

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

NO. CR 142 of 2007

REX

-V-

FUA TONGA HIGH PIUTAU

BEFORE THE HON. JUSTICE ANDREW

Counsel : Mr Little for the Crown and
Mr Tu'utafaiva for the accused

Dates of Hearing : 21 November 2008.

Date of judgment : 19 February 2009.

JUDGMENT

The accused pleaded not guilty to two counts namely;

- 1) Greivous Bodily Harm contrary to S^s 106(1) and 2(B) of the Criminal Offences Act.
- 2) Bodily Harm contrary to S. 107(1) of the Criminal Offences Act.

Particulars alleged were:

1st Count : on or about 21st October 2006 at Ha'ateiho, you did willfully and without lawful justification stab the chest of KOVULA TAKAUA with a knife and caused severe wounds to his back.

2nd Count : on or about 9th September 2006 at Ha'ateiho you did willfully and without justification cause harm to LATU SILATOLU's right chin by hitting him with a 'ikale beer bottle.

In relation to Count I there is no dispute that the victim was cut with a knife on 2 occasions. The medical evidence disclosed:

"operating findings:

- (i) Axillary wound was very deep, reaching the ribs but not entry into chest cavity.
- (ii) The major axillary blood vessels were missed by few millimeters.
- (iii) Multiple smaller vessels were cut, accounting for the blood loss. "

The complainant was suffering from severe shock and loss of blood. I accept that, but for surgical intervention he would have bled to death.

The defence have submitted that the wounds suffered from the stabbing to the chest do not amount to grievous bodily harm. That submission is based on s.106 (2) (b) of the Criminal Offences Act and the definition therein of 'grievous bodily harm' including 'the destruction or permanent disabling of any external or internal organ, member or sense'.

But that is only one definition of grievous bodily harm. S. 102 (2) has 5 definition of grievous bodily harm all in the alternative and S.106 (2) (c) includes any severe wound.

The fact is that this was a severe wound. Numerous blood vessels were cut. Severe shock was caused from loss of blood and there was loss of consciousness. I would conclude that but for surgical intervention the complainant would have bled to death. The axillary wounds were very deep, reaching the ribs.

I am satisfied B.R.D. that the wounds suffered amounted to Grievous Bodily Harm.

That was really the only defence relied upon.

- The complainant has identified the accused as the one who attacked him. He saw the complainant with a knife in his hand.
- The complainant was able to get the knife off the complainant until he passed out.

- It was not suggested that the accused has wrongly identified the complainant or that he was mistaken.
- It is not suggested that anyone else stabbed him.
- A witness observed the fight and saw the accused with a knife in his hand. She saw the victim with blood on him.
- A further witness saw the fight and saw the victim and the accused fighting.
- A further witness saw the fight and saw the victim carried away with blood on him. A further witness saw this.
- The knife was located at the scene. The accused later identified it as his.

I have no reason to doubt any of the evidence of the eye witnesses.

In a Record of Interview the accused said he was drunk. He said he was not sure if he stabbed the accused. Then at Question 27 he was asked:

“So TONGAHIGH the major injuries to KOVULA was caused when you stabbed him with this knife.

A. Yes.”

All of this evidence is overwhelming. The accused has not given any evidence disputing it and makes no denial.

For all of these reasons I am satisfied B.R.D. that the accused is guilty as charged.

COUNT 2.

It is alleged that the accused struck the victim i.e. punched him, and struck him with an lkale bottle. There is no doubt that a fight took place. There is no doubt that the victim suffered bodily harm.

The issue is one of identification. The accused says that he was too drunk and does not know what happened. The victim says he identified the accused.

The evidence of identification in this case is that the defendant was

accused of being the offender by one "ILAIASI TOLI" who based his identification of the defendant on the description given by the complainant. I remind myself of the inherent dangers of identification evidence and the very real possibility that mistakes can be made. In this case, I think that this kind of identification is open to error. There is no further evidence of identification and also there is some doubt because the complainant stated that someone got out of the van and he was surprised when he was punched and hit with the 'Ikale bottle. But in cross examination he told the Court that the Defendant was sitting on the drivers seat of the van and he was the driver. As submitted : "so if he was the driver (as confirmed by Question and Answer 14 of the Record of Interview, then it may well be he was not the person who got off the van and wounded the complainant.

For these reasons I am not satisfied beyond reasonable doubt that it is shown that the accused is guilty of Count 2 and he is found NOT GUILTY and discharged on Count 2.

NUKU'ALOFA: 19 February 2009.



Andrew J.
JUDGE