

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

Criminal Jurisdiction

Criminal Case Number 1174/2014

On the 5th day of December 2018
Before Deputy Chief Magistrate Ricky Iomea



BETWEEN: REGINA

AND: DON HOROWAI JUNIOR

am

Jasper Anisi for the Prosecution
Stanley Aupai for the Accused.

SENTENCE

1. The Accused Don Horowai Jnr pleaded guilty to one count of "Grievous Harm" contrary to section 226 of the Penal Code after the Prosecution decided to withdraw the original charge of Attempted Rape at a time scheduled for trial on that charge.
2. The following facts are agreed to by the Prosecution and the defence.
3. The prisoner in this matter is Don Horowai Jnr, and the victim in this matter is Jessie Hendry. The incident took place in the early hours on Monday morning 1st day of December 2014.
4. The victim and her two other friends (Gila Kaimanisi and Ben Sare) were drinking kwaso, and the prisoner and a boy named Junior came to join the victim and her friends. Later the prisoner asked the victim to braid his hair. The victim willingly braided the prisoner's hair. The prisoner then asked the victim if they could have sex. The victim replied him saying "afta umi drink finis umi just facke" (after we had our drink then we can have sex)
5. After having drunk some kwaso, everyone left in a Hilux which was owned by a person called Kerry, to buy some more kwaso, and later went down to Tanagai field to drink their kwaso. It was there, that the boy named Junior (prisoner's friend) left the prisoner and got into a Suzuki heading down west side from Tanagai. Later in the early hours of the morning of 1st of December 2014, the victim, her two friends Gila Kaimanisi and Ben Sare and the prisoner and the driver of the hilux Kerry came back from west side and parked at the 02 bus stop.
6. There at the 02 bus stop, the victim decided to walk back to her house. The victim's house at that time was located above White River SDA Church. As she walked back home, the prisoner followed

her. The prisoner also live within the same vicinity as the victim.

7. As they were walking back home the prisoner called the victim *karange*, the victim told the prisoner that she was not mentally ill. She laughed at the prisoner and the prisoner slapped her and she fell down near the drain next to the SDA Church at White River.
8. The prisoner then hold on the victim's hand and pulled her to an area where old unused vehicles were kept, and pushed the victim down. The prisoner then leaned over the victim as she tried to escape from the prisoner. The prisoner then grabbed on the victim's left hand and twisted her hand. As a result of that she sustained injury on the left arm.
9. The victim was later taken to the hospital and was admitted to the Orthopaedic ward. She sustained an injury to her left elbow. X-ray revealed multi-fragment fracture of the left supracondylar (above the elbow) humerus (arm) bone with extensions into the elbow joint as per medical report by Dr. Stephen Kodovaru.
10. What aggravates the offending is that the offence was committed when the Accused was under the influence of alcohol. The injury sustained by the victim was serious as reflected in the medical report as outlined in the facts above. The victim had a marked reduction of elbow extension (her elbow is stuck at 65 degrees of flexion). The action of the defendant had denied the victim of a normal, fully functional arm from the date of the offending, up till now and there is no guarantee that that arm will function normally in the future.
11. In terms of mitigating factors, the defendant has demonstrated remorse by pleading guilty to the offence when the Prosecution decided to proceed with this charge.
12. There is nothing to indicate that he had planned what he did. I accept that there is no pre-planning.
13. I accept that you he is a first time offender as confirmed by the Crown.
14. I also take into account the fact that he is a young family man, with responsibilities to members of his family who are depending on him for their wellbeing and survival. His imprisonment has certainly affected them and they will continue to feel the effects of his prison sentence. A prison sentence, in particular, a longer prison sentence will certainly increase the hardship his dependants are already facing, a hardship I do not want to impose on innocent family members if my duty permits. This is unavoidable and the defendant, himself is to be blamed

for the negative impacts that his prison sentence will have on his family.

15. I have had the opportunity to consider the sentences that the courts in this jurisdiction have imposed in past cases where accused persons had also pleaded guilty to this same offence. I must say that they serve as useful sentencing guidelines in considering the appropriate sentence to be imposed. However, as widely accepted, no two cases are the same. Each case must be treated on its own unique set of facts, when deciding the appropriate sentence to be imposed.
16. In deciding the sentence to be imposed in this case, I am also conscious of the Court's duty to continue to send a deterrent message to the Public that this kind of offending is totally unacceptable.
17. In view of the seriousness of the offence as reflected by the maximum penalty provided and taking into account the aggravating features present, I am of the view that the appropriate starting point is 2 ½ years imprisonment. Taking into account the mitigating factors, including your plea of guilty and the fact that you are a first time offender, I will deduct 6 months.
18. So the total effective sentence to be served is 2 years imprisonment. Pre-sentence custodial periods to be taken into account as I noted that the defendant had already spent some time in custody before he was released on bail and later re-arrested on a warrant of arrest and remained in custody to the date of sentencing. The pre-sentence period in custody will be calculated by the Correctional Services at Rove.
19. Right of appeal applies.

Ricky Iomea - Deputy Chief Magistrate.

