

REGINA -v- ASUANA

High Court of Solomon Islands

(Ward C.J.)

Criminal Case No. 34 of 1990

Hearing: 12 October 1990

Review Judgment: 12 October 1990

DPP in person

P. Watts for the Accused

WARD CJ: This accused was charged with unlawful wounding contrary to section 222 of the Penal Code, an offence that carries a maximum of 5 years imprisonment. Having seen the record, I ordered the accused to be brought before the Court in order to review the sentence.

The case was a serious one. Having been attacked by the ultimate victim and hit on the head with a torch and, on the accused's account but denied by the prosecution witnesses, stabbed with a small knife, he stabbed or cut the victim no less than 9 times, five of which were in the victim's back. The learned magistrate rightly rejected self defence and convicted him.

In sentencing him to 12 months imprisonment the magistrate stated -

"I made a very substantial reduction in sentence to take account of custom, settlement. Normally would be in region of 3 years."

The custom settlement was \$750 and 2 red money which is clearly substantial compensation.

It should always be remembered that compensation is an important means of restoring peace and harmony in the communities. Thus the courts should always give some credit for such payment and encourage it in an appropriate case.

Thus, any custom compensation must be considered by the court in assessing sentence as a mitigating factor but it is limited in its value. The court must avoid attaching such weight to it that it appears to be a means of subsequently buying yourself out of trouble.

The true value of such payments in terms of mitigation is that it may show genuine contrition and the scale of payment may give some indication of the degree of contrition. In this case there was little evidence of contrition. Indeed, the claim before the magistrate of self defence suggests the very opposite.

I feel the learned magistrate attached too much importance to this payment. It should have reduced sentence but this was a nasty and serious attack with a dangerous weapon on a man to whom he was related in custom and to some extent whilst that man was walking away.

By my powers of review under section 50 of the Magistrates' Courts Act I enhance the sentence passed to one of 2 and a half years imprisonment.

Informed of right to appeal.

(F.G.R. WARD)
CHIEF JUSTICE