

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

CR330 of 2007

REX

*SOLICITOR*

-V-

VILIAMI VUNIPOLA

BEFORE THE HON. JUSTICE ANDREW

Counsel : Ms. Mafi for the Crown and Mr.  
Tu'utafaiva for the Accused

Dates of Hearing : 6 March 2008

Date of judgment : 7 March 2008

**J U D G M E N T**

The accused pleaded guilty to a charge of manslaughter by negligence contrary to S.92 of the Criminal Offences Act.

The particulars of the offence were as follows:

"On or about 31<sup>st</sup> August 2007 at Ma'ufanga you drove the motor vehicle registration number L5224 heading in western direction along Salote Road and was grossly negligent that you ran over SOANE SEVELE and this caused the death of Soane Sevele"

An undisputed Statement of facts is as follows and I quote:

"On or about 1<sup>st</sup> September 2007 between the hours of 4am and 5am the deceased Soane Sevele was talking with one Ngana Tatafu Vake outside

*Recd  
23/07/08*

the Free Church of Tonga Hall on Salote Road in Ma'ufanga. After a short while the accused Viliami Vunipola drove along Salote Road heading in the western direction in a Nissan van licence plate number L5324 when the accused hit the deceased and Vahe with his car, who were thrown to the side of the road. Some people who were standing at the nearest Chinese shop and also who were drinking kavatonga nearby, took the deceased and Vahe to the hospital. Soane Sevele was attended by the doctors and on admission was unconscious but responsive to pain. This condition deteriorated and he passed away on Sunday September 2007 at 4am. It was determined that the likely cause of death was due to a head injury and lung abrasion from the accident."

The accused is a first offender.

The statement of facts does not refer to the fact that the accused was inebriated when he drove. This is admitted. On the accused's admission he began drinking at about 8pm with his friends. He continued drinking with his friends throughout the night and says that he was drunk. He said that at the time of the accident he could not recall much but he knew he had hit something as he drove. The next day when he heard that a person had been struck he went to the police station and turned himself in. He admits that he drank beer together with a bottle of gin and rum during the night.

The tragedy of this case is that an innocent man has lost his life. It is also tragic that the accused an intelligent and decent and likeable person with a promising careers ahead of him has put all that at Jeopardy and will himself continue to be haunted by what he has done.

The accused is 21. He is the eldest of 8 children. He comes from a good family who are all successful and high achieving. He was described as well mannered and clearly he is a person who is well liked and with a promising career ahead of him. He was educated to Form 7 at Tonga High School and was completing an electrical engineering course. He was about to undertake a scholarship.

There is no doubt that the accused is deeply remorseful for what had happened. He has apologized to the deceased's family and that has been accepted. I have no doubt that he will never reoffend. He has pleaded guilty to the charge. This was after some initial hesitation as it was apparently at first not entirely clear as to how the accident happened. But I accept that his plea of guilty amounts to an early plea and is deserving of the maximum benefit which can be given to a plea of guilty.

But the law and the consequences of drunk driving are well established. In R-v-Tofavaha [2000] Tonga LR 316 The Court of Appeal considered the appropriate approach to sentencing for the offence of manslaughter by negligence in circumstances similar to the present. It said:

“Whatever sympathy the Judge may feel for the offender, he cannot escape the fact that an innocent young woman has lost her life as a result of the respondent’s actions. The law has always regarded the killing of another person as extremely serious and the penalty must reflect that. There must be a place for sympathy when a Court is passing sentence but it cannot be allowed to supplant the duty to order a penalty appropriate to the facts of the offence”

The sentence in that case was one of 18 months although 6 months was suspended. In a dissenting judgment WARD CJ regarded a sentence of 18 months as the minimum which could be imposed. In another similar case; R-v-Tofavaha (supra) the Court of Appeal substituted a sentence of 2 years. The court there said that any person who kills another after choosing to drink and then to drive whilst affected by alcohol must expect to go to gaol.

This young man clearly had a bright future. The strong subjective circumstances must have a substantial effect upon his sentence. In balancing the objective circumstances as outlined and the strong subjective circumstances the accused is sentenced as follows:

The starting point for this kind of offence may have been 4 years imprisonment. Due to the accused’s early plea of guilty and his co-operation that is reduced to a term of 3 years.

The accused is sentenced to 3 years imprisonment. Following his serving 15 months of that term of imprisonment, the balance of the term of imprisonment is suspended for 2 years from the date of his release.



**NUKU'ALOFA: 7 March 2008**

**J U D G E**