

IN THE HIGH COURT OF FIJI
AT LABASA

CRIMINAL JURISDICTION

Criminal Case No: HAC064 of 2007

BETWEEN:

STATE

AND:

- 1. RUPENI MOCEI**
- 2. ESALA DELANA**
- 3. SAKIUSA TALEMAILODONI**
- 4. SIALENI TEMO**
- 5. SIMIONE NABECA**

Counsel: Mr. M. Korovou for State
Mr. Tevere & Mr. Lee for all Accused persons

Date of Hearing: 2 – 25 March 2009

Date of Sentence: 12 June 2009

SENTENCE

[1] All five accused persons have been convicted of manslaughter. The sentences for this offence range from suspended sentence to 12 years imprisonment based on the circumstances of killing in each case and the personal mitigating factors of the offender.

[2] Each accused person relies on the contents of the Social Enquiry Report that was compiled on their behalf by the Ministry for Women, Social Welfare & Poverty

Monitoring. The Report sets out the personal circumstances of each accused and I take those circumstances into account. I also take into account the matters advanced on behalf of each accused by their counsel.

- [3] Rupeni (the 1st Accused) is 46 years old and married with four children. He is a farmer by profession.
- [4] Esala (the 2nd Accused) is 52 years old and married with six children. He is a commercial farmer and a fisherman by profession.
- [5] Sakiusa (the 3rd Accused) is married with one child. He is 43 years old and works as a labourer at the Public Works Department.
- [6] Sialeni (the 4th Accused) is married and has 2 children. He is 42 years old and a farmer by profession.
- [7] Simione (the 5th Accused) is 25 years old and single. He is a farmer.
- [8] Each accused has grown up in a rural community and did not have the advantage of pursuing higher education. They all have families who are depended on them for their livelihood. A custodial sentence will cause hardships to their families.
- [9] I treat each accused as a person of previous good character. According to their character references, the conduct of the accused persons that led to the death of the victim was out of character.

- [10] The deceased was 72 years old. He was a claimant to the traditional title of "*Buli Raviravi*" in the tikina of Vuya. This particular title is a high-ranking chiefly title in Nabouwalu Village.
- [11] The accused persons belonged to a faction in the village that opposed the deceased's claim to the title. The villagers were divided. One faction supported the deceased and the other opposed the deceased.
- [12] On 25 September 2007, the deceased learnt that the bamboo posts he had arranged to build sheds for his installation ceremony on 28 September 2007, had been destroyed by the faction opposing him. The deceased was angry. He swore at those who destroyed the bamboo posts. Together with his faction, they confronted the group opposing him. They threw stones at the village hall where the accused persons were having a meeting.
- [13] The accused persons retaliated to the assault on them. They punched the deceased and struck him with bamboo stick. The deceased's skull was fractured and his brain was damaged. He died due to those injuries.
- [14] This is not a case of minimum violence and of extreme provocation.
- [15] An elderly man was ferociously attacked by a group of men who were younger in age than him. The gravity of the assault on the deceased was disproportionate to any provocation by the deceased. The deceased was provoked as well by the conduct of the accused persons or their faction who were being obstructive by destroying bamboo posts that the deceased had arranged to hold a ceremony for his installation to the chiefly title.

[16] It is rather unfortunate that the dispute between the deceased and the accused persons were not resolved amicably by understanding, dialogue and listening. These essential virtues of the Fijian society have helped the peaceful communal living in villages to exist for centuries. There is no place for use of violence to resolve disputes over traditional titles in the manner that was done in this case.

[17] Society cannot condone any act of violence that leads to loss of a human life.

[18] Clearly a deterrent sentence is called for to denounce the taking away of a human life in this case. Since this was a joint enterprise, I do not draw any distinction in the individual culpability of the accused persons. Each accused has served one month and two weeks in remand before bail was granted.

[19] Taking these matters into account, each accused is sentenced to 4 years imprisonment.

[20] In summary, the sentences are:

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|------|-----------------------|---|----------------------|
| i] | Rupeni Mocei | - | 4 years imprisonment |
| ii] | Esala Delana | - | 4 years imprisonment |
| iii] | Sakiusa Talemailodoni | - | 4 years imprisonment |
| iv] | Sialeni Temo | - | 4 years imprisonment |
| v] | Simione Nabeca | - | 4 years imprisonment |

[Daniel Goundar]

Judge

At Labasa
12th June 2009