

**In the Central Magistrate's Court
Of Solomon Islands**

Criminal Case No: 489 of 2022



REGINA

V

DERRICK APEA

Date of Hearing: 4th April 2023 – 17th May 2023

Date of Ruling: 22nd May 2023

Prosecutor Ms. Martha Mutukera (DPP) for the Crown
Counsel Mr. Bobby Harunari (PSO) for the accused

SENTENCE

PM Taeburi,

1. On the 13th of March 2023, the accused Mr. Derrick Apea pleaded guilty to one count of assault causing actual bodily harm before Magistrate of the First Class, Mrs. Pakoa. Due to the issue of jurisdiction, the matter was transferred to this court for sentencing purposes. The defendant was initially charged with attempted murder.¹ On the 20th of February 2023, the amended charge of assault causing actual bodily harm contrary to section 245 of the Penal Code was filed. The particulars of the amended charge shows that on the 4th of October 2022, he assaulted the victim, Donation Okea at Marau in the Guadalcanal Province.²
2. When the matter came before this court, there was information that the accused is suffering from mental illness and the issue of whether he was fit to take his plea was raised by the court. A medical report dated 21st November 2022 from a qualified psychiatrist, Dr. Paul Orofaloa was tendered in court and shows that the accused is found fit to take his plea.³ I re-arraigned the accused on the 4th of April 2023 and he pleaded guilty again to the same charge (assault causing actual bodily harm).

¹ Refer to charge signed 25th October 2022

² Refer to charge filed 20th February 2023.

³ Refer to medical report from Dr. Paul Orofaloa dated 21st November 2022

3. The agreed facts were tendered on the 4th of April 2023. The matter did not proceed straight to sentencing for purposes of obtaining an additional medical report relevant to the state of mind of the accused at the time of offending. The matter was adjourned several times for the defendant to produce the relevant evidence. After all, section 11 of the Penal Code places the onus of proof on the accused to show that he was not of a sound mind at the time of the offending.⁴ An additional medical report was tendered in court on the 17th of May 2023. The report is dated 7th April 2023. The additional evidence was from the same doctor, Mr. Paul Orotaloa.
4. The facts agreed to in the case shows that the accused assaulted the victim resulting in very serious injuries to his head and face. He received stitches for the wounds he sustained.⁵
5. The facts disclosed that the victim went into the accused's house when he (the accused) was sleeping. The accused woke up and saw someone walking out of his house. It was the victim. He followed the victim and shot him with a stone. The victim fell unconscious on the ground. Whilst he was on the ground, the accused took a stick and hit the victim again on the head and the face.⁶
6. The accused then took the victim to the sea and wash the victim to enable him to regain consciousness. The victim then woke up. He was taken to the Marau Clinic where he was treated for the wounds to his head and face.⁷
7. Those are the facts of the case.
8. Before I deal with anything else, I must first and foremost consider the issue of whether the defendant was of a sound mind when he committed the offence.
9. Section 12 of the Penal Code is the starting point in law on the issue of insanity. The section provides as follows;

Insanity

12. Subject to the express provisions of this Code and of any other law in force a person shall not be criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing or of knowing that he ought not to do the act or make the omission:

⁴ Section 11 Penal Code [Cap 26] – “Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question until the contrary is proved”

⁵ Refer to agreed facts filed 4th April 2023

⁶ Refer to agreed facts filed 4th April 2023

⁷ Refer to agreed facts filed 4th April 2023

*Provided that a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.*⁸

10. What this means is that if an accused person is found to be of an unsound mind then he shall not be held criminally responsible for the act or omission which constituted the offence.
11. In the case of *Regina v Suraihou*, His Lordship Justice Muria (as he was then) said, “*the onus of proof where the defence of insanity has been raised, is on the defence. The burden of proof is on the balance of probabilities.*”⁹
12. His Lordship referred to the Australian High Court cases of *R v Porter*¹⁰ and *Sodeman v R*¹¹ and explained that in the Solomon Islands, the operations of section 12 of the Penal Code would be as follows;

It would be observed that section 12 of the Code treats as insane people who are to the extent that they do not have the capacity to –

- (a) *Understand; or*
- (b) *Know that they ought not to do the act done or omitted to be done.*

*The accused having raised the issue of the state of his mind now carries the onus of satisfying the court that owing to a disease affecting his mind he did not have at the time of committing the offence any of the capacities mentioned in section 12 of the Penal Code. It will also be observed that even if a disease is shown to have affected his mind but he has not shown that the disease had deprived him of any of the capacities mentioned, then he has failed in satisfying the onus resting upon him.*¹²

13. In this case, in the medical reports dated 21st November 2022 and 7th April 2023 Dr. Orotaloa stated that the accused was diagnosed with a disease medically known as Psychosis in 2015. He was treated with injections on a monthly basis for about a year. After a year or so of receiving treatments, he defaulted. In October of 2022, he was arrested by the police for this offence and taken to the Henderson Police Post where he was medically examined again by the same doctor. He showed symptoms of the same disease and the doctor re-started the same treatment. He has been taking the monthly treatments ever since he was arrested.¹³

⁸ Section 12 Penal Code [Cap 26]

⁹ *Regina v Suraihou* [1993] SBHC 8; HC-CRC 033 of 1992 (1 February 1993)

¹⁰ *R v Porter* [1933] HCA 1; (1993) 55 CLR 182

¹¹ *Sodeman v R* [1952] HCA 75; (1936) 55 CLR 192

¹² Refer to footnotes #8

¹³ Refer to medical reports from Dr. Paul Orotaloa dated 21st November 2022 and 7th April 2023

14. This means that when he committed the offence on the 4th of October 2022, it could be possible that he was still suffering from the disease. Dr. Orotaoa said in his report dated 7th April 2023, *“When he was seen again at Henderson Police Station in October, 2022, he was still having symptoms of psychosis. It would have been plausible therefore that his psychosis would have been on-going ever since being diagnosed back in 2015. Presence of psychosis in any given individual is a risk factor to impulsive behaviour”*.¹⁴
15. The question now is this – is there evidence to show that the disease affecting him had deprived him of the capacity to understand or to know that what he did to the victim was wrong? I do not think so.
16. The medical reports and the agreed facts shows that after he shot the victim and assaulted him with the stick, the victim was unconscious. The evidence shows that he took the victim to the sea to wash. In the medical report dated 21st November 2022, he told the doctor that when he saw the victim unconscious on the ground, he panicked and decided to help the victim by taking him for a wash in the sea.
17. It is my view, that when he assaulted the victim, he knew and understood the nature of his actions. The only reasonable explanation as to why he panicked and took the victim for a wash in the sea immediately after the assault was that, he was trying to resuscitate him (the victim). This means that he was trying to correct his wrongs immediately after he committed the acts. It is my view that his mind had gone through a process of reasoning after which he came to realisation and felt a sense of responsibility towards the unconscious victim. Based on the evidence, I have reached the conclusion that although at the time of the offending, he suffered from symptoms of psychosis, the disease had not deprived him of the capacity to understand and to know that his actions on the day in question were wrong.
18. I therefore enter criminal conviction against the accused.
19. In sentencing him I consider that he has used a stone and stick in the attack against the victim. I consider section 44 of the Penal Code which provides that suspended sentence shall not be applied in a case where the offence involved the use or illegal possession of a weapon.¹⁵ I consider the stone and stick used as weapons.

¹⁴ Refer to footnotes 13

¹⁵ Section 44 of the Penal Code –

Suspended sentences

44. Subject to the provisions of subsections (2) and (3) of this section, a court which passes a sentence of imprisonment on any offender for a term not more than two years for any offence may order –

(a) that the sentence shall not take effect during a period specified in the order; or

(b) that after the offender has served part of the sentence in prison, the remainder of the sentence shall not take effect during a period specified in the order,

Unless during the period specified in the order, the offender commits another offence punishable with imprisonment and a court thereafter orders under section 45 that the original sentence shall take effect: Provided, that the period specified in the order shall not be less than one year or more than two years.

20. I also take into account the seriousness of the injuries sustained by the victim. The medical report showed that his wounds were stitched which means that they were quite serious. The photographs which were tendered with the consent of the defence counsel shows very gruesome wounds.
21. I take into account the fact that the prisoner continued to assault the victim even after he fell unconscious on the ground. I find that at the point of unconsciousness, the assault with the stick was unnecessary and uncalled for.
22. I find that the attacks were unprovoked on a harmless and defenceless man.
23. I also take into account that the prisoner has no previous convictions. He is a young man. He has pleaded guilty to the charge which shows remorse on his part. In fact he had expressed remorse when he spoke with the doctor during examinations.¹⁶ I consider all his personal circumstances.
24. Counsel for the prisoner, Mr. Harunari submitted that I should consider in mitigating, the fact that he is suffering from mental illness. I have already made the finding that he understood the wrongfulness of what he did to the victim. He was therefore found to be of a sound mind by virtue of section 12 of the Penal Code, although at the relevant time he was suffering from mental illness. It therefore follows that he must be held fully responsible for his criminal acts. I however consider as part of his circumstances the fact that he is suffering from a mental disease but I place less weight on that factor when sentencing him.
25. The maximum penalty for assault causing actual bodily harm is 5 years imprisonment.¹⁷
26. The defence counsel submitted that the sentences imposed by our courts for the offence of assault causing actual bodily harm range from 18 months imprisonment to fines. Counsel submitted that the range was set by His Lordship the Chief Justice in the case of *R v Saeniorea*. I have read the case referred to and agree with counsel that those remarks were made in the matter. However in my respectful view, the remarks were not made with the intention to restrict the sentences to be imposed for these types of offences. I think that the range was provided as a guideline. At the end of everything, each case must be decided on its own facts and merits.
27. In the case of *R v Kiloa*, the court sentenced the defendants to 2 years imprisonment each for causing actual bodily harm to the victims. They shot their victims with bows and

(2) The provisions of subsection (1) of this section shall not apply where the offence involved the use or the illegal possession of a weapon.

¹⁶ Refer to footnotes #13

¹⁷ Section 245 of the Penal Code [Cap 26]

arrows. In that case, the extent of the injuries sustained by the victims were unknown since no medical report was produced in court.¹⁸

28. In *Saeniorea*, the court sentenced the three defendants to 4 months imprisonment. The victim in the case was deceased as a result of the incident. The deceased, accompanied with others went to the defendant's village to demand compensation in custom. The deceased and his group were drunk at the time. A fight broke out between the deceased's group and the accused. The deceased was struck with a pipe or iron. He fell and witnesses saw that he was assaulted by the three defendants. The medical report shows injuries which were consistent with the assaults by the three defendants.¹⁹

29. In the circumstances of the case, I think a starting point of 18 months imprisonment is appropriate. After considering the aggravating and mitigating factors, it is my view that the appropriate sentence is 1 year imprisonment. I cannot suspend the sentence or any part of it due to the fact that items that are considered as weapons were used in the commission of the offence. The sentence imposed is inclusive of the time spent in custody.

30. ORDERS:

- i. Mr. Derrick Apea is convicted on one count of assault causing actual bodily harm contrary to section 245 of the Penal Code [Cap 26]
- ii. He is sentenced to 1 year imprisonment.
- iii. The sentence imposed is inclusive of the time he spent in custody.

31. Right to appeal within 14 days.

Dated this 22nd Day of May 2023



Principal Magistrate – Ms. Fatimah Me'ere Taeburi

¹⁸ *R v Kiloa* [2022] SBHC 32; HCSI-CRC 77 of 2018 (18 May 2022)

¹⁹ *Regina v Saeniorea* [2005] SBHC 173; HCSI-CRC 036 of 2004 (15 February 2005)