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*CROWN LAW*

*[Signature]*  
*15/11/18*

BETWEEN:

R E X

- Prosecution

AND:

SIONE NGININGINI

- Accused

BEFORE THE HON. JUSTICE CATO

Counsel: Ms. H. Aleamotu'a for the Prosecution

Accused appeared in person

**VERDICT**

[1] The accused was charged with four counts;

- a. Attempted indecent assault contrary to sections 4 and 124(l) of the Criminal Offences Act;
- b. Serious indecent assault contrary to sections 124(1) and (3)(a) and (b) of the Criminal Offences Act;
- c. Serious Indecent assault contrary to section 124(1) and (3)(a) and (b) of the Criminal Offences Act;
- d. Common assault contrary to section 112(b) of the Criminal Offences Act.

[2] The most serious of the counts factually was the attempted indecent assault. Complainant A alleged in unsworn evidence which I admitted under section 116 of the Evidence Act that the accused had asked her to enter his home and there she had been asked to take her clothes off with the accused saying he would get a knife when she refused to do so. She was aged 10 at the time. She said that she did not understand the oath but I formed the view that she was intelligent enough and

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understood the importance of telling the truth so I admitted her evidence under section 116. There was, however, no independent evidence of corroboration as the section requires of her evidence and so, as I indicated to the Crown before the end of the case, this charge would have to be dismissed. The Crown, after the conclusion of the evidence, suggested that there might be a similar fact basis for arguing corroboration but when asked at the commencement of the trial whether it was relying on similarity she had said she was not. Thus, the evidence had proceeded without exploration of whether the complainants knew each other and had discussed aspects of their evidence which might have affected any ruling on this aspect. I declined to allow this aspect to be taken up at this late stage. Hence, count 1 of the indictment is dismissed.

[3] Counts 2 and 3 relate to the same complainant B who was older, aged 12, when she came to give her evidence. She said that she had been shopping and had passed the accused's home and offered him an ice block she had purchased at the shop. She felt sorry for him because he was in a wheel chair. He invited her inside and she said no. He had wanted her to purchase something for him and she went inside to get his wallet. He kissed her and also told her to give him her tongue and touched her breast outside of her clothes. It was about three weeks after she told her father when she said her younger sister and others had been involved with incidents with the accused. Her father confronted the accused and warned him off. He denied involvement. Evidence was also given that he had denied any wrongdoing with any of the three complainants in records of interview and a voluntary statement. He gave evidence to this effect.

[4] A third complainant, C, alleged that she had come past the accused's residence around the same time as the previous incidents in June 2017 when the accused asked her to pick up his water bottle. As she went to pick up the water bottle he pulled her T-shirt. She said that she had hold of her for about two minutes. She said she threw the bottle at him and took off running.

[5] I accept the evidence of both complainants, B and C, beyond any reasonable doubt. I found both to be reliable witnesses. In relation to B, I find his actions of kissing and touching her to amount to serious indecent assault as charged. There was no evidence given however of him inserting his tongue in her mouth, so count three is

not established. I convict him also of common assault on C that is the grabbing of her shirt. I reject his denials.

**Verdict**

Guilty of counts 2 and 4.

Not guilty of counts 1 and 3.

[6] The accused is convicted of serious indecent assault and common assault as charged.

NUKU'ALOFA: 14 November 2018



*C. B. Cato*  
C. B. Cato

JUDGE