

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

CR 273 OF 2011

REX

-v-

LEONE MOATA'ANE

BEFORE THE HON. JUSTICE SHUSTER

HAVING HEARD - From Crown Counsel, and from the defendant in person.

The defendant appears for sentencing - having plead guilty on first arraignment on 21st October 2011: to an indictment alleging two counts of— [Incest and Rape] - allegedly committed in the month of September 2010.

The brief circumstances are the complainant who was 14 years of age at the time of the offence was sleeping in her room at her residence in HOI. It was late at night when the defendant who is the complainants elder brother came into the complainants room.

According to the prosecution the defendant punched the complainant rendering her unconscious and then the defendants raped the complainant.

The complainant woke the following morning and found blood on the bed. She did not tell her mother about the incident until January / February 2011 when he was confronted by the complainants mother - to his credit the defendant admitted the offence to the police.

On his arraignment the defendant was told he would be given full credit for his early guilty plea and the case was adjourned for the preparation of a

PSR and, the defendant was remanded on conditional bail for sentencing on 18th November 2011 at 14.00.

It was a condition of -the defendant's bail that he co-operates in the making of the PSR - it should be noted that the defendant is a first time offender aged 18 years. and he is NOT in employment.

On 18th November 2011 the defendant appeared for sentencing. Having considered all the facts of the case, including the contents of the PSR, and considering the fact that the defendant pleaded guilty at the first opportunity and, the fact the defendant fully co-operated with the police and with this court - and having heard from the defendant in person –

I told the defendant that Rape and Incest crimes in the Kingdom are becoming more frequent, and they must be stopped - the way to do that is by the imposition of appropriate sentences to deter others.

I told the defendant the aggravating feature of these two crimes which this court will treat - as the same circumstances - is the fact that the victim was punched unconscious and then the defendant who the complainants elder brother raped her - while she was unconscious.

On the other he mitigation is that the defendant pleaded guilty and he spared his sister the trauma of giving evidence in open court before complete strangers.

The defendant is sentenced as follows:-

Count 1 - The defendant is sentenced to **FIVE YEARS** in prison - but the last year is suspended conditional upon the defendant. keeping the peace and being of good behaviour and committing no further offending during the remaining period of the suspension of the sentence of imprisonment.

Count 2 - The defendant is sentenced to **FIVE YEARS** in prison - but the last year is suspended conditional upon the defendant, keeping the peace and being of good behaviour and committing no further offending during the remaining period of the suspens/on of the sentence of imprisonment.

All sentences are concurrent. The defendant will serve **FOUR YEARS IMPRISONMENT** from todays date.

I certify I have warned the defendant about the consequences of committing any further offences - whilst subject to a suspended sentence

This is to be a deterrent sentence, applying the principles enunciated in **Crown —v- Cunningham**

A copy of this order is to be served on the defendant and the Prison Service

DATED: 18 November 2011

J U D G E