

**IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS**

CRIMINAL JURISDICTION

Criminal Case Nos. 493 of 2017 & 490 of 2018

REGINA

V

MICHAEL AUGA

Date of Hearing: 4th September 2018
Date of Verbal Sentence: 7th September 2018
Date of written sentence: 17th September 2018

Mr. Adifaka for the Prosecution
Mr. Harunare for the Accused

SENTENCE

1. The accused, Michael Auga, has two criminal files. One involving armed robbery and the other one involved traffic offences.
2. On arraignment, he pleaded guilty to all the charges for both files as follows:
 - (a) Robbery contrary to section 293 (1) (a) of the Penal Code – has a maximum penalty of life imprisonment;
 - (b) Reckless and dangerous driving contrary to section 39 of the Road Transport Act – has a maximum penalty of a fine of \$5,000 or 6 months imprisonment of both;
 - (c) Presence of alcohol in person's blood contrary to section 43A of the Road and Transport Act – has maximum penalty of \$10,000 or 1 year imprisonment or both; and
 - (d) Driving without a valid driver's license contrary to section 20 (1) of the Road Transport Act – has maximum penalty of a fine of \$5000 or 6 months imprisonment or both.
3. I will deal with the armed robbery first.
4. The brief facts of the armed robbery charge show that on 1st May 2018, the accused and his other accomplices who are yet to be arrested came in a vehicle and parked in front of the shops near the Public Solicitors Office. One of the accomplices, Eddie Funubana, got off the vehicle and sat on the concrete walkway in front of the buildings while the other accomplice, Andrew Kesi, waited inside the vehicle.

5. At about 7:30pm, a female Chinese walked towards her vehicle that was also parked at that location. She opened her vehicle and when she inside the vehicle, Funubana saw her and advanced towards her and pulled her bag. She screamed and shouted for help. This made her husband Jiang Zhu (victim) came to assist her. Zhu somehow removed the bag from Funubana.
6. It was when Zhu tried to assist her that the accused advanced towards him and attacked him with a small bayonet knife. He attacked him in order to steal that bag from him. The accused removed that bag after he struggled with Zhu and further, after he had injured Zhu with that knife. The accused quickly escaped with that bag to their gate-away vehicle and they all fled from the scene.
7. That bag that was stolen by the accused contained \$10,000 cash. That money has not been recovered until date.
8. He was remanded in custody since May 2018. On 24th August 2018, he pleaded guilty to this charge.
9. For his case, I consider the following as aggravating factors:
 - (a) He was in company of other persons when he carried out the robbery on the unsuspecting victim;
 - (b) He used a weapon and that is a knife in order to carry out the robbery;
 - (c) The robbery was unprovoked and clearly callous;
 - (d) He robbed the victim who was performing a public duty in trying to assist his wife who was also subjected to robbery by another accomplice;
 - (e) The robbery was well planned in that the accused came in a gate-away vehicle with others. They used the vehicle to transport them to and from the scene of the robbery;
 - (f) Large amount of money - \$10,000 was stolen and never recovered; and
 - (g) The victim suffered injury as a result of the robbery.
10. On the other hand, I consider the following as his mitigating and personal factors:
 - (a) That he is a 24 year old father with one child;
 - (b) That he is a first time offender;
 - (c) He entered guilty plea to the charge;
 - (d) That he was remorseful for his action;
 - (e) He was the one who paid for rentals for the house that he accommodated in at Burnsreek; and

(f) His parents also depended on him for financial support.

11. Armed robbery is a serious offence. When it is carried out on innocent people with the use of arm or dangerous weapon is even more serious. In this case, the accused came with two others venturing out in the evening for the sake of stealing. He was the one who attacked the victim with the knife and as a result, he stole the bag that contained \$10,000.
12. The concerning part of his culpability is, the victim was performing a public duty in trying to assist his wife from being robbed by the other accused accomplice. The accused ignored this and instead attacked him with the knife.
13. He had to injure the victim with the knife in order to steal the bag from him. The circumstance of this case is very appalling and clearly a public eye-sore form of armed robbery. It involves three persons and was carefully planned with the use of a get-away vehicle. It also targeted innocent business people.
14. It is unfortunate that at this present time, we continue to experience this type of armed robbery in our country. A small country like Solomon Islands simply cannot afford to allow this type of serious offence to thrive. Our country's image and social cohesion continued to be degraded because of this utterly unacceptable type of offending and thus, this must be discouraged.
15. Therefore, there is legitimate expectations that those who involved in such high profile and aggravated robbery cases must be held accountable to it. The court is expected to uphold that expectation and apply it objectively.
16. Applying that concept to this case, this court cannot tolerate this and hence, a strong deterrent sentence must be sent not only to the accused but to also to like-minded offenders that a deterrent sentence is always inevitable. Innocent people must not be targeted by armed robbers like the accused herein.
17. On the other hand, since this is a guilty plea, the sentence to be imposed on the accused herein must be a discounted sentence.
18. I have been urged by both parties to consider other decided cases as guidelines for the sentence to be imposed for the accused. In my view, past sentences are only a guide and sometimes they provide an imperfect guidance to what ought to be the appropriate sentence for a particular case.
19. This case has to be decided on its own set of facts. I have looked at the past sentences imposed for armed robbery cases and it is my view that despite those sentences, men in particular are too prepared to take the risk of still committing this particular offence. I think the time has come that the court must adjust or increase its starting point in sentencing armed robbers where innocent people are targeted and subjected to unnecessary harm and injuries.
20. We cannot continue to wait for another few more decades before doing that, taking into account its prevalence in our country.

21. I was urged to consider that he did not benefit from the money stolen from this offending. Whilst that might be true, that does not change the fact that he was the one who took the bag from the victim. Otherwise, that bag would not be taken.
22. After carefully balancing the circumstance of this case together with the mitigating, personal and aggravating factors, in my view, a starting point of 4 years imprisonment is appropriate for this case.
23. Taking into account the aggravating factors, this sentence is increased to 4 ½ years imprisonment. However, I order that this will be reduced by ½ year to reflect his mitigating and personal factors.
24. The final sentence for the accused for this charge is 4 years imprisonment.
25. I now turn to his traffic matter.
26. The facts of the case show that on 12th April 2017 at about 16:30hrs, the accused was driving white Toyota Corolla car registered as MB-5753, heading towards the Soap Factory labour line at the back of the Tongs Refuelling Station.
27. He was seen driving at a very high speed and his driving was dangerous as he swayed from one side of the road to the other. It was then that he hit an old female pedestrian who was walking along the roadside. The vehicle dragged the victim and threw her down beside a brick wall of the Tongs building. The vehicle continued further and crashed onto that brick wall as well.
28. After, the accused moved the vehicle from the wall but unable to control his driving so he hit a fence again. He continued to drive but then he decided to stop.
29. Police attended to the scene. The accused was subjected to a breathalyser test. The result revealed that it was beyond the permitted level.
30. Upon investigation, it was also found that he did not have a valid driving license when he drove that vehicle.
31. From the facts of this case, I consider the following to be the aggravating factors. First, he made a deliberate and conscious decision to drive the vehicle even though he was drunk. The level of alcohol present in his blood clearly rendered him unfit to drive. Despite his significant state of insobriety, he decided to take the risk and drove the vehicle resulted in the accident where a pedestrian was hit. Second, he was observed to be driving at a high speed and in a zig zag manner before the accident occurred. That certainly is a dangerous driving and one that poses great risk to other road users. Finally, an elderly female pedestrian was hit and dragged on the road. That pedestrian sustained serious injuries such as head injury, right hand wrist twisted, right tibial bone was fractured and multiple abrasions and lacerations to her face, limbs and trunk. It was fortunate she survived the accident, otherwise, that might be a fatal one.

32. In terms his mitigating factors, I considered all his guilty pleas to the offences. Also; he is a first time offender. He was very remorseful for his involvement in hitting the pedestrian with the vehicle.
33. In terms of his personal circumstances, I take into account that he is a married person and no doubt, his family will be affected if he is incarcerated. I further take into account his limited education and that he was only a grade 1 leaver. His limited education might also contributed to his demise in not able to think properly about the consequences of his action when driving the vehicle whilst intoxicated with liquor. Further, I also take into account the compensation payment of 7 shell monies and \$4,000 cash being paid to the victim's family. I also noted the delay it takes to have this matter finalised.
34. I give full credit and weight to those mitigating and personal factors accordingly.
35. This is a very serious motor vehicle accident case. In my view, a custodial sentence is warranted.
36. I have considered the facts of this case and it is similar to the case of R v Samo¹ and R v Kere² I decide to adopt the same approach for this case.
37. In Samo,³ the offender was sentenced to 4 months imprisonment for the charge of reckless or dangerous driving, 3 months imprisonment for taking vehicle without authority and 2 months imprisonment for driving without a valid driver's licence. In that case, the accused took the vehicle without permission and has no valid driving license. He drove the vehicle along the Tuvaruhu Road heading towards China town. On his way back and as he was about to turn into a feeder road leading to a workshop, he hit a young female pedestrian who was walking across that feeder road. He threw her off the road and landed on a heap of soil about 6 steps away from the site of the impact, rendering her unconscious. She sustained injuries to her body. Fortunately, she survived. In that case, the Court expressed the need to seriously discourage culpable driving taking into account its prevalence in Honiara.
38. In Kere,⁴ the accused pleaded guilty to various traffic offences and was sentenced to 5 months imprisonment for dangerous driving, 6 months imprisonment for presence of alcohol in person's blood, 2 months imprisonment for driving without a driver's license and 3 months imprisonment for taking vehicle without authority. In that case, the accused was drunk with kwaso and collided with a RAV4 at the Central Market and continued to drive on the island and eventually collided with a bus on the opposite traffic.
39. In this case, the gravamen of his offending is that, he flouted the major traffic offences. He was intoxicated with liquor and also, he didn't have the valid driving licence, yet he made a conscious decision to drive the vehicle that resulted in the serious motor vehicle accident that rendered an innocent pedestrian suffered series of injuries to her body.

¹ CMC-CRC No: 614 of 2016

² CMC-CRC No: 932 of 2016

³ See footnote 1 above

⁴ See footnote 2 above

That is stupidity at its highest. This court must not tolerate such nature of offending and an appropriate sentence must be imposed.

40. Sentencing is a discretionary power exercisable by the court. The decision on whether or not to send a person to prison is an unfettered power of the court. That power can only be erroneously exercised if the sentence imposed is beyond the prescribed maximum penalty.
41. However, that exercise of power must be fair, taking into account the circumstance of the case.
42. When all these factors are considered, the appropriate sentence for the accused are as follows:
 - (1) Dangerous driving, contrary to section 39(1) of the *Road Transport Act* - 5 months imprisonment. This sentenced is reduced by a month to reflect the compensation given and therefore, **4 months** imprisonment is imposed.
 - (2) Presence of alcohol in person's blood contrary to section 43A of the *Road Transport Act (As amended)* – **6 months imprisonment;**
 - (3) Driving without a valid driving license, contrary to section 20(1) of the *Road Transport Act* – **4 months imprisonment;** and
43. All the traffic offences will run concurrent to each other - meaning he will serve 6 months imprisonment.
44. This 6 months imprisonment will be cumulative to the 4 years imprisonment for the robbery charge, making it to a total term of **4 years 6 months** imprisonment.
45. Presentence period is to be taken into account.
46. Right of appeal applies.



(Augustine Aulanga – Principal Magistrate)