

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

CR 37 of 2013

Sum. 176
12/08/14

R E X

V

SEMISI KALISITIANE MANU

BEFORE THE HON. JUSTICE CATO

Mr Kefu for the Crown
Mr 'Etika for the Prisoner

SENTENCE

- [1] The prisoner was found guilty after a trial by jury of causing grievous bodily harm to Mr Kelly Fungavaka. He was acquitted of his manslaughter. He now appears before me for sentence. I have heard the evidence not only in his trial but that involving a number of Tongan police officers involving the death of Mr Fungavaka who were tried before me as a Judge sitting without a jury.
- [2] I have entered convictions of two of those police officers for manslaughter arising out of the arrest of Mr Fungavaka on the 18th August 2012 for drunkenness. Mr Fungavaka had been drinking with a relative at the Time out bar in Nuku'alofa who was also arrested. Mr Fungavaka was a serving New Zealand police officer in Tonga to attend the funeral of his grandfather. He was a Tongan. He was a father to several children. I have heard victim impact reports from his former wife and his

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present wife detailing their families' loss at the death of Mr Fungavaka who was aged 38. They tell of a well rounded family man who is much missed by his family.

- [3] The deceased was subject to various acts of assaults in the central police station foremost of which was being hit over the head with a torch and strangled by Mr Hala'ufia who at the time was the inspector in charge of the police responsible for the arrest. The blow with the torch and the strangulation were effected with significant force sufficient to severely fracture the deceased's skull and break a cartilage in his throat. Shortly after, he was stomped on by Mr Maile as he was being dragged from the watch house to the cells. I have heard extensive medical evidence from a pathologist and also a Tonga surgeon, Lord Tungi who operated on Mr Fungavaka to attempt to alleviate the swelling on his brain. Having heard evidence from those doctors, I am left with no doubt that the deceased was in a very critical state, before he was left in the cells where Manu was present, Manu, having earlier in the evening, also been arrested for drunkenness. During this period when he was in a heavily occupied cell, he and Manu got into an altercation. The evidence is far from clear as to what happened or why the assault by Manu took place. All the witnesses to the events had been arrested for drunkenness and their evidence was unclear. However, it seems for very little provocation, if any, Manu punched Mr Fungavaka to the head causing him to fall back against a wall and then to the floor. The verdict of the jury was that Manu did not cause the death of Fungavaka and I am in agreement with this verdict. I consider it was inevitable that Mr Fungavaka would have died from the injuries he had received earlier at the hands of Hala'ufia and Maile. I interpret the verdict to

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mean the punch contributed to Mr Fungavaka's already serious condition, but it did not kill him.

- [4] Manu is a first offender and is the father of three children. He married at a young age. He is the only earner and works at farming, part time cleaning and landscaping. His wife, whilst looking after the children is studying through the extension service of South Pacific Tonga campus. They are active members of a church. He is remorseful and I am informed he has given up alcohol as a consequence of this incident.
- [5] Mr 'Etika conceded that Manu admits he hit a defenceless man and regretted his actions. I sentence him having taken into account he is a first offender and his remorse, the trial being not so much on the issue of whether he punched the deceased, which was admitted, (but whether the punch contributed to his death or grievous bodily harm) to 18 months imprisonment for causing grievous bodily harm. Mr Kefu did not oppose the sentence of imprisonment being fully suspended and I consider Manu, being a first offender, and having shown remorse and given up alcohol justifies this. However, because of the seriousness and circumstances of his conviction, I am going to order him as conditions of suspension not to commit any offence punishable by imprisonment for two years, to undertake a course on alcohol and drug abuse under the probation office and Salvation Army and perform 70 hours community work under the direction of the probation office cleaning up the Vuna Road.
- [6] Accordingly, on the charge of causing grievous bodily harm, under section 106 of the Criminal Offences Act, he is convicted and sentenced to 18 months

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imprisonment. That sentence is fully suspended on the following conditions;

1. He is to commit no further offences punishable by imprisonment for two years;
2. He is to undertake, under the direction of the probation office and Salvation Army, a course on alcohol and drug abuse;
3. He is to also undertake at the direction of the probation office ^{for} 70 hours community work cleaning up the Vuna Road.

DATED: 9 JULY 2014



Carl T

JUDGE