018 (3 May 2019),

⁴ *Penal Code* [Cap 26], s 139(2)(a) (As amended)

⁵ *R v Tekau* [2019] SBMC 24; Criminal Case 52 of 2015 (10 May 2019)

⁶ *Regina v Rukaræ* [2016] SBMC 14; Criminal Case 511 of 2015 (9 June 2016)

⁷ *R v Poloso* [2019] SBMC 13; Criminal Case 324 of 2018 (22 February 2019).

the victim's private parts, no force used in the commission of the offence and no injuries. Whilst I accept that submissions by counsel, that should not overshadow the fact that sexual acts and offences generally are unacceptable in our society and country as a whole. The trauma and shame that the victim experienced must also be taken into account and a deterrent sentence ought to be issued.

28. After having considered the circumstances of the case, and the case authorities provided, I am of the view that the starting point of eighteen (18) months imprisonment is appropriate for this case. I take into account the early guilty which shows that Mr Sisipa is remorseful for what he did, and I deduct six (6) months.
29. The accused is a first time offender and he has no criminal conviction, he also cooperated well with the Police, and coupled with other mitigating factors, I deduct another four months.
30. This leaves the offender with eight (8) months of imprisonment to serve.

CONCLUSION

31. This present case is quite a sad and shameful one because the victim is the niece of the offender, and the offender is an example of a person who has no respect for close family connections and our traditional and cultural norms.
32. In fact, the offender should be the one who should be protecting his niece from sexual violence and harassment especially within the confines of her home.
33. Such cases unfortunately are increasing in the Solomon Islands and must be condemned in the strongest terms by the Courts. Such people must be punished for their actions.
34. In view of the above, I hereby sentence Mr Sisipa to eight (8) months imprisonment with immediate effect.
35. The sentences imposed should serve as a personal deterrence to the offender and also the general public that any form of sexual violence is not tolerated in a modern, democratic and civilized Solomon Islands.

ORDERS

36. The orders of the Court are as follows:

[1] The offender, Mr Sisipa, is sentenced to 8 months imprisonment with immediate effect one of count of Indecent Act contrary to section 139(2) of the *Penal Code* [Cap 26] (As Amended).

[2] Time spent in custody already must be deducted accordingly or backdated to the date when the defendant was first remanded.

[3] A suppression order is hereby issued with respect to the name of the victim which effectively and indefinitely suppressed the name of the victim to be published in any means or form.

[4] Right of Appeal within 14 days.



**PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT**