



**In the Central Magistrate's Court
Of Solomon Islands**

Criminal Case No: 359 of 2022

REGINA

V

REX DAWEA

Date of Hearing: 1st October 2022
Date of Ruling: 2nd November 2022

Ms. Hiroshachi for the Crown
Mr. Fugui and Mr. Kaki for the accused

SENTENCE

PM Taeburi,

1. The defendant pleaded guilty to two counts of domestic violence contrary to the Family Protection Act.
2. He admitted that on two occasions he used insulting words and threatened his father, his sister and his niece. He smashed a bottle in front of his niece. On both occasions, he was drunk and committed these offences at their family home at Mbokonavera 4 Heights.
3. I am satisfied that the facts agreed to have satisfied the elements of the offence of domestic violence.
4. The defence counsels have submitted that section 35 of the Penal Code is appropriate to use in this case. The prosecutor concedes to the submission.
5. Section 35 provides,

Where in any trial the court thinks that the charge against the accused person is proved but is of the opinion that having regard to the character, antecedents, health or mental condition of the accused or to the trivial nature of the offending or to the extenuating circumstances in which the offence was committed it is not expedient to inflict

*punishment the court may without proceeding to conviction make an order dismissing the charge either absolutely or conditionally.*¹

6. There are three requirements provided in this provision. In order to invoke this section, I need to be satisfied on one or the other of these requirements.
7. Firstly, the character, antecedents, health or mental condition of the accused. The defence counsels submitted that the accused has no previous convictions. There is nothing to suggest that he is suffering from any health or mental condition. In terms of his character and antecedents, although I am satisfied that he has no previous convictions, there is nothing peculiar or extraordinary about this fact. There are many other defendants in the past who walked through these courts with clean criminal history.
8. Can this matter be described as one of a trivial nature? The answer is no. He committed the offences two times in the same circumstances. On both occasions, he came home drunk and started swearing and threatening his own family members. On one occasion, he used a bottle to demonstrate his anger and frustrations. I cannot describe this case as one of a trivial nature.
9. Are there anything extenuating about the circumstances of the offending? The answer is also no. As I have stated previously, he committed two counts of violence against his own close family members whilst under the influence of alcohol. I do not think that the circumstances of the offending can in anyway be described as extenuating.
10. I therefore refuse the application by the defence counsels and I enter criminal conviction against the accused on both counts of domestic violence.
11. In sentencing him, I take into account the following aggravating features;
 - i. That he used a bottle to threaten his niece;
 - ii. There is nothing to suggest that his niece provoked him in anyway;
 - iii. That he has shown no respect at all to his father, his sister, his niece and all other family members;
 - iv. That he committed the same offence twice within two days;
 - v. And that he was drunk on both occasions when committed these offences.
12. In his favour I take into account the following mitigating factors;
 - i. That he pleaded guilty to the charges;
 - ii. His guilty pleas were entered at the earliest opportunity presented to him;
 - iii. He demonstrated remorse;
 - iv. That he has no previous convictions;
 - v. He is a young man;

¹ Section 35 Penal Code [Cap 26]

- vi. He has cooperated with the police and the court when dealing with his matter;
- vii. And I also take into account his personal circumstances.

13. I was informed that the convict has long standing grievances with his father and his sister over family issues. It is submitted that the offences occurred as result of the long standing family dispute. The defence counsel has described the family feud between him and his father with much detail in his written submissions. Although I sympathise with the convict, he must, as an educated adult, learn to take responsibility for his actions. He must learn to resolve his grievances whether in the family or outside, within lawful means. There are other ways of resolving or dealing with his grievances. Resorting to violence is not the only option. The convict must learn that there is no justification for using violence and that those who resort to violence will face the consequences of their actions.

14. In sentencing him, I consider the maximum penalty for this offence which is 30,000 penalty units or 3 years imprisonment or both. This is prescribed in the Family Protection Act.

15. In my view, the appropriate sentence in the circumstances of this case is a bound over and reconciliation in custom.

16. ORDERS:

- i. Rex Dawea is convicted on two counts of Domestic Violence contrary to section 4(1)(c) and section 58(1) and (2) of the Family Protection Act;
 - ii. The convict is to enter into a good behaviour bond for 1 year in his own recognisance and in the sum of \$300;
 - iii. The convict is to reconcile in custom and pay a compensation of \$500 to his father, sister and niece (the complainants) within 14 days from today;
 - iv. In default of the orders for reconciliation and compensation, the convict is to be imprisoned for 10 days;
17. Right to appeal within 14 days.

Dated this 2nd Day of November 2022



Principal Magistrate – Ms. Fatimah Me'ere Taeburi