



**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS  
AT HONIARA**

(Criminal Jurisdiction)

Criminal Cases No: 494 of 2022

**THE STATE**

-V-

**ANDREW SORO, JIMMY SAE AND PATRICK VUTIADÉ,**

**Coram: HOLLISON F (PRINCIPAL MAGISTRATE)**

*Appearances:*

Ms Martha Mutukera, Office of the Director of Public Prosecutions, for the Crown

Mr Benham Ifuto'o, Public Solicitors Office, for Mr Soro

Mr Ron D Pulekera, Public Solicitors Office, for Mr Sae

Date of Sentencing: 24<sup>th</sup> February 2023

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

**SENTENCE**

**INTRODUCTION**

1. The defendant defendants Soro, Sae and Vutiade are charged with one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26] read with section 21(a) of the *Penal Code* [Cap 26]. The defendants pleaded guilty to the said offence.
2. I now convict all of them based on the pleas entered.

**AGREED FACTS**

3. The defendants are natives of Wanderer Bay, West Guadalcanal, Guadalcanal Province. They are aged 51, 18 and 32 years respectively. They are ordinary villagers. They are self-employed. Soro and Vutiade have parental duties and they are breadwinners in their own right.
4. The victim in this case is Bartholomew Otoa.
5. The incident happened on the 11 October 2022 between 8pm to 4am on the 12 October 2022 at Haohao and Bilikovu villages, Wanderer Bay, West Guadalcanal.

6. At about 8pm on 11 October 2022, the victim was with his elder brother named Reskido Vaso, two of his younger brothers Clement Kake and Greg Maine, and another boy Charles at their home village. Then they walked on the road to buy beers at Matanako village.
7. When they reached the road close to Haohao village, the defendant Soro came running towards the victim and accused him of throwing a stone which had hit him.
8. At the material time, Vutiade held the complainant's left hand. Soro's group escorted the victim's brother Reskido Vaso, Charles, Greg Maine, and Clement Kake to Bilikovu village.
9. Soro tied the victim's hands and legs together using a bush rope.
10. From there, Soro went to Chivi Chivi village. Not long after, three youths Jimmy Sae, Bendon Suitala and Allan Suitala came to them.
11. Sae kicked the victim's back with his both legs.
12. The victim asked them to release the ropes tied on him. The other defendant took out the ropes tied on the victim's legs. The victim was escorted on the road to Chivi Chivi village. At the time Charles, Greg, Clement and the victim's brother Vaso had escaped.
13. On the road going to Chivi Chivi village, the victim refused to go.
14. The victim struggled with fear to pull out the rope and he escaped. He met Aloysi along the road and he sought assistance from Aloysi to release the ropes from his hands.
15. Police received a report of the incident and apprehended the defendants.
16. There others who were involved in this incident are still at large.
17. The defendants were remanded since the 27<sup>th</sup> of October 2022.

## DISCUSSION AND ANALYSIS

### SENTENCING PRINCIPLES

18. In sentencing, the classic principles such as punishment, deterrence and rehabilitation must always be considered.

### FACTORS CONSIDERED

#### **Maximum Sentences:**

19. The maximum sentence for the offence of common assault is 12 months' imprisonment. <sup>1</sup>

#### Aggravating features

20. The aggravating factors are as follows:

21. **Severity of the offending.** The victim's hands and legs were tied with a rope. He was held in captivity whilst Sae kicked his back with his both legs. He was shamed and escorted like a prisoner in public until he escaped. The defendants' actions were demeaning and almost fits the definition of abduction.<sup>2</sup> This is a fairly serious form of common assault.

<sup>1</sup> Penal Code [Cap 26], s 244

<sup>2</sup> Section 248 of the Penal Code [Cap 26] states: any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

22. **Group offending:** The defendants committed the offence in group which means it is quite a serious form of offending. The victim was helpless and could not escape not until the ropes tied to his legs were released or untied.

### COMPARATIVE SENTENCES

23. In relation to common assault cases, the sentencing tariff for common assault in Solomon Islands ranges from penalty fines, non-custodial, and custodial sentences up to seven months.
24. In *Regina v Hala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017)<sup>3</sup>; the defendant pleaded guilty to the following charges: one count of Simple larceny, contrary to section 261(1) of the *Penal Code*; one count of Drunk and incapable, contrary to section 179 of the *Penal Code*; and one count of Common assault contrary to section 244 of the *Penal Code* [Cap 26]. He was sentenced amongst other charges, and received 4 months imprisonment for the common assault charge which totaled to 16 months imprisonment, which was partially suspended as well.

### Starting Point

25. After having considered the aggravating factors and the relevant circumstances of the present case, I am of the view that an immediate custodial sentence is warranted and a starting point of 10 months' imprisonment is appropriate for each of the defendants.

### Mitigation

26. I take into account the early plea entered, remorse shown, the fact that they are first-time offenders, cooperation with the police, and their personal circumstances. I believe they still have high rehabilitative prospects. Thus, I deduct 6 months to reflect all the mitigating factors.
27. Hence, I am satisfied that 4 months imprisonment is appropriate for each of the defendants.
28. I do not think that the 4 months imprisonment is manifestly excessive or will have a crushing effect on the defendants.

### CONCLUSION:

29. After having considered the sentencing principles such as punishment, deterrence, and rehabilitation, I now sentence the defendants Soro, Sae and Vutiade to 4 months' imprisonment respectively for one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26] read with section 21 of the *Penal Code* [Cap 26].

<sup>3</sup> *Regina v Hala* [2017] SBMC 18; CMC-CRC 325 of 2015 (14 June 2017)

30. It must be made clear to the public that taking the law into one's own hands have consequences such as imprisonment or penalty fines.

31. **Pre-Sentence Custody.** As I have said, the defendants were remanded since the 27<sup>th</sup> October 2022. The time period must either be deducted or backdated to that date.

32. On the same note, I am satisfied that the defendants have served a substantial time almost equivalent to the 4 months imprisonment and I hereby order that they are released at the rising of the court.

**ORDERS**

33. The offenders are sentenced as follows:

- 1) The defendant Mr Soro is sentenced to 4 months imprisonment for the count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26].
- 2) The defendant Mr Sae is sentenced to 4 months imprisonment for the count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26].
- 3) The defendant Mr Vutiade is sentenced to 4 months imprisonment for the count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26].
- 4) **Pre-Sentence-Custody.** The total sentence for each defendant must be backdated or retrospectively commenced on the date of first remand being the 27<sup>th</sup> of October 2022. I am satisfied that they have served a substantial time in Prison and they are to be released at the rising of the court.
- 5) Right of Appeal within 14 days.
- 6) The court so orders.



PRINCIPAL MAGISTRATE JESSIE HOLLISON  
THE COURT