

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

CR 59, 60 & 61 of 2010

REX

-V-

- 1. SULIASI FILIMONE**
- 2. FUNGATAPU NGAVISI**
- 3. LISALA TU'AEFE**

BEFORE THE HON. MR. JUSTICE SHUSTER

HAVING HEARD from Crown Counsel, Mr. Tu'utafavia and from each of the defendants in person

HISTORY- On the 16th April 2010 the defendants appeared before Ford CJ for arraignment on charges of murder, in the alternate manslaughter and Grievous Bodily harm.

The court record indicates the case was adjourned until 30th April 2010 and the accused were each remanded in custody.

The court record indicates that on 21st April 2010 the defendants were all granted bail by Ford CJ and the arraignment was fixed for 30th April 2010.

On 30th April 2010 the three defendants appeared before Ford CJ and they were formally arraigned. Each of the three defendants pleaded NOT GUILTY to each of the three counts alleged in the indictment.

The court record indicates the case was fixed for trial by a Judge and Jury and set for trial on 4th October 2010 before Ford CJ. The court record indicates a formal PTC was to be held on the 10th September 2010 before Ford CJ.

On 30th September 2010 the file was further reviewed and the case was adjourned - due to the shortage of judges.

A further trial date was set and it was canvassed whether the defendants might plead guilty to the crime of manslaughter with both the prosecution and the defence in view of the young ages of the alleged defendants.

It was subsequently indicated to this court by Mr. Tu'utafaiva that he had discussed this case with the defendants and their families and counsel indicated a guilty plea to the second count of manslaughter.

This guilty plea indication was accepted as being in the public interest by the Crown and also the court and arrangements were made for the defendants to be re-arraigned on the second count.

On the 26th July 2011 the defendants were re-arraigned and each pleaded guilty to the crime of manslaughter. They were convicted of the crime of manslaughter, on a full facts basis. They were each first time offenders.

On the 26th July the defendants were remanded in custody for sentence because of the nature and the seriousness of the offence and its circumstances, a PSR was ordered for the 15th August 2011 at 09.30.

On 15th August 2011 defence counsel Mr. Tu'utafaiva requested an adjournment to Friday 19th August 2011 and, in view of the fact one of the PSR's remained outstanding, the court granted the defence application and the defendants were further remanded in custody to the 19th August 2011.

Having been found guilty on 26th July 2011 the defendants appeared in Court for sentencing.

Having considered all the facts and having heard from Counsel and from each of the three defendants - the defendants are sentenced as follows:-

COMMENT

The facts of this case are quite horrific. This is a case where this Court acting in the public interest MUST send - a strong message to other young individuals - that they must not behave as these three defendants did on the 11th December 2009 - when they banded together and they took a human life.

Each of the defendants has to his credit admitted his part in this horrific crime where a young man was hit on the back of his head by a rock resulting in his death.

The agreed or the admitted facts reveal that each defendant took some part in assaulting the victim whilst he was lying helpless on the ground by each defendant using weapons of offence - rocks and their feet.

The Post Mortem indicates the victims head was hit at least four times and that is clearly an aggravating feature to this crime.

My starting point for a crime like this with an adult over 18 years of age would be a sentence of 12-15 years imprisonment on a NOT guilty basis.

Because the defendants pleaded guilty - I will reduce that 12 year sentence to nine years for a guilty plea entered at the first available opportunity. I will further reduce that 9 years by 3 years to - SIX years imprisonment for each of the defendants because of their young age at the time of the offence and the fact that an apology was offered, and, it was accepted by the family of the deceased victim in the usual Tongan way.

I decline to further reduce the sentence further by way of a suspended sentence, because the circumstances revealed this was a particularly horrific, and therefore a very serious crime.

**THERE CAN BE NO DISPARITY IN SENTENCING SO EACH
DEFENDANT IS SENTENCED TO SERVE SIX YEARS IN PRISON
Effective from the date of their remand into custody - 26/07/2011**

DATED: 19 August 2011



J U D G E

T. L. Pici