

THE REPUBLIC

V

JOHANNES QUADINA

JUDGE: Eames, C.J.
DATE OF HEARING: 6 March 2012
DATE OF SENTENCE: 13 March 2012
CASE MAY BE CITED AS: R v Johannes Quadina
MEDIUM NEUTRAL CITATION: [2012] NRSC 3

Criminal law - Sentencing - Intentionally Inflicting Grievous Bodily Harm - section 317(1) *Criminal Code of Queensland 1899* (1st Schedule) Adopted - Assault with an iron bar - multiple blows to head of victim while lying on the ground unconscious - Injuries life threatening but no significant long term consequences resulted - Defendant 46 years old - No prior convictions - Significance of maximum sentence of life imprisonment for s.317(1) offence, compared with 7 years imprisonment for causing grievous bodily harm under s.320.

APPEARANCES:

For the Prosecution

Mr Wilisoni Kurisaqila DPP

For the Defendant

Mr Knox Tolenoa (Pleader)

CHIEF JUSTICE:

1. Johannes Quadina, you have pleaded guilty to committing acts intended to cause grievous bodily harm contrary to section 317(1) of the *Criminal Code of Queensland 1899 (1st Schedule)*, as adopted.
2. At about 8am on 3 January 2012 you and Joseph Henty, who were co-workers at the Nauru Rehabilitation Corporation, got into an argument about religion. You are a Seventh Day Adventist and you started the argument by telling Henty that there were doctrinal flaws in the Catholic religion. Henty became upset about his faith being denigrated and a heated argument developed which led to fellow workers intervening to stop the argument and to tell you both to get back to work.
3. After a short time the argument recommenced, and you said to Henty that all Catholics were stupid and were being deceived. Henty then retorted that your wife had left you because you were a child molester. This was an apparent reference to the fact you had been charged in 2009 with rape and indecent assault on a niece but had later been acquitted on those charges.
4. You moved away but the argument continued and you then picked up a metre long steel rod, weighing almost 3 kilos, which you swung at the head of the victim striking Henty and causing him to fall unconscious to the ground. Whilst lying on the ground Henty was again attacked by you, in that you raised the iron bar with both hands and struck him to the head three more times, causing deep wounds to Henty's head. Other workers stopped you from continuing the assault and you dropped the steel rod. When the fellow workers intervened you said, facing towards the victim, "Where are you now", and walked away from the scene of the assault. The victim was rushed to the hospital. Later you went to the police station where he admitted the assault.
5. In a medical report a general surgeon at the Nauru Hospital reported that the victim had suffered three deep lacerations to the left side of his head. The second and third of those blows produced depressed fractures deep into the skull and bones of the head. Upon admission, the victim was also displaying progressive weakness and paralysis of the right upper limb and paralysis of the right side of his face. He was however then conscious. Notwithstanding the depth and the severity of the blows which were struck, the victim made a remarkable recovery. He had developed right facial paralysis and paralysis of his right arm, forearm and hand but that recovered within two weeks of surgery. The scalp lacerations also healed well, with no sign of post-operative infection. There was also no evidence of cerebral or intellectual impairment. The victim nonetheless spent five weeks in hospital and was discharged with medications to prevent convulsions. That medication will be continued for six to twelve months. When seen by the surgeon on 2 March 2012, the victim's only complaints were of numbness to the right hand and slight weakness with grip and grasp. There was no evidence of intellectual impairment, memory loss or post-traumatic stress disorder, however there was some residual weakness to the right hand.
6. The General Surgeon opined that the victim suffered serious and life threatening injuries to the head and brain which could have led to death or severe permanent

disability if the injuries had not been treated. Although he had escaped those consequences, he now has some weakness to the right hand and he will not be able to perform manual duties effectively.

7. There is little doubt that you felt provoked by the conduct of Mr Henty, however it was you who started the argument by abusing Mr Henty with respect to his religion. The actual provocation which you felt was Henty's remark that you were a child molester. No doubt, you were extremely sensitive to such an allegation, having had to face the Supreme Court on the rape charge.
8. Mr Tolenoa tendered a report dated 20 October 2011 from Dr Kiki Thoma of Nauru Mental Health Services. Dr Thoma recorded that you had been referred to the Psychiatric Clinic in September 2011 with symptoms and signs of stress and depression. The stress related to your sense of harassment from your wife, who continued to accuse you of raping the 16 year old girl, and making that allegation to neighbours and others. Dr Thoma reported that you had been suffering worsening symptoms of depression over three years, commencing in 2009.
9. In March 2010 you were acquitted but your marriage had irretrievably broken down. Your wife deserted you, as you saw it, but did not take the six children, for whom you remained responsible.
10. Apart from being extremely sensitive to the allegations so far as they affected you, you were also concerned that your school-age children had been the subject of insults and harassment as a result of your arrest on the charge of rape. That had the effect of the children withdrawing from school to a significant extent.
11. I accept that you were extremely sensitive to the topic of your previous criminal charge and would have felt greatly provoked once Mr Henty made the comments he did, particularly that he accused you of being a child molester. Mr Tolenoa submitted from the bar table that before you lost control you had warned the victim not to continue insulting you. Even assuming that was the case, it was you who initiated the hostilities between the two of you and you were willing to maintain your abuse despite it being obvious that your victim was extremely angry about having his religion insulted.
12. Mr Kurisaqila submitted that there were a number of aggravating features of this offence. First, the injuries were life threatening and the victim may well have died or suffered permanent disability had he not received prompt medical treatment. Secondly, a weapon was used, in this case a particularly heavy weapon likely to produce severe injuries. Thirdly, the blows were struck to the head and whilst the victim was on the ground, apparently unconscious. Fourthly, the evidence suggested that the assault would have continued had not the workmates intervened. Finally, even after being stopped by the workmates you continued to taunt the victim.
13. Mr Kurisaqila submitted that there is a culture in Nauru of people settling differences by resorting to violence. He submitted that the Court should regard general deterrence as a primary consideration in sentencing in such a case as this.

14. You have no prior convictions and are now 46 years of age. Since the breakup with your wife in 2009 you have been responsible for the welfare of your six children, particularly the four who live at home with you, whose ages range from 11 to 23. The two eldest live apart from you and are not dependent on you for support. At the time of sentencing submissions, you had been working for a month with BODA Constructions, as an operator and electrician. You were the sole breadwinner for the four children who resided with you. I accept that over many years, you have been a good provider for your children.
15. Mr Tolenoa submitted that the offence occurred in the heat of passion and after severe provocation. He accepted that that does not provide a defence but submitted it does provide an explanation for what occurred.
16. Mr Tolenoa submitted that you are not a violent person; you are a regular church goer and senior elder with the Seventh Day Adventist Church. You neither smoked nor drank. You have been looking after your four youngest children who remained with you after your wife left you for another man.
17. Mr Tolonoa tendered a character reference from Mr Silo Togoran, a next door neighbour of yours for six years. He reported that to his observation you had struggled to make ends meet and to attend to the needs of your children as a single father and sole bread winner. Mr Togoran reported that you were a man who dedicated his time to looking after his children and grandchildren and added, "He is faithful at his work, home and church. He is a reliable citizen unless provoked as this incident has occurred. All he wants is to be left alone and raise his family as normally and best as he can like any father would."
18. Mr Tolenoa submitted that you have shown remorse by your plea of guilty and by your prompt admission of responsibility. I accept that those are important considerations for sentencing, as is the fact that at the age of 46 you have no prior convictions.
19. Mr Tolonoa submitted that this was a special case, deserving of punishment other than by way of imprisonment. He submitted that the events were not premeditated but were provoked by insulting comments made in front of your fellow workers. He submitted that you had good prospects of rehabilitation and had complied with all bail conditions. Furthermore, he submitted that as you are the sole breadwinner, there will be particular hardship on your children were you to be imprisoned. Mr Tolenoa said, on instructions, that you apologized to the victim and to the Court for what you had done.
20. I have regard to all the matters put forward by Mr Tolonoa in mitigation. It is unrealistic, however, to contemplate that you could avoid a sentence of immediate imprisonment.
21. It was sheer good fortune that the victim in this case did not die or suffer crippling injury. The attack was vicious and brutal. It is very regrettable that members of the community might taunt each other by reference to religion, and do so to such an extent as might provoke a violent response. Your conduct in this case cannot be

tolerated by the community, and both general and specific deterrence must be given significant weight in sentencing.

22. You admitted that you struck these blows with the intention of causing grievous bodily injury to your victim. Such retaliation was out of all proportion to any provocation which you may have received.
23. In another sentencing judgment delivered today¹, I have commented on the significance of the fact that the offence which is admitted falls under section 317(1) of the *Criminal Code*, not section 320. The offence of intentionally causing grievous bodily harm carries a maximum term of life imprisonment. By contrast, the offence of causing grievous bodily harm carries a maximum of 7 years imprisonment. The difference in maximum penalties reflects the legislative intention that intentionally causing grievous bodily harm should be punished more severely than conduct causing grievous bodily harm but doing so without that specific intention.
24. In sentencing you, I have tempered the severity of sentence on account of the fact that charges under section 317(1) have rarely been brought in Nauru, and it might be thought that the public had not been given express warning that conduct of this kind would, in most cases, result in significantly more severe penalties than for offences under section 320. That consideration should no longer apply.
25. In my opinion, no punishment except immediate imprisonment is appropriate in this case.
26. You will be convicted and sentenced to 3 years imprisonment, to date from today.

13 March 2012

Geoffrey M. Eames AM QC

Chief Justice.

¹ *R v Ruckus Moses* [2012] NRSC 2