

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

**CR 96 of 2007**

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**REX**

**-V-**

**KOHINOVA, SOANE**

**BEFORE THE HON. JUSTICE ANDREW**

**Counsel :** Mr Sisifa for the Crown. ✓  
Mr Pouono for the Accused.

**Date of Hearing:** 29<sup>th</sup> February 2008.

**Date of Judgment:** 3<sup>rd</sup> March, 2008.

**JUDGMENT**

Following his trial the accused was acquitted by a jury upon charges of attempted murder and grievous bodily harm. He was convicted of 2 counts of bodily harm. He had previously pleaded guilty to one count of possession of arms without a license; Possession of ammunition without a license. He was also convicted by the jury of one count of discharging a firearm with intent to intimidate.

In relation to the 2 Counts of bodily harm (contrary to S.107(1) & 2(c) the alleged facts were that.

*Red 27/8/08*

(1) "on or about the 16th April 2007 at TOFOA you willfully and without lawful justification caused bodily harm to LAUKAU KOHINOA, in that you hit her left forehead with a point 22 rifle firearm (ie. the butt of the rifle) thereby causing injuries to her nose.

(2) on or about 16th April 2007 at TOFOA you willfully and without lawful justification caused bodily harm to LAUKAU KOHINOA, in that you hit her left forehead with a 22 rifle (ie with the butt of the rifle), thereby causing injuries to her left forehead.

In relation to the charge of discharging a firearm with intent to intimidate (Section 109 of the Criminal Offences Act) the facts disclosed that the accused had fired the rifle whist near persons in an attempt to intimidate them. To elaborate those matters the facts upon which the jury must have been satisfied were that the accused's wife had left him and taken up with another man with whom she was pregnant. The accused was distraught about this and it was clear on the evidence that he loved his wife and children and that he wanted his wife back. He had attempted by all means to get her to return, all to no avail. In desperation he obtained a gun which was at the home where he lived or worked and tried to scare her into returning. On the day of this incident he went to the home where his wife lived with the other person and attempted to scare her. She had been outside the home and she then entered the home where there were others inside including the person she was now living with. The accused discharged the firearm outside the home in an attempt to intimidate those inside. He then entered the home and he argued or pleaded with his wife to return. I am satisfied that she taunted him to some extent telling him she was pregnant. In this highly emotional scene the accused lost control and hit his wife twice with the rifle butt once on the nose and once on the forehead. Clearly bodily harm was caused but fortunately the injuries have healed and are not permanent.

I think the jury felt a lot of sympathy for the accused. They acquitted him of more serious offences. Clearly he loved his wife and was driven to desperate measures to attempt to have her return and for his family to be all together. It was a crime of passion.

In my view the accused is a decent person who has never committed any other offence and would not have committed this offence had he not been overcome with passion and desperation at the loss of his wife in these

circumstances. He has had to endure all of these events being aired in public in circumstances of humiliation. He has done this with a quiet dignity.

His wife has said in evidence that she was in the wrong and it was her that caused these events to happen. She does not blame the accused and is sympathetic towards him.

The parties have not re-united however and some of the children remain with the accused and he supports them. I believe that the accused has now accepted the situation and I do not believe that there will be any further altercation between them.

It is hard not to feel sympathy towards the accused. He was the wronged partner in his marriage and he acted out of love for his wife in his desperation to have her return. Unfortunately the emotion of all of this had caused him to lose reason and to act emotionally.

The accused is aged 37. He had 5 children and is a carpenter. The 3 youngest now live with the accused's parents due to the separation and the eldest daughter lives with him and in Form 5. The eldest son was born in New Zealand and is now an Australian citizen.

The accused is fully aware of what he did and is very remorseful. As stated I do not believe he will re-offend.

In offences involving firearms it is almost inevitable that a goal sentence will follow. I feel however that this case is a special one where there is little need now for personal deterrence. It was a personal domestic dispute in circumstances which were tragic for the accused and I do not believe it is a case calling for public deterrence in the circumstances in which it occurred. I propose not to send the accused to prison but to allow him to rebuild his life and to care for his children. His wife pleads for leniency and accepts that she was the cause of what happened.

On both counts of bodily harm the accused is sentenced to imprisonment for 12 months. On the count of discharging a firearm with intent to intimidate the accused is also sentenced to 12 months imprisonment.

Upon the charge of possession of arms without a license, the accused sentenced to a term of 4 months. Upon the charge of possession of ammunition without a license, the accused is sentenced to 2 months imprisonment. All sentences are to be served concurrently.

All sentences shall be suspended upon condition that the accused be of good behaviour for the term of the sentences.

NEIAFU: 3 MARCH 2008.



*J. Drew. J.*

JUDGE