

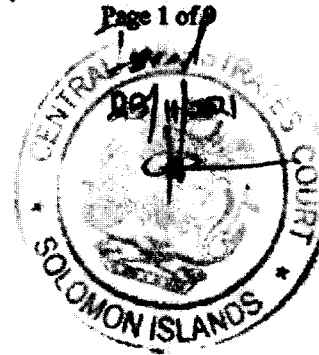
**IN THE CENTRAL MAGISTRATES' COURT )  
OF SOLOMON ISLANDS AT HONIARA )  
(Criminal Jurisdiction)**

Criminal Case No. 684 of 2021

**REGINA**

-v-

**K.M**



**Date of plea:** November 12, 2021

**Date of hearing:** November 12, 2021

**Date of sentence:** November 19, 2021

Mr. Nickson Tonowane for the Crown

Mr. Donation Houa for the Defendant

**SENTENCE**

**Introduction**

- [1]. The defendant is a juvenile, as such, for the purposes of his sentence, a name suppression order is hereby invoked; he will be referred to as, K.M. The defendant, K.M, was initially charged with *Grievous Harm*, and was later reduced to *unlawful wounding*, after some negotiation and plea bargain from defence. Subsequent to the order for substitution of the charge, pursuant to s. 201 of the Criminal Procedure Code, the defendant was arraigned and pleaded guilty. Thereafter, a criminal conviction was thereby registered.
  
- [2]. It is settled law in this jurisdiction that, s.13 of the Juvenile Offenders Act gives authority for the Court to commit a child or young person into detention or custody in cases of grave crimes. Grave crimes is defined under the schedule of section 2, as those in the category of the following: *Murder, Attempted Murder, Manslaughter, Unlawful wounding, Unlawful poisoning, and Causing grievous harm.*

**Agreed facts**

- [3]. The defendant, K.M, is from Kwaimela village, Oloburi, East Kwaio, Malaita Province. He is a juvenile, 16 years old at the time of offending, and a resident of Milestone, East Honiara, before his remand.
- [4]. The victim is Jowal Rana, a native of Bangladesh and he is residing at the Borderline area. He is 24 years old at the time of the incident.
- [5]. The incident occurred on 11<sup>th</sup> of September 2021 at around 11 pm at night at the Borderline area. At that time, the victim and his wife went to a nearby shop for top-up. On their way, they met the defendant and he asked the victim for money but the victim said he has no extra money, as he only has the money for top-up.
- [6]. The defendant then followed the victim and his wife, and bump the wife several times, as he was drunk at that time. When the victim saw that, he grabbed the defendant's hand and said to the defendant: "*what na you try for duim.*" The defendant then said to the victim: "*you like main man.*" The defendant then took out a screwdriver and stab the victim on his right side neck, but luckily the victim defended himself, which as a result, the screwdriver scratched his neck. The defendant did not stop, and again, stabbed the victim with the screw driver, which he successfully landed it on the victim's left cheek. The screw driver penetrated through his left cheek and partly damage his tooth, causing bleeding to his left jaw.
- [7]. After the incident, the victim and his wife took a taxi and went to the National Referral Hospital for treatment and Dr. Patrick Toito'ona examined him.
- [8]. The examination result or the medical report revealed that the injuries sustained by the victim is consistent with the legal definition of wounding and the reason being is that, the trauma resulted in a broken tooth and bleeding gum and he was stabbed at a dangerous location (head, face and neck). The medical report also revealed a puncture mark on the victim's left cheek.

**Maximum penalty/ punishment**

- [9]. The offence under S.229 carries a maximum penalty of five (5) years imprisonment. This is one of those relatively serious offences under the Penal Code, and its maximum term demonstrates the gravity of its seriousness and the intent of our lawmakers to denounce such offending from happening in our nation. It is also established law that the maximum term are only put to use in most serious and worst forms of offending. All cases are to be judged according to their own circumstances. Imposing a generic sentencing approach would entertain misjudgment, thus, the need for careful balancing of each cases with their facts and circumstances.

**Aggravating and mitigating factors**

- [10]. The crown submitted the following as aggravating factors. First, seriousness of offence. The maximum sentence for the offence of unlawful wounding is 5 years imprisonment and it is a 'grave crime' as far as juvenile offending is concerned. I disagree; seriousness of the offence is not an aggravating factor, although it would be considered remotely with perhaps, culpability and the circumstance of offending to pitch the starting point. In *R v Itooa*<sup>1</sup>, the court stated [at para. 10]:

"It is the sentencing notion that cases are decided on their own facts<sup>2</sup>, thus, introducing the maximum penalty as an aggravating factor, is an attempt to displace this principle. While I may accept that it is significant to establishing the yardstick or the range, it should not be added as an aggravating factor, which would unnecessarily increase a starting point. This Court has made it clear in *R v Mac*, where it said, "an aggravating factor must not form part of the elements of offence, nor from its maximum penalty, rather, from the defendant's actions that infuriates the situation, which a trier of fact would consider it serious, as oppose to a mere breach or contravention to the law."

- [11]. Second, use of weapon. The crown had submitted that the defendant used a screwdriver to wound the victim by stabbing his left cheek. The screwdriver penetrated his left cheek and partly damage one of his teeth. I accept that a screwdriver is a dangerous weapon, and fall within the definition of weapon under s. 84 (6) of the Penal Code.

<sup>1</sup> [2021] SBMC 16; Criminal Case 659 of 2021 (5 October 2021)

<sup>2</sup> *Sahu v Regina* [2012] SBHC 122

[12]. Third, the wound occurred on a vulnerable location. The medical report revealed that the wound was located at a dangerous location (facial area). It would obviously affect the way he eat or consumes food, and his physical appearance (pun:sture mark) after the incident.

[13]. Fourth, the offence occurred at night. The incident happened around 11:00 pm, which is much serious compared to if it was daytime. The risk and vulnerability to defend oneself against such an attack in darkness is different to daytime. Fifth, the defendant's intoxicated state. The defendant was intoxicated during the commission of the offence. In *Regina v Oma*<sup>3</sup>, Apaniai, J. (as he then was) stated:

"People who take alcohol in order to settle scores must accept the consequences of their actions and expect no leniency from the courts when it comes to sentencing."

[14]. Equally, in *R v Saomatangi*<sup>4</sup>, Aulanga, Principal Magistrate, also stated:

"The fact that he was under the influence of alcohol shows he was not able to control his temper and was likely to get angry and involve in a fight much quicker than his normal sense."

[15]. Fifth, the repeated assault on the victim. The defendant did not withdraw from the initial stabbing, instead, lunges the screwdriver the second time, on the victim's left cheek. As a result, it landed on the victim's left cheek, penetrated through his flesh and partly damage one of his teeth.

[16]. For his mitigation, Mr. Houa of counsel for the defendant submitted the following factors. First, the defendant entered an early guilty plea, which has demonstrate genuine remorse on his part. Second, he is a first-offender, and has no prior conviction. Finally, he is a juvenile offender, being 16 years of age at the time of offending.

#### **Comparative sentence and starting point**

[17]. I highly appreciate the assistance rendered by both counsels, in providing case authorities that has helped the court to prepare the sentence. Mr. Tonowane of counsel appearing for the crown referred to the case of *R v R.M*<sup>5</sup> ("R.M. "). In that case, the defendant, who was

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<sup>3</sup> [2011] SBHC 72

<sup>4</sup> CMC-CRC No: 239 of 2020

<sup>5</sup> Criminal Case No: 949 of 2020

a juvenile (17 years old), pleaded guilty to 2 counts of unlawful wounding, contrary to section 229 of the Penal Code. The facts were that, the defendant wounded two victims with a kitchen knife. He stabbed the first victim on his upper right shoulder and inflicted injury to the left eye-brow of the second victim. The Court imposed the starting point of 12 months imprisonment for the charge involving the first victim, and 8 months as starting point for the second victim. The Court added 2 months to each of this starting points. And, after considering the aggravating and mitigating factors, the defendant was sentence to 14 months imprisonment for the count against the first victim, and 10 months imprisonment for the second victim. The sentence was ordered to run concurrently, as such, he served an effective term of 14 months imprisonment.

[18]. I was also referred to the case of *R v FP*<sup>6</sup> ("*F.P.*"), the juvenile offender was charged with one count of Unlawful Wounding. The facts were that, the defendant who was 15 years of age at the time of offending, took the victim to a cassava garden to look for cassava. While in the garden, the victim wanted to urinate, so she urinated. After she was done, the defendant held her tight and made her to lie down on the ground. He lie down on top of her. The defendant then took a knife and cut the top of the victim's vagina, and blood began to ooze out. She was later rushed to the Hospital. The Court having considered the totality of case, its circumstances and factors, imposed a sentence of 2 years imprisonment.

[19]. Both counsels have also submitted cases of Unlawful Wounding, involving adult offenders, of which demonstrates a sentencing tariff of 12 months suspended sentence to 4 ½ years' imprisonment. However, for juvenile offenders, it has been rightly stated by the Court in *R.M.* "*...As a rule of thumb, the sentence to be imposed on this juvenile must be lower than an adult offender for the same offence. This practice is universally recognized and applied.*"

[20]. Having carefully and thoroughly gone through the nature of offending, his criminal culpability and weighing with its severity, I am confident that a starting point in between *R.M.* and *F.P.* is fitting. I do accept that it involved only one victim, however, the wound as apparent on the face of the medical report, is serious, compared to the first victim in *R.M.* Also, in this case, the screwdriver penetrated the victim's left cheek and partly bre ke

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<sup>6</sup> [2020] SBHC 77; HCSI-CRC 320 of 2019 (3 August 2020)

one of his teeth. The pain he suffered would have been excruciating. It was an unprovoked attack on the victim, who was simply going his own way and minding his own business. The attack was done before the eyes of his wife. Therefore, I take a starting point of 16 months imprisonment.

#### **Sentence remarks**

- [21]. The defendant must now realize that alcohol was the promoter to his misbehavior on the date of offence. Obviously, it was his intoxicated state of mind that has displaced his common sense, self-discipline and normal conscious mind, in giving total submission to anger, violence and fighting for no reason. He needs to accept that he is yet to reach the legal age acceptable to consume alcohol.
- [22]. The attitude and behaviour of using knives and weapons with intent to harm others is not of this generation, but those past; especially headhunters, soldiers, warlocks and so forth. More significantly, as a young person, he should not have explored such a path or life; not only is it bad, but it is a crime that one can be sent to prison for years.
- [23]. There is also no pride or gain in threatening and demanding money from innocent people who were minding their own business. It demonstrates people who are self-centered, lazy, and only depend on the sweat of others to live their life. The defendant as a young person must take this to heart and learn to endeavor to discontinue this type of behavior, or he may suffer much harsher penalties for offences of similar nature in the future.
- [24]. I understand that there may be underlining issues triggering his misbehavior, however, he must take heed that, he is responsible for the consequences of his choices. No human is immune to issues, peer pressures, challenges, and defeat in life, but it is our own duty and responsibility to make right choices in redirecting our life back on the right path. He must remember that, the power of choice is in his hands, and that the consequence of his choices goes a long way. He holds the choice of whether to choose good or bad; I strongly urge him to make a choice that would benefit him now and in the future.
- [25]. For the defendant's parents, they too must play their role in making sure that they fulfil their duty, to bring their children up in the nurture and admonition of the Lord (Ephesians

6:4)<sup>7</sup>, and train them up in a way they should go; even when they are old, so that when they grow up, they will not depart from it (Proverbs 22:6). Predominantly, it is accepted, although debatable, that the attitude and behaviour of children are a reflection of the teachings they receive at home. In *R v Ludawane [2010] SBHC 128*, Palmer CJ, said [at page 2]:

“...There are many parents who spend more time taking care of their flowers and gardens, but spend little time on the most valuable gift in their hands, their children. A master carver or painter will spend hours to perfect the image of his carving or painting, how much more should parents on building, mentoring and training their children, so that the right image is produced in their children, based on Christian values and principles, of godliness, righteousness, honesty, love, hard work and truth. There is no perfect parent in this world but God gives his Grace to parents to enable them to discharge their parental duties.”

#### **Sentencing consideration**

- [26]. I add 6 months to the starting point in considering the aggravating factors present in this case. This should result in a head sentence of 22 months imprisonment.
- [27]. For his mitigation, I first deduct 5 months from the head sentence to reflect his early guilty plea. This is a complete 25% discount as available in the case of *Qoloni*<sup>8</sup>. I accept that his guilty exhibits genuine contrition on his part, acceptance of responsibility and willingness to facilitate the course of justice. Second, I further deduct 2 months to consider his past clean criminal record. Therefore, the resulting sentence is 15 months imprisonment.
- [28]. I acknowledge the need for the defendant's rehabilitation and reintegration is important, so as to allow a total restoration for him once released, and to permit his smooth reintegration back into the community. I also accept that the core consideration is for him to reunite with his family and improve himself, to avoid reoffending in the future. It has been accepted that lengthy incarceration for juvenile offenders would generally lead to recidivism.

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<sup>7</sup>R v Ludawane [2010] SBHC 128

<sup>8</sup>[2005] SBHC 73; HCSI-CRC 076 of 2005 (21 June 2005)

[29]. I am reminded of the sentiments expounded in *Cameron-v-Queen*, where Guadron, Gunnow and Callinana, said (at page 346):

"In the case of a youthful offender rehabilitation is usually far more important than general deterrence. This is because punishment may in fact lead to further offending."

[30]. On the other hand, I am also mindful, that the interest of the defendant must be balanced with that of the victim as well, in such a case like this. The victim and his wife had to endure the worst nightmare or horror of their lives. The pain the victim has suffered from the injury was excruciating, and to happen in the presence of his wife is heartbreaking and terrifying.

[31]. In deciding whether a custodial sentence is appropriate for young first offenders, Muria, ACJ (as he then was) in *Paroke v Reginam*<sup>9</sup>, stated:

"...I do not accept the suggestion that because an offender is young and a first offender, he should not be sent to prison. In cases of serious crimes, and housebreaking is such a crime, the courts must reflect the seriousness of crimes in the sentences they pass even upon a young first offender..."

[32]. This is a grave crime, in so far as the meaning and definition under the 'schedule' of section 2 of the Juvenile Offenders Act, is concerned. It dislodges the strict application of the principle in *Cameron*. In *R.M*, the court stated [at para. 14]:

"For grave crimes, a juvenile will no longer continue to hide behind the cloak of youthfulness to avoid punishment, but must be prepared to face the consequences prescribed by the law. Therefore, as a matter of caution, children or young people should not be tempted or motivated to involve in violent crimes as a way of doing "life experiences" from knowledge gained from movies or other sources, that can cause serious injury on others. The law simply prohibit this from their inchoate life experiences."

[33]. This kind of offence that occurred in public places, poses concerns for the public, especially, their safety and freedom to move, live and do things without fear of being assaulted or harmed. The defendant, and likeminded perpetrators must be warned, that the wrath of law will punish those who wish to do what the defendant did. The defendant

<sup>9</sup> [1992] SBHC 9; HC-CRC 021 of 1992 (4 August 1992)

too must now acknowledge what is in store for him, should he wishes to return to court in the future for similar offence.

- [34]. Therefore, having considered all the matters deliberated above, and with their individual interests as submitted by counsels, I am incline to accept a custodial sentence as the appropriate method to apply for the defendant's case.

**Sentence Orders**

[35]. I order the defendant to be sentenced as follows:

- (1) Pursuant to Section 16 (j) of the juvenile Offenders Act, Mr. K.M. shall be imprisoned at the Rove Correctional Center, Honiara, for 15 months.
- (2) The sentence shall commence from date of first remand.
- (3) Conviction is entered.
- (4) 14 days right of appeal is applied.
- (5) Order accordingly.

THE COURT



LEONARD B. CHITE  
Principal Magistrate  
Central Magistrates' Court

