

IN THE CENTRAL MAGISTRATE'S COURT
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

Criminal Case No. 229 of 2017



REGINA

v

OSBORN BOBBY MAELISIA

Date of Hearing: 7 May 2020

Date of Sentence: 14 May 2020

Mr. Iete Tebakota for the prosecution

Mr. Bobby Harunari for the accused

SENTENCE

Background of the case

1. The accused, Osborn Bobby Maelisia, was charged with two counts of house breaking with intent to commit felony, contrary to section 301(a) of the Penal Code. They are felony offences and respectively carries a maximum penalty of 7 years imprisonment.

2. One of the charges relates to the incident on 19 September 2016 while the other relates to the incident on 5 March 2017.
3. On 7 May 2020, the prosecution made an application under section 190 (2)(b)(i) of the Criminal Procedure Code to withdraw the charge pertaining the 19 September 2016 incident. That application was granted with an order for acquittal in favour of the accused.
4. On that same day, 7 May 2020, the accused decided to plead guilty to the remaining charge. His conviction was entered and followed by hearing of mitigation and sentencing submissions.
5. This matter now is for sentence.

Summary of the facts

6. The accused was 18 years of age when he committed the offence. Now, he is already 21 years of age.
7. On 5 March 2017 between 4:00am and 6:00am, the accused ventured in the dark and approached the house of the complainant, Dr. Benjamin Kere. He pushed opened the locked door and entered the interior of the house. Whilst inside that house, the complainant realized someone had intruded, hence, he came out of the room and saw the accused was already holding his laptop. Instantly, the accused escaped away with the laptop from house.
8. The facts disclosed that the complainant chased after the accused for his laptop and after a short struggle, he managed to retrieve it. Thereafter, the accused escaped from the complainant.
9. The matter was reported to the police. Following the police investigation, the accused was arrested, interviewed and charged for the offence admitted.

10. On 11 March 2017, he was formally remanded in custody and bailed on 21 May 2017. He was then again remanded on 20 August 2019 for want of absconding. Since then, he had spent about 11 months in custody.

Parties' submissions

11. It was brought to the Court's attention that a lenient sentence should be given to the accused to reflect his guilty plea. Other mitigating factors advanced were; being a first time offender; he was a young person of 18 years when he committed the offence; he was a student at the Solomon Islands National University (SINU) taking primary teaching courses at the time of offending; the complainant did not suffer any loss of property from the offending and there was delay of about 3 years and 2 months to finalize the matter.
12. I have considered those mitigating factors, and required by the law, the accused must be accorded the benefit of a discounted sentence.
13. For the prosecution, it was submitted that this offending was aggravated because of the seriousness of the offence, being 7 years maximum penalty. Also, the act of chasing after the accused to retrieve the laptop had put the complainant's life at risk. The disrespectful attitude of the accused when he intruded into the house of the complainant, being a man of high standing, should be considered as an aggravating feature as well.
14. Whilst I agree that those are the obvious aggravating factors, it must also be noted that the presence of the complainant and his family at home in bed during that odd hours of the morning while this incident occurred may well bring trauma to the occupants especially if woken by the intruder. This is even greater if the occupants see it, or, worse, confronted by the intruder. In these circumstances, it would be unrealistic to regard the complainant's presence at home during a forced home invasion

as not amounting to an aggravating factor or merely a medium-level aggravating feature.

15. Even though the accused herein is a first time offender and was 18 years old at the time of offending, I must emphasis it here that the seriousness of this offence cannot be diminished or downplayed merely because of those personal factors. The accused should know that being drunk and breaking into other people's house for stealing was totally uncalled for and unwarranted, to say the least. As a SINU student, he should know the consequences of his action and behave responsibly, and set an example for others. His action was shameful and contemptuous.

Court's position on house breaking related offences

16. The offence of house breaking with intent to commit a felony is no doubt a serious offence. Unless there are special or exceptional circumstances that call for a lenient sentence, a custodial sentence is appropriate even if the offender is young and a first time offender. The law on this was amplified by then ACJ Muria in *Paroke & Kuper v R*¹ in these unequivocal terms: "I do not accept the suggestion that because an offender is young and a first offender, he should not be sent to prison. In cases of serious crimes, and housebreaking is such a crime, the courts must reflect the seriousness of crimes in the sentences they pass even upon a young first offender."² (Underlined mine).
17. In joining the call in condemning house breaking related offences for the purposes of committing felony, I reiterate the sentiments expressed by the Court in *R v Nelson Funifaka & others*³:

¹ (Unrep. Criminal Case No. 21 of 1992)

² At page 2 of the decision

³ (Unrep. Criminal Case No. 33 of 1996)

*"The message must be made clear and plain that those who venture out at night, armed and break into people's homes and attack people in their homes must expect to be sent to prison. People are entitled to feel safe and secure in their homes (whether they have a fence around and good locks on their doors or not), and to have a good night sleep and rest without being disturbed. It is plain common sense that a person's house is out of bounds to anyone whether in custom, the law or whatever religious beliefs that one might have. (In English law, an Englishman's home is known as his castle, a place of refuge and safety). It is the same here, and the courts have a duty to protect society from such persons with criminal minds. The element of deterrence therefore must be borne in mind and applied so that at least persons who are minded to do such things can at least think twice or again before venturing out in such activities full well what they might face if brought to the courts."*⁴

18. The sentiments expressed in these two cases: *Paroke & Kuper and Funifaka* are crystal clear, in that, it is plain common sense that unless you are invited, a person's house is out of bound to anyone, nothing more nothing less.
19. I understand the accused was under the influence of alcohol when he committed the offence. This explanation unfortunately is unconvincing. From the facts, he was able to perfectly coordinate himself in the dark by selecting the house of the complainant before making his way in. He then searched for the laptop in the house as a normal person unaffected by alcohol. Thereafter, he escaped with the laptop, knowing very well that it did not belong to him. Furthermore, it was after the struggle that the laptop was taken away from him. These clearly indicated that he was not disoriented or loss consciousness of what he did. He knew well what he was doing the material time.

⁴ At pages 16-17 of the decision

20. I think the taking of alcohol here is simply to boost his arrogance and confidence to commit the crime, apart from craving to steal others properties. But to say that he was so affected by alcohol and that was why he ended up in the house of the complainant is nonsensical.
21. The case of *R v Meke*,⁵ was brought to the Court's attention by counsel for the accused, as indication of the sentence imposed for this offence but on upper scale. In that case, the accused, who has 24 previous convictions, pleaded guilty to one count of house breaking with intent to commit a felony and two counts of rape, all committed inside the Honiara Hotel. He was sentenced to 2 years imprisonment for house breaking and 8 years imprisonment for the rape charges. The *Meke* case is far more aggravating than the present case. The other charges of rape and his predatory character make it more aggravating than the present case.

Decision on sentence

22. Where an offence involves house breaking or home invasion, the sentence must, for the present purpose, proportionate with the seriousness of the offence. It is also trite that I must consider the aggravating and mitigating factors associated with this offending.
23. In the present case, I accept the accused had committed an offence which carries a maximum penalty of 7 years imprisonment. On the other hand, I understand the laptop was already retrieved the same night and hence, the complainant did not suffer any loss of property. When considering all these factors in aggravation and mitigation, and in compliance to the guidelines set out in *Pitamana v R*⁶ for sentencing of house breaking related offences, it is my view, that a custodial sentence of 2 years imprisonment is appropriate. This is because the

⁵ [2018] SBHC 13

⁶ [2005] SBHC 45; HCSI-CRC 3 of 2005

accused herein is no longer a juvenile so that his sentence could be differently or exceptionally considered.

24. However, I will reduce this sentence by 6 months to reflect the delay this matter has taken to have it finalized, resulting in a sentence of **18 months imprisonment**.
25. I order that this 18 months imprisonment sentence is partially suspended pursuant to section 44 (1) (b) of the Penal Code in that, **11 months** of this sentence, is to be served in prison and the balance (**7 months**) will be suspended for a period of **1 year** on the condition that he must not commit any further offence during the suspension term. If he reoffends, he will be recalled to serve that suspended term in full.
26. The reason to suspend part of his sentence is; the accused in his allocutus said that he wanted very much to pursue his primary teaching studies at SINU. He described his education as "*the key to life*"⁷. Therefore, I feel that the Court should give him that opportunity to change for the better and I am confident that he will become a good law abiding citizen after this experience.

Court Order

27. Following the conviction of the accused, Osborn Bobby Maelisia, on his own guilty plea to the charge of house breaking with intent to commit felony contrary to section 301(a) of the Penal Code, the accused is hereby sentenced as follows:
 - (1) **Sentenced to 18 months imprisonment.**
 - (2) **This sentence is partially suspended pursuant to section 44 (1) (b) of the Penal Code in that 11 months of this sentence is to be served in prison and the balance (7 months) will be suspended on the condition that he must**

⁷ Allocutus given in Court by the accused herein on 7 May 2020

not commit any further offence during the suspension term. If he reoffends, he will be recalled to serve that suspended term in full.

(3) Period spend in custody is to be taken into account.

28. 14 days right of appeal applies.

29. Order accordingly.



(Augustine Sylver Aulanga – Principal Magistrate)