

IN THE CENTRAL MAGISTRATES COURT)  
OF SOLOMON ISLANDS AT HONIARA)  
(Criminal Jurisdiction)



Criminal Case No: 834/2019

REGINA

-V-

SHANIEL SAHEBOLA PEGUA

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COURTS SENTENCING RULING

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Prosecutor: Mrs. Ethel Maeue of Police Prosecutions

Defence counsel: Mr. Waeago, S of Public Solicitors Office for the Defendant.

Plea date: 5<sup>th</sup> Feb 2020

Sentencing Ruling: 10<sup>th</sup> Feb 2020

**CHARGE:**

The defendant in this matter namely Mr. Shaniel Sahebola PEGUA is being charged for Assault Causing Actual Bodily Harm contrary to section 245 of the Penal Code. He pleaded guilty to this charge on 5<sup>th</sup> Feb 2020 after the charge was amended from an Unlawful Wounding charge initially filed against him.

I therefore enter conviction for him for the ACABH charge he pleaded guilty to and will now deliver his sentencing ruling.

**FACTS:**

The facts as agreed to by both parties in this matter filed on 6<sup>th</sup> Feb 2020 relays the following events:

On the 16<sup>th</sup> Sept 2019 at about 5pm in the evening, the Victim namely Gabriel KAKALE was heading home from the Logging Camp at Valasi Ward,

East Guadalcanal. When he reached Nahue river bank he heard the defendant and other persons calling out to him saying "stop, stop, stop". When he heard this, he thought he would be attacked by them so he quickly walked towards the river. Just as he was about to cross the Nahue River, the defendant in the company of others got to him. The defendant kicked him on his back which resulted in him falling on to the ground. He covered his face with his hands but the defendant and another continuously kicked and punched him. The Victim rolled over to try and avoid the attack on him. As a result from the group attacking him, he sustained injuries and bruises to his upper right eyebrow and mouth.

From the above set of events, I have derived the vital features to assess the appropriate punishment:

AGGRAVATING:

1. This is a group offending matter.
2. The victim is a vulnerable person (50 years old.)
3. Disrespectful behaviour of the Defendant towards the Victim especially when they are cousin brothers who should learn how to resolve matters better than act in such manner using violence.
4. Multiple assaults on the Victim resulting in the injuries sustained.
5. This was committed in the presence of other vulnerable people (grandchildren and an in law).

MITIGATING:

1. Early guilty Plea which attracts deduction/discount on his punishment.
2. Reconciliation- the defendant desires to reconcile but has been locked in remand since being taken by police after the incident. He expressed remorse through his counsel.
3. It was a provoked attack as there was land dispute between them and the Victim.

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4. Cooperative person with police showing character of a rehabilitated person already.
5. Being on remand for 4 months now has helped the defendant to understand the extent of what he has done and learnt from it to must be a better man. He therefore realises what has happened and have learned a lesson.

PERSONAL CIRCUMSTANCES:

1. He is 40 years old
2. He is married with 2 children who are 2 years old and 7 months old. Young family needing a father to be around to actively play his fatherly role.
3. He is self-employed and makes money privately doing market selling.
4. He is the bread winner in his family.

LEGAL ANALYSIS OVER THE SENTENCING RULING:

In assessing the aggravating factors and mitigating in this case and his personal circumstances, I also apply the different appropriate sentencing principles to find the best penalty suitable for such offender. In my view this is a medium ranged kind of this offence of Assault Causing Actual Bodily Harm. This is because though it was a group offending against a vulnerable person which shows clearly the threatening situation the victim was in at the time, the injuries sustained were not reported to be as serious as no weapon was used as well. I would at this stage strongly recommend prosecution to ensure medical reports for such matters are always filed with their sentencing submissions to assist the court fully to note the extent of injuries.

Furthermore the defendant is a 1<sup>st</sup> time offender and is sorry for what he has done in this case. He expresses remorse through his counsel and therefore has high prospects of being rehabilitated. However such acts must be deterred to avoid assaults occurring in our society. General deterrence and specific deterrence are applied to send the message out to the community that this will not be accepted in any way. Specific deterrence is to also remind the defendant to never resort to violence in any form to resolve matters after this case is disposed off. People need to learn that there are better ways to resolve issues than using violence. Violence only leads to disruptions, fear, hostility, enmity amongst people and other negative impacts that are attached to such behaviour. Discussing through problems, finding solutions and doing it in a respectful and responsible manner has more benefits as issues will be resolved, parties will all have their freedom to speak and explain their parts and solutions can be reached amicably in the absence of violence. The court needs to keep saying this to remind our good people of better ways and solutions and options to be explored than resort to violence and shedding blood.

I must also put on record my appreciation for both parties in this case, police prosecutor Miss Maeue and Mr. Weago of Public Solicitors Office for their extensive and well done work on their submissions.

This is impressive work that has resulted in assisting me much as I assess on what is the most appropriate punishment suitable for the Defendant.

The case authorities are of great help however I note that most of them are not recent cases of a year back or so. Most are 2 years older cases which I still appreciate but have to contextualise the circumstances of this case as to those of the past.

In light of my assessment, I agree that the sentencing range varies due to the peculiarity of what each case presents with no 2 cases being identically similar to each other.

On the above note for this case as I have stated, it is a medium ranged kind of this offence. I therefore will impose a 1 ½ years (18 months) imprisonment term overall and will increase it by 3 months to reflect the aggravating features (arriving at 21 months) but also have to reduce it by 4 months to reflect the mitigating features as well as his personal circumstances (17 months).

I also note he has been in custody for some time already and that is also deducted from the total time left after calculating on the above basis

3 (estimated at 13 months).

**COURT ORDERS:**

1. Impose 17 months imprisonment for the defendant.
2. Time spent in custody for this matter must be deducted from the 17 months imposed above in Order(1).
3. Appeal can be filed against my decision within 14 days from today.

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Tearo R Beneteti  
Principal Magistrate