

IN THE MARAU MAGISTRATE'S COURT CIRCUIT
OF SOLOMON ISLANDS

CRIMINAL JURISDICTION

Criminal Case No. 366 of 2020

REGINA

v

GARNETT RAEKORA

Date of Hearing: 4 April 2020

Date of Sentence: 4 April 2020

Mr. J. L. Auga for the Prosecution

Mr. P. None for the Accused

SENTENCE

1. The accused, Garnett Raekora, pleaded guilty to the charge of domestic violence contrary to section 4 (1)(a) of the *Family Protection Act 2014*. It has a maximum penalty of a fine or \$30,000 or 3 years imprisonment or both. The intention of our legislators to discourage domestic violence is very clear in this by prescribing this hefty fine and imprisonment term as maximum penalty for this offence.
2. The facts of the case revealed that on 27 March 2019, the accused went after his wife who was at the village of her parent. When he arrived, he

asked the wife so that they could return to his village, but she refused. Instead, he grabbed her hair and lifted her from the bed. This was very painful. He then proceeded and punched her mouth with closed fist. After that he slapped her face using his right hand.

3. Thereafter, he pushed her out of the door and further down the door. As a result, she fell and lied on the ground. While she was lying on the ground, he moved closer to her and wiped or assaulted her backside with a rake stick.
4. She managed to get away and escaped. The accused then shot her with that stick from behind whilst during the course of the escape and it pierced and tore her shirt.
5. She escaped and hid in nearby bushes. The accused then searched for her with a diving gun (lock line) to try and find her where about.
6. The matter was reported to police and the accused was arrested and charged with domestic violence-physical abuse contrary to section 4 (1)(a) and section 58 of the *Family protection Act 2014*.
7. The defence counsel in submission raised an issue of the accused culture as the contributing factor for committing the offence. In essence, it was explained that according to the accused culture, wives must obey their husbands and if they are asked to cook or wash clothes, they must follow that, otherwise they would be treated in this way. Further, his lawyer submitted that because of the differences in culture between the wife and the accused, this creates conflict of culture, resulting in this offending. Furthermore, his counsel submitted that he had brought up from that culture and that was why he thought it was all right to beat his wife as he did. By implication, these cruel form of assault can be seen as wife – teaching.
8. With respect, I disagree with this submission. I find this submission illogical and nonsensical. The accused by his own admission in court said that his village is very close to his wife's village. Therefore, there is no real conflict of culture here since they are all from Marau. Even though there is any conflict of culture (if there is any), that culture should not be recognized and enforced.

9. If this particular culture is to be measured by, I think it will be a safe haven for breeding a lot of domestic violence, which is against the laws of Solomon Islands. The Solomon Islands Constitution under Schedule 3 (3) (2) makes it plain clear that any custom or culture that is inconsistent with the Acts of Parliament will not be recognized in Solomon Islands.
10. If the accused culture is to be accepted for purposes of condoning this offending then I disagree with this proposition. Any culture that allows domestic violence must be condemned and better still, be abandoned.
11. I find the following as factors in favor of the accused:-
 - (a) That he pleaded guilty to this offence at the first reasonable opportunity;
 - (b) That he was remorseful for his actions;
 - (c) That he has a 1 year old child to look after; and
 - (d) I still consider him as a first time offender although his other matter of malicious damage has been reconciled in court during this court circuit.
12. From the facts, I find the following as aggravating factors:
 - (a) The punching of the complainant occurred in the presence of the child;
 - (b) Weapons were used (i) rake stick and (ii) diving gun;
 - (c) Breach of trust. The husband ought to protect her. Instead, he abused her as a mere object; and
 - (d) The sustained manner in which he attacked his wife as revealed by the facts.
13. The objective of the *Family Protection Act*, in particular under section 2, inter alia, is clear in that, to criminalize domestic violence and for protection of vulnerable members of a family from any forms of violence and abuse.
14. The passing of this law shows a strong push by the government of Solomon Island to discourage domestic violence cases. Therefore, women and vulnerable persons in particular should not be seen as mere objects to satisfy the anger or grudges of domestic violence perpetrators. Women are equally important to men. They are precious souls of our communities.

Without them, humanity cannot form, regenerate and holistically function. Their important roles in the community cannot be overlooked. They are significant and in most instances, far more important and powerful than men. Therefore, they should not be seen or treated as 'inferior' beings to men.

15. The action of the accused is very serious. This is inhuman and cowardice act inflicted upon the defenseless victim. He treated his wife beyond what is required of a husband. It must be an unpleasant, embarrassing and terrifying moments for her to be assaulted in this way. Her reason to escape into the bush must be the only option for her to avoid further brutal attack from the accused.
16. This is as very serious and callous domestic violence case. The accused intention to inflict serious assault on her was clear in that he even armed himself with a diving gun when trying to find the victim shortly after she had escaped. This is senseless and one that went beyond what a sane husband would do to his wife.
17. I understand the accused is a family man and that his child will suffer as a result of the consequences of his actions. Ordinarily, whatever form of punishment (whether custodial or not) that is imposed by the court, it will inevitably bring hardships to a person. However, it is my view that there are other defendants who also in the position of the accused in the past and therefore, I do not find his case to be treated exceptionally.
18. When all these factors are considered, it is my view that a custodial sentence is appropriate for this case. I impose a starting point of 14 months imprisonment.
19. Upon balancing all these factors including the aggravating and mitigating factors together, I therefore sentenced him to 14 months imprisonment. Any time spent in custody is to be deducted from this term.
20. 14 days right of appeal applies.
21. Order accordingly.



(Augustine Aulanga – Principal Magistrate)

