

REG. v. TAUFA HEMA
 v. TU'AKALAU FUKOFUKA
 v. TUALAU PANI
 v. SIOSIFA MOALA

(Criminal Court : Hunter J. Nuku'alofa, 29th May, 1956).

Rape — Abduction — Abetment — Principals in the first degree — Abettor present at the Commission of the offence — Criminal offences Act 1926, Section 7 (Cap. 10).

The first accused was charged with rape and abduction. The other three accused were charged with abetting the rape and with abetting the abduction. By consent the accused were tried together without a jury. At the conclusion of the case Counsel for the defence submitted that the three charged with abetting the abduction must be acquitted of that offence as they were present at, and took part in the abduction and were therefore principals and should have been charged as such.

Hama appeared for the Crown.

Koloamatangi appeared for all the accused.

C. A. V.

HUNTER J. : I am convinced that these accused took Tala'noa (the girl against whom the offence was alleged to have been committed) away by force and that the accused Taufa Hema had intercourse with her against her will and I therefore find him guilty on both counts.

Koloamatangi submitted that even if I am satisfied that the girl was abducted, the other three accused cannot be convicted of abetting the abduction because on the evidence they were principals and having been charged with abetting and not as principals the verdict must be not guilty. He says in English law before a person can be convicted as an accessory before the fact it is essential that he be absent at the time the offence was committed. This is correct; but these accused are not charged as accessories but as abettors, a statutory offence defined in Section 7 of Cap. 10 and I can find nothing in the wording of that section to suggest that a person can not be convicted under it if he was present at the commission of the offence. The section refers to "every person who knowingly does any act for the purpose of facilitating the commission of an offence". I am satisfied that these three accused knowingly did several acts for the purpose of facilitating the commission by Taufa Hema of the offence of abduction. I therefore find each of them guilty of the second count, i.e. abetting the abduction.

With regard to the first count with which each of them is charged I am satisfied that the accused, Siosifa Moala, abetted the rape but I am not satisfied that either Tu'akalau Fukofuka or Tualau Pani is guilty on this count.

My verdict is :

Taufa Hema, guilty on both counts.

Siosifa Moala, guilty on both counts.

Tu'akalau Fukofuka, not guilty on the first count;
guilty on the second count.

Tu'alau Pani, not guilty on the first count;
guilty on the second count.

(The first two accused were sentenced to 4 years imprisonment on the first count; 3 years on the second, the sentences run concurrently; the other two accused were sentenced to three years imprisonment).
