

IN THE COURT OF APPEAL OF TONGA

CRIMINAL JURISDICTION

AC 3 of 2014

NUKU'ALOFA REGISTRY

[CR143 of 2009]

BETWEEN : SELINO LATU

- **Appellant**

AND : REX

- **Respondent**

**Coram : Salmon J
Blanchard J
Ward J**

**Counsel : Mr L. Niu SC for the Appellant
Mr S. Sisifa for the Respondent**

Date of Hearing : 31 March 2014

Date of Judgment: 9 April 2014

JUDGMENT OF THE COURT

- [1] This appeal is against concurrent sentences totalling 14 years imprisonment on 3 counts of rape and 2 of indecent assault imposed in the Supreme Court on 17th May 2011.
- [2] An application for leave to appeal out of time was granted by the President of the Court of Appeal on 22nd January 2014.

Background

- [3] The victim, who was 24 years of age at the time of the offending, had been the 31 year old appellant's girlfriend for 1 or 2 years. On the appellant's return from 3 months in New Zealand, the victim told him that she no longer wished to be his girlfriend. Sometime later the appellant went to see the victim and, after an argument, threatened the victim with a knife and took her to a bush area where he raped and indecently assaulted her.
- [4] The appellant then took the victim to an unused building used by the Vava'u Guest House where he again indecently assaulted her. The following morning he took her to another building in the same complex and raped her twice.

[5] Later in the day the victim was able to signal an employee at the Guest House who called for help.

[6] When charged, the appellant pleaded not guilty and continued to maintain his innocence even after he was tried by a Jury and convicted. In sentencing him the judge referred to previous convictions and that the current offending occurred while the appellant was on bail. He sentenced the appellant to 14 years in prison on each of the rape charges and to 18 months on each of the indecent assault counts, all sentences to be served concurrently. The maximum sentence for rape in Tonga is 15 years imprisonment. We were told by the Crown that the previous offending was for drunkenness and trespassing.

Submissions from Counsel

[7] Mr Niu emphasised that after the initial threat with the knife there was no physical injury. He also told us that the appellant now admits his guilt and that he has been an exemplary prisoner. He says the appellant is now remorseful and deeply regrets the offending.

- [8] Mr Niu referred us to a number of sentences in rape cases and submitted that the appropriate penalty was 5 years imprisonment with the final 2 years suspended.
- [9] For the Crown Mr Sisifa also referred to a number of comparable sentencing cases and acknowledged that the sentence imposed was manifestly excessive. He submitted that the appropriate sentencing range was 6 – 8 years.

Discussion

- [10] We consider the aggravating features of this offending to be the multiple rapes and assaults, the effective detaining of the victim for some 24 hours and the use of a knife to threaten the victim. We also note that the victim lost her virginity as a result of this offending and that the appellant continued to maintain his innocence after he was convicted.
- [11] The only mitigating feature is that he has no serious previous convictions. The appellant is a single man who lives with his mother.

[12] In *Fa'aoso v R* [1996] Tonga LR 42 this Court held that the appropriate starting point when sentencing for rape was 5 years imprisonment. That level can be increased for aggravating and decreased for mitigating features. It is useful to repeat what the Court said about the sentencing process in that case at p44:

“Assessing an appropriate sentence following a conviction has always been recognised as a difficult task. This is so particularly when assessing the length of a prison sentence, where such a sentence is required. The sentencing judge must have regard to such factors as the seriousness of the crime, the maximum sentence prescribed, the need to deter others, sentences imposed in other similar cases to achieve consistency, any sentencing guidelines given by an appellate court, the desirability of encouraging rehabilitation, the need to show society's rejection of the conduct, and any aggravating features such as the accused's previous criminal history, the effect on a victim, the age of the victim, the degree of any violence, and the use of a weapon. Mitigating factors may include the age of the accused, an early plea of guilty, genuine expressions of remorse, any relevant medical, psychological, or other condition, the accused's standing in the community, and his family and personal circumstances. There will often be other factors to be taken into account in aggravation or mitigation.”

[13] After considering the sentences imposed in the cases referred to us, we conclude that because the aggravating features seriously

outweigh the only mitigating feature, a sentence of 8 years imprisonment is appropriate. To encourage what we understand to be a serious attempt to rehabilitate himself we are prepared to suspend the final year of that sentence.

Result

[14] The appeal is allowed. The sentences in the Supreme Court relating to the rape charges are quashed and replaced with sentences of 8 years imprisonment. The sentences on the indecent assault charges remain. All sentences are to be served concurrently. The last year of the total 8 year sentence is suspended for 2 years.



.....
Salmon J

.....
Blanchard J

.....
Ward J