



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 120 of 2019

REGINA

-V-

PATRICK SUFELO

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Wesley Zoze, Principal Legal Officer for the Crown (DPP)

Mr Sam Alasia, Principal Legal Officer, Public Solicitors Office, for the Defendant

Date of Sentencing and Mitigation: 31st August 2020

Date of sentence: 2nd September 2020

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

SENTENCE

INTRODUCTION

1. The Defendant Mr Patrick Sufelo was charged with three counts of Grievous Bodily Harm contrary to section 226 of the *Penal Code* [Cap 26], one count of Assault Causing Actual Bodily Harm contrary to section 245 of the *Penal Code* [Cap 26], one count of Abduction with intent to confine a person contrary to section 248(b) of the *Penal Code* [Cap 26], and one count of Intimidation contrary to section 231(2) of the *Penal Code* [Cap 26].
2. After the completion of the trial, he was acquitted of counts 1, 2, 3, 4, and 6. However, he was convicted of the 5th count which is the offence of grievous bodily harm contrary to section 226 of the *Penal Code* [Cap 26].
3. The main issue is what would be the appropriate sentence, and whether or not a sentence can be suspended even if a weapon was used to unlawfully inflict an injury.

FACTS

4. The incident occurred in June 2018 at Zion area, Honiara on Guadalcanal.
5. On that day, the complainant and her son Brian were at Zion in Honiara and it was in the afternoon most probably before 4pm. Her son was sleeping in a hammock whilst she was in one of the rooms downstairs.
6. The defendant arrived and demanded her to give him some money. She told him that she had no money.
7. The defendant demanded her to call her sister Helen at Burns creek in Honiara to check if she has any money to borrow. She called Helen and she said she had no money as well.
8. The defendant asked the complainant to follow him to Burns Creek. Their son, Brian seeing that his father, the defendant was drunk and dangerous, he asked his parents if he could follow them but the defendant refused.
9. Whilst they were walking down the foot path, the defendant kicked the complainant's back. He grabbed her shirt and it was torn and broken, and the complainant was wearing only her bra at the time. She fell onto the ground, and the defendant took out a yellow knife and swung the knife aiming for her neck. Fred, their neighbor, saw what happened and came to her aid, and it wounded her forearm.
10. She fell onto the ground and then that was when the defendant cut her right leg. She stated that as soon as the defendant saw blood coming off from her wound he run away. She stated that the weapon used to injure her is a yellow handle knife between 15 to 30 centimeters in length. She cried out loud in agony and could not stand. She could see the laceration was opening up, and it was huge. She further added that she could still feel the pain up to the present.
11. She was admitted at the hospital for about six weeks. She was admitted at the National Referral Hospital on that Saturday and she was given an "intravenous" or "inside the vein" (IV) treatment until Monday night.
12. On Sunday the next day, she was taken to the NRH operating Theater where she was treated. Her wound was stitched and a "cast" was placed on her leg. In her description, the leg is now "disabled". She could only use a slipper to walk on the surface. A large scar is still visible on her right leg.
13. Sixteen year old Brian Kaura who is one of the sons of the defendant and the complainant, stated that he was present at the scene when the incident in 2018 with respect to the 5th count occurred.

14. One of the Doctors at the NRH who treated the complainant produced a Medical report dated 16th June 2018, which was tendered by consent and formed part of the evidence.¹ The medical report stated:

The abovementioned person was admitted to orthopaedic ward on the 10th of June 2018 with right leg knife laceration secondary to domestic violence by her drunk husband. She was attacked on the 9th June 2018 around 5pm. She had severed right tendon archilles, tibialis posterior, flexor digitorum longus and cut tibial nerve, artery and vein.

Debridement, tendon repair and tibial nerve repair was done on 10th June 2018, followed by secondary closure on the June 2018 and full leg walking cast on the 14th June 2018.

15. The tendons at least three of them, some nerves, and a vein were absolutely or 100 percent cut off. The tendons and nerves were stitched, and the medical experts performed what they termed as secondary closure, and the application of walking cast. The wound was infected, they closed it after 2 days, and a Plaster of Paris (POB) cast was also applied on the injury.

DISCUSSION AND ANALYSIS

16. Section 226 of the *Penal Code* [Cap 26]², provides as follows:

226. Any person who unlawfully does grievous harm to another is guilty of a felony, and shall be liable to imprisonment for fourteen years

17. The classic sentencing principles such as punishment, deterrence and rehabilitation must always be taken into account in the process of formulating a sentence.

Aggravating Factors

18. The aggravating factors are as follows:

19. **Large and Serious Injury.** The complainant suffered and sustained a very serious injury.

20. **Breach of trust.** Despite the fact that the defendant is charged under section 226 of the *Penal Code* [Cap 26]. This is a domestic violence case. What the defendant did to the victim is a breach of trust as husband and wife. There is an obligation between a husband and a wife to love, care and cherish each other.

¹ Medical Report-Ms Constance Kaura, Female, 38 years dated 16th June 2018 by Dr John R Rajan

² *Penal Code* [Cap 26], s 226

21. **Presence of their Son.** Their 16 year old son was also present at the scene. As a juvenile he could be traumatized for seeing first-hand the agony and pain that his mother experienced. It also shows a very bad example for the son.
22. **Intoxication.** The defendant committed the offence under the influence of alcohol.
23. **Use of Weapon.** A kitchen knife was used to inflict harm. The facts shows that he aimed for the neck first which landed in one of the hands, and then later, he inflicted the harm on the right leg.

Mitigating Factors

24. The mitigating factors are as follows:
25. **First time offender.** The defendant prior to his conviction in this present was a law abiding citizen.
26. **Reconciliation.** The defendant and the victim have reconciled in accordance with custom. Prior to the issuance of the Judgment which resulted in his conviction, the defendant and the victim have settled their issues, and have lived together. Counsel for the defendant referred the court a number of case authorities.
27. **Delay.** The delay is considered as a mitigating factor. Counsel for the defendant submitted that the defendant is not at fault for this delay, and he should be given credit for this.
28. **Pre-Sentence Custody.** The defendant was convicted and remanded on the 14 August. Hence, this sentence should be retrospectively commenced on the 14th August 2020. I understand that he was previously remanded and that period must be deducted as well.

Comparative Sentences:

29. There are a number of case authorities available in this jurisdiction.
30. In *Regina v Sitana* [2009] SBHC 57; HCSI-CRC 280 of 2008 (19 October 2009)³; the defendant pleaded guilty to one count of grievous bodily harm. The basic facts were that the 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. The victim spent some 2 months in hospital as a result of the injuries, and the wound has left a significant scar. The defendant was sentenced to 2 years imprisonment.
31. In *Regina v Tuga* - Sentence [2018] SBMC 9; Criminal Case 246 of 2016 (10 May 2018).⁴ The two defendants Silvester Tutu Tuga and Joseph Faemane were charged with grievous harm contrary to section 226 of the Penal Code. Silvester Tutu Tuga was convicted of grievous harm

³ *Regina v Sitana* [2009] SBHC 57; HCSI-CRC 280 of 2008 (19 October 2009)

⁴ *Regina v Tuga* - Sentence [2018] SBMC 9; Criminal Case 246 of 2016 (10 May)

while Joseph Faemane was convicted of common assault contrary to section 224 of the Penal Code [Cap 26]. Mr Tuga was sentenced to 3 and ½ years imprisonment.

32. In *Regina v Waiti* [2016] SBMC 22; Criminal Case 1534 of 2015 (8 September 2016)⁵ the prisoner pleaded guilty to one count of grievous bodily harm contrary to section 226 of the *Penal Code* [Cap 26]. He was sentenced to 22 months imprisonment.
33. In *Regina v Sitana* [2009] SBHC 57; HCSI-CRC 280 of 2008 (19 October 2009)⁶; the prisoner pleaded guilty to a charge causing grievous bodily harm contrary to section 226 of the Penal Code [Cap 26]. The prisoner had caused the injury to the victim by cutting the victim on the neck and face with a bush knife. He was sentenced to 2 years imprisonment.
34. In *Regina v Bitiai* [2010] SBCA 3; CA-CRAC 15 of 2009 (26 March 2010)⁷, the prisoner assaulted his former defacto wife by stabbing her twice on the back with the same knife while the victim was breast feeding her child who was admitted at a hospital. The knife penetrated her abdomen and the liver although the wounds on the back were superficial. The prisoner was sentenced to 3 and ½ years imprisonment. On Appeal by the DPP against the sentence, the Court of Appeal increased the sentence to 4 years and 9 months imprisonment.
35. In *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)⁸, the Court of Appeal imposed a sentence of 14 years of imprisonment for a count of armed robbery contrary to section 293 of the *Penal Code*, and 10 years of imprisonment for a count of grievous bodily harm which were ordered to be served concurrently.
36. Most of the grievous bodily harm cases in this jurisdiction ranges between 18 months and 5 years. However, when it is committed with other offences such as robbery it may attract a higher sentence as demonstrated in the case of *Selo*.
37. This is a matter that the defendant was found guilty after a trial was conducted.

Starting Point

38. After taking into account the gravity of the offence, and particularly, in relation to the injury sustained by the victim, I am of the view that this matter warrants a custodial sentence.

⁵ *Regina v Waiti* [2016] SBMC 22; Criminal Case 1534 of 2015 (8 September 2016)

⁶ *Regina v Sitana* [2009] SBHC 57; HCSI-CRC 280 of 2008 (19 October 2009)

⁷ *Regina v Bitiai* [2010] SBCA 3; CA-CRAC 15 of 2009 (26 March 2010)

⁸ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

39. After having considered the aggravating and the mitigating factors, I am of the view that a starting point of 42 months is appropriate for this present case.
40. **First time offender.** The defendant is a first time offender and I deduct 5 months to reflect his previous good character.
41. **Reconciliation.** The defendant and the victim have reconciled in accordance with custom. Prior to the issuance of the Judgment which resulted in his conviction, the defendant and the victim have settled their issues, and have lived together. Counsel for the defendant referred the court a number of case authorities. I deduct 5 months.
42. **Delay.** The delay is considered as a mitigating factor. Counsel for the defendant submitted that the defendant is not at fault for this delay, and he should be given credit for this. I deduct another 8 months.
43. **Pre-Sentence Custody.** The defendant was convicted and remanded on the 14 August 2020. Hence, this sentence should be retrospectively commenced on the 14th August 2020. I understand that he was previously remanded and that period must be deducted as well.
44. Hence, the resulting sentence is 24 months (2 years) imprisonment, and I am satisfied that is proportionate to the gravity of the offence.
45. I was urged by Mr Alasia of counsel for the defendant, to suspend at least part of the sentence pursuant to section 44 of the *Penal Code* [Cap 26]. He referred me to a number of case authorities to support his contention, which I have perused.
46. Section 44(2) of the *Penal Code* [Cap 26]⁹ 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.

47. In *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011).¹⁰, the Crown appealed to the High Court against the sentence that was imposed by the Magistrates Court on the basis that the learned magistrate erred when he imposed a suspended sentence in breach of section 44 (2) of the *Penal Code* [Cap 26] and sought an order 'that the suspended sentence be substituted with a custodial sentence'. The High Court held that that the order to suspend the sentence was in breach of section 44(2) which prohibits the suspension of a sentence of imprisonment where the offence involved the use or possession of a weapon. However, his Lordship Apaniai J held that he was unable to remit the case to the Magistrate's Court for re-sentence; and also to substitute another sentence for the sentence imposed by the Magistrate's Court. So it was further appealed to the Court of Appeal. The Court of Appeal in

⁹ *Penal Code* [Cap 26], s 44(2)

¹⁰ *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

*Kemahaku v Regina*¹¹, also found that the Magistrates order for suspension of the sentence was an “....error....” and commented as follows:

Any person who uses a weapon to assault an unarmed victim must expect to receive a sentence of immediate imprisonment.

48. I have perused the case of *Regina v Paewa* [2016] SBCA 25; SICOA-CRAC 8 of 2016 (14 October 2016)¹², referred to by counsel Alasia and the issue in that case is the activation of a previous suspended sentence, and whether or not it should be made concurrent or consecutive to the new sentence. Therefore, to suggest that the Court of Appeal and the High Court seemed to accept the contention of the defence that a sentence can still be suspended even if a weapon is used cannot be correct.

49. Section 44(2) of the *Penal Code* [Cap 26]¹³ is couched in a manner where it is mandatory not to suspend the sentence whenever a weapon was used or the offender was in possession of a weapon illegally.¹⁴ The phrase “shall not” means I must not suspend the sentence in this circumstance where a weapon was used. In other words, I do not have the power to suspend the sentence.

CONCLUSION

50. The harm was inflicted by the husband unlawfully and it caused a very serious injury in June 2018. The victim was hospitalized for a period.

51. The defendant was charged only in early 2019. The delay in this case is approximately 2 years or more. Appropriate deductions are made for the defendant with respect to this issue.

52. I understand that they have reconciled and they have now restored peace between themselves. I also note that the wife wanted the lowest possible sentence to be given for her husband to serve given the fact that they have reconciled. Her wishes are reflected in the final sentence, however, I cannot go below 2 years as not to set a bad precedence.

53. This is a case of domestic violence and presently it is arguably prevalent in the country, and therefore it must be condemned in the toughest terms by the court and for this case, I will not shy away from that duty. It is important that men must respect their wives, partners and girlfriends, and it is also imperative to note that there is nothing that justifies the infliction of an unlawful injury to another person. Despite the fact that custom is part and parcel of our laws and has been recognized by the court overtime, any custom that is repugnant with our

¹¹ *Kemahaku v Regina* [2011] SBCA 21; CA-CRAC 16 of 2011 (25 November 2011)

¹² *Regina v Paewa* [2016] SBCA 25; SICOA-CRAC 8 of 2016 (14 October 2016)

¹³ *Penal Code* [Cap 26], s 44(2)

¹⁴ *Penal Code* [Cap 26], s 44(2)

constitution such as pay back killing, and if I may add, domestic violence, should not be used as an excuse to assault or harm another person.

54. Section 3 of the Schedule 3 of the *Constitution*¹⁵ states as follows:

3.-(1) Subject to this paragraph, customary law shall have effect as part of the law of Solomon Islands.

(2) The preceding subparagraph shall not apply in respect of any customary law that is, and to the extent that it is, inconsistent with this Constitution or an Act of Parliament.

55. The case of *Loumia-v-DPP* [1986] provides a comprehensive discussion on custom and its application in this jurisdiction.¹⁶

56. Disobedience and infidelity cannot justify domestic violence and this must be made clear. This, however, does not mean that the court condones and encourages disobedience and infidelity to be entertained within a marriage, courtship or relationship.

57. In view of the above, I hereby sentence the defendant Mr Sufelo to 2 years imprisonment which must be retrospectively commenced on the 14th August 2020.

ORDERS

58. The orders of the Court are as follows:

- 1] **The defendant, Mr Patrick Sufelo, is sentenced to 24 months (2 years imprisonment) to be retrospectively commenced on the 14th August 2020.**
- 2] **The period that he was previous remanded before he was granted bail should also be deducted.**
- 3] **The cash bail if any, must be returned to the surety, or the defendant.**
- 4] **Right of Appeal within 14 days.**
- 5] **I order accordingly.**

¹⁵ *Constitution of Solomon Islands, Schedule 3, s 3*

¹⁶ *Loumia v. Director of Public Prosecutions* [1986] SBCA 1; [1985-1986] SILR 158 (24 February 1986)



PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT