

**IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS
AT TULAGI**

(Criminal Jurisdiction)

Criminal Case No: 1284 of 2017

REGINA



-V-

DANIEL KAUPILO

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr J. M. Saugaro and E. Kangea for the Crown (CIP Police Prosecutions)

Mr F. Kama of Public Solicitors Office for the Defendant

Date: 17 July 2019.

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

SENTENCE

1. The Defendant, Mr Daniel Kaupilo, was charged with one count of Common Assault contrary to section 244 of the *Penal Code* [Cap 26].
2. On 16 July 2019, Mr Kaupilo pleaded guilty to the charge of Common Assault contrary to section 244 of the *Penal Code* [Cap 26]. I now enter conviction against him based on the guilty plea entered.

Facts and Background

3. The Defendant or offender agreed with the summary of facts.
4. On or about 7th July 2013, Mr. Daniel Kuapilo unlawfully assaulted Mr. Stephen Kaumavi at Rara Village, Central Islands Province. Between 1100hrs to 1130hrs, Ms Mary Abiabi had invited some children including the victim for a get together at her residence at the said village on Big Ngella. The children, including the victim, were served with cakes and tea, and they enjoyed themselves. After the victim had his shares, he went to the water tap to wash his hand. Mary asked the children whether they had enough and the children answered in the affirmative, and around the same time, the offender was walking past Abiabi's house, and the victim jokingly said "...ia Kaupilo say hem maku tu.." which in

English means 'Kaupilo said he also had enough food'. The offender heard what the victim said and got angry. The offender then chased the victim around Abiabi's house. The offender took a half timber which was used to cut a tobacco and shot the victim with it and it missed. He missed his second attempt. The third attempt also missed. This made the offender even angrier. The offender continued chasing the victim and he caught up with the victim when the victim's trousers dropped down which made the victim unable to run. The offender held the victim and pushed him down on the ground with full force. He then held up the victim with his right hand and slapped the victim on both sides of the victim's face. Moreover, he grabbed the victim's hair up and shot his head with a *koilo* fruit. A short range shot using a *Koilo* definitely is painful. The offender still not satisfied, held the victim and threw him down on the ground again and kicked the victim's ass with his right leg. The victim sustained great pain, laid on the ground and cried helplessly. The victim's mother came to his aid and carried the victim, who was only eight, to the water tap and washed his body to ease the pain. The victim after few days was taken to Borohinamba clinic for treatment and medication purposes.

5. The matter was reported to the Royal Solomon Islands Police Force at Tulagi and the offender was arrested, charged and released on bail to attend the Court hearing.

Discussion and Analysis

6. Section 244 of the *Penal Code* [Cap 133] ¹provides as follows:

244. Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, shall be liable to imprisonment for one year.

7. Assault contrary to section 244 of the *Penal Code*, carries a maximum penalty of one year or 12 months imprisonment. The penalties that can be imposed ranges from fine, non-custodial or suspended sentences and custodial sentences. In the present case, the assault was done on an eight years old child and this alone is an aggravating feature and any sentences imposed should be reflective of the seriousness of the assault.
8. I also take cognizance of the relevant international treaties, and in particular the United Nations Convention on the Rights of Child in which Solomon Islands had acceded to in 1995. It placed obligations on member states to ensure that the rights of the child are protected by having the right policies and pieces of legislation in place.² A child need protections " ...from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."³ The notion that one can use excessive force for disciplining a child is obsolete and has no place in the modern Solomon Islands.⁴ It is surprising that no one intervened to protect the victim when he was chased by the offender. Children are one of the country's most important resources and the future of this country depends on them, and I must say that this country must not fail them.

¹ *Penal Code* [Cap 26], s 244

² United Nations Human Rights-Office of the High Commissioner "Convention on the rights of child" <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (Accessed 18th July 2019)

³ See above n 3.

⁴ Disciplining a child should be done in a reasonable manner as opposed to using of excessive force or weapon.

Aggravating Factors

9. The aggravating factors are as follows:

- 1) The victim was only eight years old. His body at the time was not yet fully developed and vulnerable.
- 2) The offender used a half timber (normally used for cutting tobacco) to shoot the victim three times but missed. He also used a stick. The shots made missed the victim but had they hit the child, it could be a different story. The victim could sustain injuries or even die.
- 3) The offender held the victim and pushed him down on the ground with full force.
- 4) The offender held the victim with his right hand, open palm, and slapped both left and right sides of the victim's face.
- 5) The offender then grabbed the victim's hair up and shot his head with a *Koilo* fruit.
- 6) The offender still not satisfied, threw the victim on the ground again and kicked his ass using his right leg.
- 7) The offender might claim that he was provoked by what the victim said about him, however, the offender is a mature man of 41 years of age, and a reasonable person would not react that way. The force exerted appears to be excessive as well.

Mitigating Factors

10. The mitigating factors are as follows:

- 1) He pleaded guilty in the first instance which saves the court's time and resources.
- 2) He had no prior conviction records.
- 3) Reconciliation had taken place between the offender and the victim's family including the paying of SBD 50 to the victim.
- 4) The offender is now in his 40s.
- 5) He is the only bread winner in his family. He is responsible for his family and children.
- 6) He is a village elder in the community.
- 7) The delay to have this matter finalized since the offence was committed.

Starting Point

11. I am of the opinion that a starting point of seven (7) months should be appropriate for this case.
12. I give credit to the offender for the early guilty which saves the court's time and resources of going through a trial and deduct two months. I also take into account that the offender had no prior conviction, he had reconciled with the victim, he is the only bread winner, his good record in the community as an elder including other mitigating factors enumerated above and I further deduct one month.
13. I also take into account that the incident had occurred some five years ago and further deduct another two months for delay. In the case of *R v Naidi* [2019] SBCA 5; SICOA-CRAC 45 of 2018 (12 April 2019),⁵ the Court of Appeal stated that the allowance for delays must also be taken into account.

⁵ *R v Naidi* [2019] SBCA 5; SICOA-CRAC 45 of 2018 (12 April 2019)

14. I am satisfied that the sentence of two months is appropriate in this case to deter the offender and like-minded people from committing similar offences on the vulnerable members of our community especially the children, women, girls and the old people.
15. I am satisfied that the circumstances of this case warrant a custodial sentence as the assault was done on a child who was only eight years old. I find that the force used was excessive. He slapped the child on both sides of the face, he threw the child twice to the ground with full force, he used a timber to shoot the child three times but missed, and he also used a *koilo* fruit to hit the child. It can be inferred that the *koilo* fruit was used as a weapon as well. Had the piece of timber hit the child, the assault could result in actual bodily harm, grievous bodily harm and even fatality. He completed his attack by kicking the child's ass. His actions must be condemned by the court.
16. In view of the above, I am not persuaded and satisfied to invoke a suspended sentence under section 44(1) of the *Penal Code* [Cap 26].
17. This sentence should inform the public that our children must be protected from assault, domestic violence and other form of suppression and abuse.
18. I therefore sentence the offender to two months imprisonment. This should be a lesson to the offender and like-minded people to stop violence against the children of this country.
19. The Orders of the Court are as follows:
 - 1) **The offender is sentenced to two months imprisonment.**
 - 2) **Right of Appeal within 14 days.**



PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT

