



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction): Criminal Case No: 683 of 2021

REGINA-V-ARON NADU

BEFORE: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Abel Maelanga, Police Prosecutions Department, for the Crown

Mr Bobby Harunari, Principal Legal Officer, Public Solicitors Office, for the defendant

Date: 5th September 2022

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

SENTENCE

1. The defendant Mr Aron Nadu (defendant) pleaded guilty to seven counts of Domestic Violence contrary to sections 4(1)(a) and 58 of the *Family Protection Act 2014* ("FPA").

FACTS

2. The facts of this case can be summarized as follows.
 3. The defendant is a 40 years old male of Nembo Village, Utupua Islands, Temotu Province.

 4. He is currently living at Central White River in West Honiara, Guadalcanal with his sister.
 5. He is married with 7 children and has no previous conviction with the Police.
 6. The complainant Ms Angella Siarobo (complainant) from West Fataleka in the Malaita Province is the wife of the defendant.
 7. The defendant abused his wife on seven different occasions at Nembo village, Utupua Island in the Temotu Province between June 2019 and June 2020. She later reported the matter to the Lata Police in the Temotu Province.
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Count 6:

13. The sixth incident occurred in the month of July 2019 in the night at around 8m. The defendant physically abused her by whipping her using a stick on both sides of her buttock. Her buttock got swollen associated with pain which caused her to fall onto the floor when she was six months pregnant.

Count 7

14. The seventh incident occurred on the 26th of June 2020 in the morning. The defendant physically abused the complainant using a stick to whip her left hand and leg which endangered her life. The said leg and hand got swollen and she cried as it was so painful.
15. The wife confessed to having sex with the husband's younger brother which gave rise to several heated arguments, assaults, and altercation as described in the seven charges.
16. They have settled the issue of infidelity in custom in the Temotu Province. The defendant, and his wife together with the children have since moved from Temotu Province to the country's capital and are now residing at White River in Honiara.

DISCUSSION AND ANALYSIS

17. Section 4(1)(a) of the *Family Protection Act 2014* (FPA)¹ defines domestic violence as a:

"...conduct committed by a person ("the offender") against another person with whom the offender is in a domestic relationship, or the threat of such conduct, the constitutes any of the following-

- a) Physical abuse;*
- b) Sexual abuse;*
- c) Psychological abuse; and*
- d) Economic abuse.²*

18. Section 58 of the FPA provides as follows:

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- 1) A person commits an offence if the person commits domestic violence.*
 - 2) The Penalty for an offence under section (1) is a fine of 30, 000 penalty units or imprisonment for 3 years or both.³*
 - 3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for engaging in the conduct that resulted in the breach.⁴*

20. The FPA is "an Act to provide for the protection of families from domestic violence and to promote the safety, health and wellbeing of the victims of domestic violence..."⁵ The enactment of the FPA is

¹ Family Protection Act 2014 (FPA), s 4

² FPA, s 4

³ FPA, s 58

⁴ FPA, s 58

⁵ FPA, Long Title

expressed and or the parties have reconciled and are living together again that should have bearing on the length of sentence to be imposed. An overly lengthy sentence may do more harm to their marriage relationship in the long run.

On the other hand, there have been instances in which such assaults have resulted in the death of the opposite spouse and a more serious charge including that of manslaughter or murder imposed. As a weaker vessel, women victims are especially vulnerable and the courts have readily come to their protection by imposing immediate custodial sentences as in this case. The fact the incident occurs in a domestic relationship does not justify or minimise its significance. No spouse should be physically abused or attacked for offences caused within the marriage relationship and parties should as much as possible seek to iron out their differences/disputes in a peaceful or controlled manner without having recourse to physical violence and harm to each other. In such situations, nobody wins and more often than not, both become the loser. Where there are children they can be traumatised or affected by such incidents.

Starting Points

29. I understand that the facts of some charges are more serious than the others. The most serious of all the charges is the fifth count as it involved assault on the complainant with a weapon by the defendant coupled with an alleged sexual assault. I am satisfied that because of the persistent abuse of several occasions, custodial sentence is warranted for all the counts. Hence, it would be logical to have different starting points for the said charges depending on their severity and facts.

Counts 1 and 2

30. I will deal with counts 1 and 2 together as they can be classified as the least serious in all these charges. Both counts involved the use of derogatory words and threats but the defendant did not use weapons in both occasions. I am of the view that a starting point of 6 months' imprisonment for both counts is appropriate. I take into account the early plea and remorse shown, the fact that the defendant is a first time offender, he cooperated well with the police, the reconciliation between the defendant and the complainant, his personal circumstances such as being a father of seven children, and the bread-winner in the family. Hence, I deduct 3 months to reflect the mitigating factors. I am satisfied that the 3 months' imprisonment is appropriate for counts 1 and 2 respectively.

Count 3:

31. I will deal with count 3 separately because the defendant threatened the complainant while in possession of a weapon. So it would be a bit more serious than counts 1 and 2. I am of the view that 8 months imprisonment is appropriate for the third count as a starting point. I take into account the early plea and remorse shown, the fact that the defendant is a first time offender, he cooperated well with the police, the reconciliation between the defendant and the complainant, his personal circumstances such as being a father of seven children, and the bread-winner in the family. Hence, I deduct 4 months to reflect the mitigating factors. I am satisfied that the defendant should receive 4 months' imprisonment for the third count.

CONCLUSION

35. Having said that, I hereby sentence the defendant to 3 months imprisonment each for counts 1 and 2 respectively, 4 months' imprisonment for the third count, 6 months imprisonment for the fourth count, 14 months imprisonment for the fifth count, and 7 months imprisonment each for the sixth and seventh counts respectively.

Totality Principle and Concurrent sentences.

36. In *Bade v Reginam* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)⁹, His Lordship Ward CJ stated that:

When considering sentence for a number of offences, the general rule must be that separate and consecutive sentences should be passed for the separate offences. It is trite to point out that a man who commits, say, five offences should receive a heavier sentence than a man who only commits one of them.

However there are two situations where this rule must be modified. The first, that where a number of offences arise out of the same single transaction and cause harm to the same person there may be grounds for concurrent sentences, does not concern this appeal save to say that the learned magistrate correctly applied this principle in ordering a concurrent term for the malicious damage caused to Solo Lae's house during the burglary.

37. I take into account the fact that there is only a victim in all the charges, and I order that all the sentences are to be served concurrently. Thus, the combined resulting sentence is 14 months (1 year and 2 months) imprisonment. I also note the totality principle, and it is my opinion that the said sentence is perfectly appropriate taking into account the combined severity of all the offences as a whole.

Delay

38. Due to the considerable delay of more than 2 years, I deduct 4 months from the total sentence and the defendant shall serve only 10 months imprisonment.

39. This is a story of a marriage that produced seven children in the rural Solomon Islands. Like many marriages in the country, it has its own challenges such as infidelity on the part of the wife of the defendant. She had sexual intercourse with the defendant's brother. In a human perspective, it is a very difficult and unbearable situation which can irretrievably breakdown any marriage. In the Solomon Islands cultural context, it may receive a very harsh punishment and if not handled properly, it may result in bloodshed. In the religious point of view, the wife had broken her matrimonial vows because of the said adulterous actions. However, sad and hard as it may, infidelity does not give any right to the perpetrator to do what he did and the law protects any person from domestic violence irrespective of the reasoning as to why the defendant had committed the violence.

⁹ *Bade v Reginam* [1988] SBHC 10; [1988-1989] SILR 121 (21 December 1988)