

**IN THE SUPREME COURT OF TONGA  
CRIMINAL JURISDICTION  
NUKU'ALOFA REGISTRY**

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**CR 05 of 2016**

*27/05/16*

**BETWEEN:** **R E X** - Prosecution

**AND:** **LOPETI TALAFEKAU SOAFA** - Defendant

**CERTIFICATE OF CONVICTION AND SENTENCE**

This is to certify that Lopeti Talafekau Soafa, male, date of birth: 3 September 1997, was on 18 March 2016 in the Supreme Court of Tonga, **CONVICTED** upon indictment:

1. On the count of attempted rape, contrary to section 4, 118(a) and 120 of the Criminal Offence Act [CAP 18].
2. On the count of serious indecent assault, contrary to section 124 (1) and (2) of the Criminal Offences Act [CAP 18].
3. On the count of serious housebreaking, contrary to section 173(1)(b) and (4) of the Criminal Offences Act [CAP 18].

On 23 May 2016, he was **SENTENCED** as follows:

[1] For the count of attempted rape – 4 years imprisonment with the final 12 months suspended on the following conditions;

- a. He is not to commit any offences punishable by way of imprisonment for two years;
- b. He is on probation for 12 months;

*rec'd 27/05/16  
MC*

- c. He is to live where directed by this probation officer during this period;
- d. He is not to drink alcohol on probation;
- e. He is not to make any efforts to contact the complainant in Japan by any means whatsoever including emailing her;
- f. He is to attend a course on alcohol and drug abuse as directed by probation and under the Salvation Army;
- g. He is to attend a course on sexual abuse under the direction of probation and the Women Crisis Centre.

[2] For the count of serious indecent assault – 18 months imprisonment to be served concurrently with to count 1.

[3] For the count of serious housebreaking – 2 years imprisonment to be served concurrently with count 1.

[3] In total the defendant will serve 3 years imprisonment commencing from 18 March 2016.

**DATED: 26 MAY 2016**

 **REGISTRAR**

**IN THE SUPREME COURT OF TONGA  
CRIMINAL JURISDICTION  
NUKU'ALOFA REGISTRY**

**CR 05 of 2016**

*Sean Hu & Upstead*

*Solicitor General*

*[Signature]*  
30/05/16

**BETWEEN: R E X - Prosecution**

**AND: LOPETI TALAFEKAU SOAFA - Defendant**

**BEFORE THE HON. JUSTICE CATO**

**Counsel:** Ms. Tu'inukuafe for the Crown  
Mr. Tu'utafaiva for the Defendant

**SENTENCE**

[1] The prisoner, Lopeti Soafa, aged 18 pleaded guilty to attempted rape contrary to section 4 , 118(1) (a) and 120 of the Criminal Offences Act; serious indecent assault contrary to sections 124(1) and (2) of the Criminal Offences Act, and serious housebreaking contrary to section 173(1) (b) and 5 of the Criminal Offences Act.

[2] The agreed facts were that on the 16<sup>th</sup> October 2015 at approximately 7:30pm, the complainant, a Japanese national working as volunteer, in Tonga aged 23 was at her rental home in Tofoa. The prisoner knocked on her door. He was intoxicated. He asked to use her phone to call his mother and was told to leave because the complainant was afraid. He then attacked the complainant. He forced her to the floor and punched her face. He pulled her hair and pushed her on to a sofa. She screamed, and called out for help. He squeezed her neck and held her mouth to

*rec'd 30/5/16*  
*[Signature]*

stop her from screaming. He forced her to the ground, pulled down her pants and underwear and tried to insert his penis into her vagina but she struggled and pushed him away. People who were passing heard her cries for help and knocked on the door. They saw the prisoner naked on top of the complainant and she struggling. The prisoner got up and escaped through the bedroom window, leaving some of his clothing and a mobile phone behind. He admitted to the offending when arrested by the police.

[3] The prisoner is a first offender. He seems to have suffered from the separation of his parents in 2006 and left school at about 15. He left in about the 4<sup>th</sup> Form. He seems to have got into the wrong company, and was working in the bush. He was drunk he said to his probation officer on the night in question. He claims to be remorseful, and has made apology to the complainant through the internet and to Japanese officials in Tonga who saw him. The complainant has not accepted this apology and was concerned to have email contact in Japan. He seems to have been involved with Church work subsequently and attended a four week course on Biogas with Youth with a Mission in March of this year whilst on bail. The report from University of Nations / youth with a Missions and his Church leader's reference suggest that despite the seriousness of this offending, there is room for some optimism that he can reform. I am satisfied that he understands and accepts responsibility for the seriousness of his offending.

[4] I note that in Langi v R in [2014] Tonga LR, the Court of Appeal considered a general starting point for the offence of attempted rape was four years imprisonment, the maximum for this offence being 10 years. There, it seems the prisoner planned his attack after seeing the victim was out of contact with her companion and alone, there was repeated violence, the added

humiliation of oral sex to avoid the rape and the protracted nature of events. These latter factors were seen as aggravating the eventual sentence for attempted rape to one of 7 and a half years after a guilty plea had reduced the starting point to three years.

- [5] In this case, I consider also an appropriate starting point is four years imprisonment. I have no doubt that the object of the prisoners' gratification would have been achieved had he been less intoxicated and the complainant less robust in resisting his advance. He did not leave when requested but punched her and used force to overcome her. He seems to have watched her enter into her house and used a deception to attempt to gain entry. Whilst he had been drinking, his actions were premeditated and purposeful. For attacking her and punching her in her own home, which I consider aggravating factors I increase the starting point to one of 6 years imprisonment. Protection of women from this kind of predatory behavior, and in their own homes, deterrence to the accused and others, and denunciation of such offending are considerations which must be considered in fixing an appropriate overall starting point for sentence. This must have been a truly terrifying and humiliating experience for a young woman who had come to Tonga on voluntary service and who was returned to Japan by Japanese authorities after the incident. I have read the victim impact report and it confirms she was the victim not only of attempted rape but physical violence, that it has caused her to suffer adversely psychologically from the experience and plainly ruined her Tongan experience and her desire to serve here in Tonga. She does not accept the prisoner's apology for what she described, in my view appropriately, as these "horrible crimes".

- [6] The fact that the prisoner had been drinking may explain in part his criminal actions that evening, but they cannot justify them

and they do not assist him by way of mitigation. He has, however, pleaded guilty at an early opportunity and saved the complainant having to give evidence. He is a first offender and aged only 18. He has apologized, albeit that his apology has not been accepted, and he has shown some efforts already to rehabilitate himself. For all these factors but most importantly his early guilty pleas, acceptance of responsibility and expression of remorse, I allow him two years by way of mitigation. The sentence I impose upon him for attempted rape is accordingly one of four years imprisonment, backdated to his remand in custody.

[6] He is I consider a good prospect for rehabilitation and I suspend the final 12 months of his sentence on the following conditions;

- a. He is not to commit any offences punishable by way of imprisonment for two years;
- b. He is on probation for 12 months;
- c. He is to live where directed by his probation officer during this period.
- d. He is not to drink alcohol on probation;
- e. He is not to make any efforts to contact the complainant in Japan by any means whatsoever including emailing her.
- f. He is to attend a course on alcohol and drug abuse as directed by probation and under the Salvation Army;
- g. He is to attend a course on sexual abuse under the direction of probation and the Woman's Crisis Centre.

- [7] I consider the facts objectively so serious that his sentence should not be reduced beyond the 12 month suspension that I have ordered. I have advised him that a breach of any of these conditions could see him returned to prison to serve the balance of his sentence.
- [8] On the count of serious indecent assault touching her vagina without her consent, I sentence him to 18 months imprisonment to be served concurrently with count one.
- [9] On the count of serious housebreaking, I sentence him to two years imprisonment concurrent with count one.
- [10] I have asked that a copy of this sentencing judgment be forwarded to the complainant by appropriate means in Japan. The Court acknowledges the importance of young people and volunteers from many nations including Japan for the development of many facets of Tongan life and expresses the view that it is to be hoped that the complainant will in time be able to put to one side these events, and recall with fondness other aspects of her life and experience in Tonga.

**DATED: 23 MAY 2016**



A handwritten signature in black ink, appearing to read "C. B. Cato", is written over the seal.

C. B. Cato

**JUDGE**