

IN THE SUPREME COURT OF SAMOA

HELD AT MULINUU

BETWEEN: **P O L I C E**

Prosecution

A N D: **MITAI POUVI**
FAALOGO, *male of*
Sapunaoa

Defendant

Presiding Judge: Justice Slicer

Counsel: T Toailoa for the prosecution
 T Atoa for the defendant

Hearing: 10 April 2012

Sentence: 20 April 2012

Charges: Indecent Assault

SENTENCE

1. The defendant has been found guilty of two acts of Indecent Assault on his sibling then aged under 16 and who was born in September 1996. He was aged 36 at the relevant time.
2. For the reasons given in the ex tempore judgment delivered on 11 April 2012, Mitai Pouvi Faalogo (“Pouvi”) was acquitted of the crime of incest since the

Court was not satisfied beyond reasonable doubt that there had been an act of sexual intercourse involving penetration.

3. There was a significant age difference between the complainant and her half brother. The acts of indecency were acts of rubbing the penis between the thighs and oral sex on the complainant.
4. Pouvi is the second born child of twelve children. The complainant was his half sister and each shared the same father. He continues to live with his father and stepmother and has spent most of his life working on the family plantation, and has been responsible for his family's income and well-being. His family and pastor speak highly of him. He has been assessed as being suitable for community work.
5. Pouvi has been in custody since 17 October 2011. There has been no physical harm to the complainant.
6. The Court is prepared to be lenient in this matter.
7. On the first charge of an indecent act, he is sentenced to a term of imprisonment for a period of six (6) months.

8. On the second charge, he will be dealt with in accordance with the Criminal Procedure Act 1972 section 113. If he breaches the order he will be liable for a second sentence of imprisonment for a period of six (6) months.

ORDERS OF THE COURT

- (1) Mitai Pouvi Faalogo is convicted of 2 charges of Indecent Assault.
- (2) On the charge of indecency of rubbing his penis against the thighs of the complainant, Mitai Pouvi Faalogo is sentenced to 6 months imprisonment, such sentence to commence as and from 17 October 2011.
- (3) On the charge of indecency of oral sex, Mitai Pouvi Faalogo will appear for sentence if called upon, subject to the condition that for a period of 2 years he commits no crime or offence of a sexual nature or involving violence to the person.



JUSTICE SLICER