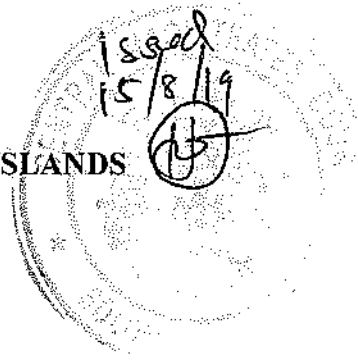


IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT TULAGI

(Criminal Jurisdiction)

Criminal Case No 65 of 2019

REGINA



-V-

URIEL POPONGO

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr J. Saugaro and E. Kangea, for the Crown (CIP Police Prosecutions)

Mr F. Kama of Public Solicitors Office for the Defendant

Date: 17 July 2019.

Notice: *This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication.*

SENTENCE

1. The Defendant, Mr Uriel Popongo was charged with two counts of Domestic Violence contrary to section 4(1)(a) and section 58 of the *Family Protection Act 2014* ("FPA")¹
2. On 16 July 2019, Mr Popongo pleaded guilty to both charges. I now convict him based on the guilty pleas entered. He also agreed with the summary of facts.

Facts

3. The basic agreed facts of this case were as follows:
4. Mr Popongo assaulted his wife on two different occasions in January 2019 at Niu Vunuha Village, Central Islands Province.
5. Prior to the two incidents, it was reported that the offender had also committed two similar incidents on his wife and the village chiefs mediated which resulted in the offender paying compensation to the victim.

¹ *Family Protection Act 2014*, s4 and 58

First Incident

6. On or about 13th January 2019, at around 0700 hrs, at Niu Vunuha Village, Central Islands Province, the offender physically abused his wife Ms Elizabeth Lia. The victim after having gone to her brother-in-law's house for betel nut chewing came back to their house and sat down at the verandah. Whilst sitting at the Verandah, the husband approached her and punched her mouth with his right hand (closed fist). She felt great pain and cried. However, they continued to live in their same house.

Second Incident

7. On 15th January 2019, at around 0900hrs, at Niu Vunuha Village, Central Islands Province, the offender committed domestic violence on his wife again. In that morning, the offender told the victim to go with him to get betel nuts in a location close to the village. As soon as they arrived at the bottom of their betel nut trees, the offender punched the victim on her face. He did this twice using his right hand with closed fist. The offender then held the victim's neck with his left hand and pushed two fingers inside the victim's mouth. As a result, the victim felt great pain on her throat. After having satisfied himself with what he did to the victim, the offender took the victim to their house. The victim then reported the matter to the village chiefs. The Chief, having mediated two similar incidents in the past, then reported the matter to the police on behalf of the victim. One of the main causes of these counts of domestic violence was that the wife was suspected of having an extra-marital affair with another man. The Police responded quickly and assisted the victim to Tulagi Mini Hospital in the Central Islands Province for medical treatment.
8. This resulted in the formal arrest of the offender and subsequently, charges were laid against him.

DISCUSSION

The Law

9. Section 4(1)(a) of the FPA defines domestic violence as a:

"...conduct committed by a person ("the offender") against another person with whom the offender is in a domestic relationship, or the threat of such conduct, the constitutes any of the following-

- a) *Physical abuse;*
- b) *Sexual abuse;*
- c) *Psychological abuse; and*
- d) *Economic abuse.*²

10. It *"...may consist of a single act or a number of acts that form part of a pattern of behavior even though some or all of those acts when viewed in isolation appear to be minor or trivial."*³

11. Section 58 of the FPA provides as follows:

² Family Protection Act 2014, s 4

³ Family Protection Act 2014, s 4

- 1) *A person commits an offence if the person commits domestic violence.*
- 2) *The Penalty for an offence under section (1) is a fine of 30, 000 penalty units or imprisonment for 3 years or both.⁴*
- 3) *It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for engaging in the conduct that resulted in the breach.⁵*

12. The FPA is “an Act to provide for the protection of families from domestic violence and to promote the safety, health and wellbeing of the victims of domestic violence...”⁶ The enactment of the FPA is a legislative response to the need to protect both men and women, the children, the old, the marginalized and all kinds of people from all walks of life from domestic violence. It must be noted that the most vulnerable people in our communities are the women and children as compared to men, however, nowadays, some men are also victims of domestic violence. Whatever punishment that will be issued for domestic violence must be done with great care to reflect the severity and gravity of the offence, and to send a deterrence message to the entire country, both personal and general, that the courts will not in any way tolerate domestic violence.
13. The pattern and trend of domestic violence that can be deduced from the actions of the offender in the present case shows that the violence was getting more serious and serious as the last incident reveals that the defendant had assaulted the victim with the intention to cause bodily harm, and it was a calculated move which ensured that the offender was free from any intervention from the public when he was committing violence at the betel nut plantation.

Aggravating Factors

14. The aggravating factors are as follows:
- 1) The monetary penalty and the length of imprisonment prescribed under section 58 of the FPA shows the seriousness of the Parliament to address domestic violence in Solomon Islands which has become prevalent and endemic in our communities, villages and of course our urban centers including Honiara. The offence carries a maximum penalty of SBD 30,000 dollars or three (3) years imprisonment.
 - 2) The incidents were repeatedly done and the offender had committed two incidents of similar nature in the past which was mediated by the village chiefs.
 - 3) The offender used closed fist in the first incident to punch the wife which resulted in great and it has the potential to inflict major injuries.
 - 4) In the second incident, the offender took the victim to their betel nut plantation which was a calculated move, in which the offender ensured that the victim was taken to a location in which she could not seek any assistance by shouting while he did his evil acts, by punching the victim with closed fist more than once. Not only that but he held the victim’s neck with his left hand and pushed his two fingers inside the victim’s mouth. The second incident was more serious as it could be brutal and life threatening.

Mitigating Factors

⁴ *Family Protection Act 2014, s 58*

⁵ *Family Protection Act 2014, s 58*

⁶ *Family Protection Act 2014, Long Title*

15. The mitigating factors are as follows:

- 1) He pleaded guilty to the first available instance which shows that he is remorseful. He also apologized to the Court for what he did.
- 2) He reconciled in front of elders, chiefs and paid a compensation of SBD 500.00 to his wife.
- 3) He cooperated with police during the interviews and before the charges were laid.
- 4) He is a first-time offender, at least according to the court records, although not the first time he committed such domestic violence on his wife.
- 5) He is married with a child and the only bread winner in the family.

Comparative Sentence

16. Mr Kama referred me to the case of *Regina v Tamana* [2017] SBMC 56; Criminal Case 131 of 2017 (14 November 2017).⁷ In that case the offender pleaded guilty to some offences contrary to the *Penal Code* [Cap 26] with two counts of domestic violence contrary to section 4 and section 58 of the FPA. For the first count of domestic violence, he was sentenced and imposed a good behavior bond for SBD 1000 for 1 year. For the second count of domestic violence which involves the throwing of a broom to the victim, he was sentenced to a one (1) month imprisonment.
17. In the case of *Regina v Foster* [2017] SBMC 58; Criminal Case 148 of 2017 (27 November 2017).⁸ The offender admitted to committing domestic violence contrary to section 4 and section 58 of the FPA, and he was sentenced to the two counts of domestic violence for five (5) months and six (6) months respectively and they were ordered to be served concurrently and the total sentence imposed was 6 months.
18. Referring to past cases are important for comparison purposes and it assists the court in determining the appropriate sentences for future cases. However, as widely accepted each case must be determined based on its own circumstance or on a case by case basis. In the present case, the offender repeatedly committed domestic violence at least two times before the two incidents in this case were reported to the Police. In the computation of sentences, it is important to take into account all the factors, both aggravating and mitigating, other related issues such as delay, and what reduction, allowance is given for the mitigating factors, and what increase, if any, for the aggravating factors.⁹

Starting Point

19. I am of the considered opinion, based on the gravity and nature of the offence, that the starting point for both counts is seven (7) months.

Count 1: Domestic Violence

⁷ *Regina v Tamana* [2017] SBMC 56; Criminal Case 131 of 2017 (14 November 2017).

⁸ *Regina v Foster* [2017] SBMC 58; Criminal Case 148 of 2017 (27 November 2017).

⁹ *R v Naidi* [2019] SBCA 5; SICOA-CRAC 45 of 2018 (12 April 2019)

20. For the first count, after having considered both the aggravating and mitigating factors, I give credit and allowance for the offender especially for pleading guilty in the first instance which saves the court's time and resources and I deduct two (2) months. In addition to that, I take into account that he is a first time offender and has no prior criminal conviction, he had reconciled with the victim and gave compensation to the victim, he has obligations to look after his family, he has apologized to the court and I deduct three (3) months for the said mitigating factors. I am satisfied that a sentence of two months is appropriate for the first count.

Count 2: Domestic Violence

21. For the second count, I take into account the mitigating factors including the fact that he pleaded guilty in the first instance and deduct two months. I also take into consideration the fact that he is a first time offender, he had reconciled and gave compensation to the victim, he has obligations to look after his family, including other mitigating factors, and I deduct three (3) months for that. On other hand, I also take into account the aggravating factors and add two more months since it was more serious than the first incident. Therefore, the final sentence for the second count is four months.

CONCLUSION

22. The incidents or offences for the two counts happened on two different days, however, I am of the opinion that the sentences should be served concurrently, as the incidents were done to the same victim and stemmed from the ongoing domestic violence within the home of the offender and the victim and also occurred within the span of two days.

23. It is important to note that there are many options in life with respect to matrimonial and domestic relationships if it's not convenient to continue on with the courtship or marriage, rather than committing domestic violence. Some of the options are as follows: forgive each other and start anew; or if the marriage and relationship is irreparably broken down, then one of the partners may file a petition for divorce based on a legitimate reason pursuant to the relevant laws; both partners may seek counselling from professional counsellors, social workers and even church organizations and leaders; or partners may opt to stay apart for a while and assess whether they can mend their relationship, and so forth. There is no justification at all to commit violence no matter what or in any circumstance.

24. These sentences imposed should serve as a lesson for the offender and to deter the general public from committing domestic violence.

ORDERS

25. The Orders of the Court are as follows:

- 1] **The offender is sentenced to three months and four months respectively for the two counts of domestic violence contrary to section 4 and section 58 of the FPA, which are to be served concurrently. Therefore, the offender is sentenced to a term of four (4) months of imprisonment with immediate effect.**
- 2] **Right of Appeal within 14 days of this ruling.**



PRINCIPAL MAGISTRATE FELIX HOLLISON

THE COURT

