

IN THE TULAGI MAGISTRATE COURT

Criminal Case 309 of 2019



REGINA
V
PAUL TUVA

BEFORE PRINCIPAL MAGISTRATE MS. FATIMAH ME'ERE TAEBURI
PC TEPAKOTA APPEARED FOR THE CROWN
MR. HAYNIEL MAX APPEARED FOR THE DEFENDANT

Date of Hearing: 6th and 8th July 2020
Date of Judgment: 8th of July 2020

SENTENCE

1. The prisoner pleaded guilty on 6th July 2020 to three counts of unlawful wounding contrary to section 229 of the Penal Code [Cap 26]. He admitted to assaulting and wounding Ian Pwaholo, Daniel Kukunu and Alfred Faramua.
2. On the 21st of April 2019, the prisoner, another person by the name of David Vuza, and four other men went from Soso Village to Soka Village with a plan to fight the victims and their group. There was a previous argument between the two groups.
3. The prisoner and Mr. Vuza were armed with bush knives. The prisoners' group were shouting aggressively as they go along the road.
4. When they arrived at Soka Village, one of the victims approached Vuza and shouted, "wat na you kam duim lo hia?". The first victim punched Vuza. The victim then retreated back to his group. Vuza pulled out his bush knife and cut the first victim on his hand. The prisoner also pulled out his bush knife and cut the first victim on the victim's right arm. The first victim is Ian Pwaholo.
5. The second victim grabbed Vuza, the prisoner cut the second victim on the victim's leg. The second victim is Daniel Kukunu.
6. The third victim came on the scene, Vuza cut the victim on his left hand. The third victim is Alfred Faramua.

7. All victims were unarmed.
8. All three victims were seriously wounded. They were taken to the Tulagi Hospital for medical treatment.
9. Medical reports for all three victims were produced by the Tulagi Hospital and provided in court.
10. The report of Mr. Ian Pwaho described the victim's injuries as follows;

He had a bad rugged wound on the palm and fingers of the Left Hand. The wound was between the thumb and pointing finger down to the palm. It involves the skin, muscles and underlying tissues. Another wound on the Right Hand mid-lateral lower arm and was about 7cm length and ½ inch deep.

The wound on the right involves the skin and outer muscles. The one on the left was a bit serious. It involves the skin muscles and underlying tissues. Muscles involved were flexor retinaculum metacarpal, flexor poliois brevis and a cut through abductor poliois transverse and might also involve the metacarpal bone.

11. In the opinion of the medical expert, the injury on the right hand of this victim will heal fully. It is the opinion of the expert that the injury to the left hand of the victim will not recover fully and it may lead to deformity of the victim's hand.
12. In relation to treatment, the injuries sustained by this victim were stitched and medication was given to him. The victim was kept at the Tulagi Hospital that night and was referred to the National Referral Hospital in Honiara because of the seriousness of the injuries.
13. The medical report in respect of the second victim, Mr. Daniel Kukunu described the victim's injuries as follows;

Wound on the frontal forehead and on the right thigh. Wound on the thigh involves skin underlying muscles, 6cm in length and 1 inch in depth. On the head it involves the skull. A laceration through the skull, 7cm in length.

The patient was bleeding on the way to the hospital and was pallor and dehydrated mildly.

The expert forms the opinion that the injury on the thigh will recover fully. She cannot form an opinion on the injury on the skull but she stated that if the laceration does not penetrate the skull then the wound could recover fully.

The wounds were stitched and the patient was referred to the National Referral Hospital in Honiara for further treatment.

14. The medical report in respect of the third victim, Mr. Alfred Faramu described the victim's injuries as follows;

Injury to left lower arm below the elbow. The wound involves skin. An open wound, cut through underlying soft tissues and a cut through the flexor carpi ulnaris, muscles of the arm. Wound about 6-7cm in length and 2cm in depth.

The expert forms the view that the wound will recover fully and no major complications expected. Treatment included stitches, dressing and medication.

This victim was not referred to the NRH. He was admitted and discharged at the Tulagi Hospital.

15. The co-offender, Mr. David Vuza, has been tried, convicted and sentenced in this court in September 2019.

16. Based on the facts agreed to in this case, I enter conviction against the current prisoner.

17. In determining the appropriate sentence, I take into account the following factors;

18. That the attack on the three victims was premeditated. The facts clearly showed that prior to the attack, six men including the prisoner had initiated a plan to carry out the attack. The plan was in relation to previous disagreements between the two groups on the land matters. The prisoner and Vuza armed themselves with bush knives. Clearly the prisoner had an intention and had planned to injure any person in the other group.

19. The prisoner had used a weapon. A bush knife is a very dangerous weapon. Under section 44(2) of the Penal Code, I will not be able to suspend an imprisonment sentence because of the illegal use of the weapon.

20. I consider the injuries sustained by the three victims as very serious. The medical reports produced on behalf of the three victims described injuries of a very serious and severe nature. I take note that the injury sustained by Mr. Pwaholo might cause permanent deformity. I consider the pain and suffering that they have experienced.

21. I consider that the prisoner and his co-offenders have acted in a group. These courts must pass sentences to discourage the common practice of several men acting together in a group to execute violent attacks on others. When several people act violently together as a group, the consequences are very serious and damaging.

22. It is also serious in my view, that the prisoner and his group injured 3 victims during the one incident.

23. In mitigating I take into account the following;

24. That the prisoner pleaded guilty to the charges. I acknowledge that the charges are serious but he had accepted responsibility for his wrong doings.
25. I consider that he has no previous convictions.
26. I consider his personal circumstances.
27. The defence counsel argued that the prisoner was provoked. I reject this submission. The prisoner and his group went from their village to the victims' village with the intention to fight and to cause harm to their opponents. They were armed with bush knives and they behaved aggressively when they entered the victims' village. If there was an provocation, I think the victims were the ones who were provoked. I accept that a member of the victims' group punched Vuza, but this prisoner was not personally assaulted at the beginning of the fight.
28. The maximum penalty for unlawful wounding is 5 years imprisonment. The highest sentence imposed in our jurisdiction on unlawful wounding is the case of Nguyen Van Thang where the defendant was sentenced to 4 ½ years imprisonment.
29. In my view the appropriate sentence are as follows;
30. Count 1 – 2 ½ years imprisonment;
31. Count 2 – 2 years imprisonment;
32. Count 3 – 2 years imprisonment;
33. All sentences are to be served concurrently. The prisoner is therefore sentenced to a total of **2 ½ years imprisonment**. The time he has spent in custody for these offences is included in this sentence.
34. Right to appeal within 14 days.


Principal Magistrate
Ms. Fatimah Me'ere Taeburi