

**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT TULAGI**

(Criminal Jurisdiction)

Criminal Case No: 1094 of 2018

REGINA



-V-

GHANDI

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 Ghandi, was charged with one count of Malicious Damage contrary to section 326(1) of the *Penal Code* [Cap 26].
2. On 16 July 2019, the Defendant pleaded guilty to the charge of malicious damage contrary to s 32(1) of the *Penal Code* [Cap 26]. I record a conviction against him based on the guilty plea entered.

Facts

3. The facts of the case can be summarized as follows. On the 29th of December 2018 at approximately 2200hrs, the offender committed the said offence at Vunavuti village on Big Gella in Central Islands Province under the influence of alcohol. He started by causing unnecessary disturbance in the village. He then proceeded by using an axe to damage the leaf hat of the victim, Mr, Charles Gota along with food being prepared for meals on the table. It must be noted that the victim is the offender's father. The offender also used abusive words to the victim and his son (the offender's adopted brother) as he said "*fuckem you tufala*" which means 'fuck you both.' He also caused disturbance and nuisance to the victim and other family members throughout the night.

4. The matter was reported to the Royal Solomon Islands Police Force at Tulagi Police Station and the defendant was arrested and charged with one count of malicious damage contrary to s 326(1) of the *Penal Code* [Cap 26].
5. He pleaded guilty to the charge contrary to s 326(1) of the *Penal Code* [Cap 26] which resulted in his conviction. I will proceed to sentence the defendant now.

Discussion

6. Section 326(1) of the *Penal Code* [Cap 133]¹ provides as follows:

326. -(1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and he shall be liable, if no other punishment is provided, to imprisonment for two years.

7. The willful and malicious damage of a property is a misdemeanor and the maximum penalty is an imprisonment term of two years. That maximum penalty is an indication that the offence is a quite a serious one as far s326 (1) of the *Penal Code* [Cap 26]² is concerned. In the case of *Regina v Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)³, the offender entered guilty pleas to a number of offences including malicious damage. The sentences for the two counts of malicious damage were five month imprisonment each. The total sentence for that case, however, was overshadowed by a more serious offence of attempted arson.

Aggravating Factors

8. The aggravating factors are as follows:

- 1) The defendant was drunk.
- 2) The offence was committed at night.
- 3) He was armed with a weapon, axe, which he used to damage the leaf hut.
- 4) He destroyed the food prepared and placed on the table. That is very rude in custom.
- 5) His actions could have attracted further charges such as drunk and disorderly and nuisance especially because he was disturbing that area as well.
- 6) The maximum sentence of a particular offence is also determinative of how serious a crime is.

Mitigating Factors

10. The mitigating factors are as follows:

- 1) He pleaded guilty in the first instance which saves the court's time and resources.

¹ *Penal Code* [Cap 25] S 326(1)

² *Penal Code* [Cap 25]

³ *Regina v Goro* [2016] SBMC 24; Criminal Case 1277 of 2015 (15 September 2016)

- 2) He had no prior conviction records.
 - 3) The victim in this case are the offender's own parents.
 - 4) Reconciliation had taken place.
11. The offender in this matter had used a weapon to destroy the leaf hut which is an aggravating factor. I note that the house belongs to his parents and that could be the reason why he was not charged with criminal trespass but only malicious damage contrary to s326(1) of the *Penal Code* [Cap 26]. I understand that the father had informed the Police Prosecutions in the Central Islands Province that he wished to withdraw the case against his son because he had forgiven his son. I was also informed that the leaf hut does not have a very high value and is now abandoned. I understand the father's love for his son, however, the state's resources have been expended and that his son has pleaded guilty to the charge laid against him. The father said, as submitted by both the Prosecution and the Defence counsel that he wanted to report this case with the Police just to scare and teach his son a lesson, which prompted the Crown to initiate this criminal proceeding. I must clearly warn the members of the public especially the offender's father in this case that the criminal justice system in this country is not for him to play with because it is not cheap. Instead, I will teach his son a lesson.

Starting Point

12. I am of the opinion that a starting point of seven months should be appropriate for this case.
13. I give credit to the offender for the early guilty which saves the courts time and resources of going through a trial and deduct two months. I also take into account the other mitigating factors, as submitted by his lawyer and enumerated above, and further deduct another two months. The final imprisonment term should be three months.
14. Section 44(1) of the *Penal Code* [Cap 26] empowers me to suspend the sentence, however, subsection (2) does not allow me to exercise that power when a weapon was used. S 44 (2) of the *Penal Code* [Cap 26] provides as follows:

(2) The provisions of subsection (1) of this section shall not apply where the offence involved the use or the illegal possession of a weapon.

15. Moreover, albeit the effect of s 44(2) of the *Penal Code* [Cap 26], s 24(3) provides as follows:

(3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or instead of imprisonment.

Conclusion

16. Therefore, it is my considered view that it is still within my discretion to issue a penalty fine, and I am satisfied that in this case a penalty fine is appropriate for this case. Based on s 24(3), I opined that a penalty fine of SBD 2000 dollars should be imposed against the offender instead of the three months' imprisonment term.

17. The orders of the Court are as follows:

- 1] **The offender is sentenced to a fine of SBD 2000 dollars for destroying that house (leaf hut) that is owned by his parents.**
- 2] **This penalty fine prescribed must be paid within two weeks from the date of this Judgment.**
- 3] **In default of payment, the offender will be imprisoned for three months.**
- 4] **Right of Appeal within 14 days of this ruling.**



**PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT**

