

was about to return to his family in Ha'apai when the offending took place.

[3] The agreed summary of facts are that, on or about the 22nd June, 2015 at Lapaha, the complainant was home alone and doing some laundry. She walked to a kava club house near her property to get some pegs for her laundry. The accused then entered the kava house claspng his hand over her mouth and strangling her to prevent her screaming. He then pulled down her pants placed his penis in her anus and copulated. He forced her to kiss and suck his neck. She ran straight home crying and a complaint to the police followed that day. The accused, in his probation report, suggested he had formed a relationship with the complainant but I do not accept this. I consider he opportunistically forced himself upon a much younger complainant.

[4] The accused is first time offender from a large family. I have read the probation report. The accused did not proceed very far at secondary school and is unemployed relying on his parents. His mother described him as otherwise well behaved and disciplined and a person who preferred to remain at home. His parents are missionaries. The probation report indicates he is remorseful. I have already observed that apologies have not been accepted by the family of the complainant. Acceptance of an apology either with or without financial reparation is an important sentencing factor in Tonga.

[5] I consider an appropriate starting point for sodomy is 4 years imprisonment. I base this on the five years starting point which the Court of Appeal has said is appropriate for rape which carries a maximum sentence of 15 years. In my view, the starting point of 4 years should be increased to four and half years for the

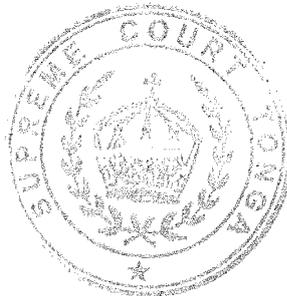
associated violence. It would have been higher had the accused been older.

[6] I allow him mitigation for his guilty plea, the fact he is a first offender, his youth and his statement of remorse. For the sodomy, he is convicted and sentenced to three years imprisonment. For indecent assault, he is convicted and sentenced to 12 months imprisonment to be served concurrently with the sodomy. The sentences are backdated to the date of his remand in custody. I recommend that consideration is given to his sentence being served in Ha'apai where his parents are working as missionaries.

[7] The final 12 months of his sentence for sodomy is be suspended on the following condition;

- a. He is not to commit any offences punishable by imprisonment for a period of a period of 2 years.
- b. He is placed on probation for 12 months and is directed to live where his probation officer directs.
- c. He is not to associate directly or indirectly with the complainant during that period.

DATED: 8 JULY 2016



A handwritten signature in black ink, appearing to be "C. B. Cato", written in a cursive style.

**C. B. Cato
JUDGE**