

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

CRIM. NO. S. 364/98 & S.540/98

BETWEEN: POLICE

Informant

A N D: NICKY AH KUOI, male of
Sapapalii Savaii and Tulaele

Defendant

Counsel: G Latu for informant
T K Enari for defendant

Hearing: 15 & 16 October 1998

Sentencing: 3 November 1998

ORAL SENTENCING OF SAPOLU, CJ

I accept what defence counsel has submitted that the accused's previous convictions are related to traffic offences and that the accused be treated as a first offender for present purposes.

I take into account in assessing what should be the appropriate penalty in this case what counsel for the defence has submitted in mitigation. I have also perused the probation report on the defendant and I take into account his personal circumstances.

Now in this case it has been pressed for the accused that his actions were careless or negligent. In my view they were very dangerous. For the defendant to place the mouth of the gun on the face of the deceased while the deceased was sleeping on the bed and then tapped the deceased's nose with the mouth of the gun is quite a dangerous act. The defendant says in his police statement that he had no knowledge that the gun was loaded, but he should still have exercised great care when placing the mouth of this gun on the face of the deceased while the latter was asleep. The accused's action may also be said to have been very careless when he placed the mouth of the gun on the face of the deceased if he did not know that the gun had a bullet inside. He should have checked to make sure before he put the gun on the face of the deceased that there was no live cartridge inside the gun.

Even though there were suggestions at the trial that the accused's action in discharging the gun was sudden and perhaps accidental, from the demonstration given by witnesses as to how this gun is to be discharged, namely, that you first click the gun downwards, then the cartridge would come up and go into the barrel of the gun, and then you pull the trigger, I take the view that the discharging of the gun by the defendant towards the deceased in this case could not have been accidental or sudden, given the demonstration as to how this gun is to be discharged. The assessors verdict of guilty of the charge also does not lend support to the view that the gun went off accidentally.

In weighing all these circumstances together with the mitigating factors that counsel for the defendant has placed before the Court, the defendant is convicted and sentenced to four(4) years imprisonment.

T. F. M. Sapaku
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CHIEF JUSTICE

Solicitors:

Attorney-General's Office, of Apia for informant
Kruse, Enari & Barlow Law Firm, of Apia for defendant