

HELD AT APIA

CRIM. NO. S.870/92

BETWEEN : THE POLICEINFORMANTA N D : TAMALEMA'I TUANUU TAMALEMA'I
FERETIDEFENDANTCounsel : M.B. Edwards for Prosecution
L.S. Kamu for DefenceDecision : 9 June 1993DECISION OF SAPOLU, C.J.

Tamalema'i, you are appearing for sentence on a charge involving having sexual intercourse with a young girl between the age of 14 and 16 years. In determining the appropriate penalty in this case I take into account what is said in the probation report in your favour as well as what your counsel has told the Court.

The mitigating circumstances as related in your probation report as well as in your counsel's plea in mitigation including the fact that you are a first offender, that your family made a formal apology to the victim's family which was accepted and that the village council imposed a penalty on yourself which you have paid by way of giving a cattle beast to the village council.

I accept what your counsel has told the Court that in this case the victim either consented or the circumstances were such that you were led to believe that the girl or the victim consented to having sexual intercourse with yourself. If it were otherwise, I would have expected the

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prosecution to file a charge of rape. So I will give you the benefit of the version which is more favourable to yourself, which is the version as related by your counsel. On the other hand, the Court takes into account that the victim in this case is related to yourself and perhaps she might not have resisted your actions in having sexual intercourse with yourself because of the close family relationship she has with yourself. The Court also takes into account the fact that the victim in this case is only 13 years of age, so she is about 29 years younger than you.

There is no denial that the offence which you are appearing for sentence this morning is a serious offence and that fact is reflected in the maximum penalty which the Legislature has provided for this kind of offence. The Court also bears in mind the prevalence of this kind of offence in this community. In weighing all of these matters the Court is of the view that imprisonment is the most appropriate penalty in the circumstances.

To assist you from being involved again in this kind of offence I think a term of probation should also be imposed. The defendant is convicted and sentenced to 12 months imprisonment to be followed by 12 months probation and the defendant is to comply with such conditions of probation as directed by the probation service.

T. P. M. J. alu
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CHIEF JUSTICE