

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

CR 222 - 226 of 2019

BETWEEN:

R E X

-Prosecution

AND:

**SIAFA NAI
KONAI BLOOMFIELD
VILAKETI BLOOMFIELD
TANGI TIOFILUSI NAI
SIONE BLOOMFIELD**

-Accused

SENTENCE

BEFORE: JUSTICE CATO

Counsel: ✓Mr. J. Lutui, Director of Public Prosecutions and Mr. J. Fifita for the Prosecution
Mr. S. Tu'utafaiva for the accused Kona'i Bloomfield and Vilaketi Bloomfield
Ms. 'A. Kafoa for Siafa Nai
Mrs. F. Vaihu for Tangi Tiufilusi Nai

Date of Sentence: 21 October 2020

1. The prisoners, Siafa Nai, Kona'i Bloomfield and Vilaketi Bloomfield appear before me for sentence today after their convictions for manslaughter after a trial at which I acquitted Mr Nai and Mr Kona'i Bloomfield of murder but found them guilty of manslaughter contrary to sections 85, 86(1(a) and 92 of the Criminal Offences Act. Vilaketi faced a charge of manslaughter and was found guilty of this charge, and also awaits sentence today.

2. Mr Tangi Nai and Mr Sione Bloomfield pleaded guilty to common assault contrary to section 112(a) of the Criminal Offences Act. Sione Bloomfield did not face any other charges at trial but Tangi Nai did face other charges namely causing grievous bodily harm or in the alternative serious bodily harm for which he was acquitted, on both counts.

3. The evidence concerned the events surrounding a series of assaults in and outside the Tali'eva Bar in Nuku'alofa on the 4th February 2019. The facts are set out in detail in my verdict dated the 16th September, 2020. At the end of these series of assaults which took place in a period of under 3 minutes as the fight moved from inside the bar to the road area outside the victim, a Mr Sione Feimoefiafi, suffered serious head injuries from which he died in hospital On Friday, the 16th October, I heard submissions from the Crown and counsel and adjourned my submissions to today, the 21st October 2020.

4. I have read the probation reports and various references attached to some of those probation reports. I heard also from the three prisoners convicted of manslaughter and Mr Tangi Nai who had pleaded guilty to assault, all of whom expressed remorse and contrition for their role in these events and for causing the victim's death. Mr Nai apologized for his role in throwing a punch at the deceased from behind which seemed to have been the start of the fight. I accept that they are all contrite, as is Mr Sione Bloomfield for his assault, as well.

5. The three accused involved in the manslaughter, Siafa Nai, Kona'i and Vilaketi Bloomfield were all involved in various assaults that contributed to Mr Feimoefiafi's death. I found that they were all involved in a concerted attack on the deceased starting in the bar and passing out onto the street. I find that of the three, Siafa Nai was the most violent, a punch forcefully delivered to the head inside the bar and a stomp in the final stage of the fight shown in phone video clips demonstrate his anger and the level of violence, but the evidence, as recited in my verdict, indicates that, together with Mr Kona'i Bloomfield, he was involved in other kicking, punching and stomping that was not on camera.. He punched, kicked and stomped on the deceased in the street before the final stage which is reflected in a video clip when he stomped ruthlessly around the head of the victim. Mr Kona'i Bloomfield was present from inside the bar to outside with Siafa Nai and was seen by witnesses to be kicking and stomping and punching the victim. Although he could be said individually by his actions of kicking punching and stomping to be furthering the attack, he was also closely present with Mr Nai when he attacked the deceased outside. He seems, however, to have come to his senses at the end and the final clip suggests that for him the violence was over. Siafa Nai however, at this stage stomped on the head of the deceased as he lay on the ground. Vilaketi had urged Siafa and Kona'i inside the bar when the fighting first broke out to beat the deceased to death and he was also present when the fighting occurred outside. Finally, at the end when the owner of the bar was attempting to stop the fight, he is seen on the video clip stomping on the head of the deceased as he lay outside in the middle of the road, shortly after Siafa Nai had stomped on his head.

6. The level of violence as I have stated in my verdict was very high. The manslaughter verdict in the case of Mr Nai came after very serious consideration as to whether I could conclude beyond reasonable doubt that he foresaw that death, as opposed to merely serious harm, was likely in which case the verdict would, as the Crown submitted, have amounted to murder. I rejected murder but, nevertheless, I consider there was a very high level of violence to the degree that he must have foreseen that his actions would cause serious harm. In my view, he was the most violent of the three accused found guilty of manslaughter. He attributed his violence to his intoxication, but whilst this might explain

the ferocity of his attack it does not in any way excuse it. The level of violence employed by Kona'i was also very serious. I consider that, although a participant also in a very violent attack, his involvement which included stomping, kicking and punching (but not recorded in a video clip) means that the starting point in his case should be less than Mr Nai. As for Vilaketi, although his involvement in urging the men to beat the victim to death, being nearby outside as most of the violence was taking place and his final stomp on the head of the deceased as recorded in the video clip, also evidence a high level of violence, I consider it to be less than his brother Kona'i, and this will be reflected in a lower starting point for him.

7. The attack was senseless. Mr Tangi Nai appeared to strike the deceased in the back resulting in the men skirmishing on the floor near the bar. The evidence suggested that the deceased may have been getting the better of Mr Nai, causing the three accused to become involved very quickly and violently and out of any proportion required to reasonably stop the men fighting. In his Crown memorandum, Mr Lutui submitted that the starting point should be 14 years. I am inclined to consider that the starting point on the worst of the perpetrators, Mr Nai, should be higher than that namely 15 years but I am content to adopt a starting point for him as 14 and half years. I consider that Kona'i Bloomfield starting point should be 12 and a half years, and Vilaketi 10 and a half years, reflecting their high end level of offending for manslaughter.
8. I heard evidence that the families of both Mr Nai and the Bloomfields have paid significant sums of money to the family of Mr Feimoefiafi and their apology has been accepted. The other accused, aside from Mr Nai, did not apologise in person but the families did and this has been accepted. I am prepared to allow each prisoner 9 months in mitigation for this
9. Turning to each of the accused, now I consider the sentence I should impose first on Mr Siafa Nai. He has I am told no convictions and is aged 41. I allow him by way of mitigation 12 months for his previous good character. As I have said I accept that he is

remorseful, and I allow 3 months imprisonment by way of mitigation for this factor. He has four still young children for whom he has responsibility since his wife died. I cannot allow mitigation for these kinds of family factors, but I do recognise this as a factor in considering the appropriate level of suspension. The reality is that the children will have to be looked after by probably another relative or family for a number of years, and they are the unfortunate collateral victims also of his offending. He seems to have had a reasonable education and at the time of the offending was involved in a construction company with the Bloomfields. I allow him an overall reduction by way of mitigation of two years on the starting point of 14 and a half years, meaning that the sentence I impose for his conviction of manslaughter is 12 and half years imprisonment back dated to take into account any period of remand in custody pending trial (from the 4th February 2019 to the 8th April 2019), and his remand in custody between verdict on the 16th September 2020 and sentence today. I have also considered the question of suspension of sentence. I consider having heard from the prisoner that he is remorseful, that he is likely to be rehabilitated and I suspend the final two years of his sentence on the following conditions;

- a) That he is not to commit any offences punishable by imprisonment during the period of his suspension;
- b) That he is placed on probation to live where directed.
- c) He is not to drink alcohol during his suspension.
- d) He is to undergo the following courses under the direction of probation;
 - i. A course on alcohol abuse under the direction of the Salvation Army or other appropriate agency;
 - ii. A course on anger management under the direction of Probation.

10. In relation to Mr Kona'i Bloomfield he is aged 45, and was deported to Tonga after criminal convictions in the United States in 2009. He had a wife and family in the United States but they separated and he has entered a new relationship with a woman with five children who he has been taking care of for several years. I have read a number of

references from his current family who speak very well of him and his involvement in their life. However, he has a conviction for assault in 2009 for which he received a year imprisonment fully suspended sentence and a fine, and more recently a conviction for abetment to robbery for which he received a sentence of 5 years imprisonment. He has formed his own construction company. I accept that he is remorseful and for that I allow 3 months by way of mitigation. He is allowed 9 months for the family apology and financial settlement on the deceased family. His starting point of 12 and half years imprisonment is reduced by 12 months mitigation, his sentence for manslaughter being 11 years and 6 months imprisonment backdated to take into account any period of remand in custody pending trial from the 4th February 2019 to the 8th April 2019, and his remand in custody between verdict on the 20th September 2020 and sentence today. The final two years of his sentence is also suspended on the following conditions;

- a) That he is not to commit any offences punishable by imprisonment during the period of his suspension;
- b) That he is placed on probation to live where directed.
- c) He is not to drink alcohol during his suspension
- d) He is to undergo the following course under the direction of probation;
 - i. A course on alcohol abuse under the direction of the Salvation Army or other appropriate agency;
 - ii. A course on anger management under the direction of Probation.

11. I turn now to Vilaketi Bloomfield. He is aged 49 and is married with two teenage children. His wife and children have included references. They speak well of him. He works in his brother's construction company. He has convictions incurred in 2008 and for assault in 2009, for which he received a fully suspended sentence of one year imprisonment. I am prepared to allow him 9 months for character, he not having offended for over ten years, and with no substantial record. I allow him also 3 months mitigation for his remorse and 9 months for the apology and compensation paid by the family. His starting point of 10 and half years is mitigated by 21 months to 8 years and 9 months imprisonment, back dated to take into account any period of remand in custody pending

trial from the 4th February 2019 to the 8th April 2019, and his remand in custody between verdict on the 20th September 2020) and sentence today. The final two years of his sentence is also suspended on the following conditions;

- a) That he is not to commit any offences punishable by imprisonment during the period of his imprisonment;
- b) That he is placed on probation to live where directed.
- c) He is not to drink alcohol during his suspension
- d) He is to undergo the following course under the direction of probation;
 - i. A course on alcohol abuse under the direction of the Salvation Army or other appropriate agency;
 - ii. A course on anger management under the direction of Probation.

12. In relation to Mr Tangi Nai, he assaulted the deceased by appearing on a still photograph taken from a security camera to punch him in the back and this then lead to their skirmish on the floor near the bar. He pleaded guilty to this, and as I have pointed out in my verdict I did not see that there was any other evidence which could inculcate him in more serious offending either inside or outside. He was involved in a skirmish on the floor with the deceased. The evidence suggests the deceased was getting the better of him before the serious assaults took place. I consider that for this initial assault a sentence of 70 hours community work to be arranged by probation is appropriate in default one month imprisonment. I have taken into account in sentencing Mr Nai to community work that he pled guilty to the assault, was acquitted on other charges and spent a couple of months in custody on remand before being granted bail.

13. Likewise with Mr Sione Bloomfield who pleaded guilty to a charge of common assault before trial. I was told this related to a kick he delivered to the deceased inside before it seems the more serious assaults took place outside. The prosecution could not say to which part of the body he had delivered that kick. In these circumstances and bearing in mind he also spent time in custody on remand, I sentence him to 80 hours for community work

(kicking in my view being more serious than a punch) under the direction of Probation. He also sentenced in default to one month's imprisonment.

14. A further condition of the sentence of Mr Tangi Nai and Mr Sione Bloomfield is that no later than by 4pm of Thursday the 22nd October, 2020 they take a copy of the order relating to their sentence to Probation so that they may be advised as to when and what community work they will carry out.

15. In conclusion, the tragic death of Mr Sione Feimoefiafi was a senseless and irrational waste of a life. All the men, the accused and the deceased had been watching the final of an American rules football match that had recently ended before the fight broke out in the late afternoon. The bar had opened about 12pm and no doubt alcohol played a part in the irrational and brutal acts that followed. There was very little evidence as to the background for this offending. The deceased appeared to have annoyed some of the men earlier but there was no evidence on his part of any conduct that could be said to have justified any assault by the accused whatever, still less the rampage of violence that followed the engagement of his skirmish with Mr Tangi Nai. All the accused acknowledged the violence he suffered at their hands was wrong, and I accept that their acknowledgement of this was genuine and his death was something they will have to live with, in addition to the sentences I have imposed.



C. B. Cato
J U D G E

NUKU'ALOFA: 21 October 2020