

Appellate Jurisdiction
Criminal Appeal No. 74 of 1980

000204

Between:

JOSAIA BULIVONO

Appellant

and

REGINAM

Respondent

Mr. H. Lateef for the Appellant

Mr. V. Maharaj for the Respondent

JUDGMENT

This is an appeal by the appellant against the sentence of three and a half years' imprisonment which was imposed on him in the Nausori Magistrate's Court on 20th May 1980 upon his conviction on his own plea of incest contrary to section 171(1) of the Penal Code.

The ground of appeal is that the sentence is harsh and excessive.

The facts reveal that in November 1977 the appellant 32, made a sexual overture on his sister 18, Sereana Wati, but no sexual intercourse took place between them on that occasion. However about four months later the appellant had sexual intercourse with his sister with virtually no resistance from her. An incestuous relationship developed between them and continued for several months until in April 1980 the matter was reported to the police by his sister whose conscience had bothered her. The appellant was then interviewed, arrested and charged.

The appellant has ten previous convictions but none is of a sexual nature.

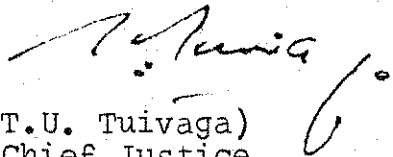
In the Court below the appellant's father spoke on his son's behalf saying "Accused is my only male child. He is looking after us. I and my wife are of old age. If he goes to prison no one will support us. I ask Court to be lenient. I am 69 years of age."

At the hearing of this appeal letters from Reverend Inoke Bulivou and from the Prison Chaplain were read out. Both of them spoke of the important role appellant occupies as a breadwinner in his family which includes two ageing parents and three young sisters whose schooling has been severely threatened ~~by~~ the absence of appellant's financial support for them. Appellant is a carpenter by trade and has worked with the Public Works Department for over fifteen years. They also spoke of him as a person of otherwise good character.

The Court has been assured that the likelihood of a recurrence of this offence is quite remote because the complainant is now living in Colo-i-Suva with an elder sister. I accept Mr. Lateef's submission that incest between brother and sister has always been considered by the Courts to be much less grave than incest between father and daughter. This is clear from the reported cases in England.

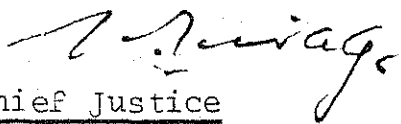
In all the circumstances of this case I am satisfied that the sentence of three and a half years' imprisonment which was imposed in the Court below is harsh and excessive.

Accordingly I would set aside the sentence imposed in the Court below and substitute a sentence of two years' imprisonment suspended for two years.


(T. U. Tuivaga)
Chief Justice

Suva,
23rd July 1980

Section 28A(4) of the Penal Code (Amendment)
Act 1969 complied with.


Chief Justice