

**IN THE HIGH COURT OF SOLOMON ISLANDS (KIRA KIRA CIRCUIT)**

**CRIMINAL JURISDICTION**

**Criminal Case Number 101 of 2025**

**REX -V- MARKSON GAPU**

**Date of Hearing: 30/08/2025.**

**Date of Sentence: 5/09/2025.**

*Counsel; Mr. Vaike and Mr. Fanasia Junior for the Crown.*

*Counsel; Mr. Brooke for the Defendant.*

**KENIAPISIA; PJ:**

**VERDICT AND SENTENCE**

1. On the **15/11/2019**, at Aparoro village, West Wainoni, Makira/Ulawa Province, between 3 pm and 4 pm, Ms. Dalcy Kaharaura went out to play with other children in the village. Mr. Markson Gapu, came across, Ms. Dalcy Kaharaura (DK) and took her to his house where he had sexual intercourse with her. When she returned, her mother noticed that she was crying and was walking unbalanced. She was experiencing discomfort inside her private part.
2. The mother asked the victim what was wrong. The victim told her mother that her vagina was painful. Her mother and Alice Kasuru checked the victim's vagina and noticed that there was whitish discharge coming out from her vagina, looking very much like a white watery substance of male sperm. The mother gave the small girl a Panadol.
3. The next day, the victim told her mother that a well-known person to them/her, Mr. Markson Gapu had pushed and rubbed his penis inside her vagina. On further enquiries, the victim's mother established that Mr. Gapu took DK to his house and had sexual intercourse with her.
4. Mr. Gapu is a close relative of DK. DK's father and Gapu are cousin brothers. The matter was reported to Kirakira police on **18/12/2019**.
5. Mr. Gapu is charged for sexual intercourse with a child under 15 years contrary to Section 139 (1) (a) of the Penal Code Act (Cap 26) as amended by the Penal Code (Amendment) (Sexual Offences) Act 2016 (No. 3 of 2016). I arraigned Mr. Gapu by reading the charge and the agreed facts, to which he entered a guilty plea. I convicted him as charged. Now I have to determine the appropriate punishment.
6. This is the first ever serious sexual abuse case I have dealt with in terms of the very young tender age of the victim (3 years old victim). The culprit is a 25 years old male adult. I cannot

even reason with how a 25. years old, adult male could possibly have penile sexual intercourse with a 3-year-old child victim. I cannot even understand how an adult male person would have lustful eyes towards a very small girl. I cannot even understand how a small girl's vagina can accommodate a male adult's penis. I am not alone in this alarming mind. In the case of *Pana, Court of Appeal 2013*, the victim was also 3 years old. The Court of Appeal remarked that the sentence will usually be greater, the younger the child.

7. In addition, I cannot even begin to understand how or why an uncle will have lustful desires towards his 3 years old niece and have sexual intercourse with her. This is a case of serious betrayal of trust. It also shows the decay of moral values and standards in our society.
8. Furthermore, I can understand the physical and psychological harm that DK will go through and the long-term negative impact on her life later. The very act of rape is a physical violation of the victim, and physical harm is inherent in it, despite the absence of any physical violence, more so on a very young child. You have to understand that this is a penis of an adult person cracking into the small vagina of a 3 years old female child. Emotionally and psychologically, the victim's human dignity, virginity, sacredness and intactness of the victim's sexual purity have been violated.
9. In saying all these, I am highlighting the gravity of this offending. I am also highlighting the peculiar circumstances of this inhumane criminality on a young, tender-age, vulnerable child victim. The gravity of this offence is also reflected in the maximum penalty of life imprisonment. However, the Court has the power to impose a lesser sentence term.
10. The starting point sentence here is obviously 8 years because according to *Sinatau, Court of Appeal 2023*, the starting point for sexual offences under *Section 136F and Section 139 of the 2016 Act*, is 8 years in a non-contested matter for a child under the age of consent. The age of consent is 16 years (*Pana -v- Regina, Court of Appeal 2013*).
11. However due to the peculiar circumstances of this case (repeat paragraphs 6 to 8 above), I will depart and start at 12 years. Departure is permissible under *Pana 2013* and *Soni 2013*, both Court of Appeal binding judgments, the only requirement is to give reasons for departure (reasons being the peculiar circumstances noted above).
12. I identify the following serious aggravating factors, present: -
  - (i) Disparity of age
  - (ii) Pre-planning
  - (iii) Weak and vulnerable
  - (iv) Physical harm/injury
  - (v) Young tender age
  - (vi) Position of trust breached
  - (vii) Psychological harm and trauma
  - (viii) Abuse committed in the home
  - (ix) Isolated spot

13. For all of the above 9 serious aggravating factors combined, I will uplift the start point by 9 more years (1 year for each aggravating factor). Increases due to serious aggravation, should be made in years and not merely in weeks and months (*Bade, Court of Appeal 2023*). The aggravated head sentence before mitigation is 21 years.
14. I also identify the following mitigating factors to reduce the head sentence downwards: -
- (i) Early guilty plea – 30 percent is 6.3 years rounded to 6 years.
  - (ii) First time offender with no previous convictions – 1 year
  - (iii) Rehabilitation – 1 year
  - (iv) Delay – 1 year
  - (v) Compensation and reconciliation - 1 year
  - (vi) Cooperation with police – 1 year
15. The final head sentence I will impose is 10 years (21 years aggravated head sentence minus 11 years mitigated head sentence). I will convert into months and say 120 months. I will take away 8 months pre-trial detention time. That leaves me with 112 months. That will be 9 years and 4 months imprisonment term.
16. As I stand back and look at the merits of this case, I can say the sentence term imposed justified the circumstances of this case. The maximum penalty is life imprisonment. The gravity of the offending is serious (repeat paragraphs 6 to 8). Guilty plea has saved the day for the defendant reducing the aggravated head sentence by 6 years. Without that, the head sentence could exceed 10 years.
17. This court has a duty to see that sentences it imposed gives out a powerful deterrent factor to prevent the commission of such offences. Offenders must receive harsher punishments to mark society's outrage and denunciation against sexual abuse of women and girls. The main purpose of the punishment I give here is to condemn your action and to protect the public from the commission of such crimes by making it clear to you and others with similar impulses, that anyone who yields to this kind of crime will meet with severe punishments.
18. Mr. Gapu, I will convict you of the charge of having sexual intercourse with a child under 15 years premised on your guilty plea. I will sentence you to 9 years and 4 months. Your sentence term will begin to run from last Saturday's date (30/08/2025).

