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

CR 185 of 2019

BETWEEN:

REX

-Prosecution

AND:

'ANITELU FIELEA MAEA

-Accused

VERDICT

BEFORE: JUSTICE CATO

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

✓ Mr. S. Tu'utafaiva for the accused

1. The Accused, 'Anitelu Maea, was charged with two counts;
 - i. Indecent Assault on a child under the Age of 12, contrary to section 125 (1) of the Criminal Offences Act.
 - ii. Sexual Domestic Violence contrary to section 4(a),(b)(i) and 28(1)(a) of the Family Protection Act.

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2. The complainant was aged 11. She lived with the accused who was married to her mother and she had several siblings who, like the complainant, were children of the mother's former marriage. The accused was her stepfather.
3. She said that her mother and the accused had an argument and they ended up by walking to the residence of a friend in Ma'ufanga. She said there were drinking when she arrived and her mother and the accused joined in. This took place on the verandah of the residence. She said she had fallen asleep on a plastic chair on the verandah and placed her head in her mother's lap. She was then moved by her mother to a sofa in the living room.
4. She said that when she was sleeping someone touched her private parts. She said she woke up and cried. She said she cried because she knew what happened and she was scared. She said she saw the accused who did this. He was at a table beside the sofa and he was sitting there. She said the toilet light was on. She said the others at the drink-up were upstairs. She said the toilet was close and the sofa was near the verandah.
5. She said that she was touched inside her clothing which was a jump suit.
6. She said that she asked the accused where her mother was and he told her that she was upstairs. He said that she went somewhere.
7. She said that she continued crying and called her mother and she came downstairs. Her mother carried her upstairs and locked the door. Her mother asked her if the accused had done something bad to her and she nodded yes. She said that she only told her at the hospital what had occurred.
8. Her mother told friends to call the police.
9. She went to the hospital. She told her mother at the hospital that the accused had done some bad stuff to her. She did not tell her what it was.

10. She told the doctor what the bad stuff was. She told him about his putting a finger in her private parts. Her mother was there. She said that it was put inside her
11. It was put to her by Mr Tu'utafaiva that she woke up and went back to the verandah and sat at the table where the drinking was and she denied his.
12. It was put to her that he accused did not touch her in the living room and she denied this.
13. It was suggested to her that the accused had lifted her up as she had been sleeping on three chairs on the verandah. He had placed one hand on back of her neck and the other on her bottom area so she could leave. She denied this.

14. It was also put to her that she had cried when he had tried to lift her up and she denied this.
15. She said the accused's hands did not go deep into her private parts. She said she felt a lot of pain.
16. The complainant's mother gave evidence that she had six children. She had been married three years. The complainant was the youngest. She was born on the 31st May 2009.
17. She said that she and her husband had visited a friend's residence in Ma'ufanga earlier that day and her husband had a lot to drink. They left at about 6 to 7 and went home to Sopa and then had returned about 8 or 9 to Ma'ufanga. She said that she had about three glasses to drink of vodka mixed with water. She thought her husband had about one bottle. He had carried on drinking when they got back. She said they had an argument at the Queen Salote wharf at Maufanga and she and her daughter had walked from Salote Wharf to the residence in Maufanga. They had been drinking on the verandah at Ma'ufanga and her daughter had fallen asleep in her lap so she had put her on the sofa in the living room.
18. She said the accused and another woman were drinking on the verandah, so she went up to the woman upstairs to discuss matters relating to the accused's behaviour. She was upstairs

for about half an hour when the other woman came upstairs. She went downstairs and heard her daughter crying. She said she saw the accused sitting beside the door looking outside. She said she asked her daughter if he had done anything bad to her and she had said yes. She said she ran to a room, with her daughter and locked it because she was afraid he might assault her. She said her daughter had told her that he had touched her private parts. The police came and she went straight to the hospital. She said that her daughter had told the doctor what she had told her. They had waited in the hospital until the doctor had arrived in the morning and then filed a complaint at the police station.

19. She denied under cross-examination being drunk and intoxicated. The accused had got angry when she had stopped him drinking. He had purchased another bottle of vodka after the first before they went back to the party. She said she had gone upstairs after about 10 pm. The accused had been talking with a woman and she was upset with him. She said that the accused and the other woman had come upstairs to ask them to go back down.
20. The accused went back downstairs.
21. She said she had gone downstairs and heard her daughter cry. It was a weird cry like she was in fear and was crying loudly. She was sitting on the sofa. The accused was sitting on a chair beside the door facing the verandah. She agreed that she had lifted her up carried her upstairs and had said that she had been raped. She said that she had assumed that she had been raped. She said that came to her mind because her daughter was shaking and crying.
22. It was put to her by Mr Tu'utafaiva that this was a false complaint had come about because she was upset with the accused in relation to his sexual overtures he had made to the other woman. She denied this. She further denied that she had used her daughter's allegation and made her report the indecency to get back at him.
23. The accused gave evidence. He said that they had been invited to a birthday and he had purchased a bottle of alcohol. They got there around 11. They drank for a number of hours

but he did not feel drunk. He admitted that he was drunk after returning later to the party with the second bottle. He said that the complainant had returned to the verandah after her mother had placed her on the sofa. The mother was upstairs. He said that he had continued drinking with child and a woman there and had fallen asleep. When he woke up the woman was there, and the complainant had fallen asleep on three chairs. He said he went looking for his wife. He said he did not find her and returned to the verandah. He said he found his wife and told her to come downstairs so they could go back. He said he went out onto the verandah to his step daughter and she was still asleep on the chairs. He had tried to lift her up she was too heavy and he used all his strength a second time to lift her. All of a sudden she cried. She stood up and ran to the area where it was dark. He said she cried like a baby. After he told her to come back, she came into the living room. He said a few seconds after she had cried out, he saw her mother. He said he did not hear anything said by the child. He denied touching her indecently.

Verdict

24. I have considered closely the evidence of the complainant and the complainant's mother. I found the complainant, who was a slightly built girl, a credible witness who gave a lucid account of events. I did not detect in her evidence any suggestion that her evidence was contrived. There was some cross-examination on the issue of whether the indecency was on her private parts rather than in, as is recorded in her police complaint, but I do not regard this as of any moment. She gave evidence and I accept this that the accused was nearby when she woke up as a result of his hand being around her private parts, and had screamed out.
25. Her evidence was supported by her mother who moved towards her when she heard the scream which she described as weird, like she was afraid. She gave evidence that she was still on the sofa where she had been placed earlier in the night. The complainant had denied she had returned to the verandah and had gone to sleep on three chairs as the accused had suggested. She said she was on the sofa in the sitting room when she was woken up by the touching and the accused was nearby.

26. The accused said that he had gone upstairs to get his wife and go home. He admitted to being intoxicated by then, and had said that he had tried to pick the complainant up but she was heavy and she had cried out when he attempted this a second time. I reject this defence of innocent association and denial. I accept the evidence of the complainant and the mother that the girl was not outside on the verandah but inside on the sofa in the sitting room, where her mother had put her earlier in the evening where the incident with the accused took place, that is fondling or touching her vagina and she cried out. I find that this must have been with deliberation and reasonable force or else it would have been unlikely to wake her up and cry out. I find that it was not an innocent or accidental assault.
27. I accept that there was fractious behaviour between mother and the accused that evening and that the accused's possibly drunken behaviour towards a woman at the party with whom he was apparently being flirtatious may have made matters worse and caused mother to go upstairs to discuss his behaviour with her friend. I accept, however, the mother's evidence that she was not motivated by spite to lay a false complainant or use her daughter to get back at the accused for his actions earlier that evening. I accept her as a witness of the truth who was upset at what she perceived at first may have been the rape of her daughter. These proceedings plainly caused her strain but I consider this was understandable. I did not find her at all mendacious or contrived in the evidence she gave, and I accept that it was difficult for her. I accept her evidence and that of her daughter beyond a reasonable doubt. I reject the accused's version of events as untruthful. On his own admission, he was very drunk, by the time of the incident.
28. Accordingly, I convict the accused of indecent assault. Plainly, his actions of putting his hand on the private parts of the accused without her consent and aged 11 is an act that is indecent by the ordinary standards of the community, whether or not his finger went inside. I convict him of indecent assault, seek a probation report and remand him in custody for sentence.

29. I also convict him beyond reasonable doubt of sexual domestic violence; his actions namely sexual abuse of an 11 year old stepdaughter is without doubt beyond the expectations and acceptance of family and domestic life.



C. B. Cato
JUDGE

The seal of the Supreme Court of Tonga is circular, featuring a central emblem with a crown and a cross, surrounded by a laurel wreath. The words "SUPREME COURT TONGA" are inscribed around the perimeter of the seal. A blue ink signature is written over the seal, and the name "C. B. Cato" and the title "JUDGE" are printed below it.

NUKU'ALOFA: 2 October 2020