



REGINA v DAVID AFUKESE

Case Number: Criminal Case No. 715 of 2021
Date of sentence: March 23, 2022
Court: Central Magistrates' Court
Coram: Deputy Chief Magistrate, Ricky Iomea
Counsel Names: Francisca Luza for the Crown (ODPP)
Rochelle Palmer (Ms) for the Accused

SENTENCE

The accused is David Afukese of Asanga village, Tikopia Island, Temotu Province. He is facing two counts of Unlawful wounding contrary to section 229 of the Penal Code. He admitted the offences when he was arraigned and pleaded guilty to the two counts on 8th December 2021.

The facts constituting the offending by the accused are agreed to by the Defence and the Prosecution. At about 12 midnight on 11th October 2021, the second victim Mr. Solomon Sau was about to sleep when he heard the neighbours shouting. He looked out of the window and saw his neighbour Livingstone Tiofua (a Correctional officer) walking along the road. He asked the neighbour what was happening and he told him that someone was creeping at their house.

Whilst the victim Mr. Sau and the other neighbours were looking for that person, they heard scream (sic) coming from the convenient room at Mr. Sau's house. Mr. Sau walked over to the convenient room and saw the accused next to the convenient room.

Mr. Solomon Sau pushed the accused and they fought. Whilst they were exchanging punches at each other, the second victim Mr. Anthony Rotu intervened and tried to pull out the accused who was on top of the victim Solomon Sau. Anthony Rotu then punched the accused on the back. The accused then turned around, tackled Anthony Rotu and threw him onto broken cement bricks and clay cutlery. As a result, Anthony Rotu sustained injuries to his head and other parts of his body.

According to Anthony Rotu's medical report, it was noted that he sustained a 5cm open wound on his left upper forehead, stitched with 4 stitches, 2 cuts below his left eye (1cm in length), open wound on his chin (3 x 2cm), 0.5cm wound on his right elbow, 2cm wound on his right hand, 12 cm wound on his left forearm and abrasion on both of his knees (right and left knees).

The accused and Solomon Sau continued to fight. They fought until the neighbours approached and separated them. The neighbours took the accused to Anthony Rotu's house. Whilst at the house, the accused took a small yellow kitchen knife and ran back to the scene. Solomon Sau's wife, Annie Kaniko saw the accused armed with the knife and she shouted to Solomon Sau. Solomon Sau picked up a piece of reinforced iron which was lying on the ground. The accused ran straight to Solomon Sau and struck him with the knife on the left upper chest. According to Solomon Sau's medical report, it was noted that

he sustained a laceration (deep cut) on his upper left chest measuring 7 cm long and 2 cm in depth.

On 14th October 2021, a reconciliation ceremony was held between the accused's family and both victims. The accused's family gave Anthony Rotu \$400.00, 1 Tikopian mat and 6 x tapa cloth. The accused's family gave Solomon Sau 2 x roll fabric and \$200.

Those are the facts of the offending and the reconciliation that had taken place after the offending. I will deal with the significance of the reconciliation when I consider mitigating factors.

When I looked at the facts of the case, I am of the view that the following starting points are appropriate for the two counts. For Count 1, that is offending against Anthony Rotu, the starting sentence is 8 months imprisonment. For Count 2, the offending against Solomon Sau, I will impose a starting point of 10 months imprisonment.

What aggravates the offending against Anthony Rotu is that he sustained a number of injuries to his head and other parts of his body. These were specified in the facts that are agreed and highlighted earlier. Therefore, 2 months is added to the starting point. That increases the sentence to 10 months imprisonment.

In relation to the victim Solomon Sau, the offending is aggravated by the fact that a weapon (a small kitchen knife) was used to cut the upper left chest of the victim. The nature of the injury was highlighted in the facts agreed. I will add 2 months to the starting point identified above. The sentence is uplifted to 12 months imprisonment.

The above sentences must also be weighed against any mitigating factors in favour of the Accused.

The Accused had pleaded guilty to the two counts of Unlawful wounding at the first available opportunity. He had in fact admitted the offences during his Record of Interview with the Police. The pleas have saved everyone's time and resources. The pleas of guilty also reflects the Accused's remorse or regret for his wrongful acts and his willingness to accept responsibility for those acts.

Further, the Accused is a first time offender. He has no previous conviction. For 23 years he has been a law abiding citizen. This is his first time to be in conflict with the law. I am satisfied that he is a good candidate for rehabilitation.

I note the circumstances of the offending. It was a spur of the moment incident. There was no pre-planning of the actions he did against the victims.

As agreed, the family of the Accused had reconciled and paid compensation to the two Victims. I am satisfied that the Accused and the Victims are now living peacefully with each other.

I note that the offences are serious given the maximum penalty prescribed by Parliament. However, the level of seriousness of the offending in this case is one that does not require me to totally ignore the mitigating factors. I note the guideline remarks made in the English case of *Millberry v R*¹ as cited by the Crown and I quote: "the defendant's good

¹ [2002] EWCA Crim 2891 (09 December 2002) at para 29; 2003 1 Cr App R 142

character, although it should not be ignored, does not justify a substantial reduction of what would otherwise be the appropriate sentence.”

As further emphasised in the same case, what is important is that the entire circumstances of the case is looked at as a whole by the court and impose the sentence which is appropriate.

Having considered the mitigating factors and being conscious of the guideline that any reduction based on mitigating factors should not take the end sentence below what would have been an appropriate sentence, I will deduct the sentences above to reflect the mitigating factors as follows:

For Count 1 (offending against Rotu), I will deduct 4 months. In Count 2 (offending against Sau), I will also deduct 4 months.

The total effective sentence in Count 1 is 6 months imprisonment. For Count 2, the total effective sentence is 8 months imprisonment.

Although there are two victims in this case, the offending occurred as part of a single transaction and occurred in proximity in time to each other. Therefore, I order that the sentences for Counts 1 and 2 be served concurrently.

The effective imprisonment term to be served by the Accused is 8 months imprisonment. I am of the view that this sentence, not only serves as punishment but also carries the message of deterrence, especially public deterrence.

The sentence commences today.

