FAATOAFE (AKI TAUILIILI) v POLICE

Court of Appeal Apia
Morling, Ward, Muhammad JJ
10 November, 13 November 1992

PRACTICE AND PROCEDURE - appeal against criminal conviction

HELD: Appeal dismissed

Fepulea'i for Appellant
Edwards for Respondent

Cur adv vult

The appellant was convicted on 19 February 1992 of a charge of unlawful carnal knowledge of a girl aged 13 years. He was sentenced to imprisonment for two years. He had appealed to this Court against both conviction and sentence. However, his counsel has, very properly in our view, abandoned the appeal against sentence.

The prosecution's case at the trial was that the Appellant, who is aged 51 years, crawled into a room where the Complainant was sleeping, forced himself on her and had sexual intercourse with her. The incident occurred some time between 1st and 31st May 1991, but was not reported to the police until the Complainant's pregnant condition became apparent to her school teachers.

The Complainant gave evidence identifying the Appellant as her assailant and gave a coherent account of the sexual abuse to which she was subjected. Her mother, who was asleep in an adjoining house at the time, said she heard the Complainant scream and went to the fale where she had been sleeping. She saw blood stains on her daughter's clothing and between her legs. She gave evidence that another girl, Netini Stowers, who was apparently in the house, assaulted the Appellant. Later the same day, according to the mother, the Appellant came to her and apologised for his conduct. The evidence as to what the accused actually said when he apologised is sketchy to say the least. But we think it sufficiently appears from the evidence that he apologised for having sexually abused the Complainant. For instance, after having given evidence in chief that the accused "just apologised", she said the Appellant said "I was drunk. It was wrong at that time". The mother was asked in cross examination: "Are you saying that the Defendant later came and

apologised for what he had done to your daughter?" she replied, "Yes". Although not included by His Honour in the evidence he regarded as corroborative, this evidence, taken with the clear evidence that the Appellant was seen near the scene of the alleged offence after the Complainant screamed was sufficient corroboration linking the accused with the offence. We should add that there was no dispute at the trial that the Complainant was aged only 13 years on the night of the alleged offence and that someone had had sexual intercourse with her on that night.

Notwithstanding what counsel for the Appellant has put to us, we do not think any ground has been made out for setting aside the conviction. There was evidence which the trial Judge was entitled to accept which justified the conviction. It was put to us that there were inconsistencies in the evidence given by the Complainant and her mother but we do not think they are of any great significance. Certainly they were not such as to require the trial Judge seriously to discount their evidence. He had the benefit of seeing them in the witness box. We see no reason for holding that he ought not to have been satisfied beyond reasonable doubt of the accused's guilt.

It is true that the evidence of the witness Netini Stowers was not persuasive, to say the least. But His Honour does not appear to have placed much, if any, reliance upon it. The evidence in the prosecution's case was such as to justify a reasonable conclusion that the case against the Appellant was proved beyond reasonable doubt.

Accordingly, the appeal is dismissed.