

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

**Criminal Case No: HAC012 of 2013**

**BETWEEN** : **THE STATE**

**AND** : **SAINI PINAU**  
**MELI BATIVIA**  
**EMOSI TALEMAIBUA (a Juvenile)**

**BEFORE** : **HON. MR. JUSTICE PAUL MADIGAN**

Counsel : Mr. L. Fotofili for State  
Mr. J. Savou (L.A.C.) for 1<sup>st</sup> Accused  
Ms N. Nawasaitoga (L.A.C.) for 2<sup>nd</sup> Accused  
Mr. N. Sharma (L.A.C.) for 3<sup>rd</sup> Accused

Dates of hearing : 4 & 8 April 2013  
Date of sentence : 18 April 2013

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**SENTENCE**

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[1] On the 4<sup>th</sup> April in this Court, each of these three accused entered pleas of guilty to a joint count of common assault, contrary to section 274(1) of the Crimes Decree 2009. On hearing those pleas and on agreement by each to an appropriate set of facts, the 1<sup>st</sup> and 2<sup>nd</sup> accused were found guilty of the offence. The third accused, being a juvenile is found guilty of the offence.

[2] The facts of the case were that on the 18<sup>th</sup> December 2012 at about 3.45am, all three accused were sleeping in a house in the Nanuku Settlement. The first accused woke when the victim had entered the house. He was seen to be holding a stereo system. The victim asked for cigarettes at which an argument erupted as it was thought that the victim had entered the house to steal. The victim was swearing and was seemingly drunk. The victim punched the first accused on the mouth which angered the first accused who punched him on the chest and back. Both the second and third accused were awoken by this fracas and joined in with punches. The second accused received a scratch on his hand from a sharp instrument the victim was holding. The fight moved outside where the victim fell into a drain but he managed to escape and run home.

[3] All three accused were taken to the Nabua Police Station where they were interviewed. Each one co-operated and admitted assaulting the victim.

### **Mitigation**

[4] The first accused is 21 years old and single. He worked as a machine operator earning \$180 per week. Whilst working he was the sole breadwinner for his family. He has a hitherto clean record.

[5] In mitigation, the first accused said that the victim, who he perceived to be stealing his stereo, swore at him and punched him first in the face, thereby raising his ire.

[6] The second accused is 22 years old and has been educated to Form 4. He is single and has previously earned income from playing golf professionally. He sponsors his sister's education. He plans to study engineering at FNU and then migrate.

- [7] With reference to the offence, the second accused says that he became angry when the intruder swore at him and had seen this intruder fighting with his friends. He joined in to try and stop the fight.
- [8] The third accused is a juvenile aged 17 years (born on 13 June 1995). He is single and lives with his parents in Vatuwaqa. He is a first year student at Nabua Secondary School. He is from an impoverished family and has 2 siblings. He has no previous record and has pleaded guilty at a very early stage of proceedings. He expresses remorse for the crime.
- [9] As to the offence, the third accused says that he was merely assisting his friends and when the intruder swore at him he only punched the victim twice on the shoulder and on the back.

### **Law**

- [10] The maximum sentence for common assault is one year imprisonment; there is no set tariff and it is therefore left to the discretion of the sentencing tribunal to pass an appropriate sentence. Suspended sentences are not uncommon.

### **Discussion**

- [11] I am acutely aware of the extreme youth of these offenders, (and in fact one is legally a juvenile for whom special considerations apply). There was a large degree of provocation occasioned to the offenders, by a drunken youth who had at a very early hour invaded the house which they were protecting from looters following a flood. This drunken youth was swearing and seemingly about to help himself to stereo equipment belonging to the house. The assaults were not particularly serious. According to the facts they amount to no more than punches. The first accused was retaliating because the youth hit him first.

- [12] The level of offending is not high; there was a lot of provocation, no weapons were used and the facts do not disclose any injuries. The accused are but 21, 22 and 17 respectively and they have entered pleas of guilty at an early opportunity. They all have clear records and all express a wish to further their education. They are not a menace to society.
- [13] Pursuant to section 15(1)(f) of the Sentencing and Penalties Decree 2009, I order that the first and second accused be found guilty with no conviction recorded and a fine to be paid by each of \$250 within 28 days.
- [14] Pursuant to the Juvenile Act, I find the charge proved against the third accused and I order that he be discharged forthwith.
- [15] There is to be no publication of the names of these accused in the media.

Paul K. Madigan  
**JUDGE**

At Suva  
18 April 2013