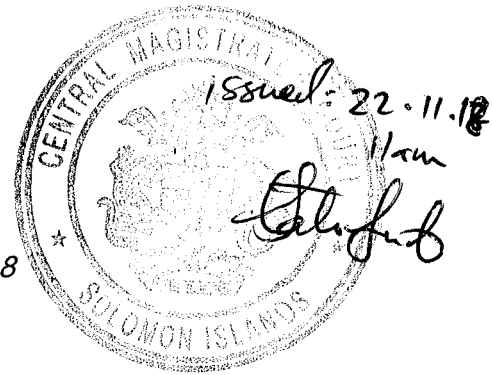


IN THE MAGISTRATES COURT
OF SOLOMON ISLANDS

Criminal jurisdiction.

Crim. Case No: 134/18



In the matter of:

REGINA
-v-
ALFRED ALA

Sentence

1. Mr Alfred ALA was found not guilty of one count of Kidnapping to cause grievous harm under section 251 of the penal code, however, this court found him guilty of assault occasioning bodily harm and threatening violence although he was not being charged with. This conviction was made under section 159(2) of the Criminal Procedure Code.
2. The defendant appear from custody to receive his sentencing today.

Brief facts

- 3.
4. Briefly, the agreed facts in which the defendant found guilty of is as follows. On the 9th February 2018 at about 12 midday, the defendant pick the victim (complainant) to an isolated spot at Mount Austin, east Honiara. While they were together at the gravel spot, an argument was later heated up between them. The defendant threatened to kill the complainant, she escaped down from a stiff hill, resulting injuries on her foot. She ran for help in a nearby residence, the defendant catch up and assaulted her. As a result of that assault, she suffered injuries.
5. The matter was reported to police and the defendant was charged and brought before this court.

The Law

6. Section 245 of the Penal Code

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and shall be liable to imprisonment for five years.”

7. Section 89(a)(b) of the Penal Code.

“ Any person who:- with intent to intimidate or annoy any person or commits any other breach of the peace, shall be guilty of misdemeanour, and shall be liable to imprisonment for one year.”

Mitigation

8. Mr WAROKA of Public Solicitors Office submitted on behalf of the defendant and say that Mr Alfred ALA reacted after he was provoked through unexplained telephone calls from the complainant's cell phone. The assault was not plan. It was from a heated argument among the complainant and the defendant.

9. The defence Counsel further submits that the range of sentencing tariff for this offence in this jurisdiction is of Bound over to 15 months imprisonment depending on the unique circumstances of each cases.

10. He seek the court to consider the personal circumstances of the defendant and suggested that the defendant is a good candidate for a bound over or a suspended sentences as there was no dangerous weapon being used.

11. In his final remarks, Mr WAROKA submits that Mr ALA has been held in custody awaiting trial since 21st of February 2018 until today. In brief calculation, Mr WAROKA affirmed that the defendant has been held in custody for more than a 9 month 4 weeks.

Aggravating factors

12. The aggravating features submitted by the prosecution are as follows:

- The seriousness of the offence,
- The victim is a women,

- The remoteness of the location where the offence was committed.
- The victim has suffered the extension of the injuries.
- It was suggested that the appropriate sentencing reserve for such offence is an immediate custodial sentence.

13. After considering submissions from the prosecution and the mitigation of the defendants, first I have taken into consideration the circumstances surrounding briefly in this case.

14. The offence of Assault Causing Actual Bodily Harm is an offence of a personal or private nature and not amounting to felony. Section 245 penal code expressly stated that it is a misdemeanour offence and not felony. One may therefore ask, is the offence of ACBH not aggravating in degree. It is aggravating in degree. It is an assault that caused the victim to sustain injuries. To ascertain the extent of the injuries a Magistrate presiding must inquire, and where possible obtain a medical report of the injuries sustained by the victim. Only then the court may verify the extent of the injuries, and may verify the degree of aggravation of the offence. Not only that, other facts may also assist the court to determine the degree of aggravation. For instance whether the accused was drunk at that time; has he got any previous conviction. Whether the injury was caused by a weapon of any nature. The age of the victim, if the victim is a woman or girl that is aggravation. Whether the accused at the time of inflicting the injuries assisted by other men then it is aggravation.

15. Any person who found guilty under section 254 of the penal code can be liable to five years imprisonment. This maximum penalties can be imposed depending on the circumstances of its case. In our current case, the defendant did assault the victim through words of threat and actually using his fist. However, since the medical report was not really indicating how serious the injuries, I fail to guess how serious it is, therefore, the court can concluded that the injuries is a minor one. It does not mean that since the injuries is a minor one, section 254 will not applicable.

16. In relation to the threatening violence offending, the facts of the case showed that on 9th February 2018, you picked the victim and took her to mount Austin in a remote spot. After a heated disagreement between both of you, you threatened to kill her. You then threatened by saying these words “bae yu no lukim mummy and dady blo yu.” The complainant was very frightened of your threatening words and from that threats of fear, the complainant escaped down a stiff hill and injured.

There are few aggravating features for this offence. First, the victim is a girl. Second, the location is an isolated spot. Third, when the victim escaped searching for help in a nearby building or residence, you don't respect the occupant of the residence who try to assist.

In the case of *R v Pedeleni [2013] CMC-CRC No: 676*, the court had imposed 4 months imprisonment for the offender who pleaded guilty and committed this same offence with the use of a knife. For purposes of consistency, I decide not to impose the same penalty of 4 months imprisonment for this case. You have been found guilty after trial, therefore I will impose one month increase to 5 months imprisonment in your case.

17. Having considered the mitigation of the defendant and the aggravating features in this case, the court takes balancing exercise on which side the sentencing method will fall. After a careful balancing thought, the court considered that a custodial sentencing is more appropriate in this case.

18. This court is considering the fact that Mr ALA has been held in custody for about 9 months awaiting trial. I have taken into account that this period spent in custody will be considered as part of the sentencing.

19. Having say this the appropriate sentencing in this case is a custodial sentencing. After considering the circumstances surrounding this case, 12 month imprisonment is imposed against the defendant in count 1 and 5 months imprisonment in count two. These sentencing will serve concurrent to each other.

20. Taking into consideration the time spent in custody, this sentencing is back dated to the 21st of February 2018.

Order:

- 12 months imprisonment for Assault Causing Occasioning Bodily Harm,
- 5 months imprisonment for Threatening Violence,
- Both sentencing to serve concurrent to each other, the total sentencing to serve is 12 months imprisonment.
- Head sentencing to be back dated to the 21st of February 2018.
- It is for the Correctional Institute to calculate and grant one third remission from original sentencing.
- 12 months Bond to keep peace is imposed in the sum of \$200.00

Right of appeal is extended within 30 days from today's date.



COURT

Jim Seuika

Principal Magistrate

22.11.2018

