

S/GENERAL

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

NO. CR.70 of 2008

REX

-V-

UIKELOTU MOHOKOI

BEFORE THE HON. JUSTICE ANDREW

Counsel : Ms Mafi for the Crown and
Mr Fakahua for the Accused.

Dates of Hearing : 10 March, 2008.

Date of sentencing : 2 May 2008.

SENTENCING

The accused pleaded guilty to an alternative offence of GRIEVOUS BOIDLY HARM contrary to s.106(2) of the Criminal Offences Act.

"Particulars of that offence are that on or about 22nd December 2007 at HA'ATO'U you did willfully and without lawful justification cause Grievous Bodily Harm to TOUTAI MAILE when you punched him with a torch on his forehead."

An undisputed Statement of facts is as follows:

"On the afternoon of 22 December 2007 the deceased and others were drinking alcohol at the rugby field in Tongoleleka. When all alcohol had

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been consumed the deceased and others decided to walk into Pangai to see if they could purchase a box of beer to continue drinking. When they reached Ha'atou'u, they went to a shop owned by one Fetuli, but there was no alcohol at that shop. The deceased and others saw one Sefo Tu'itakau purchasing some goods at the store, and asked Sefo to drive to Pita Vi's store to buy a box of beer. As the deceased and others were standing outside the shop next to Sefo's van, they waited for Sefo to finish up his shopping. It was during this time that the defendant Uikelotu Mohokoi walked past pushing his bicycle (as the chain had come off). The defendant was walking back to his home after going to the plantation, and was intoxicated as well. The defendant swore at a passing car, to which the deceased told the defendant not to swear, and then swore at the defendant himself. The accused kept pushing his bike home, and asked if he could borrow his bike to go and buy some beer. The defendant did not respond but kept on walking. The defendant did not respond but kept on walking. When the defendant reached his house, he put the bike away and picked up a black torch and walked back to the shop where the deceased and others were still waiting for Sefo to finish his shopping. The defendant walked up to the deceased and punched him in the forehead with the torch, to which the deceased fell down on his back. The defendant then walked back to his house, but was followed by 2 other boys who had come with the deceased into town and one boy punched the defendant, but were stopped after that by bystanders. The deceased was then rushed to the hospital by some bystanders. On arrival, the deceased was comatose and had a 1 cm wound on his forehead. X-ray results showed that there was a depressed fracture on the right side of the skull. He progressively got worse and was admitted to Intensive Care Unit on 26th December 2007, and passed away on 28th December 2007 from severe head injuries from a blunt force to his head."

The accused has pleaded guilty to the charge of Grievous Bodily Harm and not manslaughter.

The offence of Grievous Bodily Harm carries a maximum term of 10 years. The accused who is now aged 41 has one prior conviction, that being for manslaughter. That was in 2000 and was a motor vehicle matter. The accused received a sentence of 2 years suspended for 2 years. He is married with 2 children and he and his wife have a 1 year old fostered child. In the past he worked for the Ministry of Works at Ha'apai and then became self employed relying in his engineering skills and he also works in his plantation.

It would appear that the victim may have assaulted the accused in some form when he tried to take the accused's bicycle off him. The accused and the victim had both been drinking. The accused went home and got a torch with which he hit the victim on the head. He is not being dealt with for causing the death of the victim but for the injury be inflicted to the accused's head when he struck him with the torch. The offence would not have happened if both parties had not been drinking.

I accept the report of the probation service that the accused is an otherwise decent person who is regarded as hard working, a good father and a responsible member of the community. He is currently also employed as an electrical supervisor on a contractual basis – with Sitaleki Safety Electrical Services.

I accept all the evidence put before the Court as to the accused's good character. I accept also the evidence from his wife that any period of imprisonment may impose hardship on the family.

I also accept that he is genuinely remorseful and that his apology to the victim's family has been accepted.

It is particularly difficult to have to sentence a man who is obviously of good character and well regarded and who is hard working and a strong family man. He has pleaded guilty to the charge and that is deserving of a reduction in sentence. But nevertheless it is an offence which caused very serious injury. Again it is a matter which was largely caused by alcohol. The sentence is compounded by the fact that the accused has a prior conviction for manslaughter although it is a different matter to this one.

In weighing up all of the objective and subjective circumstances I can only conclude that the seriousness of the offence and all of the circumstances mean that a sentence of imprisonment is warranted.

Would you stand up please.

For this offence you might have received a sentence of 2 years imprisonment. Due to your plea of guilty (to the offence of Grievous Bodily Harm) that is reduced to a term of 18 months.

You are sentenced to imprisonment for 18 months. The final 6 months of that sentence will be suspended for a period of 2 years upon condition that you be of good behaviour.



Andrew J

DATED: 2 May 2008.

JUDGE