

**IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS AT HONIARA**

Criminal Case No. 691 of 2020 and 976 of 2020

CRIMINAL JURISDICTION



REGINA

-V-

LILLY DAGI

Date of sentencing submissions: March 29, 31st and April 4, 2022

Date of Verdict on Sentence: April 8, 2022

Before: Principal Magistrate Augustine. S. Aulanga

Ms. Hellen Naqu for the Prosecution

Mr. Stanley Aupai for the Defendant

SENTENCE

- [1]. This is a sentence for Lilly Dagi, who was convicted after trial for one count of indecent act contrary to section 138 (1)(a) of the *Penal Code* as amended by *Penal Code (Amendment) (Sexual Offences) Act 2016* and one count of consumption of liquor in a motor vehicle contrary to section 66 (1) of the *Liquor Act 2004*.
- [2]. The maximum penalty for the offence of indecent act is 5 years imprisonment. The maximum penalty for consumption of liquor in a motor vehicle is \$10,000 fine as provided under the *Penalties Miscellaneous Amendment Act 2009* or 12 months

imprisonment or both fine and imprisonment, as provided for under section 66 (3) of the *Liquor Act 2004*.

- [3]. For the indecent act, the facts derived from the evidence in the trial shows that in the evening between 1st of September 2018 and 31st of October 2018 after a graduation ceremony of Luasalemba Secondary School, the victim, Clifton Meleu Ruele and others, including the defendant, were sitting outside the house of Wilfred Leon. While they were outside, the victim, who has been drinking the previous day, was asleep and lied down on the ground. A little later, others who were present with the defendant left the area, leaving the victim, the defendant and two others alone. While the victim was sleeping facing upwards, the defendant moved over to him, pulled up her skirt and sat on top of his groin or genital area. She then deliberately moved her buttock in sexual motion while she was on top of him. Another witness pulled or removed her from the victim because her conduct was offensive and disrespectful to the victim and the culture or custom of Temotu Province.
- [4]. In relation to the consumption of liquor in a motor vehicle, the evidence revealed that on 24th of May 2019 during late evening, the defendant was travelling in a RAV4 taxi from Lata to Baenga village in Temotu Province. She boarded the taxi with a can of opened canoe beer and sat next to the driver. On the way, she drank that beer whilst the vehicle was driven along the main road to Baenga.
- [5]. The defendant is 57 years old, married with 7 children. 5 of them are dependent on her. 3 of the children are not working and financially dependent on her. She was already a retired police officer and depended mainly on selling of cooked foods and consumable goods to raise money for her family. Her 76 year old husband is in an ailing health and needs her constant care and attention.
- [6]. Against the background of her personal circumstances and the degree in which the offences were committed, the question now is what should be the appropriate sentence for this case?

- [7]. This case must be assessed and decided by looking at the extent of her actions when she committed the two offences. Simply put, the more serious her culpability, the greater the sentences expected. This also operates the other way round.
- [8]. There are a number of case authorities on the sentences imposed on both offences that were brought to my attention. For the indecent act, they are: *R v Poloso* [2019] SBMC 13; *R v Kohai* [2021] SBHC 100; *R v Buga* [2012] SBHC 131; *R v Watson Hiro* [2021] CMC-CRC NO. 121 of 2021; *R v Gogonokana* [2018] SBMC 2018; *R v Gatu* CMC-CRC No. 4 of 2019; *R v Milamae* [2020] SBHC 105; *R v Velomana* [2020] SBHC 67 and *R v Puisasa* [2019] SBMC 21. For the consumption of liquor in a moving motor vehicle, they are: *R v Funubana* [2017] SBMC 37 and *R v Ninamu* [2019] SBMC 31. I have considered all these cases. They evidenced serious forms of indecent acts and drinking alcohol in a motor vehicle. They involved forced grabbing of breasts, touching of the vagina that caused great embarrassment and psychological harm to the victims. Also, they involved a prolonged drinking of a number of alcohol drinks in the vehicle. Thus, resulted in the greater sentence imposed by the court.
- [9]. The defendant's case at hand, in my view, is significantly less serious and is placed at the bottom end of the two offences. This conclusion is based on the findings that when she was under the influence of liquor, she moved to the victim who was sleeping, pulled up her skirt and sat on top of him (who was fully clothed and did not know what had happened to him) and moved her buttock in sexual motion. Even after the incident, the victim was confused and thought they might be making jokes of him when he was told of what the defendant did to him. This shows, as proved in evidence, the victim did not emotionally suffer or embarrassed from the indecent act.
- [10]. This same finding also applies to the consumption of liquor in a moving vehicle. In the vehicle, she only drank or sipped the can of alcohol about twice when the vehicle was travelling along the Baenga road. Her degree of committing this offence is far less to that of *Funubana* and *Ninamu*.
- [11]. In view of her offending and for a conviction following a trial, I fixed a starting point of 10 months imprisonment for the indecent assault charge and a fine of \$700 for the consumption of liquor in a moving vehicle.

[12]. I now turn to the aggravating and mitigating factors to determine whether or not the resulting sentence should be increased.

[13]. I accept the defendant is a senior police officer at the time of the commission of the offences. Being a senior police officer, she is expected to lead by example by upholding the laws of the country whether on and off duty. That duty requires her conduct to be well above the ordinary citizens of Solomon Islands. She instead flouted or infringed the law by performing an indecent act upon the victim and drinking alcohol inside the taxi when travelling along a public road. I also accept that she was under the influence of alcohol when she committed the offences. Her actions were deliberate and cannot be said to have occurred by mistake. I must hold her accountable for her actions although she was affected or influenced by alcohol at the time of the commission of the offences. These factors have aggravated her offending.

[14]. In her favour, I took into account her good character; her cooperativeness with the police and her excellent prospect of rehabilitation. She has conducted her well and of good behaviour since the commission of the offences. Also, as earlier stated, she is now 57 years old, married with 7 children. 5 of them are dependent on her. 3 of the children are not working and financially dependent on her. She was already a retired police officer and depended mainly on selling of cooked foods and consumable goods to raise money for her family. Her 76 year old husband is in an ailing health and needs her constant care and attention.

[15]. I also take into account the delay of about 2 years and 8 months this case has taken to get finalised. She has been faithfully attending her case since 2019 to date. This delay is caused by legal representation, seeking adjournments by counsels, financial predicaments to bring the witnesses over to Honiara from Lata for the vacated trial, relisting of the trial and of course, the time required for preparation of submissions and verdicts. This is very unfortunate and the delay herein should nevertheless be avoided had this case been proactively managed and dealt with few years ago.

[16]. Our law and jurisprudence are so clear on issue of delay. That is, once delay is raised, it will have a bearing on the sentence of an offender. In *Patterson Runikera v Director of Public Prosecutions*¹, then Ward CJ stated:

*"Delay generally affects the sentence in three ways. It increases the anxiety of the accused man who has it "hanging over him" for that time. This will obviously only apply from the time of discovery of the offence – any delay before that is entirely in the hands of the offender. The second factor relates to the plea because any person must realise that, the greater the delay, the more chance the prosecution will be unable to prove their case. Thus, a plea of guilty entered with that knowledge becomes a strong mitigating factor. Finally, it gives the offender a chance, denied to many accused, of showing that he really does intend to reform and stop offending."*²

[17]. In other jurisdictions such as in New South Wales, Australia, delay can result in the leniency of the sentence imposed. For example, in *R. v. Todd*,³ Street CJ, explained the issue of delay and its implication on the sentence as follows:

*"... where there has been a lengthy postponement, whether due to an interstate sentence or otherwise, fairness to the prisoner requires weight to be given to the progress of his rehabilitation during the term of his earlier sentence, to the circumstance that he has been left in a state of uncertain suspense as to what will happen to him when in due course he comes up for sentence on the subsequent occasion, and to the fact that sentencing for a stale crime, long after the committing offences, calls for a considerable measure of understanding and flexibility of approach - passage of time between offence and sentence, when lengthy, will often lead to considerations of fairness to the prisoner in his present situation playing a dominant role in the determination of what should be done in the matter of sentence; at times this can require what might otherwise be a quite undue degree of leniency being extended to the prisoner."*⁴

¹ (Unrep. Criminal Appeal Case No. 14 of 1987)

² At page 2 of the decision

³ [1982] 2 NSWLR 517 (CCA)

⁴ At pages 519-520.

[18]. In *R v MWH*,⁵ Callaway JA made the following remarks regarding delay and how it affects the offender during sentencing:

*"The prisoner's age at the time of sentencing may mean that he is less likely to re-offence. His health or life expectancy may make service of a sentence of imprisonment more onerous than usual. There may be considerations of fairness, especially where the delay is attributable to the prosecution or there has been a significant period of uncertainty or curtailment of liberty after the offences came to light. There may be practical considerations that require a marked degree of leniency to be extended. The foregoing is by no means an exhaustive list and it omits the most important potential effect of delay, namely rehabilitation. The person standing for sentence may have been rehabilitated in one or more ways. He may have given up a form of substance abuse that contributed to the offending. He may have reordered his life. He may have changed morally so that, quite apart from being older, he would not be likely to reoffend. He may have suffered genuine remorse in the sense of repentance, not just sorrow at being caught and fear of punishment. So far as possible, a lengthy process of rehabilitation should not be halted or endangered by the sentence imposed."*⁶

[19]. These cases authorities advocated that where there is delay, the sentencing court should be conscious of the additional pressures the offender will inevitably come to face in the imposition of the sentence. Also, the need for the court to factor in this consideration when sentencing an offender.

[20]. It is my view that Lilly Dagi must be given the benefit of this delay. Since the commission of the offences, she has already reformed her character, fully rehabilitated and did not commit any new offence. Therefore, she should not be punished for faults unattributed to her conduct or what seemed to be clear "bad case management" of her matter. For these derelictions for not swiftly dealing with her case, I reduced 4 months and \$300 from the

⁵ [2001] VSCA196 (1 November 2001)

⁶ At page 18 of the decision

starting sentences to reflect the mitigating factors and the delay taken to have this matter finalised.

[21]. This is a case the defendant whilst under the influence of alcohol took advantage of the victim who was sleeping. She sat on top of the victim, pulled up her skirt and moved her buttock in sexual motion over the genital area of the victim who was fully clothed and unconscious. Even though the victim had learnt of this afterwards, he did not bother to report this incident to the police because he thought what the defendant did to him was not true. He therefore suffered no emotional and psychological harm of this incident. Is this kind of offending requires a custodial sentence? I do not think in the interest of justice a custodial sentence is the appropriate sentence for this case.

[22]. **Therefore, for the indecent act, the reduced sentence is 6 months imprisonment. However, I will have the 6 months term fully suspended for a period of 1 year pursuant to section 44 (1) (a) of the *Penal Code* on the condition that she must be of good behaviour and must not commit any offence during the operational period. Breach of which will require her to serve the term in full without alteration. I feel it is not right for the defendant to be held in suspense for almost 3 years and later on to be penalized with an imprisonment term which in effect will deprive her from what she had gained and achieved in life over the past years during the term period. For the consumption of liquor in a moving vehicle, a fine of \$400 is imposed, payable by 4:00pm 22nd April 2022. In default, 20 days imprisonment applies.**

[23]. Right of appeal applies to any aggrieved party.



Augustine Sylver Aulanga Principal Magistrate

ORDER FOR SUSPENDED SENTENCE OF IMPRISONMENT
(Penal Code S. 44(1)(a))

SOLOMON ISLANDS
IN THE CENTRAL MAGISTRATE'S COURT, HONIARA



CMC Criminal Case No: CRC: 976 of 2020

To all Police Officers within Solomon Islands and to the Officer in Charge of the Central Correctional Centre at Rove.

WHEREAS Lilly Dagi of Nga'awe Village, Reef Islands, Temotu Province has been convicted of this offence:

Statement of Offence

Indecent act without consent, contrary to section 138 (1) (a) of the Penal Code as amended by the Penal Code (Amendment)(Sexual Offences) Act 2016.

Particulars of Offence

Between 1st September 2018 and 31st October 2018, did commit an indecent act towards Clifton Meleu Ruele without his consent by sitting on his private part and moved her buttock.

And I have today sentenced him to imprisonment for **6 months imprisonment** but I have ordered that this sentence is **fully suspended** under section 44 (1) (a) of the Penal Code on the condition that she must be of good behaviour and must not commit any offence during the operational period. Breach of which will require her to serve the term in full without alteration.

(Form 48 – Magistrates' Courts Act)

THE PERIOD OF 6 MONTHS RUNS FROM 8TH APRIL 2022 TO 8TH APRIL 2023.

Dated this 8^h day of April 2022.



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Magistrate Augustine Sylvester Aulanga
Principal Magistrate