

IN THE COURT OF APPEAL OF TONGA  
NUKU'ALOFA REGISTRY

file pls.  
App. No. 11/94

PA on  
24/4/95  
by [signature]

BETWEEN : 'ASIPALI SAILOSI - Appellant;

A N D : R E X - Respondent.

Coram : Ward CJ  
Burchett J  
Tompkins J

Mr. Hoha : for the Appellant  
Ms. Weigall : for the Respondent

Date of hearing : 3 March 1995  
Date of judgment : 3 March 1995

J U D G M E N T

The appellant appeared before Lewis J on 12 May 1994 and pleaded not guilty to one count each of rape, indecent assault and assault with intent to rape. He was convicted and sentenced to 4 years imprisonment on the count of rape but no separate penalty was ordered on the remaining two counts as the trial judge considered they "went along with the rape".

This is an appeal against that sentence of four years imprisonment.

24 APR 1995

The victim in the case was a woman of 55 years who had suffered for some years from diabetes and was, as a result, frail and suffering from breathlessness. At the time, the appellant was 53 years old.

Unfortunately the judgment does not give details of the incident but it appears the appellant was a friend of the victim and used to visit the victim and her husband in her home. On the date of the offence, he found her husband was not there and committed the rape. He had been drinking at the time. His defence was that she consented to the sexual intercourse.

The appeal against sentence is based on the fact that the appellant had no previous convictions and he was a useful and hardworking member of the community with a number of dependents. Counsel asked the Court to consider the hardship that imprisonment would cause to his family. It has been stated many times that this is not a matter the Court can take into consideration. No Court is unaware of the effect of imprisonment on innocent members of a convicted man's family but the responsibility for that rests squarely on him not the Court. It is a matter he should have considered before he committed the offence.

Counsel also submitted that this was not a particularly bad case of rape, a fact with which the learned judge clearly agreed because of the length of sentence imposed. We note the victim did suffer some physical injury but we accept there are few aggravating factors. Mr. Hala therefore asks the Court to suspend the sentence.

Rape is an extremely serious offence. As with all offences of serious violence, it is only in the most exceptional and rare circumstances that any sentence other than a substantial and immediate period of imprisonment would be appropriate.

For an offence of this nature and bearing in mind the mitigation, we do not consider a sentence of 4 years in any measure excessive.

The appeal against sentence is dismissed.

*Geoffrey Ward*

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