

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

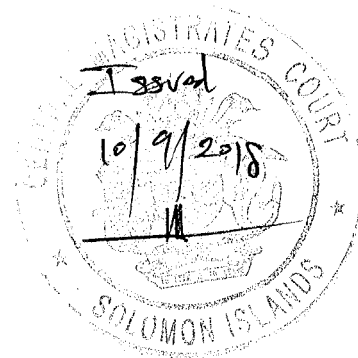
CRIMINAL JURISDICTION

Criminal Case No. 361 of 2018

REGINA

V

LINTON EDMOND SAEMALA



Date of Hearing: 4th September 2018

Date of Ruling: 10th September 2018

Mr. Abel Maelanga for the Prosecution

Mr. L. Waroka for the Accused

SENTENCE

1. The accused, Linton Edmond Saemala, pleaded guilty to one count of unlawful wounding contrary to section 229 of the *Penal Code*. The circumstances that show how the accused committed the offence are these. On 1st of April 2018 at about 6:00am, the accused and another co-accused, Seda Suiramo¹ picked up the victim, Kings Tofilu, in a car from China town and they drove up to a settlement located above Mbokonavera 4 called Papaho.
2. Upon arrival, they all started drinking alcohol. It appears that it was a friendly drinking and they even made jokes to each other.
3. At about 10:00am, the accused asked the victim to go and get a power bank from their house to charge the mobile phone that was used to play music.
4. The victim refused to go and so the accused started to get angry with him. The accused got a short bladed knife and stabbed the left shoulder of the victim with his right hand. As a result, the victim suffered wound to his shoulder.

¹ He is still under Warrant of Arrest issued on 2nd of August 2018

5. The victim escaped from the accused down the hill while the accused and Suiramo chased after him. Later, they separated.
6. The victim attended to the National Referral Hospital and was examined by Dr. Ezekiel Stanley Moli who noted the victim suffered a soft tissue injury as a result of the slightly deep incision wound to his left shoulder.

Defence submission

7. The defence submitted that the accused is a married man and has no previous convictions. Apart from his nucleus family, he also financially supported his parents and one of his brothers who is attending a vocational school in Ranogga. At the time of the offending, he works as a security officer for Fangs Company Limited. It is now uncertain whether he will return back to his job in the future.
8. The victim is his cousin brother. The reason why he stabbed him was due to an argument that occurred during the drinking that made the victim picked up a stone and tried to shoot him. This provoked him to use the knife against him – a retaliatory action to scare off the victim.
9. After the incident, he already gave him \$400 as compensation and they had already reconciled.
10. He had already spent about 5 months in custody. The defence suggested 2 years imprisonment is the appropriate sentence.

Prosecution submission

11. The prosecution on the other hand asked for a deterrent sentence with the view of discouraging the accused and the public from committing wounding offences. The prosecution suggested a custodial sentence in the range of 18 – 24 months is appropriate for this case.

Mitigating and personal factors

12. I consider the following as mitigating factors:
 - (i) He is a first time offender;
 - (ii) His guilty plea;

- (iii) Remorse;
- (iv) Family man with huge responsibility;
- (v) Payment of compensation of \$400 to victim after the incident; and
- (vi) Relationship between him and victim already normalised.

Aggravating factors

13. The aggravating factors in my view for this case are:
- (i) Use of knife; and
 - (ii) Accused was drunk at the time of offending.

Accused culpability

14. I find this is not a premeditated act but only a one-off incident. The accused decision to use the knife was due to his anger with the victim when he refused to go and get the power bank or perhaps, for his over reactive response when he saw the victim tried to shoot him with a stone. However, in my view, he was reckless when he lifted the knife and decided to stab the left shoulder of the victim. I find he made an erroneous decision when he knifed the victim. I think part of that poor decision making was due to his mind was affected or control by alcohol.
15. That knife is a weapon and is capable of causing injury. This satisfies section 84 (6) of the *Penal Code*. The nature of that knife is dangerous as depicted in the photographs tendered to court by the prosecution. No doubt, when used by the accused, it easily caused an incision wound to the victim.
16. I find his level of culpability is at the middle range of the seriousness of this offence.

The nature of the wound

17. The wound was not measured so I am unable to state with certainty the size and nature of it. The only description given is; it was a soft tissue injury due to a slightly deep incision wound. The nature of the injury is nonlife threatening and so the victim was quickly recovered thereafter. However, it cannot be denied that the victim had suffered injury or wound as a result of the accused negligent action.

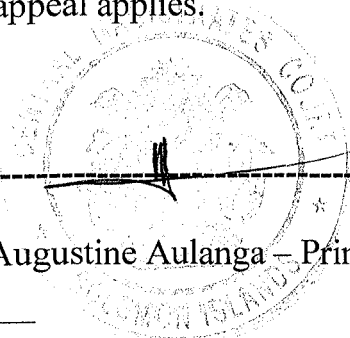
Sentencing

18. This case involves two cousin brothers who initially enjoyed drinking alcohol but somehow turned nasty along the way that resulted in one stabbing the other. Despite they were family members, I find the accused decision to use the knife against his cousin brother is unnecessary and even callous. He is uncaring and inconsiderate towards the safety of his own family member. He didn't bother at all about the consequence that will follow if he stabs the victim with the knife. It went beyond the action of a family member and treated the victim not as his cousin brother but as an enemy. It was fortunate that the victim survived the incident, otherwise, the consequence would be severe and regrettable.
19. Family members must learn to love and respect each other since is hard to show that to other people if it doesn't begin first in the family. They must learn to solve their problems in a nonviolent and appropriate way other than resorting to crime. When living in urban communities for example, they must learn to behave themselves and like role models of their own families and in the eyes of different people.
20. People with uncontrollable or arrogant behaviours when under influence of alcohol or liquor must learn to control themselves if not forego liquor or alcohol because of the negative consequences that will follow suit. Nowadays, people must learn to be civilised in thinking and doing things and be receptive to follow the laws that are put in place by the State for regulating of our behaviours. It is through behaving ourselves and obedient to the laws that our societies can be safer and are made better.
21. These are all matters of common sense that have been easily overlooked by many individuals resulting in a lot of antisocial behaviours that we continue to experience in our communities.
22. I urged the accused herein to take note of these sentiments so that he would avoid similar incident that may confront him in the future.
23. A number of case laws were referred to by the prosecution and defence as indication of penalties.
24. In the High Court case of *Regina v Paul Mona*,² Faukona J, (at para 19) stated that the range of sentences for unlawful wounding is from 12 months suspension sentence to 4 ½ years imprisonment. In that case, the court

² [2014] SBHC 37

referred to the case of *R v Cawa and Others*,³ *R v Gere*,⁴ *R v Funifaka*,⁵ and *R v Nguyen Van Thang*⁶ to show that range of sentence.

25. The trend of the sentences from those cases revealed that the penalties involving the use of knife attract higher sentences than other ordinary wounding cases.
26. In sentencing, there is this cardinal principle that the more serious the offending, the greater the punishment expected. This also operates the other way round.
27. For this case, I understand the offending involved cousin brothers and that they had already reconciled with each other. Viewed from their family or cultural context, this may not be a big thing and can be easily overlooked. However, that perception is different to the rule of law where it forbids ill treatment of another person despite of age, gender, race and creed.
28. For this present case, I am of the view that for unlawful wounding cases where it involves the use of knife or any weapon in such nature, a starting point of 2 years imprisonment is appropriate so is the starting point for this present case.
29. Taking into account the mitigating factors that substantially outweigh the aggravating factors, this term is reduced by 4 months.
30. The resulting sentence is the accused, Linton Edmond Saemala, will serve **20 months** imprisonment for this offence at Rove Correctional Service.
31. Presentence period is to be taken into account.
32. 14 days right of appeal applies.



(Augustine Aulanga – Principal Magistrate)

³ [2012] SBHC 134; HCSI-CRC 405 of 2008

⁴ [2013] SBHC 19; HCSI-CRC 83 of 2008

⁵ [[1997] SBHC 31; HCSI-CRC 33 of 1996

⁶ SICOA No. 28 of 2013