

THE REPUBLIC

v

RUCKUS MOSES

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JUDGE: Eames, C.J.  
DATE OF HEARING: 6 March 2012  
DATE OF SENTENCE: 13 March 2012  
CASE MAY BE CITED AS: R v Ruckus Moses  
MEDIUM NEUTRAL CITATION: [2012] NRSC 2

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CATCHWORDS:

Criminal law - Sentence - Two counts of Intentionally Causing Grievous Bodily Harm - section 317(1) *Criminal Code of Queensland 1899* (1<sup>st</sup> Schedule) Adopted - Assault with wooden shovel handle on wife and her disabled father, in presence of children - Very serious injuries to wife (including blindness to one eye) and to father - Offender on bail and AVO at time of offences - No prior convictions - Contrast maximum sentence of life imprisonment under s.317(1) with maximum sentence of 7 years for causing grievous bodily harm under s.320 - Need for general deterrence.

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APPEARANCES:

For the Prosecution

Mr Wilisoni Kurisaqila DPP

For the Defendant

Mr. David Aingimea  
(Pleader)

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CHIEF JUSTICE:

1 Ruckus Moses, you have pleaded guilty to two counts of committing acts intended  
to cause grievous bodily harm, contrary to section 317 (1) of the Criminal Code of  
Queensland ( 1899) (1<sup>st</sup> Schedule), adopted. This offence carries a maximum sentence  
of life imprisonment. It is to be contrasted with the offence of causing grievous  
bodily harm under section 320 of the Criminal Code of Queensland which carries a  
maximum sentence of imprisonment for seven years.

2 The facts are as follows.

3 In the early evening of 28<sup>th</sup> September 2011 your wife, Greta Harris, was at the home  
she shared with her father, David Harris. She had been recently separated from you.  
You had two children, the oldest of whom was a three year old son, who had gone to  
visit you. In the evening, Greta Harris became concerned about her son's welfare  
and telephoned you and left text messages seeking advice as to whether you were  
going to return your son.

4 The response of your wife arose in the context that a month earlier, on 26<sup>th</sup> August  
2011, you had been charged with an offence of assault of your wife and had been  
released on bail and placed under an AVO by the Resident Magistrate.

5 At 9pm, the complainant sought assistance from the police to check on the welfare of  
her son, and police responded to that by attending the house where the son was  
located. They there saw your sister, who reported to you that the police had  
attended. You were at work. You were upset by the fact that your wife had called  
the police. You spoke to your wife by phone, but got upset and hung up. Soon  
afterwards your sister dropped the son back with his mother.

6 At about 11pm that evening your wife and your father in law were at home in their  
beds, and also present were your three year old boy and 10 month old baby. You  
forced entry into the house through a locked side door which gave access to the  
living room where David Harris was sleeping. David Harris was a double amputee,

both legs having been amputated. You approached him from behind, holding a wooden shovel handle, and announced, "There you are", and began to beat David Harris with the shovel handle, striking him repeatedly around the face and body. David Harris was crying and shouting in terror and pain but you dragged him by the arm to the floor from the mattress on which he had been lying and then further dragged him by the hair, and continued to beat him.

7 Greta Harris, having heard the commotion, entered the room from her bedroom, followed by her three year old son, who was present to observe you beating David Harris, and then his mother.

8 On seeing your wife, you let go of the father and then turned on your wife, saying, "You are the one called the police on me". You then began beating the complainant with the shovel handle. She tried to fend off the blows by shielding her head with her left arm and with her right arm she was trying to hold her three year old son behind her. She begged you to stop striking her but you moved to the right, and swung the shovel handle again, across her face. Her eyes filled with blood. You took the boy from behind her and left the premises with him. With considerable difficulty, due to their injuries and shock, the complainant and her father were able to make a phone call to police.

9 Both victims suffered extreme injuries as a result of these assaults. Greta Harris suffered two fractures to the left arm below the elbow. In addition, her left eye was ruptured, with a major fracture to the left eye orbit and soft tissue damage to the lower left eyelid. She also suffered concussion, and injury to the jaw (which she was initially unable to open and close properly). Her teeth were loosened and she had a nerve problem to the left side of the face. She suffered nausea and headache.

10 As a result to this assault Greta Harris has lost all sight in her left eye. She is to be fitted with a glass eye and will rely on her right eye for vision. She experienced extremely arduous medical treatment. On the 7<sup>th</sup> of December 2011 she was evacuated to Fiji for treatment and underwent two operations. She was then referred

to eye specialists in Australia and in December 2011 to January 2012 she was treated in Brisbane. The specialist treatment involved the removal of the remaining portion of her left eye so as to avoid future infections. She had been warned that her left eye might affect her right eye adversely if she did not have this operation. She will require surgery to the left eye orbit and will require an implant of a glass eye to the eye orbit. Surgery to remove the left eye and to insert an implant has already been performed in Brisbane and the surgery is due to be reviewed in two months time. In due course, a mould will be required to be inserted in the eye orbit; this has been described as major reconstructive surgery.

11 As a result of the loss of sight in one eye, Mrs Harris is unable to gauge distances, heights and depths. She has difficulty driving and suffers nausea and migraines when using her computer or viewing television.

12 Mrs Harris continues to feel pain in the left arm where the ulna had been fractured, she is unable to lift heavy objects without discomfort.

13 In her victim impact statement, Mrs Harris describes her sense of vulnerability and fear, distrust of strangers and high levels of stress. Because of Mrs Harris' surgery, her mother has resigned from her workplace to return to Nauru to look after the children, which caused consequent loss of income in the household.

14 David Harris suffered two fractures to the left arm below the elbow, fractured fingers on the right hand, a fracture and also a deep wound to the left cheek bone. His left eye was damaged, with a fracture to the orbital rim leaving the eye protruding from the eye socket, until treated. His vision remains impaired, he says, although I do not know the extent of that. His jaw is painful. He suffered multiple bruises and abrasions to his left shoulder and back, swelling to both hands and left forearm. The treating doctor rightly described his injuries as constituting grievous bodily harm. Mr Harris now suffers constant anxiety about having suffered a near death experience for himself and his family.

15 The photos of the injuries on both victims speak volumes for the ferocity of the

attacks and the sustained and repeated nature of the assaults they suffered.

16 The Director of Public Prosecutions, Mr Kurisaqila, submitted that there were a number of aggravating features in these assaults. First, you used a weapon; secondly, the assaults were committed against two vulnerable people, and were constituted by repeated and deliberate assaults with a degree of premeditation; thirdly, the assaults involved a breach of trust with respect to your wife and father in law; fourthly, the assault on your father in law was committed against a disabled person without use of his legs; fifthly, the assaults were committed at a time when you were subject to an apprehended violence order which had been issued as a result of an assault committed against your wife on 26<sup>th</sup> August 2011, and for which you were subsequently convicted and placed on a bond on 29<sup>th</sup> February 2012. Sixthly, the assault was committed in the presence of your son and when your infant child was in the house.

17 I agree that each of those factors must be taken into account in sentencing.

18 The intervention order was imposed on the 8<sup>th</sup> September 2011, the terms of the order being that you go no closer to your wife than 100 metres and no closer than a hundred metre from her residence. Mr Kurisaqila submitted that there was a prevalence of domestic violence in Nauru and the Court should regard deterrence of primary consideration in sentencing, the breach of the intervention order being particularly significant.

19 In his helpful submissions on your behalf, Mr Aingimea submitted that the offences were not premeditated. He submitted that you had picked up the wooden handle only upon your arrival at the premises and had not brought that weapon with you to the premises. The Director of Public Prosecutions accepted that that was so, but submitted that it was the fact that you armed yourself, at all, that mattered.

20 Mr Aingimea submitted, too, that you admitted your guilt promptly and that your pleas of guilty to these serious charges reflected your remorse. I accept those submissions. Those are important factors in your favour.

21 At the time of these offences you were not affected by alcohol but were obviously enraged by the fact that your wife had gone to the police. There is, I accept, a history of hostility between you and your father in law. Mr Aingimea submitted that the father in law had abused you over a long period and that you had simply “lost it” in response to what you regarded as the long term provocation from your father in law, and the specific provocation on the evening by virtue of your wife reporting her concern about her son’s welfare to the police. You regarded your father in law as the reason why you were separated from your wife and children.

22 Whilst I accept that you believed your grievance against your father in law was justified, I am not in a position to assess where fault lies and, in any event, even a justifiably held sense of grievance, if that was the case, could never justify a violent response, let alone a response such as occurred here. Family disputes must never be resolved by violence.

23 Mr Aingimea submitted that whilst the injuries suffered were very serious, they were not life threatening. I accept that the medical reports did not suggest that the injuries actually suffered were life threatening, although it must be said that the injuries were nonetheless grievous.

24 You have no prior convictions. As I noted earlier, you had been charged with an assault offence which had occurred a month before the present offences, but no conviction had been recorded before the occurrence of the present offences, the conviction being recorded subsequently. Thus, it was not, in law, a prior conviction. It nonetheless remains a serious aggravating factor that having been placed on an apprehended violence order after that earlier assault (as it was later proved to have been) you then breached it within a month and did so to the degree disclosed by the facts in this case.

25 Mr Aingimea submitted that your conduct on this occasion was out of character and he tendered two character references. Reverend King Akibwib, Senior Pastor of the Hephzibah Church, wrote that he visited you after you were arrested on these

offences. He said that you felt deep regret and remorse for your actions. Reverend Akibwib was of the opinion that the events were caused by provocation over many years, but he accepted that that was no excuse.

26 Mr Eggo Soriano, Administrative Officer with the Nauru Rehabilitation Corporation, wrote that you had worked for the Nauru Rehabilitation Corporation since March 2008 and had displayed excellent character and had been transferred to permanent employment in 2009. In 2011 you were transferred to the Security Section, where you continued to display satisfactory performance. Mr Soriano said of you that, "He possesses a friendly nature and easy to get along with."

27 You are 29 years of age. Apart from the one incident which occurred a month before these offences you had not previously been in trouble with the law. In your record of interview you were asked why you hurt your wife and father in law and you said "It's because of my father in law, he once was drunk and swore at me and also threatened to kill me, that is why we left the residence of David."

28 I accept that these offences occurred in a domestic context which was inflamed by what you perceived as the interference of your father in law. These offences however are very serious. Some of the events constituting a vicious series of assaults, which were both sustained and brutal, occurred in the presence of your three year old son. As you told police, your wife was crying during the assaults and I have no doubt that both victims and your son were terrified by the events that were occurring. The potential and actual consequences by way of psychological and physical trauma that they have or may suffer can never be explained away as mere products of a domestic dispute. I agree with the prosecutor that conduct such as this must be discouraged by the court, no less so because it is described as domestic violence rather than random assaults on a stranger.

29 Although the assaults on the two complainants occurred at about the same time, they were distinct events, having distinct aggravating features and consequences. In recognition of the principle of totality, some degree of concurrence will be

appropriate in serving the two sentences. Nonetheless, the two distinct incidents merit a significant order as to accumulation. The sentence of imprisonment with respect to the assault on Greta Harris will be longer than that concerning her father's assault, by virtue of the severity of her injuries and the fact that as she was being assaulted she was desperately trying to protect her son, as well as herself.

30 Initially you were charged with the offence of causing grievous bodily harm, contrary to section 320 of the Criminal Code of Queensland. That offence carries a maximum sentence of seven years' imprisonment. The prosecutor took the view that that maximum penalty did not adequately reflect the seriousness of the offences in this case. Thus, you were indicted under section 317 of the Code, for intentionally causing grievous bodily harm, an offence which carries a maximum sentence of life imprisonment. The difference in the maximum penalties which are available for these two offences must be reflected in the sentences which I now impose on you.

31 The prosecutor was unable to refer me to any previous sentencing decision of the Court for an offence of intentionally causing grievous bodily harm. Assaults causing grievous bodily harm are usually dealt with under s.320, which, as I have said, carries a much lower maximum sentence.

32 The sentences which I will impose on you in this case may be more severe than those imposed, in many instances, upon offenders prosecuted under s.320. That, however, is appropriate, having regard to the different maximum sentences available. I would have imposed even more severe sentences on you had it been the case that the Nauruan community were on notice that where the offence of intentionally causing grievous bodily harm was proved it would usually attract significantly higher sentences than those imposed under s.320, where the victims' grievous bodily harm had not been the outcome which the offender intended.

33 The fact that prosecutions under s.317(1) had so rarely been brought in Nauru (although there must have been occasions where that would have been appropriate) meant that the community had not been expressly alerted to the seriousness with



which the Court viewed such offences. Although ignorance of the law is no excuse, I have taken that factor into account in your case. In future, that concession would be unlikely to carry weight.

34 Ruckus Moses, on count one, the offence of intentionally causing grievous bodily harm to David Harris, you will be convicted and sentenced to 3 years' imprisonment. On count two, intentionally causing grievous bodily harm to Greta Harris, you will be convicted and sentenced to four years' imprisonment.

35 I direct that 18 months of the sentence on count one be served cumulatively upon the sentence on count two. The effective sentence, therefore, is five years' and six months' imprisonment. That sentence is to date from 7<sup>th</sup> February 2012, when you were taken into custody.

13 March 2012

Geoffrey M. Eames AM QC

Chief Justice