

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

**AT TULAGI**

(Criminal Jurisdiction)

Criminal Case No. 524 of 2019

**REGINA**

-V-

**JACKSON TARIKE**



Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

*Appearances:*

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

Mr F. Kama of Public Solicitors Office for the Defendant

Date: **18 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. Jackson Tarike, was charged with one count of criminal trespass contrary to section 189(1)(a) of the *Penal Code* [Cap 26]<sup>1</sup>, and one count of common assault contrary to section 244 of the *Penal Code* [Cap 26]<sup>2</sup>.
2. On 16 July 2019, the Defendant pleaded guilty to both counts. I now convict him based on the guilty pleas entered.
3. The facts of the case can be summarized as follows. On 31<sup>st</sup> October 2016, between 7pm and 9pm, at Gumu Village, in the Central Islands Province, the victim namely George Rao was having dinner in his kitchen. The offender entered the victim's kitchen and approached the victim aggressively and accused the victim of stealing his Secure Digital (SD) Card or more commonly known as memory card which the victim denied. The offender then grabbed the victim's neck and pressed it so hard with his right hand. The victim sustained minor injuries on his neck. The victim felt great pain and could not breathe well at the time. The victim then went to the Tulagi Mini Hospital for medical treatment and a medical

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<sup>1</sup> *Penal Code* [Cap 26], s 189

<sup>2</sup> *Penal Code* [Cap 26], s 244

report was issued. The matter was then reported to the Royal Solomon Islands Police Force at Tulagi and the offender was charged.

#### Discussion and Analysis

4. Section 189 (1)(a) of the *Penal Code* [Cap 26] states:

*189.-(1) Any person who -*

*(a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate or annoy any person lawfully in possession of such property;*

*is guilty of a misdemeanour, and shall be liable to imprisonment for three months.*

*If the property upon which the offence is committed is any building, tent or vessel used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property, the offender shall be liable to imprisonment for one year.<sup>3</sup>*

5. The offence of criminal trespass contrary to section 189(1)(a) of the *Penal Code* [Cap 26], carries a maximum sentence of 1 year or twelve months.
6. Moreover, section 244 of the *Penal Code* [Cap 26] provides 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.<sup>4</sup>*

7. The offence of Common Assault contrary to section 244 of the *Penal Code* [Cap 26] carries a sentence of 1 year or twelve months.

#### Aggravating Features

8. The Aggravating factors in this case are as follows:
- 1) The aggravating feature for both counts is that the offender firstly committed the offence of criminal trespass and followed by the offence of common assault.
  - 2) For common assault, the offender also attacked the victim's neck by pressing it so hard. Neck is a soft and vulnerable part of a person's body, and the defendant's attack had the potential to inflict injuries and can also prevent the victim from breathing.
  - 3) The issue that triggered the offender to do the offending was the allegation that the victim had stolen his memory card and he demanded the return of it, which is a trivial issue.

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<sup>3</sup> *Penal Code* [Cap 26], s 189(1)

<sup>4</sup> *Penal Code* [Cap 26]

- 4) The assault inflicted pain and minor injuries on the victim's neck. He was taken to the Tulagi Medical facility for medical treatment. The medical report described the injuries on the neck as "...two small bruises..." which confirmed that the offender had assaulted the victim.<sup>5</sup>

#### Mitigating features

9. On the other hand, the Mitigating factors are as follows:
  - 1) He pleaded guilty in the first instance which shows that he is remorseful and saves the Court's time and resources.
  - 2) He is a first-time offender with no previous conviction.
  - 3) He is the only bread winner and is married with a child which is three weeks old. He is also responsible to look after his father who is very old.
  - 4) He has reconciled with the victim and paid SBD 100 cash to the victim.
  - 5) He cooperated with the police.

#### Comparative Sentences

10. In the case of *Regina v Sovesua* [2015] SBHC 117; HCSI-CRC 48 of 2013 (1 December 2015)<sup>6</sup>, the offender was convicted of attempted arson contrary to section 320(a) of the *Penal Code*, and one count of criminal trespass contrary to section 189(1)(1) of the *Penal Code* [Cap 26]. He was sentenced to six months for criminal trespass which was ordered to run concurrent with the sentence for the attempted arson.<sup>7</sup>
11. In the case of *Regina v Tumulima* [2013] SBHC 112; Criminal Case 397 of 2012 (26 July 2013),<sup>8</sup> the accused was convicted of one count of indecent assault contrary to section 141(1) of the *Penal Code* [Cap 26] and one count of criminal trespass contrary to section 189(1)(a) of the *Penal Code* [Cap 26]. The offender was sentenced to six month for the criminal trespass charge.
12. In the case of *Rauhoura v Reginam* [1995] SBHC 72; HC-CRC 33 of 1995 (5 December 1995)<sup>9</sup>, the offender was acquitted of the criminal trespass charge and the sentence for common assault was reduced from six months down to four months.

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<sup>5</sup> See medical report.

<sup>6</sup> *Regina v Sovesua* [2015] SBHC 117; HCSI-CRC 48 of 2013 (1 December 2015)

<sup>7</sup> *Regina v Sovesua* [2015] SBHC 117; HCSI-CRC 48 of 2013 (1 December 2015)

<sup>8</sup> *Regina v Tumulima* [2013] SBHC 112; Criminal Case 397 of 2012 (26 July 2013)

<sup>9</sup> *Rauhoura v Reginam* [1995] SBHC 72; HC-CRC 33 of 1995 (5 December 1995)

13. I note the fact that he committed the offence of criminal trespass and followed by the common assault as an aggravating factor. On the other hand, I note that this case is not so serious and any sentence imposed should fall on the lower end of the sentencing scale or tariff.

#### Starting Point

#### Count 1: Criminal Trespass

14. I am of the opinion that for count 1, that a starting point of 4 months is appropriate. I give allowance for the early guilty plea and deduct 1 month. I also considered other mitigating factors such as no previous conviction, the reconciliation and payment of compensation of SBD 100, and the offender's cooperation with the Police, and I deduct 2 months. Hence, the offender is sentenced to one month imprisonment for criminal trespass contrary to section 189(1) of the *Penal Code* [Cap 26].

#### Count 2: Common Assault

15. I think for count 2, a starting point of 4 months is also appropriate. I give allowance for the early guilty plea and deduct 1 month. I also considered other mitigating factors which includes but not limited to, no previous conviction, the reconciliation and compensation paid, and the offender's cooperation with the Police, and I deduct 2 months. It is my respectful opinion that one month imprisonment is appropriate for this the second count.

#### Conclusion

16. After having considered the aggravating and mitigating factors, I impose a sentence of one (1) month for count 1 contrary to section 189(1) of the *Penal Code* [Cap 26]. Whilst for count two (2), I sentence the defendant to one (1) month imprisonment. The sentences are to be served concurrently because the offences arose from the same transaction taking into account the totality principle.
17. In essence, it is profoundly important to remind the general populace that people's homes and dwelling houses should be respected at all times and it is wrong for some people like the offender to enter other people's homes, yards and dwelling houses without permission or any lawful excuse. The protection of a person's property is embedded in our constitution and it is one of the fundamental rights in our bill of rights.<sup>10</sup> The offence of criminal trespass ensured that our properties especially our dwelling homes are protected. People who entered other people's properties without any lawful permission, excuse or on their own volition should face the consequences of their unlawful actions.
18. It is high time that our children and the young people of this country should learn that respect for one and another including other people's property is of paramount importance. Virtues such as respect, honesty, faithfulness, compassion, and many others should be cultivated in our respective homes, and it is the role of the parents to impart, and teach their children to have good behaviors, and become useful citizens of this country.

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<sup>10</sup> *Constitution of Solomon Islands 1978*, Bill of Rights, s 3-16. S 9 states: 9.-(1) *Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.*

19. There are avenues and informal processes that can be utilized to solve any misunderstanding and disagreements between individuals rather than taking the law into their own hands. <sup>11</sup>
20. This sentence imposed should be a lesson for the offender and serve as a deterrence message to like-minded people within the country not to take the law into their own hands. The offender should use the leniency of the Court as an opportunity to become a law abiding citizen after serving his short imprisonment term.
21. The Orders of the Court are as follows:
- 1] **The offender is sentenced to a term of one month imprisonment for the two counts of offences respectively, which are to be served concurrently. Therefore, the total sentence is one month imprisonment.**
  - 2] **Right of Appeal within 14 days.**

  
**PRINCIPAL MAGISTRATE FELIX HOLLISON**  
  
**THE COURT**

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<sup>11</sup> We have chiefs, elders, ministers, priests in our villages, and even the Police who can mediate between individuals.