

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Case No HAC 155 of 2010**

**BETWEEN:**

**STATE**

**- v -**

**SEREMAIA NALULU  
SULIANO WAISALE  
WAISAKE TOKAMALUA  
KALABOSO BIAUTUBU  
NETANI DOMONIBITU**

**Counsel:** Ms S. Puamau for the State  
Ms T. Sharma for all Accused

**Dates of Hearing:** 9, 16 and 19 July, 2013

**Date of Sentence:** 23 July, 2013

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**SENTENCE**

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[1] On the 19<sup>th</sup> July 2013 in this Court, all six accused entered pleas of guilty to the following counts.

**Count 1**

***Statement of Offence***

**MANSLAUGHTER:** Contrary to Section 239 of the Crimes Decree, 2009.

*Particulars of Offence*

**SEREMAIA NALULU, SULIANO WAISALE, WAISAKE  
TOKAMALUA, KALABOSO BIAUTUBU and NETANI  
DOMONIBITU**, on the 2<sup>nd</sup> day of November 2010, at **LAUTOKA** in  
the **WESTERN DIVISION**, being reckless as to the risk that their  
conduct would cause serious harm, killed **JOSE ANSELME**.

**Count 2**

*Statement of Offence*

**AGGRAVATED ROBBERY**: Contrary to Section 311(b) of the  
Crimes Decree, 2009.

*Particulars of Offence*

**SEREMAIA NALULU, SULIANO WAISALE, WAISAKE  
TOKAMALUA, KALABOSO BIAUTUBU and NETANI  
DOMONIBITU**, on the 2<sup>nd</sup> day of November 2010, at **LAUTOKA** in  
the **WESTERN DIVISION**, being armed with offensive weapons,  
robbed **JOSE ANSELME** and **NEILA ANSELME** of a Sony Ericson  
mobile phone valued at \$300.00, a Brica Digital Camera valued at  
\$100.00, a suitcase, a Targus laptop case, a Nike bag, a Puma  
handbag and a pram cover.

**Count 3**

*Statement of Offence*

**AGGRAVATED ROBBERY**: Contrary to Section 311(b) of the  
Crimes Decree, 2009.

*Particulars of Offence*

**SEREMAIA NALULU, SULIANO WAISALE, WAISAKE  
TOKAMALUA, KALABOSO BIAUTUBU and NETANI  
DOMONIBITU**, on the 2<sup>nd</sup> day of November 2010, at **LAUTOKA** in  
the **WESTERN DIVISION**, being armed with offensive weapons,  
robbed **VILIMAINA TINAI** of a Timex watch valued at \$300.00, a  
ladies handbag, a wallet and \$85.00 cash.

**Count 4**

*Statement of Offence*

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to  
Section 255(a) of the Crimes Decree, 2009.

*Particulars of Offence*

**SEREMAIA NALULU, SULIANO WAISALE, WAISAKE  
TOKAMALUA, KALABOSO BIAUTUBU and NETANI  
DOMONIBITU**, on the 2<sup>nd</sup> day of November 2010, at **LAUTOKA**, in  
the **WESTERN DIVISION**, with intent to disable, unlawfully  
wounded **JONE VESIKULA** on the head with an iron rod.

**Count 5**

*Statement of Offence*

**ASSAULT CAUSING ACTUAL BODILY HARM:** Contrary to Section  
275 (a) of the Crimes Decree, 2009.

### *Particulars of Offence*

**SEREMAIA NALULU, SULIANO WAISALE, WAISAKE  
TOKAMALUA, KALABOSO BIAUTUBU and NETANI  
DOMONIBITU**, on the 2<sup>nd</sup> day of November 2010, at **LAUTOKA** in  
the **WESTERN DIVISION**, punched ROGER ANSELME causing  
haematomas and a contusion.

- [2] A set of relevant facts were put to the accused and each accused in turn agreed to those facts. On their pleas of guilty and on agreement to the facts all 6 were found guilty of each count and convicted accordingly.
- [3] The Court now turns to sentencing of each accused consequent to those convictions.

#### **Facts:**

- [4] Jose Anselme and his wife Neila lived with their three children (Roger 16, Alex 7 and Chana 3) in Tuvu, Lautoka where they owned and operated a beche-de-mer export enterprise. They employed Jone as a caretaker/security and Vilimaina as a housekeeper. Jone lived in the main house and Vilimaina was in a room abutting the house. There was in addition a bulk store for “Tuvu Seafood” located within the residence.
- [5] Nalulu (1<sup>st</sup> accused) worked in the beche-de-mer business in the West in 2010. He is related to Waisale (2<sup>nd</sup> accused). For 2 weeks prior to 1 November 2010 they planned to burgle and steal from Tuvu Seafood by invading the Anselme residence at night. They put together a team of 5. Tokamalua (3<sup>rd</sup> accused) and Biautubu (4<sup>th</sup> accused) had agreed to join the enterprise and Waisale recruited Domonibutu (5<sup>th</sup> accused)

- [6] On 1<sup>st</sup> November 2010, the Anselme family settled down for the night. Jone and Vilimaina also went to their beds. At 4.00am on 2<sup>nd</sup> November the house was invaded by the gang.
- [7] Waisale and Domonibitu lived in Lami and they planned to travel to the West on 1<sup>st</sup> November 2010. They hired a taxi from Suva to take them. They told the driver that they were going to Lautoka to pick up beche-de-mer. They arrived in the taxi at 3.00am at Drasa seaside where by arrangement they picked up the others in the gang. The group directed the taxi to the Anselme residence which was pointed out to them all by Nalulu (1<sup>st</sup> accused). Weapons were distributed amongst the group and these weapons included knives and iron rods. After conferring together it was decided that the assault would be twofold: an invasion of the house to get cash and valuables and an invasion of the security guard's room to get the bulk store keys. They would carry this out masked and armed with their weapons.
- [8] Nalulu (1<sup>st</sup> accused) kicked open the door to Jone's room and he entered along with Waisele (2<sup>nd</sup> accused). They grabbed the keys to the store but Jone tried to resist them. He was hit on the head with an iron rod resulting in a 2cm to 3 cm wound to his forehead which was deep and needed to be sutured.
- [9] At the same time as events described in paragraph 8 were taking place, Domonibitu (5<sup>th</sup> accused) kicked open the door to the residence and with 3<sup>rd</sup> accused and 4<sup>th</sup> accused he entered the hallway. Jose and Neila (Mr & Mrs Anselme) jumped out of bed and Jone went to investigate. Roger Anselme (aged 16) met his father in the hallway and then went into the parents' bedroom where he and his mother tried to barricade the door to prevent entry.

- [10] Jose (Mr Anselme) was still in the hallway and he engaged in a struggle with Domonibitu (5<sup>th</sup> accused) in the course of which Jose was stabbed “many times” in the stomach. Jose fell to the ground and when he tried to get up to call for help 3<sup>rd</sup> accused and 4<sup>th</sup> accused forcible prevented him from getting up.
- [11] The gang managed to gain entry to the parents bedroom where Roger was. They assaulted him on the face resulting in contusions and bruises. Mrs Anselme had left to go to the neighbor to call for help. The group took Jose’s mobile phone and a Brica digital camera. They also took several other smaller items being the property of Mr & Mrs Anselme.
- [12] Vilimaina (the housekeeper) had been woken up by the melee and tried to flee the house. She was grabbed and brought back and her watch, handbag and wallet were stolen. There was \$85.00 cash in the wallet.
- [13] The group then unsuccessfully tried to enter the bulk store but being unable to, rushed back to the taxi and drove away.
- [14] Jose (Mr Anselme) lay in the house bleeding from his stomach. He succumbed at 6.00pm on 2<sup>nd</sup> November, the cause of death being “excessive blood loss from multiple stab wounds”.
- [15] The taxi conveyed three of the group back to Lautoka and the other two back to Lami Town. The driver being suspicious of the groups actions alerted the police. Acting on his information, all five were arrested and interviewed under caution and all five made admissions.

### **Manslaughter:**

- [16] The maximum penalty for manslaughter contrary to S.239 of the Crimes Decree is a term of imprisonment of 25 years. The authoritative and accepted range of sentences for this crime is very wide, from suspended sentences to 12 years imprisonment. Sentences at the lower end of the tariff band are issued for cases where the accused has been severely provoked into engaging in conduct and at the upper end cases where circumstances show that the accused without provocation intended very serious harm or was wildly reckless as to the risk that his conduct would cause very serious harm.
- [17] The actions of Domonibitu (5<sup>th</sup> accused) as part of the joint enterprise in repeatedly stabbing Mr Anselme in the stomach were actions far beyond the need to immobilize him and can only have been actions intended to cause very serious harm or actions displaying very wild recklessness. By taking knives into the residence every other accused must have recognized the foreseeability of their use to harm the occupants of the home. As such, this particular crime of manslaughter is very serious indeed and must attract a sentence at the top of the tariff band.

### **Robbery:**

- [18] The offence of aggravated robbery contrary to S.311 (b) of the Crimes Decree 2009 carries a maximum penalty of 20 years imprisonment. A robbery can be aggravated either by being perpetrated by more than one person or perpetrated with offensive weapons which is the charge laid by the State in this case. The cases decided under the old offence of Robbery with Violence under the Penal Code are still good authorities for sentence of this offence. In **Elia Manoa** HAC 108 of 2009, Goundar J confirmed the previous authorities of **Basa**, **Wainigolo** and **Rokonabete**

which established a tariff of 8 to 14 years to be still relevant for this Crimes Decree offence. Goundar J recognized that the maximum penalty for the new offence was less than the maximum for the old Penal Code offence but nevertheless held that the tariff of 8 to 14 years should still be applicable. Thus Court would agree and adopt that range for these two robberies.

**Act with Intent:**

[19] The maximum penalty for act with intent to cause grievous harm contrary to Section 255(a) of the Crimes Decree 2009 is life imprisonment. Despite the accepted tariff being between 6 months and 5 years (as set by Shameem J in **Mokubula** (2003) FJHC 164) much higher sentences have been passed when the circumstances dictate. In **Tuigulagula** HAC 81 of 2010 this Court passed a sentence of six years on a husband who did very serious harm to his wife. The penalty being life imprisonment, it is to be regarded as a very serious offence indeed and sentences of up to 8 years would not be out of order.

[20] In the instant case, the act of hitting the security guard/caretaker over the head with an iron rod is not a trivial act. Attacks to the head, which is a very vulnerable part of the body should attract additional aggravating penalty of 18 months to 2 years on top of the sentence being contemplated.

**Assault:**

[21] Assault occasioning actual bodily harm contrary to S. 275 (a) of the Crimes Decree 2009 carries a maximum penalty of five years.



**Mitigation:**

[22] Legal Aid Counsel has filed very helpful written submissions in mitigation and State Counsel has handed up 2 victim impact reports. This Court has read and taken into account all of these matters.

**Sentencing:**

[23] Given that the crimes admitted here are without doubt crimes committed in the course of a joint enterprise, common sentences will be passed for each of the five offences and then adjustments to those sentences will be made in respect of each of the 5 accused taking into account that accused's peculiar circumstances.

[24] Aggravating features in common for all these offences are:

- (i) Night time invasion;
- (ii) Use of masks creating more fear;
- (iii) Abuse of prior knowledge of layout and availability;
- (iv) Considerable pre-planning of the robberies;
- (v) Considerable destruction of property.

[25] For the offence of manslaughter I adopt a starting point of 10 years imprisonment. For the aggravating features referred to in paragraph 23 thereof I add five years to that total meaning that the base sentence for manslaughter is fifteen years imprisonment. I realize that this sentence is above the accepted "tariff" for manslaughter, however the homicide was particularly violent and senseless and has had a lasting and damaging psychological effect on the wife of the deceased. The deceased himself was doing no more than defending his family and possessions in

his own home so he cannot be said to have been acting provocatively in any way.

- [26] For the two aggravating robbery offences (Counts 2 and 3) I take a starting point of 9 years and add 5 years for the aggravating features. These robberies were very violent and the weapons used were very dangerous. Neither Mrs Neila Anselme nor her son are able to settle or sleep following this violent and very fearsome attack. The final sentence for each robbery count is a term of imprisonment of 14 years.
- [27] The assault with intent to do grievous harm was dangerous and deliberate. I take a starting point of 6 years and add 2 years to that for an attack to the head which is a serious aggravating feature.
- [28] For the common assault to Roger Anselme I pass a sentence of 2 years.
- [29] Pursuant to S.17 of the Sentencing & Penalties Decree I impose an aggregate sentence for all of these 5 offences of 15 years and it is this aggregate sentence that I use as my base to make individual adjustments for each particular accused.

**First accused Seremaia Nalulu:**

- [30] The first accused was without doubt the ring leader and guiding force in this horrific irruption. He had previously worked for the Anselmes but had been dismissed and was aggrieved. He organized the whole robbery and chose the “team”. He was a friend of Roger, the son who looked up to him as an elder “brother” and the 1<sup>st</sup> accused betrayed that trust.
- [31] Nalulu is 24 and lives in Lautoka where he works as a diver for around \$150 per week. He lives with his defacto wife and supports his father.

He has one 5 year old previous conviction for rape which cannot afford him credit for previous good behavior.

- [32] From the base aggregate of 15 years, I add three more years for the aggravating features referred to in paragraph 29 (*supra*) bringing his sentence up to 18 years. He has no mitigating factors to consider apart from his plea of guilty (at a late stage). He has also spent 8 months in custody awaiting determination of these proceedings. For his plea of guilty and his time in remand I deduct 6 years meaning that he will serve a total term of imprisonment of 12 years. He will serve a minimum term of 10 years before being eligible for parole.

**Second accused Suliano Waisale:**

- [33] The second accused is related to Nalulu the first accused and living in Lami. He had brought up a friend from there (5<sup>th</sup> accused) to be part of the team. He does not appear to have played any additional role in this enterprise which would warrant an additional sentence for aggravation.
- [34] Waisale is 25 years old from Nausori and works as a farmer for \$100 per week. He has a defacto partner and they have 2 young children aged 3 years and 1 year. He has no previous convictions and has spent 14 months in remand.
- [35] From the fifteen year “base”, there is nothing to add. His biggest mitigating factor is his late plea of guilty. For his plea and time in remand I deduct 5 years from the sentence. For his relative youth and clear record one further year, meaning that the second accused’s sentence is one of 9 years. He will serve a minimum of 7 years before being eligible for parole.

**Third accused Waisake Tokamalua:**

[36] Tokamalua is aged 23 and works in Lautoka as a farmer earning approximately \$50 per week. He is single and lives with his parents and brothers. He is actively involved in youth and community work. He has no previous convictions. He has been in remand for about 11 months.

[37] From the 15 year base I deduct 5 years for Tokamalua's plea of guilty and time spent in remand. I deduct a further year for his clear record and his community work. He will serve a sentence of 9 years and will not be eligible for parole until he has served 7 years.

**Fourth accused Kalaboso Biautubu:**

[38] Biautubu is 23 years old and lives in Lautoka where he cuts cane and does piecemeal woodwork for a Chinese businessman. He earns about \$100 per week. He is in a defacto relationship and has a 3 year old child. He also cares for his elderly father and his sisters. He has one previous conviction for theft in 2011. He has been in remand for about 8 months.

[39] From the 15 year base I deduct 5 years for his plea of guilty and his time in remand. He can receive no further credit for good character. He will serve a total term of 10 years for all of these offences and he will serve a minimum term of 8 years before being eligible for parole.

**Fifth accused Netani Domonibitu:**

[40] Domonibitu is 30 years old and a fisherman from Lami. He earns about \$800 per month and is single, living with his parents and sisters. He has

6 previous convictions, 4 of which are “alive”. He has been in remand for 8 months.

[41] From the 15 year base, I deduct 5 years for his late plea of guilty and time spent in remand. His previous convictions do not allow for any further deductions. He will service a sentence of 10 years and will be eligible for parole after serving 8 years.

P. Madigan  
**Judge**

**At Lautoka**  
**23 July 2013**

**Solicitors: The Office of the Director of Public Prosecutions for State.**  
**Legal Aid Commission for the Accused.**

