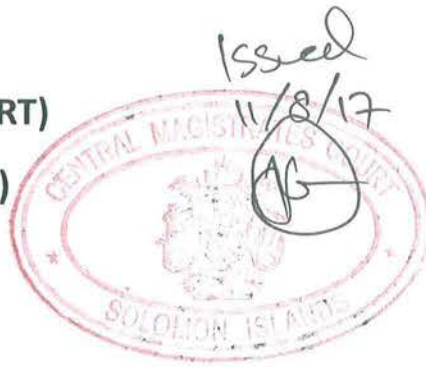


**IN THE CENTRAL MAGISTRATES COURT)  
OF SOLOMON ISLANDS AT HONIARA)  
(Criminal Jurisdiction)**



Criminal Case No: 694/2016

**REGINA**

**-V-**

**NOLAN JOLO**

Prosecutions: Mr. Konle  
Defence: Mr. Waroka  
Trial date: 1<sup>st</sup> and 2<sup>nd</sup> May 2017  
Judgment delivered on: 15<sup>th</sup> June 2017  
Sentencing hearing date: 4<sup>th</sup> August 2017

**Charge:**

The defendant Mr. Nolan JOLO is being charged with 1 count of grievous harm on his son the victim Junior Nolan JOLO.

**Case genealogy:**

The defendant pleaded not guilty to the charge on 8<sup>th</sup> December 2016. PTC was done for his case later in 2017. Trial was conducted in May 2017. During the trial prosecution did not wish to call any evidence as the filed agreed facts were in their view sufficient to prove their case against the defendant. They submitted that the agreed facts have actually explicitly display the evidence required to prove their case of grievous harm beyond reasonable doubt. They further tendered into court by consent exhibits for their case. These were:

1. Interview with the Victim Junior JOLO
2. Medical Request form to NRH with Dr. PIKACHA'S medical report on the victim
3. Medical Report of the victim done by Dr. SZETU.

After the prosecutions opened their case and submitted in summary their crowns case against the defendant, they closed their case.

Defence on the other hand chose to give sworn evidence. The defendant then took his oath and gave evidence. He was also cross examined and re-examined and further asked by the court on a few matters. After his evidence, defence closed their case as well.

Closing submissions were done thereafter and the court gave its ruling following that. The decision was a finding of guilt against the defendant for the 1 count of grievous harm on the victim Junior JOLO.

Sentencing and mitigation submissions were done after that and which I will deliberate on as I address the defendant for his sentencing ruling.

**Facts:**

I fully import the filed agreed facts for this case filed on 15 Dec 2016. They are attached to this sentencing ruling. In summary:

1. The defendant namely Nolan JOLO SENIOR on 3<sup>rd</sup> Oct 2016 between 5pm and 530pm arrived with his wife namely Barbra ANILAE at their residence at Tasahe A, West Honiara.
2. The defendant made a request to his wife for him to use the vehicle for his program.
3. The wife didn't allow him to use it due to an incident that occurred during Christmas resulting in a bend on their car which had just been repaired.
4. When the defendant heard this he told her he will take out the tyres which he said were his. He was disappointed when he also pulled out the tyres.
5. There was also an argument between them as his wife also claimed that the tyres belong to her brother.
6. The defendant at that time was eating green coconut brought from Honiara Central Market.
7. The victim walked up to the house and was eating ice block
8. The victim's younger sister Aishar EVANKA saw the victim and cried for the ice block.
9. The defendant saw and heard that his daughter was crying because of the victim eating ice block.
10. The defendant then held the shell coconut and threw it at the victim which landed at his left eye.
11. The victim sustained serious injury and got admitted for a number of days at the NRH.

Furthermore, I take note of the evidence the defendant gave under oath in court. I analyse the facts and accept what is reasonably open to me. In all the circumstances as stated in my ruling for this case and finding the defendant guilty that he was still mad and disappointed with his wife at the relevant time he threw the shell coconut.

He had just had an argument with his wife when he saw his daughter crying for the ice block from his son the victim. He was about 5 meters from his son. He said he called his son a few times and when his son didn't answer him, he threw the piece of shell coconut at him which eventually resulted in the injury he sustained.

**Sentence analysis:**

This is a serious offence as seen by the maximum penalty of 14 years. Therefore an immediate custodial sentence is expected to be imposed.

I also take note of the serious injury (permanent) suffered by the victim.

In handing down this sentencing ruling, the following are taken into account:

**Aggravating:**

1. Use of weapon therefore no suspension of sentence can be imposed.
2. Abuse of power as a father who used a weapon when he had just been arguing with his wife. He did so in the event of having argued with his wife and was emotionally affected and disappointed with his wife.
3. Seriousness of injury- the medical report shows that it was a permanent injury and may lead to blindness. The exact words I note explaining the extent of the injury are "...final visual outcome will still be impaired permanently."-refer to exhibit PE3
4. I also note the sentencing submissions from prosecutions.

**Mitigating:**

I am unable to see any mitigating factor in this case. The defence counsels applied for s. 35 of the Penal Code (PC) and again he tried to emphasise his defence case advanced when the defendant gave sworn evidence. He submitted that the circumstances of the case are trivial and there are extenuating factors. He went further to explain why they are trivial and extenuating as required by s. 35 of the PC.

**For extenuating circumstances:**

1. Unintentional
2. Mistakenly harmed the victim
3. No malice in the act
4. Reconciled with the wife already who has been visiting him at Rove
5. Family needs defendant as his wife is a nurse and no 1 to look after his children now
6. Currently a house girl is being employed to care for the children. Defence submits this is a financial constraint situation on the wife and family.
7. Further submitted that the wife was jealous when the defendant went out drinking with his friends when the victim was admitted at the NRH. This made her report to police.

While I appreciate the powerful mitigation submission done by the counsel in applying relevant laws being submitted with factors describing why s.35 of the PC should be applied, I am also cautious as to the genuineness of such submission. The wife was not present in court at the time of mitigation, there was no letter from her to confirm such submissions, and nothing was sent to prosecution on those matters so they are also aware.

For the above analysis and what has been submitted to me by both prosecutions and defence and my assessment of all that is before me, I find s.35 of the PC not relevant and applicable as submitted by the defence counsel. The circumstances of this case do not fit in with circumstances of a case that will attract or have s.35 applied to.

I have also assessed other case authorities on grievous harm and the usual sentence passed for such offending which is about 18 months – 5 years' imprisonment.<sup>1</sup> I consider the circumstances of this case as not as serious given the background of what occurred before the defendant threw the shell coconut at the victim. I agree with defence there was no malice involved but it transpired from the disappointment with the wife from the argument. A caring father would have thrown the shell gently and threw it at the leg part at least rather than aiming at the head part of the victim resulting in what had happened.

I also note the need to send out the message of deterrence so that principle is applied in this case. Fathers and the public in general should know that such offending is not accepted in any way. No one is to throw objects in such manner as the end result may be life threatening.

I further import my analysis delivered in my judgment. I also cannot impose a suspended sentence as explained earlier. In summary I find the defendant not a genuinely remorse person for the reasons of being drunk while the victim was hospitalised, no submission on him being apologetic especially to his son for what had occurred and especially for the injury sustained. The reconciliation I note is only between him and the wife. With this circumstances, and the maximum penalty I can impose, I will

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<sup>1</sup> *Regina v Batalau'ia* [2016] SBHC 29; HCSI-CRC 457 of 2013 (18 February 2016).

impose a 2 ½ years' imprisonment term on the defendant. Deterrence principle is applied with all the factors I have deliberated on.

**Court orders:**

1. Impose 2 ½ years' imprisonment.
2. Time spent in custody to be deducted from the term of imprisonment imposed.
3. Right of appeal by both parties to be exercised within 14 days from the date of delivering this sentencing ruling.

*Tearo Beneteti*

**Tearo Beneteti**

