



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 1000 of 2018

REGINA

-v-

AMALEGA ALICK CHARLES, DAVID KOTIU, AND BRIAN TUITA

(CONSOLIDATED WITH)

Criminal Case No: 676 of 2019

REGINA

-v-

DAVID KOTIU

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr J. W. Zoze, Senior Legal Officer, DPP, for the Crown

Mr A. Bosa, Senior Legal Officer, Public Solicitors Office, for the Defendant in both matters
(CC No. 1000 of 2018, and 676 of 2019)

Date: 19th December 2019

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

SENTENCE

INTRODUCTION

1. These two matters were consolidated for the purposes of sentencing as both cases concerned the same defendant Mr David Kotiu.

2. In CC No. 1000 of 2018, Mr Kotiu was charged with one count of Robbery contrary to section 293(1)(b) of the *Penal Code* [Cap 26]¹. In that case, he was charged together with Alick Charles Amagela and Brian Seni Tutia. Similarly, in CC No. 676 of 2019, Mr Kotiu was charged with one count of Robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26]². His other co-accused is Mr Lawrence (his other name not disclosed) who is still currently at large, and is facing a warrant of arrest.
3. Mr Kotiu entered guilty pleas to both charges in both cases, and I now convict him accordingly.
4. It must be noted that the other defendants in both cases, apart from Mr Kotiu, are yet to be dealt with. The Royal Solomon Islands Police Force ("the Police") is yet to execute their respective warrants of arrest.

AGREED FACTS

MC-CC No. 1000 of 2018

5. The incident occurred on the 21st of September 2018 at around 0300hrs and 0400hrs outside the Multipurpose Hall area, University of the South Pacific (USP) area, Honiara, Solomon Islands.
6. The defendant is Mr David Kotiu Junior of Atori Village, Malaita Province. On the other hand, the Complainant is Emmanuel Rihouha of Are'are, Malaita Province.
7. On the date of offending, the complainant was sitting at the multipurpose area when the defendant and 3 other persons approached the complainant and his girlfriend.
8. Two of the boys came to them and told them these threatening words in the Solomon Islands Pidgin "*...suppose iufala no like for anything happen lo ufala then ufala must stap quiet, sapos nomoa bae mifala duim anything lo iufala.*" The pidgin words simply mean that both the complainant and his girlfriend must remain quiet, and if that demand is not complied with, the suspects might do something bad on the victims.
9. Mr Kotiu and with other defendants then shone a torch on the eyes of the complainant and demanded \$2:00 from him.
10. Whilst they were there the defendant Mr David Kotiu Junior grabbed a school bag from the complainant and ran off to the Mataniko area, close to the Mataniko River that runs through the heart of Honiara, and the famous business district of Chinatown.
11. The bag contained the properties of the complainant and his girlfriend. The properties included one black laptop HP brand (worth NZ \$980 or SBD 5361.26)³, one Samsung Screen Mobile phone (worth SBD 1,200), one black button blue mobile phone (Worth SBD 100), a cash of SBD 100, and USP Course books (worth SBD 3,000).
12. The complainant then called his school mates and friends at the USP Centre for assistance. They chased and searched the suspects. The complainant with his other friend went as far as the China Town Bridge and they met a security guard and together they continued hunt for the suspects.
13. Suddenly, the complainant saw one of the suspects hiding beside the containers near the Mataniko Bridge. He shouted and they chased the suspect and apprehended him in front of the Rainbow Shop.
14. After the first suspect was arrested by the Police, Mr David Kotiu was also arrested including another suspect at Mamanawata, a settlement at the Mataniko river mouth in Honiara.

¹ *Penal Code* [Cap 26], 293

² *Penal Code* [Cap 26], 293

³ This is approximately SBD 5361.26

15. The Police recovered from the defendant Mr David Kotiu Jrn's possession one white touch screen Samsung Mobile phone, and one black Blue brand mobile phone.
16. Police also retrieved from another suspect one laptop HP Brand and a laptop charger from the other defendant Mr Brian Seni.
17. The other properties were never recovered.

MC-CC No. 676 of 2019

18. The incident occurred on Friday 2nd of August 2019 at the Mataniko Bridge area, Honiara on Guadalcanal, at around 9-10pm. The defendants, inter alia, is Mr David Kotiu Junior of Atori Village, Malaita Province. The complainant is Ms Joana Dio of Marovo, Western Province.
19. At the time of offending, the complainant was walking from the National Referral Hospital heading for the Honiara City Council area. On her way near the Dettke's field market area, the suspects Mr Lawrence and Mr David Kotiu met the victim. Lawrence grabbed the mobile phone from the complainant.
20. After the defendant and Lawrence took off with the phone, a police truck stopped by and asked the complainant what was wrong and she explained to them that she had been robbed.
21. Police then chased the two suspects and caught up with them, and apprehended the defendant at the Ministry of Infrastructure Development area. Police did a body search on Mr Kotiu and found in his possession the stolen mobile phone.
22. The phone was then returned to the complainant and she identified it as the phone that was taken from her. However, it was partly damaged.
23. The phone brand was Alcatel Touch Screen phone.
24. The defendant was arrested and dealt with and charged with the offence of Robbery.

DISCUSSION AND ANALYSIS

25. Section 293 (1)(a) & (b) of the *Penal Code* [Cap 26]⁴ provides as follows:

293.-(1) Any person who -

(a) being armed with any offensive weapon or instrument, or being together with one other person or more, robs, or assaults with intent to rob, any person; or

(b) robs any person and, at the time of or immediately before or immediately after such robbery, uses or threatens to use any personal violence to any person,

is guilty of a felony, and shall be liable to imprisonment for life.

⁴ *Penal Code* [Cap 26], s 293.

26. The maximum sentences prescribed shows that the offence of robbery contrary to section 293(1) is one of the most serious offences under the *Penal Code* [Cap 26].

27. Professor Eric Colvin succinctly explains the offence of “robbery”⁵ as follows:

7.32 The offence of robbery involves stealing coupled with the use or threat of violence, immediately beforehand or afterwards, in order to steal the property or to prevent or overcome resistance to its being stolen: Codes s490(QLD). Each element has an intentional aspect. The first is an intention to permanently deprive the owner of property; this is required for stealing. The second is the use of violence in order to steal or to prevent or overcome resistance.

Jurisdiction

28. The issue of jurisdiction of the Magistrates Court is not a contentious issue. However, it is worth noting that in *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)⁶, the Court of Appeal confirmed the jurisdiction of the Magistrates Court to hear Armed Robbery cases. Their Lordships observed as follows:

Having read the submissions of the appellant and the respondent, we are now satisfied that the Magistrates Court does have jurisdiction to hear cases of armed robbery. It is clear from those submissions that the jurisdiction was created prior to independence. Pursuant to powers conferred by the Magistrates Court Act [Cap 20], the then Chief Justice, Davis CJ, made an order on 4 October 1977 conferring such jurisdiction on the Magistrates Court. It is called The Magistrates' Court (Increase In Criminal Jurisdiction). Order 1977. (We note the order also extends jurisdiction for other named offences).

FACTORS TO BE CONSIDERED

MC-CC No. 1000 of 2018.

Aggravating features

29. The aggravating factors are as follows:

- 1) The offence was committed together with other persons.
- 2) The offence was committed at night which is an aggravation.
- 3) The offence was premeditated on the part of the defendants. There were four (4) persons involved and one of them was holding a torch. This strongly suggests that the group had planned to rob the victims before the robbery was carried out. The defendants observed that

⁵ Eric Colvin et al, *Criminal Law in Queensland and Western Australia: Cases and Commentary* (6th Edition, 2012) 208-209. The Solomon Islands *Penal Code* [Cap 26], just like the QLD Code and others, are derived from or based on a criminal code drafted by Sir Samuel Griffiths. Sir Griffiths later became the first Chief Justice of the High Court of Australia. The Solomon Islands Code, may be different from the QLD Code in many respects, but the “foundations of criminal responsibility and the nature of many offences” are still the same.

⁶ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)

the victims were alone at the USP area that night, and that the victim and his girlfriend were outnumbered.

- 4) **Fear and Trauma.** The complainant experienced fear and trauma at the time of the offending and even after the incidents. This is an incident where the complainant was not expecting the sudden attack by the defendants. He was helpless at the time offending, and knowing very well the warning that something could happen to him and his girlfriend if they protested. The use of the torch was to temporarily disturb the vision of the victim and his girlfriend, and enabled the suspects to grab the bag and escape. One of the victim is also a female.
- 5) **Financial/Educational loss to the Complainant.** A number of the items had been retrieved, however, there are other items that were not retrieved. These include the USP Books worth SBD 3000 which were part of the items taken. This is a loss to the complainant as a student. Those materials are essential to someone's preparation and studies especially for examination. Such study materials are expensive to afford in the victim's capacity as a student, and he may need to fork out some money from his own pocket or his relatives would assist him if he is lucky enough. In this case, Mr Kotiu was the one who grabbed the bag containing the properties and took off, which means he played a major role in this case.

30. The mitigating factors as follows:

- 1) **Early guilty plea.** The defendant entered an early guilty plea which shows that he is remorseful and he takes responsibility of the wrongs he committed. This also demonstrates the defendant's remorsefulness. This saves the court's time and resources for going through a trial.
- 2) **First time offender.** He is a first-time offender and has no previous conviction before his double conviction in these two present matters.
- 3) **Cooperation with Police.** He cooperated well with the Police to some extent. He also admitted that he committed the offence.
- 4) **Some items recovered.** Some of the items were recovered, however, not all the stolen properties were recovered.
- 5) **Youthfulness.** The offender committed the offence when he was 19. He is currently 20 and there is a high chance of rehabilitation.

MC-CC NO. 676 of 2019

Aggravating features

31. The aggravating factors are as follows:

- 1) The offence was committed together with other persons.
- 2) The offence was committed at night which is an aggravation.
- 3) **Fear and Trauma.** The complainant is traumatized by the events in this present case. She was attacked whilst she was alone at night. Being a female and being attacked and overpowered by two male persons made her very helpless and vulnerable. This experience will continue to haunt her for the rest of her life.

32. The mitigating factors as follows:

- 6) *Early guilty plea.* The defendant entered a guilty plea which shows that he is remorseful and he takes responsibility of the wrongs he committed. This saves the court's time and resources.
- 7) *First time offender.* He is a first-time offender and has no previous conviction.
- 8) *Cooperation with Police.* He cooperated well with the Police to some extent. He also admitted that he committed the offence.
- 9) *Items recovered but partly damaged.* The phone was recovered but it was recovered only when the Police gave a timely chase against the defendant.
- 10) *Youthfulness.* The offender committed the offence when he was 19. He is currently 20 and there is a high chance of rehabilitation.

32. Mr Kotiu's personal circumstances are listed below:

- 1) The defendant is a 20-year-old defendant.
- 2) He is not married.
- 3) He is unemployed.

SENTENCING PRINCIPLES

33. The sentencing principles, amongst others, such as punishment, retribution, deterrence and rehabilitation normally must be considered in order to ascertain the appropriate sentence.
34. It is an established principle or rule that each case must be decided on its own merits, facts and circumstances.
35. Sometimes it is helpful to consider past cases of similar nature for comparative analysis, and to assist the court in determining a just and appropriate sentence and conclusion.

COMPARATIVE SENTENCES

GUILTY PLEA MATTERS

36. In *Regina v Suilamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)⁷, the High Court imposed a sentence of 4 years imprisonment to the defendants Maritino Suilamo and Tome Akwasu'u respectively for robbery, and a sentence of 3 years imprisonment to the defendant Mr Molousafi after they pleaded guilty to the charge of robbery. In this particular case, the defendants robbed the victims which include a deceased and another person at Fanuabaita village in Malaita Province. When the defendants were making their way to the deceased's village and house, they took with them ropes and other materials with the intention to rob the victims. Upon their arrival at the scene, the defendants grabbed the deceased with another person and tied their hands with the bush ropes they took with them. After the defendants had tied the victims, the defendants went into the deceased's house and stole some custom monies including other things, and escaped. One of them also pushed certain foreign objects into the deceased's mouth which caused her death. The three defendants were

⁷ *Regina v Suilamo (Judgment)* [1992] SBHC 58; HCSI-CRC 3 of 1992 (5 May 1992)

sentenced also for manslaughter ranging from 10 years and 7 years imprisonment respectively which were served concurrently with the sentences for the robbery.

37. In *Regina v Suba* [2016] SBMC 21; Criminal Case No. 1154 of 2015⁸, the defendant was sentenced to 3 years imprisonment. Mr Jonis Suba pleaded guilty to one count of armed robbery contrary to section 293(1)(a) of the *Penal Code* [Cap 26]. The offending occurred in the early hours on the 1st of August 2015. The defendant teamed up with the other group of men and entered the premises of Winlex Company at Lunga area in east of Honiara. At the time they were armed with bush knives and covered their faces with masks. They climbed over the fence and entered the Winlex Company's compound. As anticipated, they made their way straight into the company's building and stole SBD 130,336.70 cash, a 070 chainsaw and other personal properties. Part of the stolen monies include payroll monies and personal monies of the employees of that company. The defendant only took SBD 800 and a laptop from the total amount of cash and the properties stolen that night. Those items were never retrieved.
38. In *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)⁹, the court sentenced the defendant to a term of 26 months after he pleaded guilty to the charge of robbery. The offending occurred on the 25th July 2015, when the accused with his five friends were drinking liquor beside a logging road that leads up to NAC area in the Guadalcanal Province. The defendants asked one of the truck drivers of a logging company, an Asian, to pick them up and drop them using the logging truck that the victim was driving. However, the victim refused. The victim was ejected from the truck forcefully. One of the defendants then drove the vehicle and abandoned it somewhere beside the Tina River. Parts of the vehicle were also damaged.
39. In *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)¹⁰, the defendant was sentenced to 2 years imprisonment after he pleaded guilty to one count of robbery contrary to section 293 (1)(a) of the *Penal Code*, and one count of assault causing actual bodily harm contrary to section 245 of the *Penal Code* [Cap 26]. The defendant and his associates were armed with a bush knife as well. The defendant pleaded guilty to the two charges that were laid against him.

OTHER CONSIDERATIONS

40. The court must issue a sentence that take into account both general and specific deterrence. In terms of general deterrence, the court reminds itself to impose a sentence that sends a message to the community that persons who are involved in this type of offences will be punished.
41. Moreover, robbery is a gravely serious offence and must be discouraged in Honiara and throughout the whole country, and a message specifically for the offender and likeminded persons ought to be considered in the sentence.

⁸ *Regina v Suba* [2016] SBMC 21; Criminal Case 1154 of 2015 (4 August 2016)

⁹ *Regina v Saeni* [2017] SBMC 1; Criminal Case 1143 of 2015 (18 April 2017)

¹⁰ *Regina v Kaluae* [2016] SBMC 19; Criminal Case 1492 of 2015 (25 July 2016)

STARTING POINT

42. Before proceeding with the computation of the respective sentences for the two present cases, This court as a subordinate court reminds itself of what the Court of Appeal states in *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017)¹¹, in which their Lordships stated:

In imposing sentence, the first step is to arrive at an appropriate starting point for each of the offences the appellant pleaded guilty to. This was a task not undertaken by the learned Judge. The next step, again not undertaken by the sentencing Judge, is to consider the aggravating factors to reach an initial starting point. That must be considered against the well-established totality principle before mitigating factors are factored in.

43. Having carefully studied the aggravating factors of both cases, MC-CC No. 1000 of 2018 appears to be more serious than the second case in MC-CC No. 676 of 2019, hence, the starting point ought to be higher than the latter. In MC-CC No. 1000 of 2018, after having considered the aggravating and the mitigating factors, and circumstances of it, I am of the view that the starting point of 48 months (4 years) is appropriate. Firstly, I deduct 14 months for the early guilty plea. Secondly, I deduct 4 months because the defendant is a first-time offender and has no previous conviction. Thirdly, I deduct 2 months for his cooperation with the police. Fourthly, I deduct 4 months taking into account the accused's chances of rehabilitation because of his youthfulness, coupled with his personal circumstances, and other mitigating factors. The resulting sentence for one count of robbery in MC-CC No. 1000 of 2018, is 24 months or 2 years.
44. In MC-CC No. 676 of 2019, after having considered the aggravating and the mitigating factors, and the circumstances of the present case, it is my opinion that a starting point of 24 months is appropriate for one count of robbery. Firstly, I deduct 4 months for the early guilty plea. Secondly, I deduct 2 months for being a first-time offender. Thirdly, I deduct 2 months for cooperation with the police. Fourthly, I deduct 4 months for the defendant's youthfulness and high chance for rehabilitation, his personal circumstances, and other mitigating factors. The resulting sentence is 12 months or 1 year.
45. The respective sentences for these two consolidated matters shall be served consecutively because they arose from two separate and distinct occasions in 2018 and 2019 respectively.
46. For both matters, the time that the defendant has already spent in custody ought to be considered and given due deduction.

CONCLUDING REMARKS

47. In the current legislative scheme under the *Penal Code* [Cap 26], apart from rape, homicide and a few other offences, robbery contrary to section 293(1) is one of the most serious offences which attracts a life imprisonment as its maximum sentence.¹²

¹¹ *Selo v Regina* [2017] SBCA 17; SICOA-CRAC 9003 of 2017 (13 October 2017).

¹² *Penal Code* [Cap 26], s293 (1)

48. Albeit the fact that there is no actual data presented in court with respect to the increase of robbery related offences, based on the anecdotal evidence and/or observations especially on the current active robbery cases before the courts, it can be construed that robbery related offences are actually increasing in Honiara, and most probably in some parts of the county, which definitely needs to be curtailed and contained. The robbing and stealing of properties such as mobile phones and other expensive gadgets is arguably becoming widespread in Honiara which only shows how dangerous and insecure the country's capital city is. Sometimes the occurrences of such offences in Honiara can be unfairly portrayed as a representation of the country's situation in terms of security, and law and order.
49. The need for the protection of fundamental rights entrenched in the Constitution is of paramount importance, such as the right to protection from deprivation of property or the right to own property.¹³ It is my duty to issue a sentence encompassing, amongst other facets, a deterrent component to reflect how important property rights are. Depriving of another person's property through robbery or stealing is unlawful and has consequences as prescribed by the *Penal Code*. Neither the courts nor the community can tolerate such offending.
50. The attitude displayed by the defendant in the present cases can be best described as irrational. It is simply deplorable for the defendant to prey on vulnerable victims to gain a property unlawfully through robbery and stealing, as evidenced by the present consolidated cases. Some of the properties were recovered because the defendant was arrested by the Police in a timely manner and a timely body search was done. The defendant did not voluntarily return to the victims some of the properties that were recovered until he was arrested. The fact that he committed these offences both at night, and at least with another person or more, and on two distinct occasions shows that he is dangerous person. He repeated the same offence at least twice between 2018 and 2019, and I consider this as an aggravation. He could potentially become a menace to the public if he is not corrected and given a lesson at this stage as he has a long life ahead of him.
51. If the defendant had not been well advised, taught and groomed in his household, or if it was his own choice that forced him to involve in such unlawful activities, or whatever the situation is, then I will teach him one or two lessons with the main objective that Mr Kotiu should be transformed to become a law abiding and useful citizen of the country, after serving his imprisonment term in prison.
52. In conclusion, after having taken into account all the relevant factors, and having considered the sentencing principles such as punishment, retribution, deterrence and rehabilitation, I am satisfied that the sentence of 2 years and 1 years respectively, for the present cases are appropriate and proportionate to the severity of the offences.
53. Hence, I now sentence the offender Mr David Kotiu to an imprisonment term of 24 months (2years) in MC-CC No. 1000 of 2018; and an imprisonment term of 12 months (1 year) in MC-CC No. 676 of 2019.

¹³ *Constitution 1978* (Solomon Islands), s.8. Universal Declaration of Human Rights, see Article 17(2)

ORDERS

54. The orders of the Court are as follows:

- 1] **The offender, Mr David Kotiu is sentenced as follows:**
 - 1) **In CC No. 1000 of 2018, Mr Kotiu is sentenced to an imprisonment term of 24 months or 2 years imprisonment.**
 - 2) **In CC No. 676 of 2019, Mr Kotiu is sentenced to an imprisonment term of 12 months/or 1 year imprisonment.**
 - 3) **Both offences occurred on different dates in 2018 and 2019 respectively, and cannot be deemed to have arose out of the same transaction, and therefore, they shall be served consecutively.**
- 2] **Hence, the total sentence is 36 months or 3 years.**
- 3] **Time spent in custody must be appropriately deducted, or alternatively, a proper backdating to the first time the defendant was placed in custody shall be done.**
- 4] **The warrants of arrest against Mr Charles Alick Amagela and Brian Tuita in CC No. 1000 of 2018 are still pending. These must be executed by the Police. Similarly, the warrant of arrest against Mr Lawrence in CC No. 676 of 2019 is also pending and must be executed by the Police.**
- 5] **Right of Appeal within 14 days.**



PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT