



**IN THE MAGISTRATES COURT  
OF SOLOMON ISLANDS**

*Criminal Jurisdiction*

Criminal Case Nos: 940/2017

**REGINA  
-v-  
LAWRENCE LILIVA**

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**Date of Sentencing:** 24/08/2018

*Police Sergeant ADIFAKA for the Crown  
Mr. KADI for the Defendant*

Sentence

1. Mr LILIVA was found guilty on one count of Armed robbery contrary to section 293(1)(a) of the Penal code.
2. This guilty plea arose after the first prosecution witness gave evidence on a trial proper. At the closing of the evidence in chief process, the defendant instructed his defence counsel that he had changed his attitude towards pleading. The defence counsel act upon instructions and make application not to cross examining the evidence adduced by PW1, instead ask to re-arraign the defendant. The defendant pleaded guilty to one count of Armed Robbery.
3. **The Law**

Robbery, contrary to section 293(1)(a) of Penal Code.

*“Any person who (a) being armed with any offensive weapon or instrument, or being together with one person or more, robs, or assaults with intent to rob, any person; is guilty of a felony, and shall be liable to imprisonment for life.”*

4. The principal guideline of sentencing is clearly stated in the case of *Farsy v Reginam*, [2004] SBHC 120; where his Lordship Palmer stated; “ when considering what sentence to impose or would be appropriate, the courts have developed from guiding principles. These are Retribution, Deterrence, Prevention and Rehabilitation. Any Judge who comes to sentence ought always to have those four classic principals in mind and to apply them to the facts.
5. In the case of *Johnson v Tariani*, Court of Appeal of Solomon Islands; where Sir Mari Kapi JA stated; “Where the law simply provides a maximum sentence, the courts are given a very wide discretion to determining the appropriate penalty in a case. The courts have developed principles of sentencing which guide the exercise in his discretion.”

**Brief facts.**

6. At the outset, there was no set of agreed facts submitted, however, the court has taken into account that the defendant has change his plea after the forensic evidence was completed. Therefore, the facts of the case stands as it is, except for being said to be jointly charge.
7. Briefly, on the 31<sup>st</sup> of August 2017, while the complainant was still sleeping on the sofa in his living room, he was awoken by his dog barking. When he fully awoken he saw two men in dark clothes inside his sitting room but could not identify them. One of the two men approached and punched the complainant and said words to the effect, “I will kill you.”
8. While the intruder continue punching, the complainant managed to grab his other hand. The complainant can felt the intruder had a pliers in his other hand. He was so terrified and fear for his life, he told the intruders to take what they want and leave. After saying this, both intruders left him and immediately they search around the room get what they want and left.
9. It was discovered after the intruders left that they took a bag containing the sum of SBD\$8,000.00, 1x red Asus laptop (worth the value of USD\$1,200.00 and 1x

Asus cell phone (value at USD\$200.00). These properties had never been recovered.

10. On the next day, the matter was reported to police and police forensic experts attend and condoning the building. It was later discovered that the intruders got their entry point by breaking through the window on the side of the sitting room.
11. The Police Forensic discovered some visible fresh latent prints at the point of entry. The latent prints were lifted for further comparison at the police forensic lab. The Police Forensic experts confirms that the latent prints lifted from the scene of crime were matched with the active prints of the defendant (Lawrence Roles LILIVA) which was kept at the Police Forensic finger print bureau, Police Headquarters.
12. The defendant (Lawrence Liliva) was apprehended and dealt with accordingly, charged with one count of Armed Robbery contrary to section 293 of penal code.

#### Sentencing Tariff

13. In our jurisdiction (Solomon Islands) the offence of Armed Robbery is considered as an offence in most serious category. It bears the maximum penalties of life imprisonment. However, there was no such guidelines as to what methodology should be adopted by this court (Magistrate Court) when sentencing on offences that has penalties of life imprisonment.
14. The case of *Regina vs Kada*, [2008] SBCA 9 became an appalling case of a home invasion. This case set the principles where the sentencing court to observe that the sentences were within the sentencing judges or magistrate's discretion and demonstration no appealable error.
15. Although there was no such guidelines as to what methodology to be adopted in the magistrate court, I am of the view that the same principles of sentencing is always the guideline whether in the magistrates' court or the higher court. It depends on the gravity and circumstances of each case. Whilst I acknowledged the independent discretion that must be exercised by each magistrate, the court must strive for coherence and similarity of outcome in similar cases.

16. The starting point of more serious home invasion case is in the range of 8 to 10 years as in the case of *Kada* [2008]. For a specific charge of serious armed robbery, for example, bank robbery as in the case of *Selo v Regina* [2017], the CA of SI established the starting point tariff for Bank Robbery in its own words would be 15 years. For the grievous bodily harm, 8 years and can be increase it to 10 years because of the aggravating features of that particular offence including the injuries to the victim.
17. In our current case, the gravity and the circumstances falls a bit lower than the serious home invasion incident as mentioned in the above cases. Having considered the appropriate starting point for robbery charge that has less gravity and circumstances, 5 years would be an appropriate starting point in this case. It can be increase for grievous bodily harm, however, Mr. Liliwa was not charged either on that bodily harm charge.

#### **Robbery and Home invasion**

18. It is plain that the community in Honiara City is increasingly concerned at crimes committed during home invasion.
19. Home invasions are a particularly traumatic intrusion into the lives of citizens and foreigners who lives and worked in Honiara. The most striking features of this episodes is the sheer terror to its victims. They are set upon within the apparent safety of a private dwelling by complete strangers. This unjustified acts by intruders like Lawrence LILIVA to invade the home of a Taiwanese Diplomat who works for the Republic of China, at the Taiwanese embassy office in Honiara was totally condemned by the entire community in Honiara City. As such acts not only affect the lives of the immediate family of the victim, Mr. WENG but also instil fear in the whole community of Honiara creating a siege like mentality.
20. Entry into dwelling house at night and assaults upon occupants must draw stern sentences to reflect society's attitude to such conduct.

21. In sentencing offenders for home invasion the court have always recognized the sanctity of the home and have insisted that violence occurring in a person's house is to be treated as an extreme aggravating factors calling for higher sentence.
22. At the very least the victim and the society deserve the small comfort of knowing that while the trauma and fears the home invaders are not free to ply their miserable trade.
23. However, since this offence was in the middle- range of home invasion, I still maintain the starting point of 5 years would have been appropriate. This is only a starting point and will need to be adjusted by the application of appropriate aggravating and mitigating circumstances.
24. A thorough search on similar cases in this jurisdiction on sentencing defendants who found guilty on lesser or middle range of home invasion has been made and I have appreciated the fact that each case has to be dealt with on its merits.
25. I also appreciated that most of the Robbery cases that has higher penalties are all dealt with in the High Court. The starting point for higher range on home invasion is in the range of 8 to 10 years.
26. To make this case serious, the prosecution submitted and seek the court to consider the seriousness of the offence, where the incident occurred at night time, it was said to be a planned move to rob the complainant, the dangerous weapon involved is a pliers. The property stolen was not recovered.
27. The aggravating feature applicable in this case are:
- The seriousness of the offence,
  - The fact the victim was lives alone during the time of invasion,
  - The use of weapon (plyers)
  - The terror, psychological and emotional harm accompany home invasion at night by two or more people.
  - Property stolen was never recovered
28. On mitigation, Counsel for the defendant submits and ask this court to consider several mitigating factors on behalf of the defendant.

29. First, the defendant claimed his youthfulness and guilty plea at the first instance which serves every body's time especially putting the complainant on the witness box. Secondly, the issue of delaying in prosecuting this case. It was conceded that the delayed in this case was the making from both parties. For instance, for the defendant side, the continuous change of legal representative and for the prosecution the delay in following up with the evidence of the forensics.
30. Having considered the mitigation submitted on behalf of the defendant, I have taken into account the personal circumstances of the accused. His early pleas serves everybody's time although he had changed his attitude within the process of trial proper. He is a first offender, he is remorseful of his action.
31. In balancing out against the aggravating features, the applicable mitigating factors in this case would be as follows:
- Cooperation with police,
  - First offender,
  - Easily accepting the evidence of prosecution at earliest stage in a trial proper and
  - Time spent in custody awaiting trial.
32. Having considered the mitigation features submitted by the defence counsel, the court has considered that the defendant's date of birth is not reveal and unknown. He is a married person raising three child of his wife.
33. In relation to the delay of prosecuting, I have gone through all the court's record and reconciled them with events, I am of the view that it is fair to say that the delay was caused from both the prosecution and the office of the Public Solicitors failures to advance the case on time.
34. Court have often recognized that sparing victim's agony of relieving their terror through the process of complete trial proper deserves full recognition. The acceptable mitigation features are also taking into consideration and deserve some discount. The days spent in custody is considered.

35. However, the aggravating features also deserves some recognizance in this case.

For these reasons I see a discount 12 months from the 5 years starting point as being appropriate.

36. I have considered carefully the question whether I should suspend this sentence in full or part under section 44 (1) of the penal code. I bear in mind both offences involving dangerous weapons which contravening section 44(2) of the penal code that stated "*the provisions of subsection (1) of this section shall not apply where the offence involved the use or illegal possession of a weapon.*"

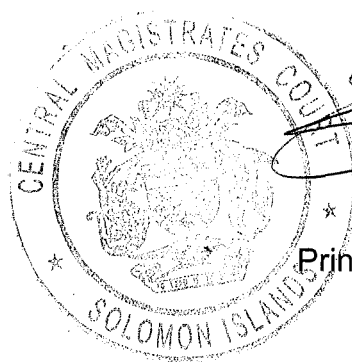
37. Bearing in mind the four principles guideline on sentencing, a deterrence sentencing is much appropriate in this case. This is to send a message to the public in Honiara and also the entire community in Solomon Islands that the law will take a tougher measure on those who denies constitutional rights of innocent people who were invaded in their private home.

38. In balancing consideration, I concluded that a total term of 4 years imprisonment for Robbery charge that has mid-range of home invasion is appropriate in this case.

Order:

- 4 years imprisonment for the Robbery Charge,
- Sentencing of 4 years to backdated to the time he was taken into custody.

Liberty to appeal this sentencing is within the range of 30 days.



Jim Seuika

Principal Magistrate

24/09/2018