

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

S. 34/97

BETWEEN: THE POLICE

Informant

A N D: VAITOELAU GREEN of Leufisa
and Poutasi Falealili

Defendant

Counsel: G Latu & M Leung Wai for prosecution
Accused in person

Hearing: 4 November 1997

Judgment: 10 November 1997

JUDGMENT OF SAPOLU, CJ

The accused is charged that at Leififi on 12 March 1997 he indecently assaulted the victim, a girl over the age of 12 years and under the age of 16 years.

In considering the evidence in this case, I do bear in mind the warning that it can be dangerous to convict an accused of a sexual offence solely on the uncorroborated testimony of a victim. There is, however, nothing to prevent the Court from so convicting if it is satisfied of the

truth of the victim's testimony. But if the Court so convicts, then it must do so bearing in mind the warning I have mentioned.

cont.

~~New~~ I do not have to refer to all of the evidence which has been adduced in this case. Essentially what the victim told the Court was that after school on the afternoon of 12 March 1997, she and her younger sister who also attends the Leififi Junior Secondary School went to the industrial arts room of the school. They were at that room for some time before the accused came. The victim said she and the accused then went into a small room inside the industrial arts room. In that small room, the victim further said that the accused kissed her, sucked her breasts, and tried to touch her private part. He also laid her on his laps. The victim was a student at the Leififi Junior Secondary School and was about 15 years of age at the time. She gave her date of birth as 19 August 1981.

To corroborate the victim's testimony, the prosecution called several witnesses. The first was the victim's younger sister who was 14 years old at the time of this incident. She testified that after school on the afternoon of 12 March 1997, her sister the victim asked her to go to the industrial arts room for the victim's geography class with the accused. When they came to the industrial arts room, a school rugby meeting was held in that room. So they waited for the accused who only came after the rugby meeting was finished. The victim's sister said she was then sent by one of the teachers present to tell two other teachers to meet with him at his home. She was away for quite some time. When she returned she did not initially see any person in the industrial arts room. But she then saw the head of the accused and part of the victim's body inside the small room in the industrial arts room. The victim's sister then said that the victim called out for her to wait so that they could go home together. She refused to wait as it was already 3.00pm. So she went home while the accused and the victim were still by themselves in the small room.

A male teacher named Faalafua Vaana who also teaches at the Leififi Junior Secondary School testified that a school rugby meeting was held at the industrial arts room. Also present were the accused and the victim. When it was time for him to leave, only the accused and the victim were still inside the industrial arts room.

The next corroborating witness called by the prosecution was constable Tavita Asalemo who investigated this case. The police officer testified that when he questioned the accused about the alleged incident, he admitted to the offence. He said that the accused told him that he talked with the victim inside a room. He then kissed her, sucked her breasts and nipples, made love bites on her left breast, and he also laid her down to have sexual intercourse but it did not happen.

In his oral testimony the accused said that when he was first questioned by constable Tavita Asalemo he denied the accusation against him. The police officer then said not to make things difficult. So he orally admitted to the offence. However he refused to make a written statement or consult a lawyer. In Court, the accused has again denied that he indecently assaulted the victim.

After giving careful consideration to the evidence I have decided to accept the victim's evidence that the accused performed indecent acts upon her. That evidence is corroborated to some extent by the evidence of the victim's sister who said that she found both the accused and the victim inside the small room in the industrial arts room, and they were still there by themselves when she left for home at about 3.00pm. I must also say that I have not been impressed by the accused's wavering attitude. He said that initially he denied the charge against him when questioned by constable Tavita Asalemo. But he then admitted to the charge to the police investigating officer when he was told not to make things difficult. The police officer denied

making any threats and simply related what he said the accused told him about what happened in this incident.

Even without corroboration, I have decided to accept the victim's evidence as to the indecent acts the accused did to her bearing in mind the corroboration warning. The evidence of her sister and of the police investigating officer do go to support that conclusion. I do not accept the accused's oral denial to the Court.

As to the age of the victim, her mother testified that the victim was born on 19 August 1981. The mother also produced the victim's birth-certificate to confirm her date of birth. I am therefore satisfied that the victim was between 12 and 16 years of age at the time of the alleged offence.

In all I am satisfied that the charge has been proved beyond reasonable doubt. This matter is adjourned to 24 November 1997 at 12.00 noon for a probation report and sentencing.

T. M. Sapulu
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CHIEF JUSTICE