

**MOFFAT PASIKALE -V- THE QUEEN****HIGH COURT OF SOLOMON ISLANDS  
(KABUI, J.).**

Criminal Case No.090 of 2003

Hearing: 12<sup>th</sup> June 2003.

Judgment: 17<sup>th</sup> June 2003.

*Mr Ronald B. Talasasa for the Crown*

*Mr I.Kako for the Accused*

**JUDGMENT**

**Kabui, J.** You were charged with two offences, in the alternative, in the first place. The first count was an allegation of rape, contrary to section 137 of the Penal Code Act (Cap. 26) (the Penal Code). The second count being the alternative count was an allegation of defilement, contrary to section 142 (1) of the Penal Code. At the trial, Mr. Talasasa dropped the charge of rape but proceeded with the charge of defilement as the standing charge against you. On being arraigned, you pleaded guilty to the charge of defilement. Mr. Kako confirmed this guilty plea as being consistent with his instructions.

**The Facts.**

You and the complainant are from the Gold Ridge area on Guadalcanal but were residing in the Kakabona area west of Honiara at the time you committed the offence. To be specific, the offence took place at Veravao village, Kakabona on 18<sup>th</sup> January 2003. At night in the evening, you and the complainant agreed to have sexual intercourse and both of you did so. You inserted two of your fingers into the vagina of the complainant and then inserted your penis into her vagina. After the act of sexual intercourse was complete, you left the complainant. At the time sexual intercourse took place between both of you, the complainant was 12 years old. The matter was reported to the Police and later you were arrested by the Police and charged with the offence of defilement.

**Plea of guilty.**

I entered a plea of guilty on your own plea and now convict you accordingly of the offence of defilement, contrary to section 142 (1) of the Penal Code. I will now consider the appropriate sentence I should pass on you.

**Sentence imposed by the Court.**

Section 142 (1) of the Penal Code states-

“(1) Any person who has unlawful sexual intercourse with any girl under the age of thirteen years is guilty of a felony, and shall be liable to imprisonment life.

(2)-----

(3)-----” Clearly, a custodial

sentence is inevitable under subsection 1 above.

Section 24 (2) of the Penal Code however states-

“(2) A person liable to imprisonment for life or any other period may be sentenced for any shorter term...” It is therefore incumbent upon me to impose whatever length of imprisonment I think is consistent with the facts of this case. In **Mulele v. DPP and Poini v. DPP** [1985/1986] S.I.L.R.145, the Court of Appeal said that the sentencing policy for future guidance was that each case must depend on its own facts but such matters as disparity of age, abuse of position of trust, subsequent pregnancy and the character of the complainant were relevant matters though were not exclusive in themselves. Counsel on both sides cited no authorities to guide me as to what the appropriate sentence should be in this case. I have looked at some cases of defilement in this jurisdiction to try and reach what I consider to be the appropriate sentence. I have found none that is on all fours with the facts of this case. I must therefore restrict myself to the facts of this case. I have noted that you are a married man with a wife and two children both of whom are 6 years and 3 years respectively. You are obviously from your physical appearance an adult person, older than the complainant. You would have known that the complainant was a young person and had good character. There is no evidence to show that she had had previous sexual experience so as to have misled you as to her age. I have however taken into consideration your guilty plea and that you have shown remorse for what you have done to the complainant and her family. You do have a family for whom you are the only bread-winner. I also take into consideration your wish to mend the relationship as between yourself and the complainant’s family by giving them compensation. These are good points in your favour to earn you leniency. However, the fact still remains that your were the cause and entirely responsible for the complainant’s condition. She will bear the scar of shame because of you. I think you had taken advantage of her youth and weakness as a young girl. The fact that her family and yours have been dislocated from Gold Ridge is no excuse for what you did. How would you feel if you were the father of the complainant and someone did to your young daughter what you did to the complainant? I am sure you will be outrageous and report to the Police immediately. The criminal law protects young girls against men like you who prey on young girls to satisfy their sexual crave. The fact that she consented to sexual intercourse is no defence. You are lucky that the Mr. Talasasa did not give me the detail facts of what happened according to the statements taken by the Police. The facts given by Mr. Talasasa were scanty and general. The facts could have been better presented. In the circumstances, I do feel that the appropriate sentence in your case is a custodial sentence of 9 months imprisonment, commencing from the date you went into custody. You are at liberty to appeal against the sentence.

F. O. Kabui  
Judge