

**IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NUKU'ALOFA REGISTRY**

BETWEEN: R E X - Prosecution

AND: TEVITA 'AHOAFI - Defendant

BEFORE THE HON. JUSTICE CATO

SENTENCE

Mr Lutui and Mr Finau for the Crown
Mr Pouono for the prisoner.

[1] The Prisoner Tevita 'Ahoafi, pleaded guilty to manslaughter contrary to sections 85, 86(1)(a) and (2), 92 and 91 of the Criminal Offences Act, in that he did cause the death of Sione Puku 'Ahoafi when he unlawfully struck his body repeatedly with a metallic pipe and a piece of wood causing serious injuries to his body which led to his death. The Crown accepted this plea which was entered on the 11th December 2015 in discharge of its indictment for murder to which the accused had pleaded not guilty on the 10th June 2014.

[2] The agreed summary of facts were that, on or about the 23rd May 2013 at around 12am, the prisoner had come back from drinking kava and had entered a small dwelling he lived in. The deceased lived with his wife and other family members in the main house that was also on the property. The deceased was the paternal granduncle of the prisoner who then was aged 30.

- [3] On arriving in his dwelling, the prisoner noticed a light on in the main house. Thinking that there was a burglary, he went over to the house to check up. As he did this the lights were turned off. When he entered the house, he saw the deceased standing at his granddaughter's bed fondling his penis in her presence.
- [4] He went back outside quietly and found a metal pipe in the verandah of the house. He then proceeded to approach the deceased from behind him and struck him numerous times on his arms and legs intending him to fall to the ground. He did not do so. The prisoner then went back outside and got a plank of wood. He hit him on the side of the face causing him to fall to the ground. By then he was unconscious. He then tried to wake him up by kicking him numerous times.
- [5] The granddaughter woke up and found the deceased bleeding and she went to a neighbour's house. Whilst there, a sound like another assault was occurring came from the deceased's house.
- [6] They then heard the accused outside the deceased's house calling the police. After a short while, the police arrived and the deceased was rushed to hospital where he was pronounced dead. According to the post mortem report he died of brain herniation secondary to traumatic brain injury.
- [7] Part of the reason for the delay in this matter progressing more quickly was because the prisoner had been placed under the care of Dr Puloka, a specialist psychiatrist. The prisoner had a history of admission to the mental health facility of Vaiola hospital the most serious of several admissions in 2009, being that he had assaulted his uncle by hitting him in the mouth and causing injury. He had on those occasions been prescribed antipsychotic drugs. A diagnosis of substance related disorder and psychotic disorder not otherwise specified was made at the time. Dr Puloka

confirmed that on his recent assessment the prisoner was a person with a cannabis dependence disorder and schizophrenia. He formed the view that, although he was suffering from a mental illness, he was fit to plead and he knew the nature of what he did, and, although he did not have the intent to kill him, he knew that to some degree what he was doing was wrong. He did not consider that he was legally insane although, before the incident, there is mention in his record of interview that he was hearing voices. It would seem, on this basis, that earlier but at a time proximate to the incident he may have suffered from an episode, where his mental condition was disordered. This may have clouded his judgment although not to the point where according to the Doctor he could avail himself of a defence of insanity.

[8] I sentence the accused consistently with his plea to manslaughter on the basis that he did not know that what he did was likely to kill the prisoner (a basis which the Crown accepted), although he plainly intended to seriously harm and disable the deceased when he hit him about the head with a plank. I also sentence him on the basis that he was an impaired person mentally and assess his responsibility also in that light. A Court is entitled to take a prisoner's mental disability in determining the level of his culpability. Fa'asso v R [1996]TLR 42, at 45. Taufa v R AC 17/04

[9] In my view, the trigger for his action was his belief that the deceased was likely to seriously abuse his granddaughter. Plainly, even if he acted in defence of another, his retaliation was disproportionate. He did not simply assault the deceased with a weapon around the body but went further and hit him around the head with a wooden plank thereby causing the head injury which led to his death. The Crown confirmed that there was only one relevant blow, in this case. Cases on manslaughter vary considerably. In this case, I am prepared to conclude that the

prisoner acted with limited premeditation in a situation where he had found the deceased in a serious sexual situation with his granddaughter. Although he acted with violence, I do not consider the violence was prolonged and nor did it involve a number of blows to the head. I am prepared also to accept after reading the report from Dr Puloka, that he was a person suffering from a mental disability and may well have suffered an episode reasonably proximate to the incident. Just how much his judgment was affected by his medical condition is unclear but I am prepared to make some allowance for this in mitigation as it affects his culpability for reasons I explain further below.

[10] The deceased died plainly from a blow inflicted with a weapon to the head and in these circumstances the starting point must reflect the fact that death has arisen unlawfully (that is without lawful justification or excuse) and the prisoner is responsible for his death. On the evidence, whilst there was a high measure of violence, I do not find there was extreme or prolonged violence as is seen in some of the cases where there have been very high starting points, such as Vaomotau v R [2014] Tonga LR 63. It was, the Crown accepts, provoked by the deceased actions in masturbating in the presence of this granddaughter and in his belief she would be raped. In my view, a starting point of eight years imprisonment is appropriate to reflect the circumstances of this homicide (one violent blow to the head) and to deter others from using weapons to inflict injuries to the head from which death not uncommonly results. The provocation is, in my view, a factor which should be taken into account as mitigation. Neither Mr Lutui nor Mr Pouono expressed objection to this starting point.

[10] In mitigation, however, I take the following circumstances into account. It is plain that what triggered him to act as I have said was finding the deceased, his paternal uncle and long time

caregiver, in a situation where he threatened to sexually abuse his granddaughter. This, in my view, significantly reduces his culpability that evening. It must have been a rather devastating discovery to find his paternal grand uncle behaving in this way in the presence of his granddaughter. Further, his impaired mental state may have affected his judgment so that whilst he knew, as Dr Puloka said the nature of what he was doing and by his plea that it was wrong, he did not reason as lucidly as might have been expected of a person who was not suffering from mental unsoundness. He had told Dr Puloka that he had used violence to prevent the deceased becoming stiff (it seems sexually erect and raping his granddaughter), a thought process described by Dr Puloka as bizarre. Dr Puloka said his judgment was poor and there was a decreased ability to process information, a "poverty of thought" he wrote.

[11] I also note, that he has pleaded guilty to manslaughter. Whilst this was not an early plea, in the circumstances of the involvement of Dr Puloka and the need for a careful assessment and hospitalization, I accept his plea was entered in a timely manner. I have also read, in addition to the report of Dr Puloka, a probation report. It seems that the prisoner, who is the eldest of 9 children in his family, and now aged 32, comes from a good family with a church background. He had been brought up by the deceased and adopted by he and his wife in a customary way. He was the prisoner's paternal granduncle. He was schooled to form six and then joined the Tongan defence force in 2003. He married in 2005 and had two children. It appears that he was discharged from the Army because of behavioural reasons. The probation report indicated that his wife and children left him in 2007, and went to live with her family because of her concerns about him when he is "sick in the head". The Crown indicates that he has apologised to the family (the widow and other relatives) and this had been accepted by them. He had also been responsible for ringing the police and stayed with the deceased

afterwards. These are all matters that justify a significant discount.

[12] For all these factors, I consider an appropriate discount is four years imprisonment. Accordingly, I impose a sentence for manslaughter (for which he is convicted) of 4 years imprisonment which is backdated to the date of his remand in custody which I am informed was the 30th May 2013. This I consider adequately reflects the fact that human life was taken unlawfully by the prisoner but in circumstances which, as Mr Lutui put it, reflects a lower end sentence for manslaughter resulting from the violent use of a weapon.

[13] I consider, however, that given he takes his medication (which is problematic) that he is a prospect for rehabilitation. Dr Puloka's report is somewhat pessimistic about his future, however. His addiction to cannabis will he says always cause a relapse of schizophrenia. He considered there was treatment for the prisoner's psychiatric condition based on medication and a strict monitoring of his compliance to the treatment. The difficult part of the treatment is his addiction to cannabis. It is a dual diagnosis and the prognosis according to Dr Puloka was poor. Other psychosocial treatment that would benefit the prisoner is to attend the Salvation Army Drug and Alcohol Program. Mr Lutui confirmed that he was currently undergoing such counselling whilst under Dr Puloka's care.

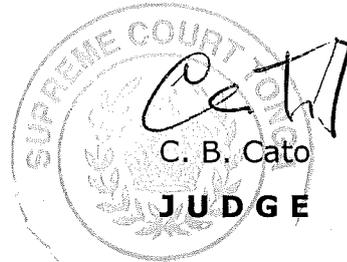
[14] Mr Lutui advised that he had spoken to Dr Puloka earlier today concerning a treatment order and application was made for this. A treatment order under section 67(1) of the Mental Health Act can be made as part of a sentence of imprisonment. It is plain that with the prisoner's diagnosis and history it would be inviting further problems to keep him in the prison regime where I am informed by Mr Lutui there were some problems concerning behaviour, in any event. He has been in Vaiola Hospital under

Dr Puloka for several months now and I consider it is necessary that his treatment be closely monitored and medication taken to minimise any repeat of this kind of offending. I am informed that Dr Puloka may, after the period of imprisonment and this treatment order has elapsed, seek a further order that he be detained further as an involuntary patient. That may be the only viable option if he cannot be placed with persons who can ensure he takes his medication.

[15] The sentence I impose upon him for manslaughter is 4 years imprisonment backdated to the date of his remand in custody which includes any period confined in Vaiola hospital for assessment and treatment, that period I am informed commencing on the 30th May 2013.

[15] In addition to, or as part of this sentence, I make a treatment order under section 67(1). A certificate under section 68 has been delivered to the Court, this morning. As part of this treatment the prisoner is to undertake an appropriate program of drug and alcohol rehabilitation under the Salvation Army, under the direction of Dr Puloka.

DATED: 5 FEBRUARY 2016

The seal of the Supreme Court of New Zealand is circular, featuring a central emblem with a tree and a sun, surrounded by the words "SUPREME COURT OF NEW ZEALAND". Overlaid on the seal is a handwritten signature in black ink. Below the signature, the name "C. B. Cato" is printed in a standard font, and the word "JUDGE" is printed in a larger, bold, sans-serif font below the name.

C. B. Cato
JUDGE