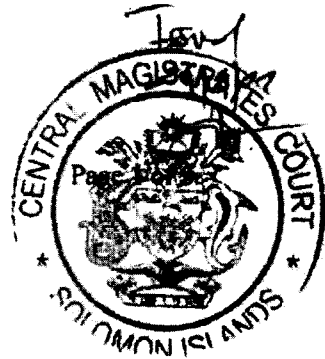


CMC Criminal Case No. 820 of 2021, R v Ma'abe

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



Criminal Case No. 820 of 2021

REGINA

-v-

JACK MA'ABE

Date of Plea: March 18, 2022

Date of Submission: March 25, 2022

Date of Sentence: March 29, 2022

Mr. John Saugaro for the Police Prosecution

Mr. Amos Ngaingeri for the Defendant

SENTENCE

- [1]. The Defendant, Mr. Jack Ma'abe, appears before this court today, on a charge of *Intimidation*, contrary to section 231 (1) of the Penal Code. He pleaded guilty to the charge. The offence carries a maximum penalty of 3 years imprisonment. I reserve the right to enter criminal conviction, until after assessing the totality of facts.
- [2]. The agreed facts revealed that, on July 23, 2021, between 7:00pm and 8:00pm, the Defendant, after drinking some cans of beer, approached the victim at her residence at Tandai, in West Honiara. He first approached her at the market stall and demanded her to give him \$2,000. The victim was clueless, so she invited the Defendant to their house, to settle his issue. The Defendant agreed and went over to the house, while the victim and her nephew followed him. As they were on their way, the victim overheard her husband talking to the Defendant, explaining himself, saying words to the effect, "that he is not aware of the problem and since they are all family members, they should settle the issue under the context as family." The victim heard this and immediately invited the Defendant to discuss the matter. As they were discussing, it dawned on her that, the Defendant was after an unpaid payment that her brother, Michael Tela, failed to meet.
- [3]. It was later learnt that the Defendant was frustrated over his numerous attempts to get Mr. Tela to reimburse his \$1,500. This was the reason for approaching the victim. During

the said approach, he uttered words to the effect: "*if iu no givin me seleni bae anything bae save happen.*" This caused fear to the victim. These were the facts that gave rise to the charge against the Defendant.

- [4]. Obviously, this is an avoidable issue that if not for the Defendant's drunken and persistent state of asking the money, they would have amicably settled it. The victim and her husband, although related to Mr. Tela, are not connected to the issue he has with him. What the Defendant did was totally inappropriate and disrespectful. I believe he may have been driven by alcohol and anger, the two most common elements that can shift a person's self-control and clear conscience.
- [5]. This is a peculiar case, for which the Defendant who is related to the victim as a first-cousin brother, displayed frustration to a couple who are totally unrelated to the issue of unpaid money. On the other hand, I accept that, although his request was persistent, he did not use physical violence or weapon. The level of anger is quite low compared to case of *R v Siru*¹, *R v Ramosala*², and *R v Gora*³, where it involves pre-meditation, angry slurs, violent gestures, imminent fear of life, and weapon.
- [6]. I acknowledge that he has entered an early guilty plea, showed remorse, and a first-offender. The victim and her husband have had the opportunity to talk the situation out with the Defendant, and few days after the offending, he received the unpaid money.
- [7]. The Solomon Islands' customary culture, and biblical way of resolving things, for most times, coincide with our statutory laws. The Defendant has breached all of them, and regretted it. He must take this blunder as a positive reproach and correction; for him to understand that, anger, if not swiftly managed can spiral out of control. The authority to gain dominion over it, is in himself. However, the practical aspect of it is tough, but that is the only way to keep up with all that the world and its problem has to offer. There is no smooth journey.

¹ [2020] SBMC 11; Criminal Case 6 of 2020 (4 May 2020)

² [2016] SBMC 3; Criminal Case 1297 of 2015 & 27 of 2016 (5 April 2016)

³ [2016] SBMC 18; Criminal Case 1456 of 2015 (25 July 2016)

- [8]. Anger usually finds its peak at our very vulnerable state, and when alcohol is added to it, it forces one to do things out of proportion. The aftermath of submitting oneself to "anger" can be disgraceful and shocking, to the point that one may even wish he or she never existed. All because of alcohol and frustration. To avoid the disgraceful events that can flow from such behaviour, he must desist alcohol at his vulnerable state.
- [9]. I acknowledge that the matter involves family members, who are close cousins. Therefore, the paramount consideration is to entertain avenues to resolve the issue, while at the same time, encourage the "family bond" to remain untouched.
- [10]. I have considered the level of intimidation in this matter, and find that it falls at the lower end of the sentencing tariff. It was his persistent, intoxicated and disrespectful approach that intimidates the victim and her husband.
- [11]. The Prosecutions and Defence, both concede to a sentence of fine penalty. The Defence sought, simultaneous to a fine penalty, that the court abstain entering a criminal conviction against the Defendant, for what counsel stated: may potentially affect the Defendant's plans to travel overseas, and other professional opportunities. I believe counsel may have intended to have the court invoke S.35 of the Penal Code, discharging the Defendant without entering a criminal Conviction, this may be the only provision conferring the power to abstain from entering conviction. However, his submission may appear contradicting, as per the precedent set down in *R v Tapoika*⁴. In that case, Bird, J. expounded on S.35, stating at paragraphs 18 and 19, of Her Ladyship's ruling:
- "...It is my view that when a court of first instance uses this section, they are opting not to punish the offender.
- ...In this case however, the court of first instance had already opted not to punish the offender to Section 35 of the Penal Code but had further decided to impose further punishment under Section 29 (2) of the Traffic Act. In my view that is a clear error of the application of the laws."
- [12]. If the Court is to consider S. 35 of the Penal Code, it has to do it in isolation to a fine penalty. This is the settled law in *Tapoika* (supra.). Therefore, I will now proceed to assess the merit of this matter, as far as it fulfils S. 35. If I find that it satisfies the

⁴ [2020] SBHC 11; HCSI-CRAC 693 of 2019 (10 February 2020)

requirements of that provision, I will invoke the necessary orders. If however, I find on the contrary, I will see to the fine penalty agreed by both Prosecution and Defence.

[13]. The criterions as provided for in S. 35 of the Penal Code, are:

“Where, in any trial, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge either absolutely or conditionally.”

[14]. First, the Defendant and victim are first-cousins. Second, he went to the victim's premises and met her at the market place. He went there purposely to ask for the unpaid money of \$1,500, that the victim's biological brother (his cousin) took. Third, it was his persistent asking, and intoxicated state, including the words which he uttered: “if iu no givim me seleni bae anything bae save happen”, that intimidates the victim. However, there is nothing to explain the extent of his intoxicated state, thus, I would not place much emphasis on this factor alone. Fourth, they managed to discuss with him thereafter, and he cooperated with them to resolve the matter. As such, he left without any money. Finally, the victim's brother travelled to Honiara, few days after the incident and paid the money.

[15]. For the Defendant's character and antecedents: he is a first offender, 54 years old and married with 3 children.

[16]. Having discussed the criterions and applying them to the facts of this case, it is my opinion, that the peculiar nature of this case goes to explain the extenuating circumstances which the offence had committed. All of the above put together, that is to say, he is a first-cousin brother to the victim, his words used are far less life threatening, and that they have settled the issue together, which led to him leaving without the money, plus him being a 54 year old person; I am satisfied that the requirements under S. 35 of the Penal Code, is justified.

[17]. Accordingly, I invoke Section 35 of the Penal Code, to order dismissing the charge of intimidation against the Defendant, without entering any conviction, on condition that he

must refrain from demanding money of any nature from the victim, and that he must return to reconcile with victim and her husband according to custom.

Order:

- [1]. Order dismissing the charge of intimidation against the Defendant without conviction, on condition that he return to reconcile with the victim and her husband according to custom.
- [2]. Right of appeal applies within 14 days.

BY THE COURT



MR. LEONARD B. CHITE
Principal Magistrate
Central Magistrate's Court

