

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 261 OF 2015S

STATE

vs

1. JOSAIA VUSUYA
2. KELEPI SAMUTA QAQA
3. TEVITA DAKUITURAGA

Counsels : Ms. S. Serukai and Ms. S. Tivao for State
Ms. A. Tuiketeei and Mr. S. Vuki for Accused No. 1
Ms. T. Kean for Accused No. 2
Ms. E. Leweni for Accused No. 3

Hearings : 27 to 31 March, 3, 6, 7, 10 and 11 April, 2017

Summing Up : 13 April, 2017

Judgment : 18 April, 2017

Sentence : 19 April, 2017

SENTENCE

1. In a judgment delivered yesterday, the accuseds were found guilty and convicted on the following counts in the following information:

FIRST COUNT

Statement of Offence

MURDER: Contrary to section 237 of the Crimes Act No. 44 of 2009.

Particulars of Offence

JOSAIA VUSUYA, KELEPI SAMUTA QAQA and TEVITA DAKUITURAGA on the 18th day of July 2015 at Nausori, in the Central Division, murdered EPINERI WAQAWAI.

SECOND COUNT

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 255(a) of the Crimes Act No. 44 of 2009.

Particulars of Offence

KELEPI SAMUTA QAQA on the 18th day of July, 2015 at Nausori in the Central Division, with intent to cause grievous harm to SAVENACA NAITABA unlawfully wounded the said SAVENACA NAITABA by hitting his head with a beer glass.

2. The facts of the case were as follows. On 18 July 2015 at about 9pm, the deceased and his younger brother, Savenaca (PW1) were at the Bridge Nightclub, Nausori. They were consuming liquor and having a good time. Kelepi (Accused No. 2) and two friends joined Savenaca and the deceased. They started to consume liquor together. After a while Savenaca and the deceased decided to leave the nightclub and visit the Whishling Duck nightclub. When they went outside the Bridge Nightclub, Kelepi confronted the two over his alleged money. The brothers denied taking his money and the three parted ways.
3. While walking near RB Patel Supermarket, Kelepi suddenly re-appeared and punched Savenaca twice. While doing so, he injured Savenaca's head with a broken beer glass. Kelepi and Tevita (Accused No. 3) then attacked the deceased by repeatedly punching him. They fought a moving battle from Brown Lane to Ross Street Nausori to the back of Westpac Bank. Josaia later join the two by felling the deceased with a straight left hand punch to his jaw. The deceased fell on the concrete ground. Josaia, Kelepi and Tevita then repeatedly stomped the deceased on the face, chest and body. Two days later the deceased died of massive brain injuries as a result of the above assaults. The accuseds were later charged for the deceased's murder. Kelepi was also charged with wounding Savenaca with a broken beer glass when he punched Save's head, while holding the same.

4. There is only one penalty for murder, and that was mandatory life imprisonment. However, the court had a discretion to set a minimum term of imprisonment to be served before a pardon may be considered by His Excellency the President of the Republic of Fiji (section 237 of the Crimes Act 2009).
5. In this case, the violence used by the accuseds against the deceased and his brother, Savenaca, were totally unnecessary and uncalled for. The brothers visited the Bridge Nightclub to enjoy themselves. They were drinking liquor with others. Kelepi and his friends joined them. They consumed liquor together. Instead of making the evening an enjoyable one, Kelepi began to pick a fight with Savenaca and his brother, the deceased. Kelepi accused the brothers of taking his money.
6. An argument erupted. Kelepi punched Savenaca twice, and injured his head with a broken beer glass. Kelepi and Tevita then ganged up on Epineri and repeatedly assaulted him with several punches. Later Josaia joined the two and fell the deceased with a hard left punch. The deceased fell on the ground unconscious. Josaia, Kelepi and Tevita then repeatedly stomped him. The deceased died 2 days later as a result of the above assaults. This was a senseless killing that had caused Epineri's family heartache and sadness. They had lost a loved one. The accused must not complain when they lose their liberty to atone for their misdeed.
7. As for Josaia and Kelepi, I note that you two have not offended in the last 10 years. As for Tevita, you have two "larceny" convictions in 2007 and 2009. Josaia, I have taken note of your counsel's well written plea in mitigation. I have noted what she said in the mitigation. Likewise, Kelepi, I have taken note of your counsel's well written plea in mitigation. I have also noted what she said in the mitigation. The same goes for you Tevita. I have taken note of your counsel's well written plea in mitigation. I have noted what she said in the mitigation. I note that all of you had been remanded in custody for 1 year 8 months and 18 days.
8. While taking the above factors into account, on count no. 1 (murder), I sentence all of you (Josaia, Kelepi and Tevita) to the mandatory life imprisonment, with a minimum term of 15 years imprisonment to be served, before a pardon may be considered by His Excellency the President of the Republic of Fiji.

9. For count no. 2 (act with intent to cause grievous harm), I sentence Kelepi to 5 years imprisonment, this to be concurrent to the sentence in count no. 1 above.
10. The above sentence are designed to punish you in a manner that is just, to protect the community from would-be offenders, to deter others and to signify that the court and community denounce what all of you did on 18 July 2015 to the deceased and his brother, Savenaca.
11. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE

Solicitor for State : **Office of the Director of Public Prosecution, Nausori.**
Solicitor for Accused No. 1 : **Ana Tuiketeki, Barrister and Solicitor, Suva.**
Solicitor for Accused No. 2 : **Legal Aid Commission, Suva.**
Solicitor for Accused No. 3 : **E. Leweni, Barrister and Solicitor, Suva.**