



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

(Criminal Jurisdiction)

Criminal Case No: 724 of 2019

REGINA

-V-

DIMPTON DIMU AND FREDRICK DAU

PRESIDING MAGISTRATE: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Ms Patricia Tabepuda, Principal Legal Officer, Office of the Director of Public Prosecutions, for the Crown

Mr Rodney S Manebosa, Principal Legal Officer, Public Solicitors Office, for the first defendant
Mr Dimpton Dimu

Mr Bobby Harunari, Senior Legal Officer, Public Solicitors Office, for the second defendant Mr
Fredrick Dau

Date of Sentence: 21st April 2021

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

SENTENCE

INTRODUCTION

1. The defendants Mr Dimpton Dimu and Fredrick Dau were each charged with one count of Robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] read with section 21 (a)-(d) of the *Penal Code* [Cap 26]. The two defendants were found guilty and convicted after a trial. I will now proceed to deliver their respective sentences.

FACTS

2. The relevant facts can be summarized as follows.

3. The first defendant Mr Dimpton Dimu is from Bunikalo village, Marovo Lagoon in the Western Province. He was 20 years of age at the time of the offending. He is currently 22 years of age.
4. The second defendant Mr Fredrick Dau comes from Kakara Village, North Malaita, Malaita Province. He was 25 years of age at the time of the offending. He is around 27 years now.
5. The third suspect who is supposed to be the third defendant is still at large. He is at this stage simply identified as Nicky.
6. The complainant is Mr John Houaroa from the Are,are region in the Malaita Province.
7. The incident occurred beside the fence at the old Solomon Islands Football Federation Academy (SIFF), King George Sixth School area, east Honiara, on the 11 August 2019 at around 7pm at night.
8. The complainant met his then girlfriend Noelyn Wate at King George VI area, and they walked to the fence beside the SIFF Academy and sat down. Within ten minutes after sitting down, three men approached them. The three men's names are Dimpton Dimu, Fredrick Dau and Nicky.
9. Prior to this, the three men had been drinking a locally made alcohol known as Kwaso beside one of the fields at the KGVI playing fields.
10. One of three men called out to the complainant and his girlfriend by saying "Jo". The complainant realized that the name "Jo" could be a reference to his name who is also John so he responded to the men and said "how is it?" The three men moved closer to the complainant and his girlfriend. The complainant was leaning onto the SIFF Academy fence at the material time.
11. Without an explanation and warning, the third suspect took out a knife and placed it on the complainant's neck. The knife is approximately 45 centimeters in length. The complainant was helpless and could not do anything as the knife was placed on his neck. That person demanded the complainant to give his (victim's) mobile phone to him (Nicky) and his cohorts. The complainant gave the phone to him. Next, that person asked for some money, and the complainant then gave him SBD 5 which was his bus fare. Moreover, that person demanded the complainant to give his (complainant's) shoes to him, so he gave those shoes to him. He then demanded the complainant to give his (complainant's) shirt to him which he complied with. Finally, the complainant was told to also give his long trousers to the defendants as well.
12. Whilst Nicky was robbing and torturing the complainant, Dimu watched and stood next to him. Nicky pointed the knife on the complainant's neck and whilst both Dimu and him threatened him. The knife was placed on his neck and when he tried to give an explanation to the men,

Nicky punched him on his face. The complainant as a result took out his long pant/trousers and gave it to Nicky, and he was wearing only his pant.

13. Moments later, Nicky gave the knife to Dimu. Dimu held the knife and placed the cutting edge right on the complainant's neck. Nicky then asked the complainant questions about his address and other personal information in which he gave him the accurate information. The defendants continued to torture him.
14. Dimu threatened the complainant as follows: "...if you continue to talk, I will now cut your tongue..." whilst placing the knife on the complainant's neck. When Nicky punched him, Dimu would move the knife away, and after that he would place the knife onto his neck again.
15. The complainant gave the defendants virtually all his properties which include his phone, shirt, money, shoes and his long trousers. The sequence of the events were as follows. The complainant gave his phone and money. Later, he gave his shirt, shoes, and long pants to the perpetrators.
16. The complainant's girlfriend Ms Wate was present all throughout the incident and she was terrified. Ms Wate also faced her own ordeals and humiliation that night. Nicky told her to take off her shirt whilst Dimu gave orders for her to take off her bra. The complainant's girlfriend was crying and she called Dimu but he swore and pretended that he did not know her. The defendants threatened and ordered the girlfriend to take her shirt off. Ms Wate told Dimu that what they were doing was wrong and Dimu responded "*fuckem you, who na Dimu*" in an attempt to conceal his identity. Dimu told the complainant's girlfriend to take off her bra, and Nicky told her to take off her trousers which she reluctantly complied with. By then, the complainant and his girlfriend were wearing only their pants.
17. The defendants continued to assault the complainant. In the midst of all these, Nicky then kned the complainant's face whilst he was sitting which caused him (complainant) to bleed profusely and he fell down as a result. His body became very weak.
18. At that point in time, Nicky and Dimu discussed between themselves that they should take the complainant to the basketball court and the complainant could hear them talking. The complainant did not have much strength at that time and he feared for his life and he was thinking that if he was taken that far, the men would kill him.
19. Dau was also present all throughout the incident at the crime scene and stood some few meters away, whilst Dimu and Nicky were standing right in front of them (victims). Dau's role was to stand and watch as a lookout.
16. After they had taken everything from the complainant, Nicky ordered Dimu and Dau to take the already naked complainant's girlfriend to the "base". According to Dimu the "base" is a spot close to KGV field located in the bush which is a meeting place for students. Dimu held

Ms Wate's shoulder and Dau accompanied them. This was after she took off her shirt, bra and trousers, as ordered by Nicky and Dimu. Dimu held her shoulder whilst Dau followed them heading for the basketball court. Dau and Dimu led the girl and they walked towards the "base" whilst Nicky held the complainant's neck, and he tried to take him to the base as well.

20. When Dimu was leading the complainant's girlfriend away with Dau, the complainant was still under captivity beside the fence whilst Nicky was standing and trying to lead him to the base as well.
21. Dau, Dimu and Ms Wate were ahead of the complainant and Nicky on their way to the base. The complainant and Nicky were going to follow the others to the "base" as well. However, as the journey started, the complainant tapped Nicky's hand and ran away. He shouted for help. Some of the boys who were sitting beside the field went to him and he told them that the three men had just robbed him. He was worried about his girlfriend and that they would rape or murder her. They searched the edge of the field but could not find his girlfriend and the perpetrators.
22. The complainant walked to the KGVI bus stop and he met a Police Patrol vehicle from the Naha Police Station, and he managed to stop the vehicle. He got onto it, and they drove to the field searching for his girlfriend and the three men but they could not locate them.
23. The three men (two of whom are the present defendants) were present all throughout when the robbery occurred. Dau was present at the crime scene, standing from some meters away and watching, whilst the two others assaulted the complainant.
24. On their way to the base, Dimu held Ms Wate's shoulder whilst walking, and he told her to move faster. The complainant's girlfriend was led to a creeper which shaped like a cave. Dau left the others when they reached the base. She was still there when Nicky arrived. She was further led to a brick house. She was still wearing only her pants at the brick house whilst Nicky and Dimu joked about the fact that she was naked.
25. The complainant's girlfriend Ms Wate knew Dimu and Dau quite well as they were neighbors at KGVI heights in east Honiara and they grew up together there.
26. The defendants were later arrested and charged by the Police.

DISCUSSION AND ANALYSIS

27. The offence of armed robbery carries a maximum penalty of life imprisonment.¹ The sentencing principles such as punishment, deterrence and rehabilitation must of course be considered in the process of formulating any sentence.

AGGRAVATING FEATURES

28. The aggravating features are as follows:

29. **Group offending.** The commission of the offending by the three adult men would normally cause fear to anybody coupled with the use of weapon. This must be considered as an aggravation.

30. **Premeditation.** It appears that the defendants premeditated the offending before actually carrying it out. They had a weapon with them. They knew where the location of the complainant and his girlfriend. They did not find any difficulty in reaching the victims. They were also drinking Kwaso, a locally made alcohol, before actually approaching the young couple. Nicky had even mentioned to these defendants that he had an enemy beside the field.

31. **Use of Weapon and violence.** Dimu and the other suspect used a knife to threaten and rob the complainant. The defendants especially Dimu and the third suspect assaulted the victim that resulted in the complainant losing blood through bleeding which weakened his body. The complainant had contemplated that if he was taken to the so called "base", he would be killed given the torture that he had already received. In *Fefe v 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.*²

32. **Loss of the complainant's properties.** The properties may not be that expensive in terms of monetary value, however; they are the complainant's properties, and to him they are valuable properties. He was left with only his pant. It must be made clear that the law not only protects expensive and the more valuable properties, and to suggest that that because the clothes and properties stolen are not expensive would run the risk of making the law as being more protective of certain classes of people within our communities.

33. **Humiliation for the complainant and his girlfriend.** The complainant and his girlfriend were told to take off their clothes, and they were wearing only their pants towards the end of the

¹ *Penal Code* [Cap 26], s 293(1)

² *Fefe v Director of Public Prosecutions* [1987] SBHC 5; HC-CRAC 005 of 1987 (23 February 1987)

offending. They suffered great humiliation as far as their dignity as adults and as individuals is concerned. No one is deserved to be treated as such.

MITIGATING FACTORS

34. The mitigating factors are as follows: No prior convictions; young offender and chances of rehabilitation, cooperation with the police, the circumstances of the offending, delay, personal circumstances, and pre-sentence custody. These factors are addressed later in detail in this ruling for each of the defendants.

COMPARATIVE ANALYSIS

35. The offence of armed robbery is a very serious crime and this is reflected in the maximum penalty of life imprisonment.³ Professor Colvin explained that “the consistency principle is the principle that similar cases should receive similar sentences. Perfect consistency is unattainable in a system of discretionary sentencing. Nevertheless, it can be increased by attention to precedents or by use of sentencing guidelines” [end of quote].⁴
36. In *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)⁵; Gleeson CJ said, as follows:

All discretionary decision-making carries with it the probability of some degree of inconsistency. But there are limits beyond which such inconsistency itself constitutes a form of injustice. The outcome of discretionary decision-making can never be uniform, but it ought to depend as little as possible upon the identity of the judge who happens to hear the case. Like cases should be treated in like manner. The administration of criminal justice works as a system; not merely as a multiplicity of unconnected single instances. It should be systematically fair, and that involves, amongst other things, reasonable consistency.

37. Some of the cases in this jurisdiction for comparative purposes are as follows. In *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)⁶, 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 in the vicinity of the Westpac Bank at Point Cruz in Honiara. In the course of committing the offence, Mr Selo also caused grievous bodily harm

³ *Penal Code* [Cap 26], s 293(1)

⁴ Eric Colvin et al “Criminal Law in Queensland and Western Australia: Cases and Commentary”-Sentencing Principles (6th Edition, 2012) 947.

⁵ *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)

⁶ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

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 which was done in broad daylight and within one of the commercial banks in the Central Business District in Honiara.⁷

38. In *Regina v Sulamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)⁸, the High Court imposed a sentence of 4 years imprisonment for Mr Maritino Sulamo 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. Hence, 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.
39. In *Regina v Suba* [2016] SBMC 21; Criminal Case No. 1154 of 2015⁹, 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.
40. In *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)¹⁰ 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, 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

⁷ Their Lordships in *Selo* commented 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.

⁸ *Regina v Sulamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)

⁹ *Regina v Suba* [2016] SBMC 21; Criminal Case 1154 of 2015 (4 August 2016)

¹⁰ *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)

defendants then drove the vehicle and abandoned it somewhere beside the Tina River in the Guadalcanal plains. Parts of the vehicle were also damaged.

41. In *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)¹¹; 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.
42. Based on the case authorities from this court, the High Court and the Court of Appeal, the sentencing tariff for armed robbery ranges from a custodial sentence of less than a year up to around 15 years.
43. In *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)¹², Kirby J said at [89]:

In Lowe v The Queen[100], Mason J explained that consistency in criminal punishment is "a fundamental element in any rational and fair system of criminal justice". Inconsistency, he declared, "is calculated to lead to an erosion of public confidence in the integrity of the administration of justice" and is "regarded as a badge of unfairness and unequal treatment under the law"[101]. He was there speaking of disparity between the sentences imposed on co-offenders. However, the principle is one of general application.

44. The consistency in terms of sentencing between co-offenders is very important, however, as Kirby J noted in *Wong*,¹³ it is only a principle of "general application", which in my view the court may under its discretion can still deliver sentences for co-offenders based on the level of their participation and criminal responsibility in the offending. The prosecution submitted that the defendants should be sentenced as per their level of culpability in which the defence also acknowledged. Hence, I am satisfied that the defendants shall be sentenced in accordance with their respective level of culpability and participation. Mr Dimu played an integral role in the offending. For example, he held a knife and placed it upon the neck of the complainant. He also uttered some threatening words to the complainant. He also told the complainant's girlfriend to take off her bra.
45. On the other hand, Mr Dau was present at the crime scene, and he knew all the facts that constituted the offence. He accompanied Dimu and Ms Wate to the "base" whilst the complainant was held under captivity beside the SIFF Academy fence by Nicky. He left as soon as they reached the base. He did not say a word or possess any weapon at the time of the offending. His level of criminal responsibility is minimal and he ought to receive a lesser sentence. To achieve this, it is my considered opinion that the pair should be given different

¹¹ *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)

¹² *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)

¹³ *Wong v R* [2001] HCA 64; 207 CLR 584; 185 ALR 233; 76 ALJR 79 (15 November 2001)

starting points in terms of their sentencing because they almost have the same mitigating factors.

46. I will now deal with Mr Dimu first.

STARTING POINT

Dimu

47. The starting point of 36 months imprisonment in my view is appropriate for Mr Dimu. I will now consider the mitigating factors and give due allowances.
48. **No prior convictions.** Mr Dimu is a first-time offender and had no prior convictions. I deduct 2 months to reflect this.
49. **Young Offender.** The defendant is 22 years of age. He is still young and there is no doubt that he has great chances of rehabilitation. I deduct 2 months.
50. **Cooperation with Police.** The defendant cooperated well with the Police during the investigations. I deduct 2 months as well.
51. **Circumstances of the offending.** The defence submitted that the defendant Mr Dimu assisted the complainant's girlfriend to reach home safely after the robbery incident. I agree and this should be considered in his favor. I deduct 2 months to reflect the circumstances of the offending.
52. **Delay.** There is a delay since the commencement of the proceeding in 2019. The case authorities in this jurisdiction are clear that any delay regardless of whoever is to be blamed must be considered in favor of the defendant.¹⁴ I deduct 2 months to reflect the delay.
53. **Personal Circumstances.** Dimu is 22 years of age and an aspiring sailor. He had been given a letter of offer to study at the Solomon Islands National University and was enrolled in Advance Safety at the School of Technology and Maritime Studies a few years ago. He can still re-enroll at SINU after serving his imprisonment term for this case as there is no law that forbids a former convict to continue with his studies.
54. In addition to that, he is also a member of the local youth group at the King George Residential area, and also an active member of the Seventh Day Adventist Immanuel Church.
55. He is also a member of the local comedy group known as "Home Boys Comedy". This group posted their videos on Face Book.

¹⁴ *Bolami v Regina* [2011] SBCA 26; CA-CRAC 9 of 2011 (25 November 2011)

56. I deduct 2 months to reflect his personal circumstances.

57. Hence, I am satisfied that 24 months imprisonment is appropriate for Mr Dimu taking into account his culpability.

Dau

58. As alluded to above, due to the fact that Mr Dau's level of participation and culpability is minimal. I am of the view that his starting point should be lower than his co-defendant Mr Dimu and 20 months imprisonment should be appropriate as a starting point. I will now consider the mitigating factors for Mr Dau and give due allowances.

59. **No prior convictions.** Similar to his co-defendant, Mr Dau is a first-time offender and had no prior convictions. I deduct 2 months to reflect this.

60. **Young Offender.** The defendant is 27 years of age. He is still young and he has great chances of rehabilitation. I deduct 2 months.

61. **Cooperation with Police.** The defendant cooperated well with the Police during the investigations. I deduct 2 months as well.

62. **Circumstances of the offending.** Mr Dau did not hold any weapon, and his only active participation was assisting Dimu to lead Ms Wate to the "base". He did not inflict any harm on Ms Wate or actively participated when his two other cohorts assaulted the complainant. I agree and this should be considered in his favor. I deduct 2 months as well.

63. **Delay.** There is a delay since the commencement of this proceeding in 2019. This is partly due to the fact that the defendants decided to contest the charges laid against them. Nevertheless, the case authorities in this jurisdiction are clear that any delay must be considered in favor of the defendant.¹⁵ I deduct 2 months for the defendant.

64. **Personal Circumstances.** Dau is now 27 years of age and is single. He participated in certain social activities and assisted the boys in their neighborhood to form a local comedy group known as the "Home Boys Comedy" which is quite popular on Face Book. His mother wrote a letter stating that Dau is generally a well behaved youth and asked for some leniency.

65. I deduct 2 months to reflect his personal circumstances.

66. Hence, I am satisfied that eight (8) months imprisonment is appropriate for the second defendant taking into account Mr Dau's culpability.

¹⁵ *Bolani v Regina* [2011] SBCA 26; CA-CRAC 9 of 2011 (25 November 2011)

PRE-SENTENCE-CUSTODY FOR BOTH DEFENANTS

67. **Pre-Sentence Custody.** The defendants were remanded since the 4th March 2021. This must be taken into account. In addition to this, the court's record shows that the defendants were remanded on the 14th August 2019 and granted bail on the 23rd of September 2019, and this period must also be duly deducted from the defendants' respective sentences.

CONCLUSION

68. After having considered the relevant factors and circumstances of the offending, and also the sentencing principles such as punishment, deterrence and rehabilitation, I hereby sentence Mr Dimu to 24 months (2 years) imprisonment for one count of robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code* [Cap 26].

69. After having considered the relevant factors and circumstances of the offending, and also the sentencing principles such as punishment, deterrence and rehabilitation, I hereby sentence Mr Dau to eight (8) months imprisonment for one count robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code* [Cap 26].

70. These sentences cannot be suspended because of the use of weapon as prescribed in section 44(2) of the *Penal Code* [Cap 26] and the defendants were charged together as co-defendants pursuant to section 21 of the *Penal Code* [Cap 26].¹⁶

71. Robbery is a very serious offence attracting a maximum sentence of life imprisonment and any person who commits this offence should expect an immediate custodial sentence and depending on the circumstances of each case, a lengthy imprisonment term just like these two defendants. I hope the sentences in this case would send out a message of caution and warning to the members of the public about the consequences of committing serious crimes such as robbery and theft.

72. I thank counsels for the written submissions which I find very helpful in preparing these sentences.

ORDERS

73. The orders of the Court are as follows:

¹⁶ *Penal Code* [Cap 26], s 44(2)

- [1] The defendant Mr Dimpton Dimu is sentenced to twenty four (24) months (2 years) imprisonment for one count 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 defendant Mr Fredrick Dau is sentenced to eight (8) months imprisonment for one count robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code* [Cap 26].
- [3] ***Pre-Sentence-Custody***. The defendants' respective sentences shall be backdated to the 4th March 2021, being the date of first remand after their conviction. In addition to that, the period from the 14th August 2019 to the 23rd of September 2019 in which both defendants were in custody must also be duly deducted from the defendants' respective sentences.
- [4] The defendants are entitled to receive their respective cash bails, and the Magistracy to facilitate the refund to the sureties.
- [5] Right of Appeal within 14 days.
- [6] I order accordingly.

