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REX -versus- MAHE TALOA (Accused)

[1] Rape

[2] Indecent Assault

WARD CJ

Miss Tapueluelu for the Crown

Mr Niu for the Accused

Trial : 31st January; 1st, 2nd and 3rd February 1994

Judgment : 10th February 1994

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JUDGMENT

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The Accused is charged with rape on 11 October 1992 of a girl, 'Uheina, who was 16 years old.

The girl's parents were abroad and she had been staying with the accused and his wife, Fononga, the girl's aunt, for one or two years.

The 11th October was a Sunday and the complainant told the court she was on her way to Sunday School when the accused stopped and picked her up in his van. He suggested they went to Toloa to find some labourers to work on Monday. However, instead of going to Toloa, he turned onto a bush road and eventually stopped in a plantation. He told her he had to collect something and, after he got out of the van, he called to her to help.

27 JUN 1994

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She went to where he stood and saw a mat and sheet on the ground which he asked her to take to the truck. As she bent to do so, he pushed her down and raped her.

She explained how she tried to push him off but could not. He removed her T-shirt from her arms and left it around her neck, pulled her bra, tearing the stitching on one strap and pulled her skirt, which had an elastic waist band, and her pants down to her knees.

Although she explained she was ignorant of such things, it is clear he ejaculated inside her. Afterwards he said he could hear someone walking nearby, pulled his trousers up and went to his van. The girl put on her clothes and got in the van also. As the accused reversed back to the road, three boys appeared.

The complainant did not say and was not asked who put the mat and sheet in the van but it would appear they were taken in the van and they were produced in Court.

Once they reached Vaini, the complainant saw a cousin Musie and jumped out of the moving van to reach her. She told her some little time later that the accused had cheated her. She told a number of people that she had been cheated and it was only when she gave a statement to the police almost a week later that she gave more specific details.

She went to the police the following Saturday after her aunt, No'o, with whom she was by then staying, had asked if she wanted to report it. The delay was largely caused by the request of Fononga not to tell anyone and, in order to get free of that situation, the complainant ran away to another relative's house.

After she explained to the police she was seen by a doctor. His report confirmed sexual intercourse had occurred and the tear in the hymen was healed. That, he said, was consistent with sexual intercourse a week or more before. The complainant told the court she was a virgin and described the pain she felt on penetration. The tear to the hymen did not reach the side and the doctor explained that regular sexual intercourse would be likely to tear it further. However he said that, if not much force was used, it could stay in that condition.

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The accused was seen by the police and had a lengthy interview only part of which has been produced by the prosecution. In the interview, as in the witness box, he admitted having sexual intercourse with 'Uheina but insisted it was with her consent. He explained they had had sexual intercourse three times previously.

He gave evidence in Court and gave the same account except he changed the number of previous occasions to four. Although he denied rape, the account he gave describes a disgraceful course of conduct for any married man of his age especially as he was her guardian at the time.

He told how he effectively bribed her to let him suck her breast and touch her private parts and they later had sexual intercourse. He could not explain why he had not told the police the correct number of times he had sexual intercourse. It was also clear that the number put to the complainant by the accused's counsel was not the same as his evidence.

The account he gave was based on an arrangement that allowed the complainant to use his van to drive to Toloa where she had a boyfriend. Although she took another friend, the accused's wife was never told and the whole arrangement was designed to deceive both her and the people in Vaini. It involved the girl pretending to go to Sunday School and being picked up by the accused who was then dropped off to wait in the 'uta while the girl visited her boyfriend. Then they returned and she was dropped at a place that enabled her to pretend she had been to church.

The complainant agreed with most of this. Her initial account did not refer to it but it was explained in her evidence in chief.

The picture as a whole, the alleged rape apart, is one of a far from innocent 16 year old. On the contrary it is a case of deception, both by the girl and the accused, of her aunt carried out over some time and involving a relatively complicated system to cover up.

A number of other witnesses were called by both sides. I do not go through their evidence in detail but some points should be mentioned.

The girl's complaints were always of having been cheated and, in the evidence generally, I accept that word conveyed to the other a suggestion

of sexual cheating and at least an inference of rape.

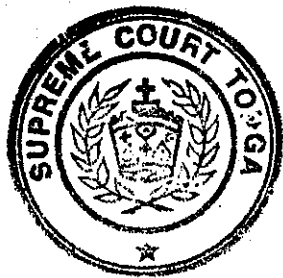
Some witnesses referred to her being red eyed and red faced when she returned on the day in question. The accused suggested to the Court the reason the girl complained was because she realised their illicit affair had be discovered. Whilst the evidence of red eyes and a red face is consistent with the distress caused by rape, it is also consistent with such a discovery.

The accused described how, when they heard someone coming, they went to the van and he reversed away quickly. He said he put the mat and a coat in the back of the truck and the girl took the sheet into the van. It certainly seems clear someone did pick these items up. The accused also claimed that, ~~as~~ he backed away and the three boys came in the view, the girl ducked down in order not to be seen. The complainant denied it but one of the boys described how she seemed to be trying to avoid being seen and how she ducked down.

The accused also described seeing another man on a previous occasion when they were going to the bush for sexual intercourse. That man was called and supported the accused's account although such a encounter could equally have been perfectly innocent.

I do not think it is necessary to go through the evidence further. A considerable amount of questioning was devoted to times and dates and it is clear there are a number of discrepancies. Some of those are contrary to the evidence of the accused but some are also inconsistent with each other.

I have to be satisfied beyond reasonable doubt that the prosecution have proved sexual intercourse without consent. The evidence shows as I have already said, disgraceful conduct by the accused and deceit by the complainant in which the accused was a willing participant. Were this a court of morals, the accused would have been condemned out of his own mouth. He gave his evidence in court in way that suggested he had little feeling of shame or embarrassment for his conduct. However, for a criminal charge of rape, I am not satisfied the prosecution have proved lack of consent to the required standard and the accused is acquitted.



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NUKU'ALOFA, 10th February 1994.