



IN THE CENTRAL MAGISTRATES COURT OF SOLOMON ISLANDS

AT HONIARA

(Criminal Jurisdiction)

Criminal Case No: 520 of 2019

REGINA

-v-

ADRIAN TOKETAKE

Coram: HOLLISON F (PRINCIPAL MAGISTRATE)

Appearances:

Mr Tei for the Crown (Police Prosecutions)

Mr R. Dive for the Defendant

Date: 15 October 2019.

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

SENTENCE

1. The Defendant Mr Adrian Toketake pleaded guilty to one count of Domestic Violence contrary to sections 4(1)(a) and 58 of the **Family Protection Act 2014** ("FPA"),
2. On the 4th October 2019, the Defendant Mr Adrian Toketake pleaded guilty to one count of Domestic Violence contrary to section 4(1)(a) and 58 of the FPA.
3. I now convict him based on the guilty plea entered.

Facts

4. The facts of this case can be summarized as follows. On the 14th May 2019 at about 07:00am, the defendant and his wife were getting ready for their usual business at their family home at the Soap Factory Married Quarter, King George Area, in Honiara. The victim who is also the wife of Mr Toketake was also preparing and getting her children ready to go to School at that time. She left SBD 20.00 on top of the food shelf for the purposes of taking their children to school, and this was conveyed to their house keeper.

5. The defendant, however, took the money and used a portion of it for buying credit for his mobile phone. When the defendant returned, the victim asked him about the money that had gone missing. Mr Toketake told her that he used the money to buy credits. He also told his wife and it's her own problem to find other means to get the children to school.
6. The defendant and the victim then started arguing between themselves. The argument escalated and the defendant used his both hands to hit the complainant on her face, head, and ribs. He also kicked her back resulting in great pain. It was a painful ordeal for the victim.

Discussion and Analysis

7. Section 4(1)(a) of the FPA defines domestic violence as a:

“...conduct committed by a person (“the offender”) against another person with whom the offender is in a domestic relationship, or the threat of such conduct, the constitutes any of the following-

- a) Physical abuse;*
- b) Sexual abuse;*
- c) Psychological abuse; and*
- d) Economic abuse.¹*

8. It *“...may consist of a single act or a number of acts that form part of a pattern of behavior even though some or all of those acts when viewed in isolation appear to be minor or trivial.”²*

9. Section 58 of the FPA provides as follows:

- 1) A person commits an offence if the person commits domestic violence.*
- 2) The Penalty for an offence under subsection (1) is a fine of 30, 000 penalty units or imprisonment for 3 years or both.³*
- 3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for engaging in the conduct that resulted in the breach.⁴*

10. The FPA is “an Act to provide for the protection of families from domestic violence and to promote the safety, health and wellbeing of the victims of domestic violence...”⁵. The enactment of the FPA is a legislative response to the need to protect both men and women, the children, the old, the marginalized and all kinds of people from all walks of life from domestic violence. It must be noted that the most vulnerable people in our communities are the women and children as compared to men, however, nowadays, some men are also victims of domestic violence. Whatever punishment that will be issued for domestic violence must be done with great care to reflect the severity and gravity of the offence,

¹ Family Protection Act 2014, s 4

² Family Protection Act 2014, s 4

³ Family Protection Act 2014, s 58

⁴ Family Protection Act 2014, s 58

⁵ Family Protection Act 2014, Long Title

and to send a deterrence message to the entire country, both personal and general, that the courts will not in any way tolerate domestic violence.

11. In sentencing the core principles of punishment, deterrence and rehabilitation must be considered.

Aggravating features

12. The aggravating factors are as follows:

- 1) The maxim sentence is either a 3 years' imprisonment or a fine of 30,000 penalty units or both.
- 2) The victim is a female and vulnerable member of the community.
- 3) The victim is the wife of the defendant and the assault done on her shows a breach of trust between them as husband and wife.
- 4) He assaulted the victim on the head which is a vulnerable and important part of the body that hosted important organs such as the brain and eyes.

Mitigating Features

13. The mitigating factors as follows:

- 1) **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.
- 2) **First time offender.** He is a first-time offender and has no previous conviction. It was after 39 years on earth that he finally got convicted.
- 3) **Cooperated well with Police.** He cooperated well with the Police by admitting the offence and that the fact that he was wrong.
- 4) **Reconciliation.** He reconciled with the wife and they are now in good terms. This was confirmed by the wife in Court.
- 5) He is also the bread winner in the family.

14. It is an established principle or rule that each case must be decided on its own merits or facts.

15. There is no Medical Report tendered in Court and this is quite unfortunate. The Court needs an independent medical assessment in order to ascertain the severity of the injuries or pain inflicted upon the victim. On the same note, I must remind the Police and the Prosecutors in general to always ask for a medical report when cases involving assault, body injuries and domestic violence are reported to your offices. However, I will rely on the agreed facts to issue the sentence for the present case.

16. As alluded to above, one of the aggravating features in this present case, *inter alia*, is the fact that the defendant used his both hands to hit the complainant on her face, head, and ribs. Additionally, he kicked her on her back. The face, head and ribs are vulnerable parts of the body which can be injured easily. In some cases, applying a strong force on these body parts can result in permanent bodily harm or even fatality.

17. I also take note of the mitigating factors such as early guilty plea, reconciliation, no previous conviction and coupled with other factors, and give the defendant full credit.
18. I must say that the Court should not wait until another life is taken before imposing harsh penalties.
19. In the case of *Kunia v Regina* [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005)⁶, his Lordship Palmer CJ said as follows:

In domestic violence cases the courts should be mindful of the effect of a custodial sentence and should always bear in mind that in some cases a short sharp sentence may be as effective in rehabilitating the Appellant and deterring others. Where a desire for reconciliation has been expressed and or the parties have reconciled and are living together again that should have bearing on the length of sentence to be imposed. An overly lengthy sentence may do more harm to their marriage relationship in the long run.

On the other hand, there have been instances in which such assaults have resulted in the death of the opposite spouse and a more serious charge including that of manslaughter or murder imposed. As a weaker vessel, women victims are especially vulnerable and the courts have readily come to their protection by imposing immediate custodial sentences as in this case. The fact the incident occurs in a domestic relationship does not justify or minimise its significance. No spouse should be physically abused or attacked for offences caused within the marriage relationship and parties should as much as possible seek to iron out their differences/disputes in a peaceful or controlled manner without having recourse to physical violence and harm to each other. In such situations, nobody wins and more often than not, both become the loser. Where there are children they can be traumatised or affected by such incidents.

20. In the case of *Regina v Popoe* [2014] SBHC 155; HCSI-CRC 77 of 2010 (6 November 2014)⁷ That case is a manslaughter case, however, it is relevant because the death of the victim occurred as a result of domestic violence. The learned Judge His Lordship Palmer CJ made some pertinent observations concerning domestic violence as follows:

This type of violence occurs within the confines of the home and family setting, for which over the years women groups, family groups, churches, non-Government organisations, including the Police have been very vocal about and repeatedly urged that this type of violent offending be curtailed. It is not something, which cannot be controlled, rather it is within the power of the perpetrator to stop and desist from. It has been pointed out so many times that this is more an attitudinal problem than cultural or anything else. Domestic violence cases are a phenomenon the world over. It occurs in almost every country not only in Melanesia and many organisations and stakeholders have actively sought to highlight this problem so that it is addressed aggressively by everyone in the community and not swept under the carpet. The courts too, not only in this country but in other jurisdictions have duty to ensure that the law which denounces this type of conduct is enforced firmly, fairly and consistently.

21. After having considered both the aggravating and mitigating factors, the circumstances of the case, and the testimony of the wife in Court that they have now reconciled and are in good terms, I am satisfied

⁶ *Kunia v Regina* [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005).

⁷ *Regina v Popoe* [2014] SBHC 155; HCSI-CRC 77 of 2010 (6 November 2014)

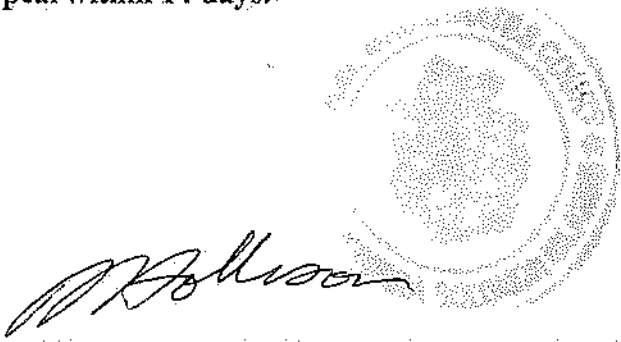
that a penalty fine is appropriate for this case. Moreover, after taking into account the core principles of sentencing such as punishment, retribution, deterrence and rehabilitation, and having done my own computation, I now sentence the offender Mr Toketake and order him to pay a penalty fine of **SBD 6000 dollars**.

22. Perhaps I should add that virtues such as love, honesty, empathy, transparency, patience, trust and forgiveness are some ingredients of a healthy relationship, and embracing them arguably would reduce matrimonial problems, and essentially would also contain domestic violence. In any relationship, there will always be challenges but they are not insurmountable. There are ways, forums and avenues where couples can seek assistance from when having relationship and marital issues, other than committing domestic violence.
23. The sentence imposed should be a lesson for the offender as he is quite lucky that I have decided not to impose a custodial sentence. This is to show the court's denunciation and admonition of the offence of domestic violence which is now prevalent in the country today.

Orders

24. The orders of the Court are as follows:

- 1] **The offender Mr Adrian Toketake is sentenced and ordered to pay a fine SBD 6000.00 for one count of domestic violence contrary to sections 4 and 58 of the FPA. The fine shall be paid within four (4) weeks from today. The due date is on 12 November 2019.**
- 2] **In default of payment, Mr Toketake shall be imprisoned for six (6) months.**
- 3] **Right of Appeal within 14 days.**



PRINCIPAL MAGISTRATE FELIX HOLLISON
THE COURT