



IN THE CENTRAL MAGISTRATES COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)

Criminal Case No: 65/2020

REGINA

-V-

BADDLEY TARAI

COURTS SENTENCING RULING

Date of arraignment and sentencing proceedings: 18th Mar 2020

Date of sentencing ruling: 19th Mar 2020

Date of Written Ruling: 28th May 2020

Defence Counsel: Mr. Ron Dickey Pulekera of PSO

Prosecutor: Mr. Jonathan Auga of ODPP for Mr. Fanasia

Accused: Appeared in court on bail.

Charge:

The Defendant is being charged for Domestic Violence contrary to section 4 (1) (a) as read together with section 58 (1) of the Family Protection Act.

The Defendant pleaded guilty to the charge on 18th Mar 2020 during the arraignment and sentencing hearing date. He was therefore convicted for the offence upon his own guilty plea.

Facts:

The facts filed in court on 18th Mar 2020 revealed the following circumstances surrounding the offending. Prosecution stated that

the Defendant and the Victim in this matter were in a defacto relationship at the time of the offending which makes it a domestic violence matter. On 5th January 2020 between 1200hrs and 1300hrs at the Lunga area, the Defendant who was unhappy about their locked house met with the Victim namely Miss Ethel Maiue. The Victim at the time was with her sister travelling to Lunga upper riverside to do some washing. When they met the Defendant along the way, the Victim informed the Defendant that they were travelling to do some washing. The Defendant on the other hand asked the Victim why their house was locked and he was not able to go in. the Victim responded by swearing back at him and ignored him further by using a bucket to clean the front screen of their vehicle. The Defendant got angry and used his right hand closed fist to hit her right face and then used a wheel spanner and struck on her forehead resulting in a minor injury. The Victim was taken away by her cousin brother and eventually reported the Defendant to Henderson police to file her complaint.

With the above facts, I gathered the following as important features to weigh out for the appropriate penalty to be imposed for this matter.

Aggravating factors:

1. The Victim is a female and is therefore a vulnerable member of society,
2. There is a continuous attack done to the Victim when the Defendant punched her and then used a weapon to hit on her forehead resulting in the minor injury.
3. Wheel spanner was used as a weapon against the Victim.
4. The Defendant at the time of the offending was clearly under the influence of alcohol.

Mitigating features:

1. On file there is clear evidence of Reconciliation already done. This was in the form of \$1000 cash and \$1000 form of shell money recognised by custom as form of compensation to settle the problem.
2. Early guilty plea- has saved the courts resources and time to expend on a trial for the matter and dispose the need

- to having the victim to narrate what she had gone through again.
3. The Defendant is remorse and regrets his actions and has learnt from this and will not repeat it again.
 4. The Defendant has been very cooperative with police and faithfully attending court hearings which has assisted the court to dispose of the matter efficiently.
 5. The Defendant is a First time offender, has been a good and responsible person until the incident occurred and has changed since that issue happened as well.
 6. Finally this scenario is a clearly provoked attack on the Victim- as the Victim clearly swore at the Defendant when he was only asking about their locked house and why he could not go in. Furthermore the swearing of the Victim is a clear breach of customary norms and practices in Malaitan culture.
 7. I have also not seen any evidence of the Victim remedying the swearing she did to the Defendant except for the Defendant paying compensation of \$1,000.00 cash and \$1,000.00 worth of red money to the Victim and her family for the issue they had.
 8. The Victim is a police officer and should act more responsible than swear back at a simple question posed by the Defendant at the time and lock the house to affect the Defendant. She acknowledged her wrong in her letter also filed in court, however it is not signed for verification. Her acceptance of the letter filed shown in court is taken as confirmation of being the writer.

Personal Circumstances:

1. The Defendant is 50 years old.
2. He has 6 dependent children from which 2 are married already
3. He is the Bread winner for his family especially his children and earns about \$2,736.00.
4. Most of his children are in school and are cared for by the Defendant
5. He is also a Form 3 drop out so has limited education
6. He is a Driver for bulk shop and does other private work in his liking or hobby to sustain his dependants.
7. He was married to the children's biological mother and the Victim in this matter is his de facto partner.

In my assessment over this matter I note that the Defendant has shown and proven to be a responsible person for his dependants and also a productive member of the society despite his limited educational background. He is also a first time offender.

Courts analysis:

In any event domestic violence is a serious offence. The court must remind the Defendant and the community to stop engaging in such scenario of domestic violence as it has damaging effects to families and children especially.

Deterrence is vital to be applied in this case but rehabilitation is also important in this case as the Defendant is a first time offender and was clearly provoked by the victim at the time. The injury sustained is also a minor injury as seen in the filed documents for this matter and the Defendant is clearly sorry for what had happened and promised not to repeat it again.

In factoring deterrence (both General and Specific) and rehabilitation into this case, I would also consider case law on the sentencing precedents for such matters. Prosecution provided mostly assault cases and not domestic violence matters like defence counsel. However I do appreciate both counsels hard work in providing their submissions with assistance provided through that.

All cases filed by both counsels have been read and appreciated. However those provided by defence are more relevant as the circumstances are similar than the prosecutions cases. I note especially the important factor found in the case of Kunia¹. It was clearly stated by his Lordship Sir Albert Palmer that the courts must be cautious in penalising Defendants in a domestic violence setting by imprisonment. Overly lengthy sentences may be harmful as they would separate partners in a long run affecting their

¹ [2005] SBHC 60; HCSI-CRAC 599 of 2004 (21 February 2005).

relationship and may permanently damage the family's union as a whole.

I also note that most Dependents are all in school and education is a key factor in moving this nation forward.

The Defendant is also the breadwinner. He expressly stated that he has learnt his lesson and it is only human that we all make mistakes and cross the line at some point in time in our lives. There is always hope of changing positively and becoming better tomorrow. The important thing is to learn from it for the good to avoid problems and impacts of doing wrongs again and again. The Defendant is someone I note as a person who is responsible given his background in supporting his children and was provoked at the time he asked a simple question. More so when a custom breach occurred with the Victim swearing at him. No compensation was paid to him for the swearing the Victim did yet he was the only one who paid compensation for the assault he did after receiving the swearing.

Custody penalty is therefore not appropriate in my view for him. A fine would be more appropriate so he knows that still the assault was wrong and should always be avoided.

Court Orders:

1. Fine is imposed to address breach of law by Defendant as he should always think of consequences by doing any wrong again (assault on the Victim).
2. Fine of \$500.00 to be paid by 2nd April 2020 at 3.30pm.
3. In default if he does not pay the fine at the due date, he will have to be imprisoned for two weeks.
4. Right of appeal can be exercised by any aggrieved party in this case within 14days


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Principal Magistrate: Miss Tearo Beneteti