

POLICE v FAATOAFE (AKI TAUILILI) (No. 1)

Supreme Court Apia
Ryan CJ
19 February 1992

CRIMINAL LAW - Unlawful carnal knowledge - corroboration

EVIDENCE - Unlawful carnal knowledge - corroboration - S10
Maintenance and Affiliation Act does not apply.

REHEARING -

CRIMINAL LAW - unlawful carnal knowledge - corroborating -
evidence by 2nd Witness untrue.

HELD: Judge had given little probative value to the evidence
of the second witness and had mentioned her limited
credibility in his judgement.

Edwards for Prosecution
Fepulea'i for Defence

Cur adv vult

(On conviction). The Defendant faces a charge of Unlawful
Carnal Knowledge with a young girl who was alleged to have been
13 years of age at the time. The birth certificate and the
medical certificate were put in by consent and the date of birth
of the child - 16 September 1977 - is not in dispute. The
medical certificate relates to the examination which took place
in September 1991 some 4 or 5 months after the alleged incident.
Of itself it is not of great assistance to the court other than
to show that the girl was pregnant at the time - whether
precisely four and a half months pregnant I am not sure.

The incident was alleged to have taken place between 1 - 31 May
1991. The Complainant, a very small child, gave evidence and
said that on the night in question she was asleep in a fale with
a number of members of her family. She said that the defendant
whom she was able to recognise at the end of the episode when the
light came on, came over to her, jumped on her and later on
touched on her. She said she did not say anything because she
was scared and that was because the defendant put his hand over

her mouth. She said he took her panties off and rolled up her blouse and then in the process tore off her panties. She said he performed certain indignities with her which she described in detail and then entered her with his penis. She said that the light came on, he jumped outside and took his lavalava with him. She said she cried, she was bleeding and that she told her sister. She said she tried to make a noise or scream but could not.

In cross-examination she gave details of the other persons in the room as she recalls it but I must say that her recall of the persons in the case was different somewhat from the other witnesses but I am not surprised in the circumstances. There was evidence that there was an electric light in the case but her evidence said it was a kerosene lamp. She said she did not go to the police because she was afraid and her mother also did not go to the police for some unexplained reason. In addition she said the police were not told because the defendant came back and apologised to her family.

The Complainant's mother gave evidence and she said that she in fact slept in a different house but she went to the case where her daughter was sleeping when she heard a scream. She said that the Complainant's clothes were ruined. She was carried onto the bed and there were also blood stains on her clothes and this blood was from between her legs. She said there was another girl Netini Stowers who went to the back of the house and assaulted the defendant. She also mentioned an apology from the defendant sometime after on the same day. She said that his words were, "please I was drunk and also wrong at the time". She said she did not tell the police because the Defendant had apologised and she did not tell her husband because she was afraid. She said she found out from the girl's teachers later on that she was pregnant.

Netini Stowers also gave evidence and she said that she heard the scream also. She said that she saw the Defendant walking around on the other side of the house. She said she was able to recognise him because the light was on and also from the moonlight. She also commented on the condition of the girl's clothes and her physical condition in the fact that she was simply lying there. She confirms the mother putting a cold cloth on her head.

She was cross-examined whether she was even at the scene in the month of May and initially stated that she was. She then said after five questions in cross-examination that she was not. I then questioned the witness as to her understanding of perjury as to whether she was telling any lies here today.

I reached the conclusion that she was the least convincing witness with some of the evidence that she gave and I reach a further conclusion with my assessment of her and the other 2 witnesses that none of them was particularly bright intellectually. Either that or they were totally overwhelmed by the situation in which they found themselves today.

The Defence did not call any evidence and Mr Fepulea'i submitted that corroboration should be looked for by the court and that the evidence from the mother was tenuous in the extreme. He drew my attention to the provisions of the Maintenance and Affiliation Act section 10 which relates to the evidence of the mother alone. It was submitted by Mr Edwards that it had never been the prosecution case that the Defendant was necessarily the father of the child. This is not an affiliation case and the same legal principles do not apply at this particular hearing. What the court must do is to remind itself that it is dangerous to convict an accused in a sexual case on the uncorroborated evidence of the Complainant. What evidence here is capable of corroboration? There is evidence of the distress of the child. There is the evidence of the blood stains on the clothing and there is evidence of the presence of the defendant at the scene. That evidence was given not only by the Complainant but by the mother and the third witness. What the court must be satisfied here is that the Defendant did have sexual intercourse with the child and that the prosecution has proved its case beyond reasonable doubt. It is not a rape case where consent is of course a factor; consent is not of any significance in a case of this nature. As I have said there are limitations in the evidence of the witnesses which is to be expected after a lapse of time and given the background of each of the 3 witnesses and the village life that they have clearly lived. If there were not minor discrepancies I would be surprised. There is not in my view a shadow of a doubt in this case and I am perfectly satisfied that the Prosecution has proven its case beyond all reasonable doubt that sexual intercourse did occur in the month in question between the Defendant and the Complainant and at that time she was a child under the age of 16. The defendant will be convicted and remanded to 2 March 1992 for probation report and sentence. Bail will continue.