

Rape

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

CR. NO. 940/95

BETWEEN : **R E X** - Prosecution;

A N D : **FEHOKO KULA** - Accused.

Hampton CJ

Mrs. Taumoepeau for Crown

Mr. Niu for Prisoner

Sentencing : 29 January 1996

Remarks on Sentence (29 January 1996)

Fehoko Kula: I have listened with care to Mr. Niu's eloquent submissions on your behalf, and read with care the 4 testimonials. As well I have regard to both the pre-sentence report on you, Mr. Kula, and the victim impact report. There is much that is positive that can be said of you and your past history. I will not go over Mr. Niu's submissions about you. I have no intention of re-traversing the facts because my findings are clearly set out in my reasons for the verdicts. I regard all 3 offences, for which you are now convicted, as being part and parcel of the one transaction. The rape is the fundamental count and the other 2 are in effect secondary features of the main offence.

There are, in my view, aggravating features here, they being your deliberate organising and detaining of the complainant, and the age of the complainant with whom you, a much older and more worldly-wise person, decided you wanted to have your way regardless. You are an educated and intelligent man. I am not going to deliver a moralizing homily to you. You know full well, as the

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pre-sentence report indicates, the effects your offending has had, for what you have thrown away and the shame you have brought to your family. My concern is not for the effects on you, but for the effects on your family and, most especially, on the complainant. I do not need, publicly, to dwell on those matters.

Perhaps, and hopefully at sometime in the near future, some sort of restorative meeting can be held between you and the complainant. There are positive and encouraging signs that such might be able to be achieved.

A further encouraging sign which I see is your wife's support throughout - and especially now under particular adversity. With her, and the children and your family you have much to be thankful for; and to work towards full reconciliation with all of them.

I have come to the view that the head sentence of imprisonment should be on the rape count and that lesser sentences of imprisonment should be imposed, concurrently, on the other charges.

Rape is regarded by the Legislature as, rightly, a serious crime carrying a maximum of 15 years imprisonment. In the circumstances I can impose no less than 5 years imprisonment on that count. I do not agree that any part should be suspended. That is the sentence on that count. On the detention count a sentence of 2 years imprisonment, concurrent, is imposed. On the indecent assault a term of 1 year's imprisonment, concurrent with both the other 2 terms already ordered, is imposed. That is a total of 5 years imprisonment that term to run from the date you first went into custody after having been found guilty i.e. on 15 January 1996.

NUKU'ALOFA, January 29th, 1996.


(CHIEF JUSTICE)