

**IN THE CENTRAL MAGISTRATE COURT
IN THE SOLOMON ISLANDS**



Criminal Case No: 608 of 2023

In the Criminal Jurisdiction

BETWEEN: REGINA

AND: DOMINIC AREBONTO

Before: Michael Fagani

Mr. Saugaro. W for Prosecution

Mrs. Rusi. E for Defence

Date of sentencing and mitigation: 13th of March 2024

Date of sentence: 5th of April 2024

SENTENCE

1. The defendant Mr. Dominic Arebonto is charged with one count of common assault and using abusive words. Upon being arraigned, he entered a guilty plea to both counts. I will now enter conviction against him and today, he appears before me for his sentence.
2. The agreed facts tendered before me shows that on the 8th of October 2023 at about 1800hrs, the complainant was at the 01 market, White River looking after his granny's betelnut market stall. Whilst she was there, the defendant showed up and asked her to give him \$20. However, the complainant refused to give him the money because she did not know him. The defendant then punched the complainant on the face with his hand closed fist and she fell down. The complainant then swore at the defendant saying in pijin "*u fuckem mum blo iu*" and the defendant then replied by saying to her "*fuckem mum, dad and uncle blo iu*". The complainant then reports the matter to the police and the defendant was charged accordingly.
3. The maximum penalty for common assault contrary to section 244 of the Penal Code is 1-year imprisonment and using abusive words under the *Penalty Miscellaneous Amendment Act 2009* - \$1,000 fine - or 1-months imprisonment, or both such a fine or imprisonment.
4. I must remind myself that it is trite law that the maximum penalty is reserved for worst type of offending and each case must have to be treated differently from other cases base on their merits.

5. For this case, the **aggravating factors** which the court can see is as follows: First, I must say that the unlawful act of the defendant is unprovoked. I note from the facts that the defendant is nowhere asked the complainant to give him \$20 but it was refused by the complainant because she did not know him. However, he then punched the complainant's face. This is clearly an unprovoked act since the defendant punched the complainant's face without any good reason. We do not know whether the complainant refused to give him money because she has no money, or maybe there is money but it belongs to his granny, or maybe the defendant is a stranger to her at that time. However, the fact that he received a no answer but punched her on the face without any good reason is unprovoked.
6. Secondly, the defendant is the instigator of the offence. I note from the facts that when the complainant refused to give him money, he turned around and punched the complainant's face. I must say the offence was first committed by the defendant when he punched the complainant's face. Should he just have to walk away then nothing should ever have happened to the complainant like that.
7. Thirdly, the defendant used his hand closed fist to punch the complainant's face. Face is a crucial part of the body and it also fragile. Nose, eye and mouth are all attached to it. They are important senses of human being. To put a heavy punch on the face can be very painful. Sometimes, it can lead to serious injury or even death if the force applied is too strong. Fortunately, there is no medical report tendered before this court to show how serious the punch is. Nevertheless, that must contribute to make this case serious.
8. Fourthly, I must say that there were multiple offences committed in this case. First, the defendant punched the complainant on the face and later he used abusive words against her. To make it worst, the abusive words used against the complainant is very disrespectful and unacceptable.
9. Finally, the complainant is a female. It must note that female is regarded as vulnerable. They are vulnerable because they a known as weaker vessel in the society. In other words, they are weak compared to man. To commit such an offence against such a vulnerable person is serious.
10. On the other hand, for **mitigating factors**, the court take into account the following mitigation factors on behalf of the defendant. First, he entered an early guilty plea at the first available opportunity. It serves court's time and resources. The defendant was also remorseful for his unlawful action. I note counsel submit and inform the court that the defendant feels sorry for what he did to the complainant at that time. Court will take into account that submission. Furthermore, the defendant has no previous conviction. For the past 23 years, he has been a law-abiding citizen except during a spur of moment when he commits the offence. That will also be considered in my sentence as well. And finally, the court also take into account the personal circumstances of the defendant that he is 23 years

of age. I must say the defendant is very young and I believe there is prospect that he can change to a better person in the future. I must give credit to that as well.

11. In terms of sentencing, any sentence imposed on the defendant by this court, it must deter the defendant to know that what he did to the complainant was unlawful. It must also teach him not to commit such an offence again in the future. Not only that, but it must also send plain message to the general public that committing such an offence in the society is punishable in our jurisdiction.
12. To reach a fair and just sentence, I have relied on few cases above. In *Regina v Tamana*¹, the defendant is charged with one count of common assault and using abusive words with other offences. The court imposed good behaviour bond sentence for common assault and using abusive words.
13. In *R v Kong*², the defendant initially charged with one count of ACABH. However, the charge was reduced to common assault. I note in that case, the offending occurred when the defendant asked the victim about an allegation relating to his wife but the victim continues denying it and as a result, he assaulted the victim. The court imposed a fine sentence of \$700 on the defendant.
14. In *R v Kimisi*³, both defendants were charged with one count of common assault. In that case the defendants punched the victim's face and as a result, he felt to the ground. The court sentence both defendants to 2 months' imprisonment but fully suspended the sentence to 1 year on the condition that both must not commit any further offence within the period of 1 year.
15. Having carefully consider the above cases, it appears that sentence range for common assault and using abusive words range from bound over, fine sentence or imprisonment depending on the circumstances of the case.
16. In terms of sentence submission, prosecution submit for this court to impose a bound over sentence on the defendant. In contrary, defence submit for this court to consider a non-custodial sentence or should the court thought of imposing a custodial sentence on the defendant then that sentence should be suspended.
17. I had the opportunity to peruse through the agreed facts tendered by prosecution and defence and carefully considering the aggravating factors of this case, mitigating factors, the circumstances surrounding the offence, nature of the offending and the personal circumstances of the defendant. I am of the view that the nature of the offence is

¹ [2017] SBMC 56; Criminal Case 131 of 2017 (14 November 2017).

² [2021] SBMC 2; Criminal Case 237 of 2021 (28 April 2021).

³ [2019] SBMC 14; Criminal Case 16 of 2015 (21 March 2019).

somehow mid-way of the scale. In other words, the nature of the offending is a bit serious.

18. However, the fact that the defendant is a first-time offender and there is no weapon used during the commission of the offence and also, taking into account the personal circumstances of the defendant that he is young, and there is prospect that he can change in the future. I am of a view that a non-custodial sentence is appropriate in this case. In my view, a good behaviour bond sentence is appropriate.
19. For count 1: common assault, I will impose a good behaviour bond for a period of 1 year in a sum of \$1,000 and count 2: using abusive words, a good behaviour bond for a period of 6 months in a sum of \$500. The defendant must keep the peace and be of good behaviour for the said period.
20. Let me remind the defendant that today you must not take the sentence lightly but take it as a lesson learnt. Remember, you appear before this court today because of the unlawful action caused against the complainant when she refused to give you money. You must note that money is hard to get. If you want it, go and work for it rather than begging someone to give you. You cannot expect receiving money straight away when you ask for it. It can only be given if she got extra or have it. I must strongly warn you that today court now take judicial notice that you appear for the first time before this court. Should you commit any offence again during the period imposed in this sentence, the court will not be merciful on you.
21. Having say this, and taking into account the aggravating factors of this case, mitigation factors, the circumstances of this case, the personal circumstances of the defendant and the entirety of this matter, I will now make these following orders:

ORDER

1. **I hereby sentence the defendant Mr. Dominic Arebonto as follows:**
 - 1.1 **For count 1: Common assault, I will impose a good behaviour bond for a period of 1 year in a sum of \$1,000. The defendant must keep the peace and be of good behaviour for the said period.**
 - 1.2 **For count 2: Using abusive words, I will impose a good behaviour bond for a period of 6 months in a sum of \$500. The defendant must keep the peace and be of good behaviour for the said period.**
2. **Conviction is entered against the defendant.**
3. **14 days right of appeal to any aggrieved party.**
4. **Order accordingly.**

Dated this 5th day of April 2024.

THE COURT

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MR. MICHAEL FAGANI
Magistrate First Class