



**IN THE CENTRAL MAGISTRATE'S COURT )  
OF SOLOMON ISLANDS AT HONIARA )  
(Criminal Jurisdiction)**

Criminal Case No. 82 of 2020

**REGINA**

-v-

**PETER TOLO**

**Date of plea:** July 2, 2020  
**Date of hearing:** July 16, 2020  
**Date of sentence:** July 27, 2020

*Mr. Samuel Tovosia for the Crown  
Mr. Henry Kausimae for the Accused*

**SENTENCE**

Introduction

1. The accused, Mr Peter Tolo is charged with a count of *Grievous Harm* contrary to section 226 of the Penal Code (Cap. 26). He has pleaded guilty and convicted accordingly as charged. The facts are admitted through the Prosecution and Mr Kausimae of counsel for the defence, thus, I shall wholly adopt it in my deliberation.
2. The accused is a 19 year old person of Gilbert Camp, East Honiara and a native of Namanaso Village, East Malaita, Malaita Province.
3. The victim is Augustine Kwaenia who resides at Gilbert Camp area, East Honiara in the Guadalcanal Province.

Agreed Facts

4. On January 27<sup>th</sup> 2020, between 2:00am and 4:00am at Gilbert Camp, water pump area, the accused was returning to his house when he sighted the victim, standing in the dark some distance away.
5. The accused called out to the victim to identify himself but the victim did not say anything and just stood there. The accused then picked a rock and hurled it at the victim, which landed on the victim's face. As a result, the victim sustained multiple scalp laceration, multiple rugged laceration of the forehead and periorbital haematoma.
6. After the accused threw the rock, he went back to his house. The victim was taken to the National Referral Hospital in Honiara and treated for the injuries sustained as a result of the attack.

7. The accused was then charged with Grievous Harm contrary to section 226 of the Penal Code (Cap. 26) to which he entered a guilty plea.

#### Medical report

8. The Medical Reference Letter dated March 18, 2020 by Dr. Denton Aota, stated that the victim, Mr. Kwaenia was admitted to the Surgical Ward, National Referral Hospital (NRH) on the 27<sup>th</sup> January 2020 with mild head injury. The Medical Reference was prepared by the NRH Registrar Dr. Aota on behalf of Dr. Aloysius Samo (Duty Doctor on the date of admission of Mr Kwaenia). For reason that there were no issues regarding the name of the victim, I shall accept the use of *Kwaina* in the medical report to equally denote *Kwaenia*. Possibly a spelling mistake but not the person concerned.
9. The direct quote of particulars of the Medical Reference Letter is as follows:-

*"Mr. Kwaina was presented to the Emergency Department with multiple scalp lacerations. On examination he had multiple rugged edged lacerations on his forehead with some bleeding. He also had swelling around both of his eyes. His Galsgow Coma Scale (GCS) was 15/15 (scoring system for severity of head injury). He was admitted for mild head injury secondary to head trauma for Neurological observations intravenous antibiotics and daily wound care. He was discharged on the 31<sup>st</sup> January 2020 after noted stable observations throughout the admission."*

#### Criminal Culpability

10. The accused conduct is far from premeditated, rather, a reckless and thoughtless act done out of stupidity and foolishness on his part. He deliberately threw a rock at the victim who is a human being standing in the dark some distance from him, I accept that his culpability falls at mid-range of the culpability scale.

#### Maximum Prescribed Statutory Penalty

11. The offence of Grievous Harm carries a maximum imprisonment term of 14 years. It is surely one of those serious offences in the Penal Code. Inevitably, an imprisonment term is the predominant sentencing methodology normally applied by Courts in this Jurisdiction, albeit tariffs varies on its own factors, circumstance and criminal culpability.
12. More importantly, Grievous Harm offence on its face alone is an unsightly crime. It involves a permanent disfigurement or life threatening injury on a human body, an injury that will have a lasting effect on the unfortunate victim. With or without the use of weapon, it is an awful crime. Our lawmakers have stood a stern ground to legislate this high imprisonment term in demonstrating their deterrent and repugnant approach on those who wish to exercise or practice such offence. The Court of Appeal have recently made remarkable leading authorities<sup>1</sup> pertaining to this offence, which I will discuss on when I arrive at the sentencing tariff or range.

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<sup>1</sup> *Saukoroa v R* [1983] SBCA 2, *Regina v Dani & Anor* [2004] SBCA 16, *Regina v Wesley* [2005] SBCA 12 and *Selo v Regina* [2017] SBCA 17

Matters of Aggravation

13. From facts and submission by both counsels, I gather the following as matters aggravating the gravity of offence:-
- (a) The offence occurred in the dark or during night-time. The victim was startled with the rock thrown at him. He has not foreseen the encounter. He could not be alerted to the accused conduct because it was dark. Thus, it was simply impossible for him to set into motion his reflexes and quick reactions, compared to if it was daylight. More so, he was simply there standing defenceless.
  - (b) The attack was totally unprovoked. The victim did nothing to provoke the accused person to do what he did. It was simply unnecessary and unlawful. A cowardice act on an innocent person minding his own business.
  - (c) The use of a rock as a weapon. The accused used a rock to throw at the victim, this is a reckless behaviour. He knew well that a rock is a dangerous weapon and if thrown at a human being would potentially cause serious injury or to some extent death. It landed on the victim's face and that he was so fortunate not to suffer life threatening injury or death.

Accepted Sentencing Tariff or Range for Offence of Grievous Harm

14. I must acknowledge both counsels for the efforts in compiling the relevant case authorities pertaining to the offence of Grievous Harm. Sadly, such an assistance has fallen recently, and I would have thought that such a submission as provided by Mr Kausimae of counsel for defence must be circulated to other relatively new legal practitioners within Public Solicitors Office for assistance.
15. The accepted sentencing tariff for offence of Grievous Harm is as settled in *R v Batalau'ia*<sup>2</sup>, where His Lordship Chief Justice Palmer, stated at paragraph 9 of the sentence:-
- "...The range of sentences for grievous harm fall within 18 months – 5 years. Where there are clear aggravating features present the sentences will noticeably be higher..."*
16. In *Batalau'ia*, the Accused had been charged with attempted murder, had been on remand for 32 months, and pleaded guilty to the lesser charge. A sentence of 4 years was imposed for having severed the victim's arm with a bush knife. The Accused was ordered to be released at the rising of the Court because of his pre-sentence remand.
17. In *Regina v Tongana*<sup>3</sup>, the Accused pleaded guilty to Grievous Harm charge. The facts showed that on the morning of the 28 August 2004, a confrontation occurred between the deceased and another person Sam Dei, in the course of which a person was stabbed twice in the leg by the Deceased with a small knife. He fled the incident pursued by a group of about five men including the Accused and another. The Deceased was eventually

<sup>2</sup> *Regina v Batalau'ia* [2016] SBHC 29; HCSI-CRC 457 of 2013 (18 February 2016)

<sup>3</sup> [2005] SBHC 98; HCSI-CRC 594 of 2004 (26 August 2005)

confronted at a building site and stones and rocks thrown at him. At one point in time, The Accused was seen to have thrown a piece of brick which landed on his leg causing him to fall backwards onto the ground. The group of men continued to throw rocks at him, in particular at his hand which held the knife. He later escaped and police assisted him to National Referral Hospital but died days after. The Accused person was sentenced to 2 years' imprisonment.

18. In *Saukora v R*<sup>4</sup>, the appellant stabbed the victim with a knife and caused serious wounds to the victim's arms and the ribs of the victim. The wound in the ribs had penetrated the victim's abdomen. The appellant was sentenced by the High Court to 4 years' imprisonment. On appeal, the Court of Appeal reduced the sentence to 3 years.
19. In *Regina v Sitana*<sup>5</sup> there was an attack on the victim with the use of a bush knife. Muscles of the face, jaw and neck were cut. A piece of the periosteum and bone of his mandible was removed. The victim's tendons, salivary gland and an artery were cut. Some 2 litres of blood were lost. In all, the victim spent some 2 months in hospital as a result of the injuries, and the wound has left a significant scar. The Court imposed a sentence of 2 years imprisonment with the time in pre-trial custody to be taken into account.
20. In the case of *R v Larrex Lulua*<sup>6</sup> the Accused who was an 18 year old boy at that time, had kicked the victim with his right leg and the kick landed on victim's forearm. He was later assisted to the National Referral Hospital to undergo surgery. On 7<sup>th</sup> September 2017, Doctor Kabwere confirmed in the medical report that when the victim was first presented on 29<sup>th</sup> August 2017, his left forearm (midshaft)-ulna and radius was closed fracture, swollen and deformed. He was treated with orif-plate/screws – open reduction internal fixation on the 30<sup>th</sup> of August and that complainant made an uneventful operatively. The Court imposed 1 year and two months imprisonment.
21. In *Regina v Waiti*<sup>7</sup>, the Accused, Aron Waiti pleaded guilty to a count of Grievous Harm contrary to section 226 of the Penal Code. He was already 18 years of age when he committed the offence. The facts revealed that on 29<sup>th</sup> November, 2015, between 7:00am and 7:30am, the victim followed the Accused purposely to control him since he was drunk. When the Accused reached a kitchen of one of their neighbours, he looked behind and saw the victim who was following him. There the Accused pulled out a bush knife from the walling of that kitchen and walked back towards the victim and said "*Sutu wanfala*". He first cut a drum of water and later moved to the victim and punched his face. After he assaulted him, he lifted the bush knife and swung it towards him and landed on his right leg. He then for the second time raised the same bush knife and swung it at the victim and landed on his left leg. The medical report stated that the victim had suffered wound to his right leg measuring 5cm, partially cut his artilleries tendon and also a wound to his left foot measuring 6 cm. The wound to his left foot has affected the

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<sup>4</sup> [1983] SILR 275; CRAC No. 1 of 1983

<sup>5</sup> *Regina v Sitana* [2009] SBHC 57

<sup>6</sup> (Criminal Case No: 653 of 2019)

<sup>7</sup> [2016] SBMC 22; Criminal Case 1534 of 2015 (8 September 2016)

movement of his toes on the same side. The Court after weighing and balancing all circumstances, imposed a 22 months' imprisonment.

22. Having closely consider the above cited case authorities and their individual facts, it is clear that most of these cases involve pre-planning and nasty injuries on the victims' bodies. Some if not all, involved repeated stab wounds of knife and life threatening situations. In this case however, it involves a use of a rock, the medical report is clear to state that the Glasgow Coma Scale scores ("GCS") 15/15. GCS 15 is the maximum score to demonstrate a best prognosis which the victim is likely to recover quickly, simply put, the less serious coma. Apart from the multiple lacerations, there were no clear discussion on whether he is bound to suffer lasting effect on his life. Also, it was not a premeditated situation.
23. This case fall similar to that of *Lulua* and *Waiti*. The difference is obviously the use of a rock and Doctor's report on the seriousness of injury. For reason that the rock landed on the victim's face and with his deliberate and reckless conduct, I am of the view that any starting point must be above *Lulua* and similar or above *Waiti*.

#### Starting Point

24. Having considered the unprovoked circumstance, the deliberate and reckless rock throwing at a human being during night time, coupled with its seriousness as provided in Doctor's report, it is my respectful view that an appropriate starting point is 3 years imprisonment.

#### Consideration for Factors of mitigation

25. He has entered an early guilty plea at the early stages of the proceeding, after which a reduction was made to the initial charge of Attempted Murder. He has shown remorse in court. I accept that his plea has withhold the expense to run a full trial. I shall allow reduction of 25% or 9 months'. I further reduce, 6 months' to consider his clean criminal history, his youthfulness and corporation with the police during investigation. In total, 15 months is deducted from the starting point.

#### Sentence remarks

26. I'm unable to fathom the reason for the accused action and why he has to throw a rock at the victim. The victim did nothing to cause fear or threat to him, instead he saw it appropriate to throw the rock at the victim, which then landed on his face. A human head houses the brain, being the control box and the facial area (nose, eye, mouth) which are of course some of the important and vulnerable body parts of a human being. All the more reason for the accused to think carefully before he throw the rock.
27. I must say that this is an avoidable situation if the accused person had taken the right approach, to either ignore the victim or get help from others to check on the victim. The act of throwing a rock at the victim is simply callous and demonstrates the accused 'no care attitude', he now faces the tough consequence for his action.

28. I can only state that such a heartless and no care attitude demonstrated by the accused person has no place in our country, and the Court strongly condemn it. We are human beings, thus, the need to treat each other with dignity and respect.
29. The accused is a young person and I do believe this case is a lesson for him, he have more to discover and live in life, thus, should consider this case as a learning experience to turn from such behaviour. Unfortunately, such behaviour will not bring any good for him and his future life. He needs to redesign his path to create a better future, one that will give pride and admiration to him and his family.
30. The sentence that I will pass must incorporate both principles of general deterrence and rehabilitation. It must resonate a sounding message and theme to the general public on the court's disapproval to *Grievous Harm* or similar offences, and the need to treat every inhabitant of this nation with dignity and respect.
31. I acknowledge that the accused is a first offender, hence, specific deterrence would be of less significance, instead the best approach would be to provide an avenue for him to rehabilitate himself, so he can acknowledge his mistake and thereon can swiftly reintegrate back into the society. This in my view will benefit him and this nation in the long run with the overarching goal to avoid recidivism.

**Sentence orders**

1. I hereby sentence the accused person, Mr. Peter Tolo to **21 months imprisonment or 1 year and 9 months imprisonment.**
2. Time spent in pre-trial custody to be take into account.
3. Right of appeal applies within 14 days of this sentence.
4. Order according.

  
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**MR. LEONARD. B. CHITE**  
Principal Magistrate