



**IN THE SOLOMON ISLANDS MAGISTRATES' COURT
AT HONIARA
Criminal Case No. 1074 of 2020**

**REGINA
v.
JUNIOR DAOGA**

Before: Principal Magistrate Ms. Fatimah Me'ere Taeburi
Ms. Francisca Angilio Luza (DPP) for the Crown
Mr. Sholto Rodney Manebosa (PSO) for the Defendant

Date of Hearing: 16th March 2021
Date of Sentence: 17th March 2021

SENTENCE

1. The prisoner pleaded guilty to two counts of unlawful wounding contrary to section 229 of the Penal Code.¹
2. The facts agreed to in this case are as follows;
3. On the 30th of August 2019, he met his first victim at a market stall at Tasahe B in Honiara. He left the market and went back to his home. He came back to the market stall after a few minutes and asked the victim about some rumours. He then hit his victim on the head using a weapon called a *nunchaku*. The victim fell unconscious and sustained an injury to his head. The victim was admitted at the National Referral Hospital. He released after two days. Strangely there was no medical reported presented in court by the prosecution to describe the extent of the injury sustained by the victim.²
4. On the 8th of November 2020, the prisoner met his second victim at White River in Honiara. He enquired about the whereabouts of his girlfriend. He later came back

¹ Section 229 Penal Code [Cap 26] –
Unlawful Wounding

229. Any person who unlawfully wounds another is guilty of a misdemeanour and shall be liable to imprisonment for 5 years.

²Memorandum of Agreed facts filed 16th March 2021

to the victim and stabbed the victim on the chest with a scissors. The victim was also taken to the National Referral Hospital. The medical report showed that he sustained a wound of 1 cm to the left side of his chest. He was given some antibiotics and released the same day.³

5. I convict the prisoner for unlawful wounding in count 2. I am satisfied that the facts of the case and the evidence of the medical report proves all the elements of the offence.

6. I cannot convict the prisoner for unlawful wound in count 1. I am not satisfied that the circumstances of the offending in count 1 prove all the elements of the offence of unlawful wounding. Although the counsels have conceded in the agreed facts that the victim in count 1 sustained an injury, there is no medical evidence or any other material to describe the extent of the injury sustained.

7. Section 229 of the Penal Code creates the offence of unlawful wounding. It provides,

*Any person who unlawfully wounds another is guilty of a misdemeanour and shall be liable to imprisonment for five years.*⁴

8. Section 4 of the Penal Code which provides the interpretations in the Act, defines the word 'wound' as "...any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane".⁵

9. Without medical evidence, I cannot be certain that the injury sustained by the victim in count 1 satisfies the definition of a wound as provided in the Penal Code.

10. Section 159 of the Criminal Procedure Code gives me the authority to convict a person for a lesser offence even if he is not charged for the lesser offence in cases where the facts do not constitute the elements of the offence for which he is charged. The section provides,

When offence proved is included in offence charged

159. – (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a lesser offence, and

³ Refer to footnotes #2

⁴ Refer to footnotes #1

⁵ Section 4 Penal Code [Cap 26]

such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence although he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he was not charged with it.⁶

11. I find that the agreed facts relevant to count 1 discloses an offence of assault causing actual bodily harm contrary to section 245 of the Penal Code.
12. Section 245 of the Penal Code defines the offence as follows,
Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and shall be liable to imprisonment for 5 years.⁷
13. Section 4 of the Penal Code defines the word 'harm' to mean, "...any bodily hurt, disease or disorder whether permanent or temporary".⁸ I am satisfied that the facts constituting count 1 prove all the elements of a lesser offence of assault causing actual bodily harm and I convict him on the lesser offence.
14. In sentencing him, I take into account that he was armed on both occasions and used dangerous weapons to cause harm to both victims. He struck both victims at vulnerable parts of the human body. He hit the first victim on the head with a *nanchaku* and he stabbed the second one on the chest with a scissors.
15. I find that his actions were unprovoked. There is nothing in the agreed facts to suggest that there was any sort of argument or disagreement between him and his two victims. The victims were simply answering to his queries.
16. Both victims were taken to the hospital after he assaulted them. The victim to count 1 was unconscious and was admitted at the hospital for 2 days. I consider the injuries sustained by them and their pain and sufferings.
17. I also take into account that he pleaded guilty to the charges. He informed the court that he made attempts to reconcile with both victims. His proposals were refused. Nevertheless I consider that he had demonstrated remorse.
18. He is a young man of 23 years old. He is a native from Malatia Province in the Northern District. He is married and has a young family.

⁶ Section 159 Criminal Procedure Code

⁷ Section 245 Penal Code [Cap 26]

⁸ Refer to footnotes #5

