

PUBLIC PROSECUTOR -v- PETER SALEMALO

JUDGMENT

The accused in this case is charged:-  
that on or about the 18th February 1986 in Vila, he attempted to have sexual intercourse with Faith Ann Din Eric aged 13 years, who was living with him as a member of his family and was under his protection.

On the 23rd March he appeared before me and pleaded guilty to the charge.

Outlining the case for the prosecution, Mr Pickenson stated that the complainant, the young girl, was effectively but not legally adopted by the accused when she was nine years of age and was treated as a full member of the family. It seems the accused became concerned with the health of the girl and her attitude to a boy so he decided to discover what her attitude to sexual approach would be. One day in February 1986 while his wife who was a nurse, was on duty at the hospital, he went to her bedroom and started to kiss the girl. However, as her brother, who was sleeping in the same room, began moving in his bed, the accused asked her to move to his room and she did so. When there he took off his lava lava and kissed her again. That at his instigation she held his penis and lay on the bed. Then the accused removed her pants and kissed her vagina and put his penis into her mouth.

These, in my opinion, are the acts of a depraved man in circumstances as they then existed. The girl alleged that the accused then attempted intercourse with her but she was unable to say whether his penis penetrated her vagina. The girl did not report to anyone because she was afraid of being beaten by the accused. That a few days later, on Friday of the same week, the accused called her to his room again. This time fearing a repetition of what happened before, she ran away to her auntie's house and went later to her mother at the hospital. That an attempt at a settlement was made by the accused by giving money to his wife, the girl and the aunt.

The accused made an admission to the police similar to what was related by the girl. He admitted sucking her breasts and asking her to suck his penis. He admitted that on the Friday he attempted to have sex with her again but she ran away.

Mr Coombe, on behalf of the accused, substantially admitted the facts as outlined by the prosecution. He submitted that the accused pleaded guilty and this spared the girl considerable embarrassment. That, of course, is a factor in favour in all accused persons.

I cannot accept the fact that because the complainant had been ill, possibly due to sex worries, that it was necessary for the accused to accustom her to such by making her suck his penis and he suck her vagina. In such a quarter of society such may be necessary to train a girl for prostitution and the like but not ordinary sexual relationship between husband and wife. According to Mr Coombe's instruction there was an orgasm as a result of oral sexual activity. No complaints were made the following morning after the event when all had breakfast together.

Mr Coombe accepts that the accused pleaded guilty to the serious charge on legal advice. That it was not a long planned seduction. There is no suggestion of any physical injury or physical fear.

The accused is deputy director of radio vanuatu. He has an excellent education and is one of the highly qualified ni-vanuatu men. He worked his way through the ranks in radio vanuatu. That his wife is a nurse. He has three boys of his own and three adopted children. This is the first time he has had any criminal problem. That the accused has suffered a great deal and is extremely sorry for what happened.

Both the prosecution and defence agree that the accused is a first offender. I take into consideration the fact that he has pleaded guilty and saved much embarrassment to the girl if she had to give evidence. I also appreciate that the accused has worked hard in his job and climbed the ranks to his present position.

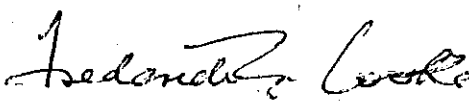
One would not expect the accused to behave as he did in this case but I suppose nearly everyone has some indiscretion in their life for which they are ashamed, of course, not necessarily sexual.

In my opinion, this is a case I cannot place in the category of an indiscretion. If one, it certainly is a serious one and one in which I must impose a deterrent penalty.

It seems to me to follow after making all due allowances for the personal circumstances and antecedents of the accused, the facts of this case, and the need to show such mercy as is compatible with the safety of the public, I should impose such sentence as will spell out clearly to anyone who commits such an offence that they must expect and will receive an appropriate penalty.

I therefore sentence the accused to 18 months imprisonment suspended for three years and a fine of 100,000vT or six months imprisonment in lieu thereof. The fine to be paid in two instalments of 50,000vT. One instalment at the end of April and one at the end of May 1987.

Dated at Vila this 24th day of March, 1987.

  
Frederick G. Cooke  
CHIEF JUSTICE

