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IN THE TONGAN COURT OF APPEAL

CASE NO. 343/1992

BETWEEN : PENISIMANI TANGI - Appellant;

AND : R E X - Respondent.

CORAM : Mr Justice Roper  
Mr Justice Ryan  
Mr Justice Morling

COUNSEL : Miss Tonga for Appellant  
Solicitor General for Respondent

HEARING : 15 June 1993

JUDGMENT : 15 June 1993

ORAL JUDGMENT OF THE COURT DELIVERED BY ROPER J

This is an appeal against conviction and sentence on a charge of rape. On the appeal against conviction Miss Tonga submitted that the learned trial Judge failed to tell the jury of the need for strong corroboration on a charge such as this; and that overall there was insufficient evidence to justify conviction. As to the failure to direct the jury on the question of corroboration, it is true that the learned trial Judge did not give a direction in express terms. But he did say this:

When you are looking at the evidence of the complainant, consider any other matters that you may feel support or don't support her case. Evidence is frequently strengthened if there is other evidence from another source that seems to assist or support that evidence. And the prosecution here suggest that the answers that this man gave to the police and the statement he made to the police a few days after

the incident give considerable support to the evidence that the complainant has given.

It is to be noted that in fact there is no statutory requirement in Tonga that a complainant's evidence be corroborated although as a matter of common sense it is desirable that a jury be told to consider such evidence with care.

In fact there was ample evidence corroborating the evidence of the complainant and it is only necessary to refer to one passage from the statement the appellant made to the police as follows:-

"The two of us sat at the back seat as we drove along and I started to touch Fokikovi. We got to the start of the hill at Tefisi. I touched her breast and she pushed me off and said to stop and we laughed. And as we drove along I started to form some bad designs towards Fokikovi. When we reached between Tefisi and Tu'anuku at the turn to Ha'amuni I stopped the car and told Fokikovi to get out and I told the taxi to go back. We walked along and as we walked along I asked her to have intercourse. She said to stop but I held her by the dress and led her to the mango tree. And I asked her again but she said "no" and I started to remove her clothes, pulled her dress and it came off, pulled her bra also and pulled her underpant. All the times Fokikovi kept saying to stop and lets just talked normally. But when her clothes have been removed I said "no"."

It is significant that all of the clothing the appellant said he removed forceably was torn.

In the result we find that there was no miscarriage of justice. The jury was presented with a fair and careful summing up and there was ample independent evidence confirming that intercourse without consent occurred.

As for the appeal against sentence it is true that this was not a case where significant force was used and there was no evidence of injuries.


For all that rape is a serious offence and substantial terms of imprisonment are inevitable.

Counsel has suggested that a sentence short of imprisonment should be imposed but that is unrealistic even though this is the appellant's first conviction for a serious offence. We have been assured by the Solicitor General that the sentence is well within the normal range and we see no reason to interfere with it.

The appeals against conviction and sentence are therefore dismissed.

  
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