

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

CR 128 & 129 of 2018

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BETWEEN:

R E X

- Prosecution

AND:

1. SIONE FELEMI

2. LATAI LATU TAUHELANGI

- Accused

BEFORE THE HON. JUSTICE CATO

Counsel: Ms. T. Kafa for the Prosecution

Accused appeared in person

SENTENCE

- [1] The prisoner, Sione Felemi, was charged with four counts of serious indecent assault contrary to sections 124(1) and (2) of the Criminal Offences Act; and 4 counts of domestic violence contrary to section 28(1) of the Family Protection Act.
- [2] The female prisoner, Latai Latu, was charged with abetment to serious indecent assault on three counts contrary to sections 8(a) and 124(1) and (2) of the Criminal Offences Act, and three counts of abetment of Domestic Violence, contrary to sections 8 (a) of the Criminal Offences Act and section 28(1) of the Family Protection Act.
- [3] The victim, A, was the daughter of Latai Latu and was aged 13 at the time of the offending. The male prisoner, Felemi was aged 42, was unemployed and resided in a defacto relationship with Ms Latai Latu who was aged 41. In about January 2017, the prisoners took the victim from her maternal grandmother in Eua and brought her to live with them in Tonga. They had commenced living together. Felemi commenced abusing the victim shortly after that and the victim's mother abetted three of the four incidents.

rec'd 05/12/18
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- [4] The first incident involved the mother taking off the victim's clothes and Felemi licking her vagina. The mother watched whilst he did this. -
- [5] The second incident occurred on the same night at their home. On this occasion, Felemi fondled the victim's breasts, sucked them, and licked her vagina whilst her mother was watching.
- [6] The third incident on a different day occurred in the house. Felemi licked her vagina, sucked her breasts and rubbed his penis outside her vagina. The mother again watched.
- [7] A fourth indecent assault at a beach involving Felem only. Felemi took the victim fishing, and after laid her on the ground, licked her vagina, fondled and sucked her breast and rubbed his penis outside her vagina. Her mother was not involved.
- [8] Felemi threatened to beat the victim up if she told anyone. On one occasion, he asked her to allow him to take her virginity but she declined. After this, he told the victim and her mother to leave the house. He chased them out of the house. Later, Latai Latu went back to live with Felemi, leaving her daughter to live with a friend. As a consequence, the offending came to light and the police became involved in February, 2017. Both admitted their offending. Felemi has previous convictions but nothing in recent years and has no convictions for sexual offending. Latai Latu has no convictions.
- [9] The probation report for Sione Felemi suggests that he is a heavy drinker. Latai Latu indicated she had experienced domestic abuse at his hands. She said if he did not get his way in relation to the child he would revert to violence. She said she was afraid. The male prisoner left school early. He admitted an alcohol addiction. He earned an income by doing some plantation work. He freely admitted wanting to have sex with the child to his probation officer after meeting her at Eua. He said he had stopped trying to penetrate the child when she said to stop. He expressed remorse for what he did.
- [10] Latai Latu, came from a large family in Eua and they were poor. It seems she suffered abuse from a boyfriend of her mother. The victim was her only child. The marriage to the victim's father did not last very long. It was after this that she met Felemi. She told probation that she had initially resisted his demands to have sexual relations with her daughter and they had been chased out of the house, she being slapped in the face first. She said that he apologized and asked them to come back but persisted in his desire for sexual relations with the victim. Latu agreed eventually to allow this because she feared harm to herself. She also admitted to being in love with the male prisoner and said that she would likely reunite with him upon release from imprisonment. Like Felemi, she would also drink to excess.

[11]The victim wants both to be imprisoned. She has been residing with the Women's crisis center and expresses a desire to leave and stay with her grandmother. She says she still loves her mother. Womens Crisis wish her to remain longer.

[12]Felemi in appearance is a large strong looking man. Latu is slightly built and looks rather tired for her age. I consider that she may well have submitted to Felemi's desire to seduce her daughter because she was afraid of him.

[13]Protection of girls and young women is paramount in my sentencing considerations here and also denunciation or condemnation of sexual abuse of minors. This was appalling behavior instigated by Felemi and perhaps reluctantly abetted on three occasions by the victim's mother.

[14]The maximum sentence for serious indecent assault is 5 years imprisonment. I consider on counts 1 and 2, the starting point should be four years imprisonment and on counts three and four, four and half years imprisonment. Offending of this kind by a much older man in a position of trust is in the upper range of starting point. Violence, coercion and the threat of it was part of his manner of offending and is to be deterred.

[15]I allow him 12 months mitigation for his early guilty plea and expression of remorse. On counts 1 and 2, I sentence him to three years imprisonment each to be served concurrently with the sentence I will impose on counts 3 and 4. On counts 3 and four, I sentence him to three and a half years imprisonment on each count. I order, however, that one year of the three and half years imprisonment imposed on count 4 be served cumulatively upon the three and half year sentence imposed on count 3 making an overall or combined term of imprisonment of four and half years. In doing so I have considered the totality principle. I backdate the sentences to the date he was remanded in custody for this offending.

[16]Although I have real doubt, he will rehabilitate, in the light of his early guilty plea and expression of remorse, I will suspend the final 6 months of his overall term of imprisonment on the following conditions;

- a. He commit no further offences punishable by imprisonment for the period of his suspension; and he is placed on probation for the period of his suspension;

- b. He is to live during the period of his suspension where directed by his probation officer and he is not to reside with any girls or women under the age of 16 years including the complainant;
- c. He is not to drink alcohol during the period of his suspension;
- d. He is to attend an alcohol abuse programme under the direction of probation and the Salvation Army;
- e. He is to attend a course on sexual abuse under the direction of probation and the Women's crisis center or other appropriate agency.

[17]He is warned that a failure to abide by the terms of his suspension may mean he is required to return to prison to complete the balance of his term of imprisonment.

[18]On each of the four domestic violence offences as reflected in the serious sexual assaults he is sentenced to 6 months imprisonment. These sentences are to be served concurrently with the combined sentence on counts 3 and 4.

[19]In so far as Latai Latu is concerned, her involvement as an abettor was serious and in grave dereliction of her maternal duty to her daughter to support her welfare even though her involvement in part may have been attributable to duress. I consider an appropriate starting point for her involvement on counts 1, 2 and 3, in which she was an abettor to sexual offending where her partner fondled the victim's breasts and licked her daughter's vagina is three years imprisonment. I allow her 15 months by way of mitigation, accepting she is also a first offender making a sentence of one year and nine months imprisonment on each count to be backdated to the date of her remand in custody. All of these sentences are to be served concurrently with one another.

[20]IN relation to these sentences, I order that the final 6 months be suspended on the following terms;

- A. She is not to commit any offenses punishable by imprisonment during the period of suspension;

- B. She is to live where directed by her probation officer and not with the complainant during her period of suspension; and she is placed on probation
- C. She is not to drink alcohol during the period of suspension;
- D. She is to attend a course of alcohol abuse under the direction of her probation officer and the Salvation Army;
- E. She is to attend a course on child abuse under the direction of her probation officer and the Women's Crisis Center.

[21] She is also warned that that a failure to carry out the term of her suspension may mean she is returned to prison to carry out the balance of her term of imprisonment.

[22] On each of the three domestic violence charges she faces I sentence her to 4 months imprisonment to be served concurrently with count 1.

[23] I also note that it is the view of the Womens' crisis center that the victim, aged about 13, should remain there for some further period. I would direct that this file be placed with the Solicitor- General, Mr Sisifa, to consider the child's ongoing welfare and security, and further orders should she leave the Women's Crisis to live elsewhere.




C. B. Cato
J U D G E

NUKU'ALOFA: 4 December 2018