



**IN THE CENTRAL MAGISTRATE'S COURT)
OF SOLOMON ISLANDS AT HONIARA)
(Criminal Jurisdiction)**

Criminal Case No. 1 of 2020

REGINA

-v-

JOSEPH TIMOTHY TAVE

Date of plea: June 30th, 2020
Date of hearing: July 3rd, 2020
Date of sentence: July 10th, 2020

*Mr. Steward Tonowane for the Crown
Mr. Ben Alasia for the Accused*

SENTENCE

Introduction

1. The accused person, Joseph Timothy Tave is charged with one count of *Grievous Harm* contrary to section 226 of the Penal Code and a count of *Unlawful Wounding* contrary to section 229 of the Penal Code.
2. On 30th June 2020, the accused was arraigned on the charge in court and he entered guilty pleas accordingly. For this reason, I now formally enter conviction on his own guilty pleas.

Agreed Facts

3. Mr Alasia of counsel for defence have agreed and signed the facts produced by the Prosecution. The facts states that on December 31st, 2019, all people around Lambi area, West Guadalcanal gathered to celebrate New Year 2020 at Jarupehe village.
4. The accused and some boys were drinking beer at Tarasisio's house, and he eventually fell asleep. He suddenly cried in his sleep and one of the boys came and stepped on his ear. The accused woke up and got angry. He took a bush knife from the kitchen and cut the walling on Tarasisio's house. Some of the boys tried to control him, and fortunately they removed the bush knife from him. Eventually, the two victims came and kicked him.
5. Thereafter, few boys took him to his brother in-law's house and left him there. The accused went and took a bush knife from his brother in-law's house and slashed it on a nearby market stall. The victim, Tarasisio attend to stop the accused person from damaging the market stall, instead the accused turned and cut him with the knife.

6. The second victim, John Tonani who is the son of the first victim came to assist his father. He came and asked the accused as to why he had cut his father. The accused turned to him and cut his right hand.
7. Both victims were later rushed to the Honiara National Referral Hospital and had been assisted by medical practitioners.

Medical Reports

8. Upon being assisted at the Honiara National Referral Hospital, the victims were then examined by Dr Leslie Tawaani and Dr Gordon Koburu, whereupon two separate reports dated 5th March 2020 and 29th January 2020 were furnished to the Prosecution, which are also part of the evidence in the sentencing submissions. The Doctors report are particularised as follows: -

Tarasisio Lingo

I examined the patient and my observation were as follows:

- o *There was a laceration measuring 8 cm x 1cm x 2cm. the injury involves soft tissues and no intraperitoneal involvement.*

The following treatments were administered;

- o *He was taken to the operation theatre and was examined under anaesthesia and the wound was closed with nylon. He was covered with antibiotic (cloxacillin) and Panadol.*

John Tonani

I examined the patient and my observation were as follows:

- o *The victim has a transverse cut anterolateral aspect of his right mid arm which is deep extending down to lateral aspect of biceps and brachialis muscles and also cut the radial nerve and accompanying actively bleeding blood vessels.*

The following treatments were administered;

- o *The blood vessels were tied with sutures to control bleeding and cut is cleaned.*
- o *Subsequently, the cut was closed with sutures.*

And the reason why are as follows:

- o *The cut is deep partially cutting to muscles (biceps and brachialis) and also cutting the radial nerve.*
- o *loss of movement on the forearm and hand as all muscles supplied by the radial nerve*

Maximum Prescribed Penalty

9. These are of course two serious offences concerning injuries and wounds on a human body. Unlawful wounding carries a maximum term of 5 years' imprisonment, and Grievous Harm holds a maximum term of 14 years' imprisonment. The latter one extend

to include permanent injuries and maim on a human body. The intention of our legislatures are clear when setting the maximum terms and in my opinion exemplifies the objective and approach of our lawmakers towards denouncing and condemning such hideous crimes from occurring within our communities.

10. It is settled law in this jurisdiction that cases are considered based on their own merits, and that by virtue of section 24 (2), the maximum terms are reserved for the most horrible offending.

Aggravating Factors

11. I find the following to be the aggravating factors in his case: -

- (i) Firstly, he used a bush knife to inflict injuries on both victims on the date of offence, this is an obvious aggravating factor. A bush knife is a dangerous and deadly weapon that if applied on a human body will likely to cause serious injury or to a certain degree death. In this case, the victims suffered slash wounds on their bodies, for Tarasisio on his stomach and for Tonani, a severed radial nerve which will result in loss of movement on his left arm. The human arm plays an integral role in the life and function of a human being, it is an important part of the human body, the victim Tonani will likely to suffer loss of movement of his left arm, this will certainly affect his physical appearance, limit the work he does and other important roles that require the use of his left arm.
- (ii) Secondly, the accused was intoxicated during the commission of the offence. He has voluntarily consumed alcohol to his own displeasure. The presence of alcohol has motivated his anger and dislodges his clear mind and self-control, which consequently led him to commit the offence. He now suffers its tough consequences.
- (iii) Thirdly, the offence was executed in the dark or at night. Darkness obviously impairs any human vision, as such, would have affected the victims' reflexes and reaction to the slashing of knife by the accused. I would have thought that chances to defend oneself in such a case is very slim, compared to if it was in broad daylight.
- (iv) Fourthly, the incident involves the two victims who are a Father and son. Both are close relatives to the accused person. The pain encountered by the victim's family would have been unfathomable.

Sentencing range

12. For the count of Grievous Harm, the accepted sentencing tariff is as highlighted in *R v Batalau'ia*¹, where His Lordship Chief Justice Palmer, stated at paragraph 9 of the sentence:-

¹ Regina v Batalau'ia [2016] SBHC 29; HCSI-CRC 457 of 2013 (18 February 2016)

“...The range of sentences for grievous harm fall within 18 months – 5 years. Where there are clear aggravating features present, the sentences will noticeably be higher...”

13. In *R v Bitiai*², the accused assaulted his former de facto wife at the National Referral Hospital by stabbing her under her left breast with a 30cm kitchen knife and further stabbing her twice on the back with the same knife while the victim was breast feeding her child who was admitted to that hospital at that time. The knife had penetrated her abdomen and liver although the wounds on the back were superficial. The High Court took into account the aggravating features of the case as well as the mitigating factors submitted on behalf of the accused and sentenced him to 3½ years imprisonment. On appeal by the Director of Public Prosecutions against the sentence, the Court of Appeal increased the sentence to 4 years and 9 months’ imprisonment.
14. In *Saukora v R*³, the appellant stabbed the victim with a knife and caused serious wounds to the victim's arms and the ribs of the victim. The wound in the ribs had penetrated the victim's abdomen. The appellant was sentenced by the High Court to 4 years’ imprisonment. On appeal, the Court of Appeal reduced the sentence to 3 years.
15. For the count of unlawful wounding, the sentence tariff ranges from 12 months’ suspended sentence to 4 ½ imprisonment⁴. A number of cases were submitted to the court by counsels in assisting on identifying the range. Few of which are *R v Bala*⁵, *Tagini v Regina*⁶, *Regina v Taniamae*⁷ and *R v Manu*⁸.
16. By distinguishing and comparing the above cited authorities to the one before hand, for the grievous harm count, this case falls below that of *Bitiai* and *Saukora*, while I do agree that it involves a bush knife and has resulted in loss of movement on the left arm due to severed radial nerve. The two cited cases illustrate repeated stab wounds on a single victim, and in *Bitiai*, the victim was his defenceless de facto wife. Of course, the circumstance of those cases were life threatening and that if not for immediate medical assistance, it could have resulted in deaths.
17. For the unlawful wounding count, I do accept that the case at hand falls below that of *Bala* and *Taniamae*. The victim suffered laceration on his stomach from the knife and it was revealed to have been sutured and covered with antibiotics. The medical report does not state the extent of the wound, other than the vague measurements which is unclear on which refers to length, width and depth.

² CRAC No. 15 of 2009

³ [1983] SILR 275; CRAC No. 1 of 1983

⁴ *R v Bala* [2019] SBMC 9; Criminal Case 138 of 2018 (12 February 2019)

⁵ *Ibid.*

⁶ [2016] SBHC 221; HCSI-CRC 258 of 2015 (18 July 2016)

⁷ [2017] SBMC 32

⁸ SBMC 7; Criminal Case 1 of 2019 (27 March 2020) [2017] SBHC

Starting point

18. Balancing the circumstance of offending, the aggravating factors and accused criminal culpability, I am satisfied that the following starting point are fitting and justified: -
- o For count 1. Grievous Harm contrary to section 226 of the Penal Code – 4 years' imprisonment.
 - o For count 2. Unlawful wounding contrary to section 229 of the Penal Code – 3 years' imprisonment.

Mitigating Factors

19. I took into account the following as extenuating factors to go in the accused favour, firstly, he entered guilty pleas to both of these serious offences at the earliest opportunity. This itself demonstrate his honesty and acceptance to his wrongs, and more importantly genuine remorse. Obviously, his pleas have saves time and expense for the court and relevant court-users to be committed to other contested matters. It also avoids the victims to recount on the horrible incident. Secondly, the accused is a person with clean criminal history, this is his first brush or conflict with the law. He is a young offender and has since arrest, cooperated well with the police which led to quick completion of investigation and his case before the court as well.
20. I do acknowledge that this is not a premediated act but one that was simply orchestrated by anger and alcohol. He was assaulted by the victims which led to him snapping or losing his cool and retaliated with the use of a bush knife to initially damage the walls of victim Tarasio's house and a market stall, it was when the victims approached him that he ended up injuring them with the knife.
21. For his personal family circumstance, the accused is a 25 years old youth, married with a child and was a mechanic before his remand.

Sentence remarks

22. While I do acknowledge that the accused was stepped on by another boy during his sleep and that the victims later assaulted him when he was restrained, what he did was simply unnecessary, utterly wrong and illegal. A knife should never be used on or against a human being. This type of behaviour belongs to our ancestors and the head-hunters so to speak, we have lived some hundred or more generations after those days. Such attitude and behaviour has no place in this country. I say this in bold condemnation against it. What good is it to see another person severely injured or dead before one's eyes? Nothing. There is no accolade nor gain in wounding another person, thus, such attitude and behaviour must be stopped and that the accused need to incorporate proper standards and self-control.
23. I noted that the accused have issues with his temper and self-control. He obviously needs anger management to enable him to refrain from succumbing to violence and fighting. There are many peaceful ways to resolve issues or disputes, and violence is never one of them.

24. In *R v Batalau'ia*, His Lordship Chief Justice Palmer, when explaining the need to avoid violence stated at paragraph 11;

"...This is what the rule of law and justice is about that people should be able to live their lives peacefully and harmoniously with one another in the community with respect and tolerance and when disputes or disagreements occur to revert to peaceful and lawful means to have them resolved as provided for in our communities, churches and the law..."

25. The accused should now consider putting a complete stop to alcohol. It was plainly demonstrated in his case that alcohol only does more damage than good to him. The date of offence was expected to be a memorable moment for a person to have live another year, instead it turned into a nasty attack on the two victims, all fuelled by rage and alcohol.
26. I pass these remarks today, not to bring the accused down, instead to help him see his mistakes and make changes accordingly. We are all humans and susceptible to make mistakes in this life. Nevertheless, we must always accept challenges and mistakes as lessons for change, this is but the ticket to excel and prosper in this life.

Sentencing consideration

27. For count 1 grievous harm, I deduct 12 months to consider his early guilty plea and genuine remorse. I further deduct 6 months to consider him being a first offender, his cooperation with the police and youthfulness. In total, 1 year 6 months is deducted from the starting point of 4 years imprisonment.
28. For count 2 unlawful wounding, I deduct 9 months to consider his early guilty plea and remorse. I further deduct 6 months to consider his clean criminal history, youthfulness and cooperation with the police. In total, 15 months⁹ is deducted from the starting point of 3 years imprisonment.

Concurrent vs. consecutive

29. The guideline on whether or not to apply a concurrent or consecutive sentence is provided in the case of *Augustine Laui v Director of Public Prosecutions*⁹. In that case, Ward CJ, as he then was, stated:

"When sentencing at the one time for two or more offences, the court will always need to consider whether to make the sentences concurrent or consecutive. The question that must be decided by the court in this regard is whether or not the offences were committed in the course of a single transaction. If they were, the sentences should be concurrent, if not then consecutive sentences are appropriate subject to the overall total."

30. For reason that both offences and counts occurred within a short span of time and or same incident, it is my view that although it occurred to separate individuals it forms part of a

⁹ (Unrep. Criminal Appeal Case No. 11 of 1987)

single transaction. Accordingly, the sentence for both counts must be served concurrently.

Sentence Orders

1. I hereby sentence the accused, Mr Joseph Timothy Tave to imprisonment as follows:-
 - (i) For count 1 – Grievous Harm contrary to section 226 of the Penal Code – **2 years and 6 months imprisonment.**
 - (ii) For count 2 – Unlawful Wounding contrary to section 229 of the Penal Code – **21 months imprisonment.**
2. I order that the sentences to be served concurrently, meaning the accused to serve the 2 years and 6 months ‘imprisonment.
3. Time spent in pre-trial custody to be take into account.
4. Right of appeal applies within 14 days of this sentence.
5. Order according.

THE COURT

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MR. LEONARD. B. CHITE
Principal Magistrate

