

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

High Court Criminal Case No. 41 of 2014

STATE

v.

TOMASI TAKAKA

Counsel: Mr. L. Fotofili for the State
Mr. M. Fesaitu (L.A.C.) for the Accused

Dates of Trial: 6, 7, 8 July 2015
Date of Conviction: 8 July 2015
Date of this Sentence: 10 July 2015

SENTENCE

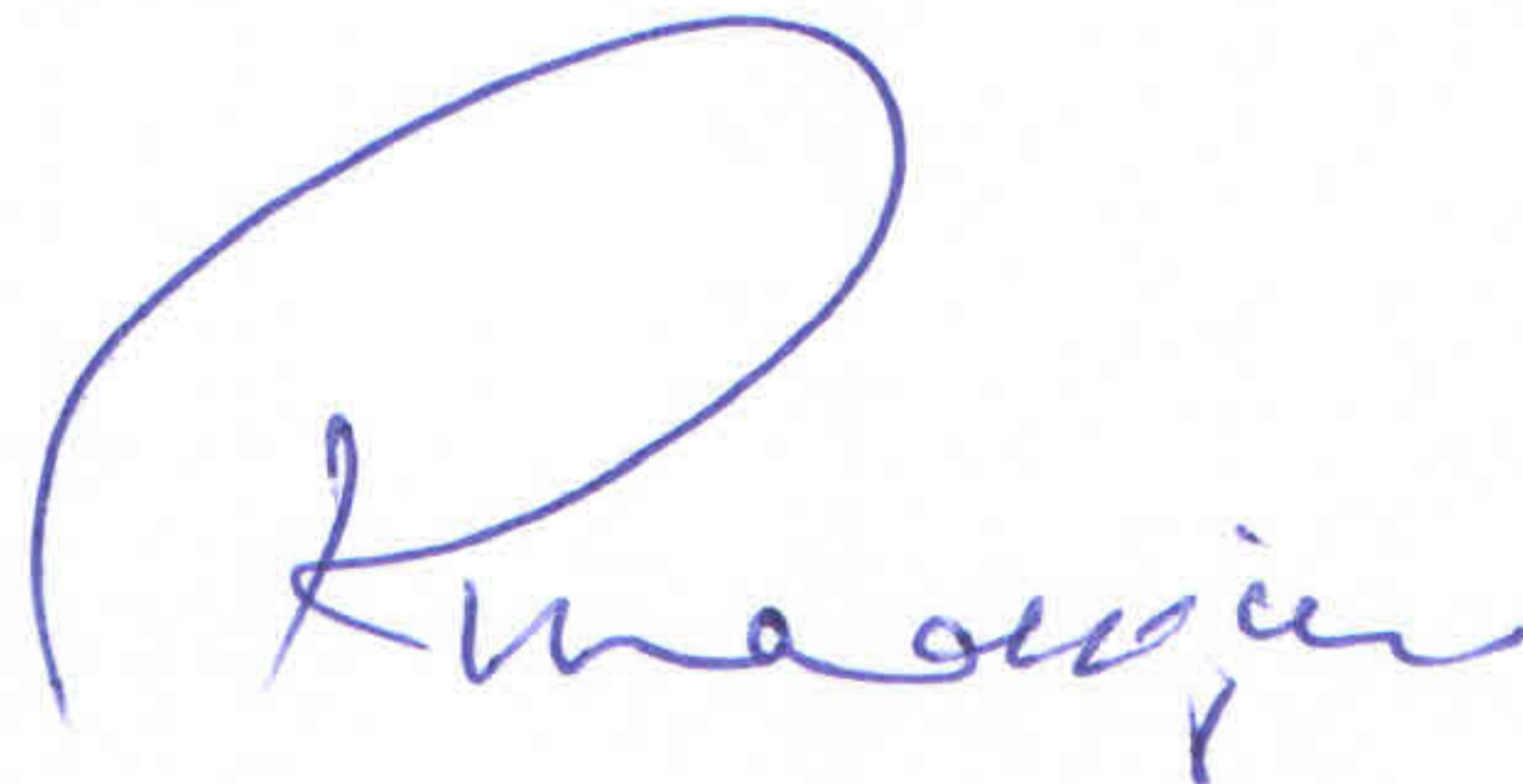
1. TOMASI TAKAKA has been convicted by this Court of one count of manslaughter consequent to a finding of guilty after trial on a charge of murder. He had on the first day of trial entered a plea of guilty to this lesser offence which was not accepted by the State.
2. The facts of the case were that on the 26th August 2014 on the island of Rabi, in the village of Uma, a group of young men spent a night drinking toddy after a church fundraising event. As the night wore on there appeared to be some ill feeling arising between the accused and the deceased and before too long a fist fight ensued.

All others left the scene while these two fought. The accused quite frankly described the fight in evidence he gave to the Court. In a darkened room in a house used by the village for community meetings, the deceased was brought to the concrete floor by the accused who continued his assault by kicking his head and even at one stage stamping on it. The pathologist described injuries of major severity and said that excessive force must have been used to cause the injuries that killed the deceased. The cause of death was a haemorrhage to the brain caused by extensive haemorrhaging to the scalp face and neck of the deceased.

3. The accused was at the time a 20 year old farmer from Rabi. He was the eldest of 7 siblings and had been educated to Form IV. He has a clear record. He expressed remorse for the event and that remorse was quite evident to the Court.
4. The maximum penalty for manslaughter is 25 years imprisonment and the accepted range of sentences (ie tariff) is from suspended sentence where the provocation has been high to 12 years imprisonment where there is no provocation and where the accused intended very serious harm or was wildly reckless as to the result.
5. Although the facts of this case would place the culpability of the accused at the upper end of the tariff he must receive credit for his willingness to plead to this charge before trial.
6. It was unfortunate that the D.P.P. did not accept this plea, but it did enable a lot of the facts to be agreed, thereby shortening what could have been a lengthy trial.

7. I take as a starting point for this offence a term of 8 years imprisonment and for his co-operation by pleading guilty and agreeing the prosecution evidence I reduce that term by 2 years to arrive at an interim total of 6 years imprisonment. For his clear record and remorse I deduct a period of 18 months leaving a term of 4 years and 6 months. He has been in custody for this offence for 15 months awaiting trial and that too must be deducted.

8. The accused will serve a total term for this offence of three years and 3 months (39 months). He will serve a minimum term of 30 months before being eligible for parole.



P.K. Madigan
Judge

At Labasa
10 July, 2015

