

**IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)**

CRIMINAL CASE NO. 33 and 34 of 2015

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

NATHAN SOLOMON AND OTHERS
Defendant

*Mr. Filimoni Lacanivalu for the Republic
Mr. Vinci Clodumar for the Defendant*

*Date of hearing: 28 September 2016
Date of Sentence: 3rd October 2016*

Sentence

1. The defendant pleaded guilty to one count of assault occasioning bodily harm contrary to section 339 of the Criminal Code 1899.
2. In brief the agreed facts submitted to the Court are:

On the 21st November 2015, at about 8pm, the victim was at his home when he was told that his friend wanted to talk to him. The victim was afraid and wanted to run away but Sherman grabbed him and held him until a car came. The victim was taken in the car to Sumich Detenamo's house. The person who was driving got off the vehicle held a hammer covered with a T-shirt and asked the victim about his motor bike. The victim replied he did not know. The person assaulted him with the hammer wrapped in a T-shirt.

The victim was later taken to Juvenin's house. Again he was asked about the motor bike. The victim was further taken to a residence in Buada and information was received that the bike was at Tango one. The defendant arrived at the Tango one area with about 5 to seven other persons. At the tango one area the

victim was pulled out of the vehicle and pushed over to sit on timber where he was asked about the motor bike. The defendant wrapped a cloth around the hammer while he hit the victim's head with one hand and struck the victim's face with the other hand. The defendant also hit the victim's body with the hammer several times. The victim tried to ran away but couldn't because the defendant's friends blocked his way. The victim was later rescued by others and taken to the hospital. The victim was attended to by Dr. Wyn at the Ron Hospital and he sustained the following injuries; "2 small soft tissue swelling at the sides of the head, small laceration lower end of (L) arm and no other open wounds. All joints-Normal"

3. The maximum penalty for this offence is three years imprisonment. The maximum penalty that this court can impose is 3 years imprisonment.
4. The guilty plea entered in the first instance must attract a reduction of sentence in the defendant's favor. This in my view is the only mitigating factor available to the defendant in this case.
5. In mitigation Mr. Cloumar submits that court considers exercising its powers under the Criminal Justice Act 1999 by way of the imposition of a non-custodial sentence or in the alternative the court should consider imposing a sentence of less than 4 months imprisonment and then have the said sentence suspended.
6. The defendant has prior convictions which involve violence. This is not his first time to come before the court. In passing sentence I remind myself that I must avoid sentencing him for his past.
7. The following in my view aggravates the offending by the defendant in this case;
 - i) The victim was taken away from his home and assaulted at various different places. The assault was repeated.
 - ii) A dangerous weapon was used in occasioning the assault.
 - iii) The defendant accused the victim of stealing his motor bike, without caring to first ascertain where the truth lies, and took it upon himself to investigate,

prosecute, convict and administered punishment by way of assaulting the victim with a hammer outside of the due process of the law. The defendant took the law into his own hands. It cannot be a mitigating factor as suggested by Mr. Clodumar. This attitude of punch or hit first before we talk to resolve issues should be discouraged. That is why we have the police there to protect the community and to enforce law. So the proper thing to do is report the matter to the police.

iv) This incident happened in the night. This in itself is an aggravating feature.

8. I am of the view that a deterrent sentence should be imposed. I sentence the defendant to 18 months imprisonment. In light of Mr. Clodumars submission that in the event that a custodial sentence is imposed I should consider suspending any such sentence, I must consider whether or not the term of imprisonment imposed should be suspended. In light of the aggravating features present in this case, I refuse to exercise the court's discretion to suspend the terms of imprisonment imposed on the defendant. Defendant is sentenced to serve 18 months imprisonment.

Dated this 3rd of October 2016

Emma Garo
Resident Magistrate

