

IN THE CENTRAL MAGISTRATE'S COURT )  
 OF SOLOMON ISLANDS AT HONIARA )  
 (Criminal Jurisdiction)

Criminal Case No. 57 of 2014



REGINA  
 -V-  
 DICKSON FAFALE

**Date of Plea:** May 4, 2017  
**Date of Submissions:** May 18, 2017  
**Date of Sentence:** May 22, 2017

*Mr. L. Adifaka for prosecution*  
*Mr. D. Kwalai for the accused*



SENTENCE

Background

1. Dickson Fafale ("accused") pleaded guilty to one count of acts intended to cause grievous harm contrary to section 224 (a) of the *Penal Code* and one count of assault on a police officer contrary to section 190 of the *Police Act*.<sup>1</sup>
2. For the first charge, it an offence for any person to do any act or conduct with an intention to cause grievous harm, maim, disfigure, disable or any form of serious injury towards another person. For the second charge, it is also an offence or crime for a person to assault a police officer during the course of performing or carrying out his/her duties.
3. These are serious offences under the respective legislations.<sup>2</sup> The first offence contrary to section 224 (a) carries a maximum penalty of life imprisonment while the assault on police officer carries a maximum penalty of a fine of \$50,000 or 5 years imprisonment or both.

Acts intended to case grievous harm

4. The facts for the first offending showed that in the early hours of 12<sup>th</sup> January 2014, the accused and the victim, Simon Sade, were inside the Kovuare night club. During that early morning, a lot of people were still there drinking liquor. As dawn approached and at about 5:20am, the accused saw Sade was amongst the crowd and advanced

<sup>1</sup> 2013

<sup>2</sup> See definition of 'felony' under section 4 of the *Penal Code* for the charge contrary to section 224 (a) of the *Penal Code* and section 2 of the *Police Act 2013*

towards him with a 10 cm knife and without any warning, he lifted that knife and stabbed him on his back. It wounded him instantly.

5. The accused escaped out of the club but was apprehended by the securities within the vicinity of the club.
6. The victim's back was seen bleeding heavily and as a result, he was quickly transported in a car to the National Referral Hospital. Following that incident, he was admitted at the National Referral Hospital for medical treatment.
7. He was examined by Dr. Michael Belande Buin who revealed in the medical report that the knife penetrated his back and entered his lung, causing air and blood to fill up his pleural cavity. He had to undergo a chest drain treatment whereby a water seal drainage devise was inserted into his right chest to drain the air and blood. The loss of blood from the injury after the incident made him eventually developed a complication of anaemia and another complication of recollection of pleural effusion of his right lung even though he was discharged. This caused the victim to undergo another surgery to drain the recollection of fluid in the right lung.
8. Following the additional surgery, he finally recovered thereafter.
9. It appears from the facts tendered by the prosecution that the accused stabbed the victim because he was angry with him as the one who he suspected to have reported him to his employer of SA bottle shop and as a result, he got terminated from that job.

#### Assault on a police officer

10. The assault on the police officer occurred in the early hours of 11<sup>th</sup> November 2016 inside the Central Police Station lockup cell room.
11. At about 4:30am, the accused was brought in by police with two other suspects for interrogation. When a police officer, John Shortla, was still talking to the other suspect, the accused instantly punched that police officer with his right hand closed fist and landed on his jaw. That officer suffered pain and a swollen jaw after being assaulted by the accused.

#### Aggravating factors

12. For the first offending, I consider these as the aggravating factors. First; he was armed with a knife and used it to stab the victim. That knife he armed with is a weapon and by its nature, it is capable of producing injury. He used it to cause injury to the victim during the incident and was successful in doing so. Second; the victim was deliberately targeted by the accused that night. Third; the offending occurred in the night and put the victim in a defenceless position when he was attacked by the accused. Fourth; the accused was intoxicated at the time of the offending. Fifth; the nature of the injury and its effect on the health of the victim is so critical or life threatening. As revealed in the

medical report, the knife had penetrated his back and entered his lung causing air and blood to fill up his pleural cavity. He had to undergo a chest drain treatment whereby a water seal drainage devise was inserted into his right chest to drain the air and blood. The loss of blood he suffered from the injury eventually made him to develop two complications. One of anaemia and another is the recollection of pleural effusion of his right lung after he was discharged. He was required to undergo two operations before he finally recovered.

13. For the assault on a police officer, I consider these as the aggravating factors. First; his act of punching the police officer, John Shortla, when he was performing a public or lawful duty showed that he did not have any respect to that police officer. Second; the assault on the officer was unnecessary and clearly uncalled for in that circumstance. Finally; he committed his offence whilst he was on bail for his other charge. According to his bail condition (d) dated 18<sup>th</sup> September 2015, he was prohibited from committing any new offence. He knew very that restriction but decided to breach it by assaulting the said officer.
14. The facts regarding these two cases are not only serious by their nature but, because of the way the accused had carried them towards the two victims. For the first offending, he observed the victim was inside the club and was busy drinking liquor. He knew the victim was in a defenceless position but yet he took advantage of his vulnerability to attack him. He advanced towards him with the knife and without any warning stabbed him from his back.
15. His act of stabbing the victim is totally cowardice, inhumane, senseless and has little if not, no respect at all to his life. It was fortunate that his family members were there at the scene and also, the incident occurred close to Honiara that made it easy for him to be transported to the hospital in good time and survived the ordeal. Had it not, the consequence will be obvious.
16. For the second offending, his behaviour was outraged and showed total disrespect to a police officer who was tasked with an important duty to ensure crimes are prevented in our societies.
17. Therefore, the offences committed by the accused stand to be condemned by the public. The court is part and parcel of upholding that public expectation by ensuring he should not be remorsefully sentenced but, a sentence that he will receive must give a clear message to the public that such behaviours displayed by the accused on both occasions are not easily tolerated.

#### Mitigating factors

18. The sentence that I will pass for his two offences must take into account his guilty pleas, being a first time offender and the remorse he showed during the course of the sentencing hearing. I also take into account that on past occasions when he appeared before me, his demeanour reflected a person who now realised the wrongs of his

actions and will ensure he won't repeat them in future. I am also mindful that he is single and still in his youth age. Our law in this jurisdiction has made it clear that youthfulness is a strong mitigating factor. It is also recognised that youths who committed serious crimes should not hide behind the cloak of youthfulness merely to escape lengthy sentences. The court must filter this conflicting ideologies and approach a case on each own set of facts taking into account the criminal history of an offender.

19. Otherwise, I give him full credit to all his mitigating factors and personal factors accordingly, take them into account for purposes of his sentence.

Sentencing consideration

20. The accused is a juvenile and was only 17 years when he committed the first offence. Now he is almost 20 years of age. Therefore, in relation to his first offence, he will be sentenced as a youth person under the *Juvenile Offenders Act*. Given the objective seriousness of this offence, I will sentence him under section 16 (j) of that legislation which provides that imprisonment is one of the sentencing options for a young person.
21. The case authorities submitted by the prosecution and the defence for the first offending involve adult offenders whose sentence will inevitably be higher than the accused in the present case. I am urged to consider the case of *R v Sutafanabo*<sup>3</sup>, *Takule v R*<sup>4</sup> and *State v Moe*<sup>5</sup> as aid to assist in deciding the appropriate sentence for this case.
22. For the *Sutafanabo's* case, the charge instituted against the defendants was under section 224 (b) of the *Penal Code* and hence, it is irrelevant for the present case. The case of *Takule*, is unclear which subsection under section 224 of the *Penal Code* the accused was charged and sentenced for. Again, the sentencing court took into account the non-availability of a medical report and hence, this precludes the court to ascertain the nature and extent of the injury suffered by the victim.
23. The *Moe's* case, which is a decision from another jurisdiction, concerns only an attempt to strike the victim with a knife and hence, no injury from the offending. Again the facts of *Moe* is different with little, if not, no relevance to the present case.
24. The case of *R v Kada and Ors*<sup>6</sup> is the only Court of Appeal decision that dealt with a guilty plea to an offence under section 224 (a) of the *Penal Code* involving adult offenders. Even though that case was more serious than the present case as it involved armed group of burglars, was well planned and the victims were disabled following the incident, it nevertheless gives an indication for sentencing of adult offenders for this offence. It that case, the three accused persons respectively received sentences of 9, 11 and 15 years imprisonment.

<sup>3</sup> [2012] SBHC 48; HCSI-CRC No. 247 of 2010

<sup>4</sup> [2008] SBHC 17; HCSI-CRC No. 71 of 2007

<sup>5</sup> [1994] FJHC 74

<sup>6</sup> [2008] SBCA 9; CA-CRAC 35 of 2007

25. The accused in this case is a young offender so his case must be distinguished from the offenders in *Kada* and by implication, he should receive a lesser sentence.
26. This is a case where a life threatening injury was inflicted on the victim. Whilst the accused is a juvenile and should receive a lesser sentence compared to adult offenders, the court must not be overly tempted by putting too much weight on sentimental and personal factors of the offender and lose sight of the pain and suffering endured by the victim from the injury suffered. Otherwise, the imposition of an inadequate punishment for young offenders faced with serious crimes may weaken the public confidence in our criminal justice system.
27. In the case of *Attorney-General's References Nos 59, 60 and 63 of 1998 (Goodwin and others)*,<sup>7</sup> the Court when highlighting the significance of deterrence for young offenders echoed:
- “When an offender, however young, deliberately inflicts serious injury on another there is a legitimate public expectation that such offender will be seriously punished to bring home to him the gravity of the offence and to warn others of the risk of behaving in the same way. If such punishment does not follow, public confidence in the administration of the criminal law is weakened and the temptation arises to give offenders extra-judicially the punishment that the formal processes of law have not given. When we speak of the public we do not forget the victim, the party who has actually suffered the injury, and those close to him. If punishment of the offender does little to heal the victim’s wounds, there can be little doubt that inadequate punishment adds insult to injury.”<sup>8</sup>
28. On the other hand, I am also mindful of the need that rehabilitation and re-integration of the accused into his community after his imprisonment term also deserves equal consideration. In fact, the public interest also demands that goal of sentencing. This principle was advocated in *John Tii v Regina*<sup>9</sup> where the Court of Appeal stated:
- “Rehabilitation and reintegration into the community are particularly important in the case of young offenders. It is in the public interest that as well as in the interest of the offender that a young offender become a law abiding and contributing member of his community.”<sup>10</sup>
29. The accused in the present case is a juvenile or an immature person at the time of the offending. Taking into account his level of culpability, the seriousness of the offence being one of life imprisonment, the aggravating factors alluded to herein, the mitigating and personal factors and the need for deterrence; it is my view, that a sentence of 3 ½ years fits well his case and is therefore, the appropriate sentence for the first charge.
30. In relation to the second offending, section 2 of the *Police Act*<sup>11</sup> categorized ‘assault on a police officer’ a serious offence. The accused committed the offence when he was brought for questioning by police at the Central Police Station. When he assaulted that

<sup>7</sup> [1999] 2 Cr. App R. (S.) 128 at p. 131

<sup>8</sup> Also referred to in *Pati v R* SICOA-CRC No. 4 of 2013

<sup>9</sup> SICOA CRAC No. 14 of 2016 delivered on 5<sup>th</sup> May 2017

<sup>10</sup> At paragraph 24 of the judgment

<sup>11</sup> 2013

police officer, it was done intentionally to interfere with his lawful duties. The pain and the swollen jaw suffered by Shortla reflected his malicious intension and one that was meant to stop him from conducting the interrogation at the material time.

31. In my view, this is a serious form of offending under section 190 of the *Police Act*<sup>12</sup> since it occurred when the officer was performing his duties prescribed under section 7 of the said legislation. It was an unlawful interference with his lawful or statutory duties required of him to do. Therefore, in my view, his action calls for a custodial sentence taking into account the need for general and specific deterrence. The appropriate sentence I reach for the second charge is 1 year imprisonment.

Concurrent or consecutive sentence

32. I don't think this section requires detail analysis but in brief, these two offences occurred in different years involving different victims. Therefore, the cardinal rule is; they will be cumulative meaning, they will be added together. Therefore, a total of 4 ½ years imprisonment is imposed on the accused.
33. From this term, I reduced 6 months to reflect the delay, the mitigating factors and personal factors advanced on his behalf.

Sentencing order

34. With the balance of the term, I order that the accused, Dickson Fafale will serve **4 years imprisonment.**
35. The presentence custodial period is to be deducted from this imprisonment term.
36. 14 days right of appeal by any aggrieved party.




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<sup>12</sup> I bid