

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

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CR 107 & 108 of 2017

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19/11/18

BETWEEN: REX - Prosecution

AND: 1. SULIASI HU'AKAU
2. 'OFA HU'AKAU - Accused

BEFORE THE HON. JUSTICE CATO

Counsel: Ms. L. Fakatou for the Prosecution
Mr. V. Mo'ale for the Accused

SENTENCE

- [1] The prisoners were convicted of several counts of sexual offending against the daughters of 'Ofa Hu'akau they being the stepdaughters of the prisoner, Suliasi Hu'akau. The evidence was set out in a lengthy verdict given on the 19th September, 2018. I do not propose to details the facts in any great length they being set out in the verdict.
- [2] Suliasi was aged 56 at the time of the offending and his wife aged 42. Both had previous marriages and had previous families. At the time of the offending between January 2017 and March 2017, the victims A and B had lived with them for short periods. Suliasi had four children by a previous marriage and Ofa had 10 children one of whom had died. The victims were aged 16 (A) and B was about 14. B was not attending school at the time but A was. Both ordinarily lived elsewhere.
- [3] The prisoner, Suliasi, was not a first offender but his wife was. He, amongst other offending, had two separate incidents involving indecency; one arising in 1981 when he was convicted and sentenced to nine months imprisonment. Much more serious were six counts of indecency which occurred in 2006 when he was sentenced to six years imprisonment on each count by Ford J to be served concurrently for indecency

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with a girl under the age of 12 being his step daughter. These offences involved licking her vagina, putting his penis between her legs and ejaculating on several occasions. He was sentenced in November 2008. The maximum sentence for this offending was 7 years imprisonment. The sentencing judge described the offending as despicable.

[4] The probation report in that case, which I have read, stated that the prisoner had pleaded guilty changing his plea and was said to deeply regret his offending. It was suggested that he was a changed man. The present offending suggests the probation officer's assessment of him, however, as a high risk offender was correct. The probation report for his present offending indicates he is in good health and spent most of his time working to support family. It states more seriously that he continues to maintain his innocence suggesting that he believes himself to have been falsely accused. His wife, a first offender, had it seems a harsh and difficult life with a former husband who drank heavily bringing up a large family. She had little education and was not looking after any of her children at the time of this offending aside from having the victims stay temporarily with her and her husband when this offending arose.

[5] She also maintains that the offending did not happen and I find her attitude as set out in the probation report very concerning. I found she had falsely given evidence of a meeting between she and one of her daughters at which her daughter had apologised which the latter had denied. She had also falsely in my judgement resiled from admissions in a record of interview she had made. There is no suggestion, I note either, that she was coerced by her husband to participate in the offending. I treat her for the purposes of this sentencing as a willing participant in their depraved activities. Indeed, I consider that she and her husband groomed these girls in offending prior to the rape of B with A having the good sense to leave the residence before more serious sexual activity was engaged in. B was not so fortunate.

[6] For reasons which I have given, I did not believe either she or her husband's denials. I found both girls convincing witnesses and I reject any suggestion that they were falsely motivated to conspire to damage or injure Suliasi or their mother. This offending it goes without saying will be very damaging to both young women, and the victim impact reports bear this out, although the older victim has married and seems to be getting on with her life. The reports indicate that the offending has been very damaging with family taking sides.

- [7] I have considered the case of both prisoners closely. In so far as Suliasi's offending is concerned, I do not consider there are any mitigating factors. I agree with the Crown's observations in the sentencing memorandum that his offending constituted a grave breach of trust. He has, in the words of the High Court of Australia in *Veen v The Queen (No 2)* (1988) 164 CLR 465. At 477-8, by continuing to offend shown a "continuing disregard for the law" and young women, and I consider this should be reflected in the sentence I impose. His offending objectively speaking is worse because it follows only a few years after his release for serious sexual offending against another step daughter. The only mitigating feature on the part of his wife is that she is a first offender. As a mother, she failed completely to protect her daughters and in participating in this offending exhibited a wanton and callous disregard of her role as a parent and mother.
- [8] The most serious sentencing rational in this case is the protection of young women and girls from sexual abuse. In a number of cases in recent years, this Court has sent out a strong message that sexual abuse will not be tolerated. Denunciation or condemnation and deterrence to the prisoners and to others is also required of this kind of sexual abuse.
- [9] A asserts in an attachment to the probation report that the allegations were true and expresses the sentiment that the prisoners should be held to account and is happy that no others will be the subject of offending of this kind. She has married and is being supported. She is plainly aggrieved that her mother played a role in this offending. This has had an understandably adverse effect on her and it is likely she will carry this forward throughout her life.
- [10] I am concerned about B's position. She was the victim of much more serious abuse. Plainly she is likely to carry scars for many years to come if not forever. I recommend that this matter be placed before the Solicitor- General for him to evaluate whether proceedings should be commenced to make her a ward of court. She does not appear to have present support as does her elder sister who is married.
- [11] I pause to say that A is to be greatly commended for her actions in trying to protect her younger sister by returning to the residence having left in response to the offending against her. She acted very sensibly and courageously in defence of her younger sister, in taking her away from the residence and in bringing this offending to light. This Court's acknowledgement should be conveyed to her by the Crown.

[12] I do not now propose to canvass the evidence in very great detail which I have set out in my verdict. As to Suliasi, I sentence him as follows.

- (a) Count 1 – indecent exposure, contrary to section 3(1) of the Order and Public Places Act, where the evidence revealed that he pulled down his trousers and showed his buttocks to A, he is convicted and discharged.

The penalty is by way of fine only and it is not practical in these circumstances to impose a fine.

- (b) Count 3, serious indecent assault, contrary to sections 124(1) and (2) of the Criminal Offences Act.

The offending occurred at a tax allotment. 'Ofa held A's hands above her head and tight in the vehicle and Suliasi squeezed her breast. The accused laughed. A reacted by picking up a hoe nearby and stabbing at him with it.

I sentence Suliasi to 18 months imprisonment on this count.

- (c) Count 4, domestic violence contrary to sections 4(a) and (b) (ii) of the Family Protection Act.

I sentence Suliasi to 3 months imprisonment for the offending arising out of count 3.

- (d) Count 5, serious indecent assault contrary to sections 124(1) and (2) of the Criminal Offences Act.

This count involved B being at a beach when Suliasi kissed her mouth, pulled up her T-shirt and sucked her breast.

He is sentenced to 18 months imprisonment for this offending.

- (e) Count 6, serious indecent assault contrary to sections 124(1) and (2) of the Criminal Offences Act.

This occurred at night at Navutoka beach where 'Ofa held her hands to B's chest whilst in the motor vehicle and then Suliasi removed her clothing and licked her vagina. He later sucked her breast.

I sentence him to 3 years imprisonment for this offending.

- (f) Count 7, domestic violence contrary to sections 4(a) and (b) (ii) of the Family Protection Act.

I sentence him to 9 months imprisonment for the offending arising out of count.6.

- (g) Count 8, serious indecent assault contrary to sections 124(1) and (2) of the Criminal Offences Act.

This offending arose at the school in Vaini where the prisoners were cleaners. B was locked in a storage room by Ofa and Suliasi kissed her mouth and fondled her vagina outside her clothes. 'Ofa told B it was all right.

I sentence Suliasi to 3 years imprisonment.

- (h) Count 9, domestic violence contrary to section 4(a) and (b) (ii) of the Family Protection Act.

I sentence Suliasi to 8 months imprisonment for this offending arising out of count 8.

- (i) Count 10, indecent exposure contrary to section 3(1) of the Order and Public Places Act.

Suliasi is convicted and discharged.

- (j) Count 11, serious indecent assault contrary to sections 124(1) and (2) of the Criminal Offences Act.

This incident occurred at home after she had a bath and was wearing a towel. 'Ofa went outside to get clothing and Suliasi kissed and sucked her breast.

I sentence him to 18 months imprisonment for this offending.

- (k) Count 12, rape contrary to sections 118(1) and (a) of the Criminal Offences Act.

Suliasi after the vigil for the Queen Mother, on return to the residence, B was held down on the double bed by Suliasi and he said he would make her good. 'Ofa was present. Suliasi told 'Ofa to put his penis into B. 'Ofa removed B's clothes and tried to place the male accused's penis into B. Suliasi said he would penetrate her himself. She was told to hold B's hands. 'Ofa asked her it felt good. She said it was painful but her mother said it would become good. B said she felt a lot of pain. It went on she said a long time. She felt a liquid discharge from her vagina. 'Ofa told her to wipe it with a black cloth.

I sentence Suliasi to 8 years imprisonment on this count. The complainant was only 14 years old and this must have been a terrifying experience being raped by the accused with her mother complicit in and assisting Suliasi in the offending. He was in breach of trust. Further, this was the second time he had committed a serious sexual offence against a step daughter indicating a continuing disregard of the law as I have said making his offending on this occasion, in my view, worse. As I have said, I consider there are no mitigating circumstances. Mr Mo'ale did not suggest anything by way of mitigation merely that I should not impose a sentence which gave no hope to the offenders which I bear in mind

- (l) Count 13, domestic violence contrary to sections 4(a) and (b) (ii) of the Family Protection Act.

I sentence him to 10 months imprisonment for his offending arising out of count 12.

- (m) Count 14, serious indecent assault contrary to sections 124(1) and (2) of the Criminal Offences Act.

This occurred when B woke up after the rape to find Suliasi licked her vagina. 'Ofa saw what he was doing.

I sentence Suliasi to 3 years imprisonment on this count

(n) Count 15, domestic violence contrary to sections 4(a) and (b)(ii) of the Family Protection Act

I sentence Suliasi to 8 months imprisonment for his offending arising out of count 14 on this count.

Suliasi's overall sentence

[13] The sentence I pass on Suliasi is that cumulative on the eight years sentence for rape of B I have imposed on count 12, is to be served additionally the sentence of three years I have imposed for serious indecent assault on B on count 6. I also order the sentence imposed for serious indecent assault on count 3 on A of 18 months imprisonment be served cumulatively upon these sentences. The overall sentence I impose is, accordingly, one of 12 and a half years imprisonment.

All the other sentences I have imposed on Suliasi namely counts 1, 4, 5, 7, 8, 9, 10, 11, 13, 14, and 15 are to be served concurrently.

His overall sentence of 12 and a half years imprisonment is to be backdated to the date of his remand in custody for this offending.

I have considered the totality principle and record that I consider the breaches of trust, the nature of his offending and the injurious nature of it involving also the mother of the girls, with the background of previous serious sexual abuse also of a step daughter for which he served a condign sentence means that this sentence is not one that could be described as crushing or excessive but I consider is entirely appropriate to reflect the seriousness of his offending. This constitutes a very serious case of sexual abuse against members of his family and the inevitable dislocation of the girls' relationship with their mother and other members of the family. I see no reason to suspend any part of his sentence and Mr Mo'ale did not suggest any.

‘Ofa’s sentence

[14] As I have indicated, I consider she was a willing party in the accused’s seduction of her daughters which commenced with lesser sexual activity in the case of the girls ultimately ending up with the rape of B. She acted in serious breach of trust. As the Crown submitted, the only mitigating fact is that she is a first offender. Her actions which were not as I have said under duress but apparently given willingly (which she continues to deny occurred), were appalling and exhibited a fundamental dereliction of her relationship as a mother to her daughters. The sentences I impose upon her are;

- (a) Count 1, abetment of serious indecent assault contrary to section 8(a) and sections 124(1) and (2) of the Criminal Offences Act relating to Count 3 of her husband’s indictment.

This offending occurred at a taxi allotment. Ofa held A’s hands above her head and tight in the vehicle and Suliasi squeezed her breast. The accused laughed. A reacted by picking up a hoe nearby and stabbing at him with it. I sentenced Suliasi to 18 months imprisonment on this count.

I sentence ‘Ofa to 9 months imprisonment for her part in this offending.

- (b) Count 3, abetment of serious indecent assault contrary to section 8(a) and section 124(1) and (2) of the Criminal Offences Act. This offending arose in relation to count 6 of her husband’s offending.

This offending occurred at night at Navutoka beach where Ofa held her hands to B’s chest whilst in the motor vehicle and Suliasi removed her clothing and licked her vagina. He later sucked her breast.

I sentenced Suliasi to 3 years imprisonment and I sentence Ofa to 18 months imprisonment.

- (c) Count 4, abetment of serious indecent assault contrary to section 8(a) and sections 124(1) and (2) of the Criminal Offences Act. This offending arose in relation to count 8 of her husband’s indictment.

This offending arose at the school in Vaini where the accused were cleaners. B was locked in a storage room by Ofa and Suliasi kissed her mouth and fondled her vagina outside her clothes. Ofa told B it was all right.

I sentenced Suliasi to 3 years imprisonment.

I sentence Ofa to 18 months imprisonment and view the fact she locked the door as particularly serious in this instance.

- (d) Count 6, abetment of rape contrary to sections 8(a) and 118(1) (a) of the Criminal Offences Act relating to count 12 of her husband's indictment.

Suliasi after the vigil for the Queen Mother, on return to the residence, B was held down on the double bed by Suliasi and he said he would make her good. Ofa was present. Suliasi told Ofa to put his penis into B. Ofa removed B's clothes and tried to place the male accused's penis into B. Suliasi said he would penetrate her himself. She was told to hold B's hands. Ofa asked her it felt good. She said it was painful but he mother said it would become good. B said she felt a lot of pain. It went on she said a long time. She felt a liquid discharge from her vagina. Ofa told her to wipe it with a black cloth.

I sentenced Suliasi to 8 years imprisonment on this count. The complainant was only 14 years old and this must have been a terrifying experience being raped by the accused with her mother complicit in and assisting him in the offending.

The Crown submitted the starting point for Ofa should be 7 years imprisonment. Taking into account her serious breach of her trust, I consider that 6 is an appropriate starting point. Being a first offender which I have taken account of in her sentencing on each count, I sentence her to five years imprisonment. I see no other mitigating factor. As I have said, her conduct in not protecting her daughter and in giving active encouragement to this offending was appalling. I see no reason to suspend any part of her sentence given her failure to acknowledge her role in this offending and indeed her continued stance that the allegations were contrived. Mr Mo'ale did not suggest otherwise. Indeed, he was candid in his approach suggesting he had little to add by way of mitigation to what was in the probation report in relation to these offenders.

- (e) Count 7, abetment of serious indecent assault contrary to section 8(a) and sections 124(1) and (2) of the Criminal Offences Act relating to count 14 of her husband's indictment.

This occurred when B woke up after the rape to find Suliasi licked her vagina. 'Ofa saw what he was doing. She made no effort to intervene.

I sentenced Suliasi to 3 years imprisonment on this count.

I sentence Ofa to 18 months imprisonment for this offending.

- (f) Count 8, common assault contrary to section 112 (a) of the Criminal Offences Act.

I found 'Ofa beat her daughter B with a stick without any apparent justification and beyond any lawful justification for any perceived disobedience. It caused A to try to intervene.

I sentence her to 4 months imprisonment on this count.

- (g) Count 9, domestic violence contrary to sections 4(a) and (b) (i) of the Family Protection Act.

I sentence Ofa to 3 months imprisonment for this offending.

'Ofa's overall sentence

[15] The sentence of 5 years imprisonment on count 6 for rape of B is to be followed by the sentence of 18 months imprisonment for her offending on count 3 in relation to B which is to be served cumulatively with the sentence on count 6. Also to be served cumulatively is the sentence of 9 months imprisonment on count 1 in relation to the offending on A. Her overall sentence is 7 years and three months imprisonment, backdated to the date of her remand in custody for this offending.

As I have said I see no reason to suspend any part of this sentence.

I have also considered in relation to her offending the totality principle and consider that this sentence fairly reflects the overall seriousness of her offending in relation to her daughters.

Her sentences on counts 4, 7, 8, and 9 are to be served concurrently.

NUKU'ALOFA: 16 November 2018



A handwritten signature in blue ink, appearing to read "C. B. Cató", is written over the right side of the seal.

C. B. Cató

JUDGE