



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

(Criminal Jurisdiction)

Criminal Case No: 330 of 2019

REGINA

-V-

EDDIE ALICK SANAU

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Steward Tonowane, Senior Legal Officer, ODPP, for the Crown

Mr Andrew Bosa, Senior Legal Officer, PSO, for the Defendant

Date of Sentencing: 6th April 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 Eddie Alick Sanau was charged with one count of Robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code*. This matter was previously consolidated with the Criminal Case Number 337 of 2019-*Regina-v-Frank Firimolea* ("CC No. 337 of 2019"), however, Mr Firimolea's matter will proceed to trial given the fact that he changed his plea of "guilty" to a "not guilty" plea.
2. Mr Sanau pleaded guilty to the said charge. I now pronounce his conviction based on the plea entered.

Basic background of the defendant and the Complainant

3. The defendant in this matter is Mr Eddie Alick Sanau, a 33-year old from Tawanielosi village, Small Malaita, Malaita Province. The defendant has no previous conviction.
4. The complainant is Mr Billy Wong, a Chinese businessman and the Manager of the Nature Bakery shop at Ranadi in East Honiara.

FACTS

5. The incident occurred at Nature Bakery Shop, at Ranadi industrial site, East Honiara on Guadalcanal on the 28th of April 2019.
6. Mr Sanau with other eight men were armed with offensive weapons which include knives and iron rod and robbed the Nature Bakery located at Ranadi at around 0400hrs in the morning.
7. The defendant was arrested on the 28th of April 2019 at Honiara in Guadalcanal province.
8. During the incident, the following items and the sum of money are missing:
 - 1) 2 x Acer Note Book;
 - 2) 1 x iPhone;
 - 3) 4 x Mobile Phones and;
 - 4) SBD 90,600;
 - 5) AUD 1000;
 - 6) USD 400;
9. The accused was charged with one count of Armed Robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code* [Cap 26].
10. Mr Sanau's co-accused is Mr Frank Firimolea who has now changed his recent plea of guilty to one of not guilty. This means that Mr Firimolea's matter shall proceed to trial.

DISCUSSION AND ANALYSIS

COUNT 1: ARMED ROBBERY CONTRARY TO SECTION 293(1) AND SECTION 21(a) OF THE PENAL CODE [CAP 26]

11. Section 293(1)(a) of the *Penal Code* [Cap 26]¹ provides as follows:

293.-(1) Any person who -

(a) being armed with any offensive weapon or instrument, or being together with one other person or more, robs, or assaults with intent to rob, any person; or

is guilty of a felony, and shall be liable to imprisonment for life.

12. The offence of armed robbery carries a life imprisonment which shows that it is one of the most serious offences prescribed by the *Penal Code* [Cap 26].

¹ *Penal Code* [Cap 26], s 293(1)

Aggravating features

13. The aggravating factors in this case are as follows:
14. **Seriousness of the offence.** The maximum penalty of life imprisonment shows that the offence of robbery is a very serious offence.
15. **Premeditation.** The facts revealed that the robbery offence was well orchestrated and implemented. A vehicle was used and weapons such as irons and knives were also used. In addition to that, the offence was committed at 4:00am on the date of the offending which means that most people would be soundly asleep at the time. This means that the offence was premeditated.
16. **Offence committed with the company of others.** The offence was committed together with at least seven people which can easily cause fear and panic to any person. This is quite a big number of people and is an aggravation.
17. **It was carried out with violence/weapons used.** Weapons were used and violence was committed against the victims, and this made the workers at the bakery shop to escape leaving the victim and others vulnerable. The victims were assaulted or punched several times before the sum of money were taken from the victim. According to the Medical Report dated 28 April 2019, the victim Mr Billy Wong suffered 'pain' and sustained a "swollen" face with bruises on the lower back and left shoulder. According to the brief information in the Medical Report, the victim was said to have been attacked by unknown persons with sharp instruments on his forehead and at the back of his head and left arm. Professor Eric Colvin explains that the offence of Robbery in addition to the stealing component involves the use or threat of violence as follows:

The offence of robbery involves stealing coupled with the use or threat of violence, immediately beforehand or afterwards, in order to steal the property or to prevent or overcome resistance to its being stolen: Codes s 409(QLD)/s 392(WA). Each element has an intentional aspect. The first is an intention to permanently deprive the owner of the property; this is required for stealing. The second is the use of violence in order to steal or to prevent or overcome resistance. The phrase 'in order' suggests a purposive requirement. Presumably the incidental use of violence would not constitute robbery. The violence be against the victim but it can be directed to any person or even to property.²
18. **Financial Loss to the complainants.** A substantial amount of money was stolen from the two complainants in this matter. The money stolen were as follows: SBD 90,600; AUD 1000; and USD 400. Bakery is a medium sized business and the loss of SBD 100000 could easily affect the revenue collection of such business and may take some time to recover the unwarranted loss.
19. **Psychological and mental effect on the victims.** There is no doubt that the victims were traumatized and suffered psychological repercussions. The victims were forcefully awoken from their peaceful sleep

² Eric Colvin et al. "Criminal Law in Queensland and Western Australia: Cases and Commentary": Ch. 7 Property Offences (6th Edition, 2012) 2019.

and then got assaulted. This is a bit harsh and cruel and they did not deserve to be subjected to such treatment in their very own home and place of business.

20. **Occurred at night.** The offence occurred at night. It is well settled in this jurisdiction that the commission of an offence in the night is an aggravation.³

Mitigating Features

21. The mitigating factors are as follows:
22. **Early guilty plea.** He entered an early guilty plea to one count of armed robbery contrary to section 293(1) (a) of the Penal Code [Cap 26]. This also saves the courts time and resources to run a trial. However, I note that he entered the guilty plea only on the 14th of February 2020 after he was arrested in April 2019.
23. **Genuine Remorse.** Mr Sanau apologized to the court and expressed his great remorse and regret for what he did. In fact, he said, his meeting up with the other offenders was accidental but admitted he was part of the group when the offending occurred.
24. **First time offender and Good character.** The defendant is a first-time offender until his conviction in this present case. Mr Bosa of counsel for the defendant also said that the defendant had a good character generally in which I agree and I am of the view that having a good character is the same as having no previous conviction or a first time offender.
25. **Cooperation with the Police.** The defendant cooperated well with the Police. He made an early admission to the Police during the course of the investigation.
26. **Personal Circumstances.** Mr Eddie Sanau is married and has 4 children. He works as a welder by profession. He is effectively the bread winner and has financial responsibilities towards his children and family.
27. **Time spent in custody.** The defendant was remanded in custody since the 28th of April 2019. This ought to be taken into account, and an appropriate deduction ought to be made.

Comparative Sentences

28. The offence of armed robbery is a very serious crime and this is reflected in the maximum penalty of life imprisonment.⁴

³ *Regina v Funiifaka* [1997] SBHC 31; HC-CRC 033 of 1996 (6 June 1997)

⁴ *Penal Code* [Cap 26], s 293(1)

29. In *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)⁵, 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. The armed robbery in this case involved the robbing of around SBD 4 million dollars at the Westpac Bank at Point Cruz in Honiara. The principal offender Mr Selo also caused grievous bodily harm to one of the security guards Mr Michael Malea by viciously cutting him using a knife that completely amputated his left hand leaving only the thumb. The robbers then used a vehicle and escaped with the boxes of money. The arraignment was done in the Magistrates Court and was committed to the High Court for sentencing, and an 8 years imprisonment term was imposed. However, it was further increased to 14 years by the Court of Appeal upon appeal in consideration of the severity of the robbery within a commercial bank in Honiara. The Court of Appeal stated as follows:

This is a most serious case of armed robbery of a commercial bank during normal business hours. It was premeditated and involved weapons which, it is clear, this gang were prepared to use. The appellant and his companion consciously planned a robbery in Mendana Avenue in the heart of the Honiara commercial district. They did so at a time when they must have been well aware a large number of innocent bystanders going about their lawful business would be present. They must have also been aware that their actions could prove dangerous to those bystanders. A very large sum of money was involved.

30. In *Regina v Suilamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)⁶, the High Court imposed a sentence of 4 years imprisonment for Mr Maritino Suilamo and Mr Tome Akwasu^u respectively, and a sentence of 3 years imprisonment for Mr Molousafi after they all pleaded guilty to the charge of robbery. One of the victims of the robbery also died as a result of the robbery. The three defendants were sentenced also for manslaughter ranging from 10 years and 7 years imprisonment respectively which were ordered to be served concurrently with the sentences for the offence of robbery.
31. In *Regina-v-Suba* [2016] SBMC 21; Criminal Case No. 1154 of 2015⁷, the defendant was sentenced to 3 years imprisonment. Mr Jonis Suba pleaded guilty to one count of armed robbery contrary to section 293(1) (a) of the *Penal Code* [Cap 26]. The offending occurred in the early hours on the 1st of August 2015. The defendants were armed with bush knives and covered their faces with masks and entered the Winlex Company's compound at Lunga in East Honiara. The defendants stole SBD 130,336.70 cash, a 070 chainsaw and other personal properties from the said company. The defendant only took SBD 800 and a laptop from the total amount of cash and the properties stolen that night. Those items were never recovered.
32. In *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)⁸, the court sentenced the defendant to a term of 26 months of imprisonment after he pleaded guilty to one count of robbery contrary to the provisions of the *Penal Code* [Cap 26]. The offending occurred on the 25th July 2015,

⁵ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

⁶ *Regina v Suilamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)

⁷ *Regina v Suba* [2016] SBMC 21; Criminal Case 1154 of 2015 (4 August 2016)

⁸ *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)

when the accused with his five friends were drinking liquor beside a logging road that leads up to NAC area in the Guadalcanal Province. The defendants asked one of the truck drivers of a logging company, an Asian, to drop them off at their destination but the driver refused. The victim was ejected from the truck compellingly. One of the defendants then drove the vehicle and abandoned it somewhere beside the Tina River in the Guadalcanal plains. Parts of the vehicle were also damaged.

33. In *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)⁹; the defendant was sentenced to 2 years imprisonment after he pleaded guilty to one count of robbery contrary to section 293 (1)(a) of the *Penal Code*, and one count of assault causing actual bodily harm contrary to section 245 of the *Penal Code* [Cap 26]. The defendant and his associates were armed with a bush knife as well. The defendant pleaded guilty to the two charges that were laid against him.
34. Based on the case authorities from the Court of Appeal, High Court and this court, the sentencing tariff for armed robbery in Solomon Islands ranges from a custodial sentence of around a year up to 15 years.
35. In the present case, the offending involves the use of weapon especially knives and irons. It also involves the assault of the victims and there were around eight men including the defendant. This present case is not as serious as the *Selo's case*, however, both cases shared some similarities in terms of their planning, money and properties were stolen and the use of offensive weapons.

Starting Point

36. In *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)¹⁰, their Lordships stated:

In imposing sentence, the first step is to arrive at an appropriate starting point for each of the offences the appellant pleaded guilty to. This was a task not undertaken by the learned Judge. The next step, again not undertaken by the sentencing Judge, is to consider the aggravating factors to reach an initial starting point. That must be considered against the well-established totality principle before mitigating factors are factored in.

37. After having considered the relevant factors and especially the aggravating features in this present case, it is my considered view that a starting point of 5 years (or 60 months) is appropriate for this present case.
38. **Early guilty plea.** He entered a guilty plea to one count of armed robbery contrary to section 293(1) (a) of the *Penal Code* [Cap 26]. In *Qoloni v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)¹¹, CJ Palmer quoted the passage in *R. v. Thompson* (2000) 49 NSWLR 383; 115 A.Crim R 104 (CCA - a full bench) per Spigelman CJ, as follows:

(iii) The utilitarian value of a plea to the criminal justice system should generally be assessed in the range of 10-25 percent discount on sentence. The primary consideration determining where in the

⁹ *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)

¹⁰ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

¹¹ *Qoloni v Regina* [2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)

range a particular case should fall is the timing of the plea. What is to be regarded as an early plea will vary according to the circumstances of the case and is a matter for determination by the sentencing judge.

39. I note that he only entered a guilty plea in February 2020. It took him almost 10 months since he was remanded to enter his plea of guilty to the offence. One of the reasons for the delay is that Mr Sanau's counsel made a few proposals or plea deals with the Office of the Director of Public Prosecutions which were all unsuccessful. Hence, the delay in this case is also attributed to the defendant and his counsel as well. Hence, I deduct 10 months which is still within the range in *Ooloni-v-Regina* taking into consideration the timing of the plea.
40. **Genuine Remorse.** Mr Sanau apologized to the court and expressed his great remorse and regret for what he did. In fact, he said, his meeting up with the other offenders was accidental but admitted he was part of the group when the offending occurred. I deduct 2 months.
41. **First time offender and Good character.** The defendant is a first-time offender until his conviction in this present case. I deduct 2 months.
42. **Cooperation with the Police.** The defendant cooperated well with the Police. He made an early admission to the Police during the course of the investigation and I deduct 2 months.
43. **Personal Circumstances.** Mr Eddie Sanau is married and has 4 children. He works as a welder and maintenance by profession. He is effectively the bread winner and has financial responsibilities towards his children and family. I deduct 2 months.
44. **Time spent in custody.** The defendant was remanded in custody since the 28th of April 2019. This ought to be taken into account, and an appropriate deduction ought to be made.
45. Hence, I am satisfied that an imprisonment of 42 months (3 year and 6 months) is appropriate with respect to the severity of the offending.

CONCLUSION

46. The fundamental and constitutional rights of individuals such as the right to own a property or protection of a property is of paramount importance and I cannot stress their significance enough.¹² Robbery is one of the most serious offences in this jurisdiction as prescribed by the *Penal Code* [Cap 26]¹³ with a maximum sentence of life imprisonment. I take note of these important rights in the process of formulating the sentence in this case.
47. The present robbery offence is aggravated by, inter alia, the use of the weapons and the assaulting of the victims and the presence of around eight robbers including the defendant. There is no dispute that

¹² *Constitution of Solomon Islands 1978*, s 8 and 9

¹³ *Penal Code* [Cap 26],

the defendant was part of the group who committed the offence of robbery that night. The effect of section 21 of the *Penal Code* is very clear.¹⁴

48. In *Selo v Regina* [2017]¹⁵ SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017), the Court of Appeal when imposing a 14 year jail sentence in a ruthless robbery case highlighted that was one of the "...most serious case of armed robbery of a commercial bank during normal business hours..." and that it "...was premeditated" and involved the use of weapons. The Court of Appeal explained that the robbers had planned the robbery and noted that they were well aware that a large number of innocent bystanders would be present and going about their lawful businesses in Honiara's commercial district.

49. In *Fefelev Director of Public Prosecutions* [1987] SBHC 5; HC-CRAC 005 of 1987 (23 February 1987), his Lordship Ward CJ stated that:

*Any robbery where the offender is armed with a knife even if it not used directly must result in a lengthy sentence.*¹⁶

50. Moreover, the present case is also exacerbated by the fact that the victims were also assaulted. They were punched several times by the offenders and sustained injuries.

51. I note that the victim is a Chinese businessman and the manager of the Nature Bakery Shop at Ranadi in East Honiara. A considerable amount of money in the sum of SBD 90,000; AUD 1000 (equivalent to SBD 6000); USD 400 (equivalent to SBD 3000) and coupled with other properties such as 2 Acer Note Book, 1 iPhone; 4 Mobile Phones were all stolen. This is a great loss for the bakery business, and the victims who lost both their monies and valuable properties and who were also assaulted. This is an affront to the growth of commerce and business in the country and the occurrences of this offence has become quite common recently. Lazy, selfish and inconsiderate people do such things for a living and their actions must be condemned in the strongest terms by the courts. The Government of the day must do more to protect not only our investors and the business community but ordinary Solomon Islanders from robbers and thieves. This should include the installation of Cameras in our public amenities, streets and main buildings within our city and other urban centres throughout the country to complement what the businesses and companies have done for themselves in terms of their security. Similarly, the Police should continue to be vigilant and swiftly respond to suspicious reports from the public. Each individual is entitled to feel safe whilst living in his or her home or property either in the night or day.

52. Mr Bosa of counsel for the defendant suggested that a six (6) months imprisonment is appropriate for this present case as the defendant did not take a leading role in the commission of the offence. However, I am not persuaded with that proposition as it will send a wrong message to the members of the public that you can get only a 6 months' imprisonment for an offence of robbery.

53. Having said that and after taking into account the principles of sentencing such as punishment and retribution, deterrence and rehabilitation, and also the relevant factors, I now sentence the offender Mr

¹⁴ *Penal Code* [Cap 23], s21

¹⁵ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

¹⁶ *Fefelev Director of Public Prosecutions* [1987] SBHC 5; HC-CRAC 005 of 1987 (23 February 1987)

Eddie Alick Sanau to 42 months (3 years and 6 months) imprisonment for the offence of Armed Robbery contrary to section 293(1) of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code* [Cap 26].

54. I take note of the time that Mr Eddie Alick Sanau has spent in custody and the total sentence must either be backdated to the time when he was first remanded or the time spent in custody ought to be deducted accordingly.
55. It is my considered view that the sentence will not have a crushing effect on the defendant given the magnitude of the present case and also taking into account the recent case of *Selo-v-Regina*.¹⁷ I also hope that this would send a message of general deterrence to the members of the public and any potential offender that committing robbery and other related offences have severe penalties.

ORDERS

56. The orders of the Court are as follows:

- 1] **The offender Mr Eddie Alick Sanau is sentenced to a term of 42 months (3 years and 6 months) imprisonment for one count of Armed Robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code*[Cap 26].**
- 2] **The time spent in custody shall be taken into account and the sentence must be retrospectively commenced from the date that the defendant was first arrested or remanded in April 2019.**
- 3] **The CC No. 337 of 2019-*Regina-v-Firimolea* shall proceed to trial and further orders will be made on the next court occasion.**
- 4] **Right of Appeal within 14 days.**



PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT

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