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IN THE SUPREME COURT OF TONGA
APPELLATE JURISDICTION
NUKU'ALOFA REGISTRY

AM 03 of 2021

BETWEEN : LILIETA TU'ITUPOU
- Appellant

AND : POLICE
- Respondent

JUDGMENT

BEFORE: HON JUSTICE TUPOU

Counsel: Mr. F. Vaihu for the Appellant
Ms. T. 'Aho for the Respondent

Hearing Date: 22 March 2021

Judgment Date: 30 March 2021

1. This is an appeal against the sentence made by Magistrate Pahulu Kuli in two criminal cases for common assault pursuant to section 112 where the Appellant pleaded guilty and was sentenced to 4 months imprisonment.

The grounds for appeal are –

- (i) This is the first time that she has been charged for a criminal offences.
- (ii) The Magistrate did not give her a chance to give her evidence on the allegation of common assault and she did not have a Counsel to help her.
- (iii) That her mother (complainant) had taught her as child to assault her father's mother as she have hatred to her father's family.
- (iv) That on the day the incident occurred her father's family had a funeral, her mother swore at her father (deceased) and his family. She could not hold her anger so she

chased and hit her mother with a machete while she ran out of the house calling help from their neighbour.

- (v) She regrets what she had done
- (vi) The sentence is too severe as this was the first time she committed offences and take into account the family surrounding that she grew up in.
- (vii) She asks that she be released on bail pending her appeal to the Supreme Court.

CHARGES

2. There were 2 criminal charges against the appellant in the Magistrate Court under summons issues on 16 February 2021.
 - a. Summons 125/21 that on 15 February 2021 you committed an assault contrary to section 112 (a) of the Criminal Offences Act in that you wilfully and without justification hit with the flat side of a Machete (cane knife) the left back side of Mahetani Tu'itupou.
 - b. Summons 126/21 you committed an assault contrary to section 112 (a) of the Criminal Act in that you wilfully and without lawful justification hit with a wooden board the back and thigh of Sisi 'Upolu Houa.
3. The Appellant pleaded guilty on both summons.

FACTS

4. On the 15 February 2021 in Fatumu , the Appellant was staying at home in the afternoon with her mother (Mahetani Tu'itupou) and her 4 year old daughter (Sisi 'Upolu Houa) the Appellant told her mother that there is a funeral in the family of her father. Her mother did not want to take any part in the funeral as she did not like the family of her father. The Appellant was very saddened and angry by the attitude of her mother so she went and got a machete to hit her mother with. The mother ran outside calling for help from the neighbours and the Appellant hit her bottom with the flat side of the machete before help came from the neighbour and stopped the assault.
5. The mother went to the Police Station and lodged her complaint about the attack. At the same time, she lodged a complaint on behalf of the Appellant's' 4-year-old daughter Sisi 'Upolu Houa who showed bruise marks on her body and leg. Medical evidence showed that these bruises were caused by a wooden board which was in the Court room with the machete.

SUBMISSION BY COUNSEL

6. At the hearing, the Appellant's counsel Mrs Vaihu went through the grounds of appeal. First she asserts that the Appellant was not given a chance to give her evidence. She was not represented by counsel and not familiar with court proceedings. I pointed to the transcript of the hearing where she explained that she told her mother that collections were requested for a funeral of the family of her father. Her mother said she will not take part in anything to do with her father's family. The Appellant was very upset and got the machete to hit her mother . The Magistrate asked her if there is anything else she was to say and she said no. Counsel for the Appellant said that the transcript could be wrong but this would be contrary to the everyday hearing by Magistrates that they always say, is there anything else you want to say, especially when the evidence is short like that of the Appellant.
7. The next point Counsel made was the Appellant had not committed or charged with a criminal offences. A police record produced showed that the Appellant had no previous conviction. Paragraph 12 of the judgment say that the Appellant has a criminal record. The reference would have been to an order made by the police or from the Organisation for the Prevention of the Abuse of women and children but not from the Court.
8. Counsel submit that the sentence is manifestly excessive in view of the Appellatn having 2 young children to look after, she is working and get \$150 a week and with her first payment, she bought some diapers and food and gave it to the police to deliver to her mother and children together with \$20.00. This is her first offence.
9. She also say that her mother taught her at a young age to hate her father's mother and relative. She threw water on her mother in law. I asked at what age did she do this and she said it was when she was in Class 4 which is about 10 years old.
10. Counsel submit that the Appellant may be going through a psychological trauma where her family surroundings and upbringing has affected her mind. She had lost her husband who left her and her mother does not like her father's family.

11. She is very remorseful and counsel submits that this may be an opportunity to take part in a course like Anger management course with the Salvation Army so that she can have a better future with her family.
12. Mr 'Aho for the Respondent also point to paragraph 12 of the Magistrate judgment which says that the Appellant had a previous criminal record and this was part of the reason for not suspending any part of the sentence. The Police record shows that the Appellant does not have a criminal record. For this reason, he does not oppose the appeal and submits that there should be a partial suspension of the sentences as this was her first criminal offence. He does not support a full suspension because of the use of a weapon (machete) for the assault. He therefore submit that the sentence should be suspended for the final 2 months with conditions set by the Court.

DISCUSSION

13. This is a very sad case involving a 30-year-old daughter assaulting her 54-year-old mother with a machete. In her emotional evidence before the Magistrate the mother said that she did not know what would have happened if her daughter had caught her inside the home before she ran out and call help from their neighbour. She also said that this was not the only time that her daughter attacked her as she had done this before with a hammer, a pipe and a board of wood. She says that she is afraid of her daughter and that she cannot stay with her anymore. She also described how her daughter hit her child with a board of wood which left bruises that a medical doctor confirmed to have been inflicted by a board of wood. The second charge is in respect of this assault on the daughter.
14. In her summing up, Magistrates Pahulu Kuli say that this assault is contrary to the 5th Commandment of the Ten Commandments to honour and respect your father and mother. It is also contrary to Tongan culture and customs for a child to attack his/her parents. The charge under section 112 (a) of the Criminal Offences Act is for a minor assault where no major injury is caused liable to a fine of \$5000.00 or 12 months' imprisonment. The attack by a daughter of her mother is much more serious.
15. It is correct that the Appellant does not have a criminal conviction. But the references by the Magistrate is a criminal record would have been in respect of a police order on a complaint of domestic violence.

CONCLUSION

16. I find that the judgment given by the Magistrate very clear with her reference to the Ten Commandments and to Tonga customs and culture. Children must respect and honour their parents. The Appellant hitting her mother with a machete shows great disrespect and must be appropriately punished. She also hit her child with a wooden board for which she has been charged in the second summons to which she pleaded guilty.
17. I agree with the Magistrate that custodial penalty has to be imposed. I feel, however that part of the sentence should be suspended to give the appellant an opportunity to be more normal and to respect her mother and her children. During the suspension period she should attend the course on the management of anger by the Salvation Army or any other course directed by the Probation Officer.

RESULT

18. I accordingly order that the sentences under appeal be varied as follows;
1. That the sentences of 4 months' imprisonment shall have the final month suspended for 12 months on the following conditions that;
 - a. She does not commit any criminal offence
 - b. On her release from prison, a gaol officer or police officer shall take her directly to the Probation Office to schedule her programme for the month.
 - c. She is to stay at the home of her aunt Lutimila Kafoa in Navutoka or such other family home approved by her.
 - d. She does not visit the home where her mother is staying with her children unless invited or approved by her mother.
 - e. She is not to contact her mother personally by telephone or other mean but may do so through her aunt or another person,
 - f. She attends and take part in an anger management course or other course as directed by the Probation Officer.
 - g. She endeavor to mend her feelings towards her mother.

2. A warning is made to the Appellant that if she does not comply with or breach any of the conditions within the 12 months that they are effective, she will be taken to prison to serve the 1 month that is suspended.
3. That the term of 3 months' imprisonment is reduced by 7 days for the days the Appellant was in prison until released on bail on 2 March 2021.

NUKU'ALOFA: 30 March 2021

