



High Court of Solomon Islands

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Regina v Do Van Va [2017] SBHC 118; HCSI-CRC 185 of 2017 (14 July 2017)

REGINA

-v-

DO VAN VA
VO Van VI
Nguyen Nguyen

HIGH COURT OF SOLOMON ISLANDS
(PALMER CJ.)

Criminal Case Number 185 of 2017

Hearing: 5th July 2017
Sentence: 14th July 2017

Mr. A. E. Kelesi for the Crown
Mr. D. Hou (Public Solicitor) for the Defendant

Palmer CJ.

1. The three of you have been charged with four offences pertaining to our fisheries laws:

Count 1: Illegal entry into Solomon Islands Fisheries waters without appropriate entry permit approved by the Ministry of Fisheries and Marine Resources contrary to section 37(1) and (2) of the [Fisheries Management Act 2015](#).

Count 2: Illegal catching and selling of beche-de-mer contrary to section 13(A) of the Fisheries (Amendment) Regulations 2009, that on the 26th March 2017 at the Indispensable Reef near Rennell and Bellona Province you did have in your possession on board in your boats beche-de-mer for sale.

Count 3: That you had permitted prohibited fishing gears on board your fishing vessels within the Solomon Islands Fisheries Waters contrary to section 26(1) of the [Fisheries Management Act 2015](#) on the said date.

Count 4: That you had engaged in activities relating to fish processing to wit processing of beche-de-mer, salted with sea water and bined salt for the purposes of export without a valid or appropriate licence approved by the Ministry of Fisheries and Marine Resources contrary to section 44(1)(a) of the [Fisheries Management Act 2015](#).

2. These are very serious offences as reflected by the hefty fines and custodial sentences which this court can impose. These are set out as follows:

1. Illegal entry of foreign fishing vessels under section 37(1) and (2) of the [Fisheries Management Act 2015](#), a fine not exceeding 12,000,000.00 dollars or except as provided in section 103 of the [Fisheries Management Act 2015](#), imprisonment to a term not exceeding 5 years, or to both.

2. For prohibition of catching, selling beche-de-mer contrary to section 13A of the Fisheries (Amendment) Regulations 2009, to a fine not exceeding \$100,000.00 or to imprisonment for a term not exceeding 4 months, or both.

3. For the offence of use of and possession of prohibited gear on vessel contrary to section 26(1) of the [Fisheries Management Act 2015](#), a fine not exceeding \$5,000,000.00 or imprisonment to a term not exceeding 3 years or to both, and in addition the prohibited gear shall be forfeited to the Solomon Islands Government.

4. For the offence of buying, selling, storage and processing of fish and fish products for export (fish processing activities without an export licence) contrary to section 44(1)(a) of the [Fisheries Management Act 2015](#), to a fine not exceeding \$5,000,000.00 or to imprisonment to a term not exceeding 5 years, or to both.

3. The manner and way these offences have been committed, referred to as illegal, unreported and unregulated (“IUU”) offences by you is a new phenomenon to the Region and is causing much concern, in terms of the theft of its valuable sea resources and wealth. This is a relatively new way of intruding into the territorial seas

and coastal waters by relatively small foreign vessels to fish for inshore species, with a focus on high value product in the Asian market including beche-de-mer (BDM), giant clam and shark fin^[1].

4. The selfishness and greed for money and quick riches at the expense of a country's wealth and resources cannot be tolerated by this country. The penalties that have been prescribed by law reflect the seriousness with which its people view this type of activity. The courts in turn are obliged to ensure that where there is a conviction, that appropriate penalties are imposed to reflect not only the seriousness of this type of offending but to deter further offending by sending out a very clear message of the penalties that will apply for this type of activity if caught.

5. This is the first time these blue boats have been apprehended in Solomon Islands but they have also been apprehended and sighted in Palau, FSM, PNG, Australia and Vanuatu.

6. It is clear you took calculated risks to enter into the exclusive, economic zone of Solomon Islands waters on the view that the Pacific is a "soft target". I can assure you and anyone else thinking of coming into our waters that if caught you will be appropriately dealt with under our laws.

7. It is clear too you have moved out into our waters because the waters around your country have been depleted through overfishing and unsustainable harvesting. That does not give you the mandate to continue with your activities in other people's countries and you should be ashamed for what you have done.

8. The seriousness of the illegality of these offences is reflected by the fact that the species being targeted are known to be very vulnerable to overfishing, especially BDM and giant clam. These species however, are equally important to local and remote communities and any monetary benefits should be reserved solely for them and the country. They also command very high value when sold in the open market and in your country. It is obvious you were aware of this and were prepared to make such a long journey into a faraway country like Solomon Islands.

9. Further the modus operandi in harvesting of sea cucumbers and any other marine species targeted while crude but very effective and destructive in terms of the use of diving compressor hoses which allow divers to stay at the ocean floor for extended lengths of time fishing for sea cucumbers etc. and which can allow them much longer than the more conventional method of using scuba diving air bottles or tanks. In any one dive, it is obvious so much quantity and large volume of sea products can be collected and an area within the range of 100-300 metres can be completely cleaned of sea cucumbers.

10. I note too according to submissions from the Crown Prosecutor, Mr. Kelesi, when you were sighted you tried to escape and did not comply with instructions when intercepted. The vessel number QNg 90557 TS had to be rammed several times but did not stop until rubber bullets and teargas canisters were discharged on the boat. As well further assistance had to be called from Patrol boat Auki to assist in apprehending your boats. The Maritime Police must be commended for an outstanding job in the midst of very challenging circumstances with limited weaponry on board to enforce orders and directions given to such boats. This must be viewed as an aggravating factor against you. It is clear you did not cooperate and were doing your very best to escape.

11. The issue of costs of such operation in surveillance alone, and when a pursuit is made to effect arrest cannot be underestimated, a fortiori, with a country with a very small budget and funds that are available for this type of operation. Such costs however, can continue with the investigation and prosecution of offenders and where

there is conviction and eventual repatriation. These can be prohibitive and easily run up to millions of dollars for such a small country.

12. The element of retribution (punishment) for the offences committed and the deterrence (prevention) of other future offenders feature high in the sentence to be imposed by this court.

13. I give credit for your guilty pleas and accept the submission that this has saved this court unnecessary time and expense in having your cases deliberated upon and disposed of much earlier than would have taken. I accept this is your first time in court and that you have cooperated with police. I note your personal and family circumstances and the reasons given to explain how and why you became involved in these type of illegal activities at great risks to your personal liberty and family welfare. Those personal and family circumstances, however have to be balanced with the willingness and determination taken by you to travel long distances in spite of the grave risks to your own personal safety and knowledge of the consequences of being caught as a result of your illegal activities. It is patently clear you were well aware of those risks and deliberately ignored them.

14. I note what your lawyer has said in mitigation submitting that you were not captains but were on equal footing with other crews in your boat that had been dealt with in the court below and submitting you had been victimised by virtue of the fact you were at the helm of your boat when accosted by Maritime Police. Your lawyer has sought to submit that you all took turns to steer and control the boat and that you were all on equal pay.

15. Your lawyer has also submitted it would be unfair to impose any penalty different from the rest of the crew that had left the country. Unfortunately, I find that hard to believe and accept for it is only normal and reasonable to expect that someone would be given that responsibility in any circumstances, and in particular in times of crisis when someone has to take control and make crucial and final decisions when needed. Even if that person is not described as a captain, it is normal to have someone in charge, someone that everyone answers to and vice versa. It would make sense as well to have someone in charge for purposes of communication with your owners or your home-base and the giving and receipt of instructions as to the next course of action to do etc. Only a person in charge would be able to make and take those crucial decisions and not anyone else. I reject that argument for purposes of sentence.

16. On the subject of human trafficking, I find that too far-fetched in the circumstances of this case. You cannot be victims of human trafficking when it is a deliberate decision to engage in fishing for gain by illegal means; that is nothing less than plain criminal activity. There is no evidence whatsoever to show or suggest your wills had been suborned, overridden or overtaken by anyone, to the contrary this undertaking was voluntarily embarked upon by yourselves, knowing full well what the risks entailed.

17. You are convicted and sentenced as follows:

1. **Count 1:**

- (i) For illegal entry of foreign fishing vessels under section 37(1) and (2) of the [Fisheries Management Act 2015](#), impose a fine of \$6,000,000.00, in default to serve a sentence of 2 years.
- (ii) Impose a sentence of imprisonment of 2 years with effect herewith.
- (iii) Direct that the fine is payable within thirty (30) days, failing which the default period of two years is to be served consecutive to the 2 years sentence of imprisonment imposed.

2. **Count 2:**

- (i) For prohibition of catching, selling beche-de-mer contrary to section 13A of the Fisheries (Amendment) Regulations 2009, impose a fine of \$50,000.00, in default to serve a sentence of 4 months imprisonment.
 - (ii) Direct that the fine is payable within thirty (30) days herewith failing which the default period of 4 months is to be served concurrent to the sentence in count 1.
3. **Count 3:**
- (i) For the offence of use of and possession of prohibited gear on vessel contrary to section 26(1) of the [Fisheries Management Act 2015](#), impose a fine of \$2,500,000.00 in default to serve a sentence of 12 months imprisonment.
 - (ii) Direct that the fine is payable within thirty (30) days and the default period is to be served concurrent to counts 1 and 2.
 - (iii) Direct that any fishing gears confiscated are to be forfeited to the Solomon Islands Government herewith.
4. **Count 4:**
- (i) For the offence of buying, selling, storage and processing of fish and fish products for export (fish processing activities without an export licence) contrary to section 44(1)(a) of the [Fisheries Management Act 2015](#), impose a fine of \$2,500,000.00 in default to serve a sentence of imprisonment of 2 years.
 - (ii) Direct that the fine is payable within thirty (30) days and the default period is to be served concurrent to counts 1, 2 and 3.

Taking into account the totality effect principle in sentencing, I am satisfied that the overall sentence of imprisonment of 4 years (inclusive if the fines are not paid within thirty days) is more than adequate to reflect the seriousness of the offences committed and in particular taking into account the element of deterrence in this type of offending. The message must be made plain and clear that the courts of this country will not tolerate this type of offending as mandated by the laws of the land.

I also direct that the period already spent in custody is to be deducted from the sentence of imprisonment to be served herewith.

Pursuant to section 95 of the [Fisheries Management Act 2015](#), I further direct that the three (3) Vietnamese “Blue Boats” seized be forfeited herewith to the Solomon Islands Government. Unless further use is required of them, given any reports on their sanitary and sea worthiness condition, the said vessels with registration numbers: QNg 90286TS, QNg 90529TS, QNg 90557TS should be destroyed 14 days thereafter or earlier, if circumstances require.

The defendants have a right of appeal to the Court of Appeal if aggrieved by the sentence.

The Court.

[\[1\]](#) FFA Secretariat – Strategy for addressing IUU risks relating to illegal foreign fish of inshore fisheries resources, at page 1, para. 1.

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