

**REGINA-V-JERRY FUTA**

HIGH COURT OF SOLOMON ISLANDS  
(Naqiolevu, J)

*Criminal Case No: 374 of 2006*

Date of Hearing: 10<sup>th</sup> February 2010  
Date of Ruling: 10<sup>th</sup> February 2010

For Crown: Mr M. Coates  
For Appellant: Mr S. Barlowe/Ms M. Manaka

**SENTENCE**

**Naqiolevu J:**

1. The accused was charged with the offence of Attempted Murder contrary to Section 215 of the Penal Code. After a trial lasting over a week the Trial Judge declared a mistrial and ordered a retrial on the basis the accused had interfered with one of the prosecution witnesses.
2. The trial was listed before this court on the 10<sup>th</sup> of February however at the commencement of the proceeding the Crown filed a Nolle Prossqui stating it does not intend that the "proceeding will continue" against the accused. The accused was subsequently discharged from the proceedings. Fresh information was tendered in court of a new charge of Grievous Harm contrary to Section 238 of the Penal Code.
3. The accused after the charge was put to him pleaded guilty to the offence of Grievous Harm contrary to Section 238 of the Penal Code.

**STATEMENT OF FACTS**

4. The crown tendered a Statement of Facts which outline, that in January 2001 a Paul Gcsi and Ricky George were police officers serving with the RSIP. During the time they were involved in the recruitment and training of ex IMF militants to become special constables at an area called CDI, which is at the cast end of Honiara.

5. On the 25<sup>th</sup> of January 2001. Alan Love, Paul Gesi, and Ricky George drove a Toyota double cabin Hilux in Honiara to pick up supplies. Alan Love was the driver, Ricky George was in the front seat and Paul Gesi in the back seat.
6. The 3 persons with the intention of collecting supplies drove over the single lane bridge and turned left into Chinatown, as the shop was not open, they continue East and drove towards the Multipurpose hall. Next to the hall they saw the accused driving a single cab Toyota Hilux containing members of the Marau Eagle Force driving in the West direction.
7. The accused suspected the men in the car were members of the IFM and blocked their path with the car. Alan Love stopped his car and started to reverse, Ricky George jumped out of the car window and the accused stopped his vehicle and got out with a firearm. He then moved forward and discharged the weapon, as a result a bullet entered the car and struck Paul Gesi in the head causing superficial wound.
8. Alan Love then stopped the car and left the scene. The accused also got out of the vehicle went and saw Paul had been injured and they took him to the hospital for treatment.

#### **Mitigation**

9. Counsel for the accused in mitigation submit the accused is 43 years old, married and lives with his second wife at their home in Honiara. He has six children whom he supports, four of which are from his first marriage. The eldest child attends Bible College in Vanuatu, the second child will commence study at Bible College in Vanuatu next month and the third child attends school in Honiara and the youngest lives with his grandparents in Marau.
10. The accused attended school to Form 3 at Tangarare Provincial School and did not continue beyond Form 3 after an accident at school. The accused counsel submit, has moved on with his life since 2001, he is a devoted family man who provides for his children's education and has recently commenced a small business operation.
11. Counsel on the issue of delay submit the incident happened in 2001, more than 9 year ago and the accused was not charged until July 2006, more than five years after the incident. Counsel cited several authorities in support of the relevant laws on delay and sentencing. Counsel asserts the magnitude of the delay is substantial and called for a significant reduction in sentence.

12. Counsel assert the guilty plea at the time of the appropriate charge was laid has saved the need for a trial. The victim and the witnesses do not have to give evidence. Further it is also evidence of contrition and remorse. The guilty plea warrants a reduction of between one quarter and one third in the sentence that would otherwise be imposed.
13. The offence counsel assert is an unusual and uncommon offence, further criminal negligence of this sort are not prevalent, and would ordinarily be dealt with by the Magistrate Court. The accused immediately assisted the victim and conveyed him to hospital and the injury suffered were superficial.
14. The crown submit the accused and the victim have reconciled which involved the payment of compensation and the shaking of hands. Traditional reconciliation is an important aspect of life in the sentencing process in the Solomon Islands.
15. Counsel submit the prospects of rehabilitation is very strong, he has not been charged with any offence for a period of 9 years and this demonstrate that the offence was out of character and a genuine "one off". It is highly unlikely that the accused will reoffend in the future.

**Decision**

16. The court having carefully considered the nature of the offence and the circumstances leading to the offence. The seriousness of the offence committed during the height of tension where lawlessness was the norm. The court having taken into consideration the guilty plea upon the information being filed against the accused. The mitigating circumstances as submitted by counsel, the delay which has been hanging over the accused for the past 9 years.
17. The important reconciliation process which has taken place between the accused and the victim and monetary value which was confirmed by the crown have been paid. The court has considered the letter of support from the spokesman of the nine tribes of the Marau Clans and the House of Chiefs.
18. Clearly with the support of his family, the Chiefs of his village his rehabilitation into society is extremely good. The accused is now a businessman who since the incident some 9 years ago has not committed any offence.

19. The court having further considered the period spent in custody awaiting trial some four months, the court consider the accused has indeed served a term of imprisonment that would otherwise be imposed. This must be taken into consideration in the circumstance given the maximum term of imprisonment for this offence is 6 months.

The court in all circumstances convict the accused as charged and sentence him to 4 months imprisonment to commence from the day he was originally remanded in custody.

**ORDER**

1. Accused convicted as charged and sentenced to four (4) months imprisonment.
2. The sentence is to commence from the day originally remanded in custody.
3. The accused is to be released from custody at the rising of the Court.

  
THE COURT