

IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT TULAGI

(Criminal Jurisdiction)

Criminal Case No 65 of 2019

REGINA



-V-

JOHN VURE

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 John Vure, was charged with assault causing bodily harm contrary to section 245 of the *Penal Code* [Cap 26]. His other previous charges were withdrawn under section 190(2) (b)(i) of the *Criminal Procedure Code* [Cap 26] prior to him taking his plea.
2. On 16th November 2019, Mr Vure pleaded guilty to one count of assault causing bodily harm contrary to section 245 of the *Penal Code*. This offence carries a maximum sentence of five years.
3. Based on that guilty plea, I now convict him accordingly.
4. The facts of the case can be summarized as follows. On 18th December 2018, at 0900hrs, at Niu Vunuha bush land, the Defendant unlawfully assaulted the second complainant namely Ruben Tutu causing him actual bodily harm. The victim was sitting underneath an ngali nut tree, eating ngali nut when suddenly the offender appeared in front of him armed with a bush knife in his right hand. Before assaulting the victim, he threw the knife away and attacked the complainant. The Complainant fell to the ground and the offender sat-on top of him. He then punched the victim's face with his right-hand closed fist and it

landed particularly on the victim's left eye. The victim's eyebrow was cut open as a result. The offender then continued punching the victim's eye several times with his both hands closed fist. He then pressed the victim's neck which resulted in the victim struggling to breath. As a result, the victim felt great pain whilst his nose and mouth were also bleeding. The defendant then notified the villagers about the whereabouts of the victim and what he had just did to the victim.

5. The victim was taken to Tulagi medical facility on the same day whilst the defendant was formally arrested by Police and charged.
6. The main cause of the problem was that the victim was having an affair with the offender's daughter who was then a student in one of the secondary schools in the Central Islands Province.

Discussion and Analysis

7. Section 245 of the Penal Code [Cap 26]¹ provides as follows:

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

Aggravating factors:

8. The Aggravating factors are as follows:

- 1) He punched the victim several times which resulted in injuries especially a cut on the left eye.
- 2) He also struggled and attempted to prevent the victim from breathing.
- 3) He sat on top of the helpless victim and punched the victim with closed with.
- 4) His actions could potentially result in more serious injuries and even fatality.

Mitigating factors:

9. The mitigating factors are as follows:

- 1) The defendant pleaded guilty in the first instance.
- 2) He said he was provoked because his daughter was missing for two days but found out later that the victim eloped with his daughter who was then a student.
- 3) The victim has now been engaged with his daughter and are ready to get married. He confirmed to the court no longer has any grudges against the victim.
- 4) The victim's family and the defendant's family have informally reconciled their differences based on the proposed marriage.
- 5) He is a first-time offender.
- 6) He cooperated well with the police.
- 7) He is the sole bread winner.
- 8) He is a committed Christian, and an elder in the village.

¹ Penal Code [Cap 26], s 245

10. It is important to note that the Court may rely on precedents to assist it in determining the appropriate sentence, however, each case should be determined in accordance with its own facts and circumstances. In the case of *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)² the Court of Appeal imposed a sentence of 7 months imprisonment. The Court of Appeal stated that:

*The nature and circumstances of assaults are so varied that most cases turn on their particular facts with the result that earlier cases are, therefore, unlikely to give much assistance.*³

11. In the case of *Kilatu v Regina* [2005] SBHC 118; HCSI-CAC 206 of 2004 (22 September 2005)⁴, the High Court sentenced the offender to twelve (12) months imprisonment. The sentencing trend for the offence of assault occasioning bodily harm depends very much on the circumstances of each case, and the more serious the harm, the likely the sentence will increase towards the maximum.
12. It is understood that the offender did what he did out of his concern for his daughter who was then a student and had a bright future ahead of her. However, what he did fall afoul of section 245 of the *Penal Code* [Cap 26] and the force used was obviously excessive. The Court notes that the weapon or knife was not used, however, when he appeared before the victim, he was holding a knife and he later threw away the knife but the fact that he appeared with the weapon would definitely cause fear to the victim. It appears that the offender had also premeditated his attack on the victim, which is why when he saw the victim was alone, he launched his attack which resulted in bodily harm.
13. The court will not condone such actions because it is against the laws of this country especially the *Penal Code* [Cap 26] to assault and cause harm to another person. His actions had caused injuries or bodily harm to the victim. The victim's left eye was cut open which was the main cause of the bleeding. The Medical report stated that the victim had "...black left eye lid and swollen..." which is consistent with the facts.⁵ As I have noted, his actions could or have the potential to cause serious harm such as blindness and mental illness or even fatality.
14. The *Penal Code* [Cap 26] defines harm as "...means any bodily hurt, disease or disorder whether permanent or temporary."⁶ I am satisfied that victim suffered bodily harm which is consistent with the definition of "harm" in the *Penal Code* [Cap 26].
15. There are ways to solve disputes and disagreements rather than resorting to taking the law into his own hands. The defendant could have reported to the Police that his daughter was missing and asked the village chiefs to mediate. Sadly, he chose to retaliate.

Starting Point

16. It is my considered view that the starting point of seven (7) months is relevant for this case and the circumstances surrounding it. I note the early guilty plea which shows that he is remorseful and give him credit for that and deduct two (2) months. I also take into account that the offender's family and

² *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

³ *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

⁴ *Kilatu v Regina* [2005] SBHC 118; HCSI-CAC 206 of 2004 (22 September 2005)

⁵ See medical report.

⁶ *Penal Code* [Cap 26], Definitions.

the victim's family had in a way informally reconciled through the proposed marriage of the daughter to the victim; and he was also very cooperative with the police during the investigations coupled with other factors and I must give him credit for that and further deduct two (2) months. This leaves the offender with three (3) months of imprisonment to serve.

17. After having considered the aggravating and mitigating factors, I am of the opinion that a sentence of three (3) months is sufficient. This should deter like-minded people not to take the law into their own hands even in very disappointing, tempting and difficult times. There are other avenues to solve problems other than resorting to violence.

18. The sentence that is imposed now is a bit lenient and the Court believes that the offender still has the chance to rehabilitate and move on from the past after serving his imprisonment term.

Orders

19. The Orders of the Court are as follows:

- 1] **The offender is sentenced to a term of three (3) months of imprisonment.**
- 2] **Right of Appeal within 14 days.**



PRINCIPAL MAGISTRATE FELIX HOLLISON



THE COURT