

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

CRIM. NOS: S.371, 372 & 373

BETWEEN: POLICE

Informant

**A N D: ISAAGO FAASA'O, VILIAMU
ELISARA and LIVIGISITONE
PEAUALA, males of Salua-tai
Manono**

Defendants

**Counsel: M Leung Wai for police
T K Enari for defendants Isaako and Viliamu
R S Toailoa for defendant Livigisitone**

Hearing:

Sentencing: 16 November 1998

ORAL SENTENCING OF SAPOLU, CJ

In assessing what should be the appropriate penalty in this case, the Court takes into consideration what counsel for all the defendants have placed before the Court in mitigation of penalty. I accept that the defendants being first offenders is a factor to be taken into account in mitigation of penalty. And likewise the fact that the families of two of these defendants namely Livigisitone and Viliamu did make formal apologies to the family of the victim for what happened in this case.

The facts of this case were adduced in detail before the assessors but what happened was that the complainant did consent to having sexual intercourse with Isaako Faasa'o but she did not consent to having sexual intercourses with Viliamu Elisara and Livigisitone Peauala. As to what Isaako was charged with, the assessors must have found him guilty of aiding and abetting the non-consensual sexual intercourses that took place between the complainant and the defendants Viliamu and Livigisitone. On that basis, Isaako would be just as guilty as Viliamu and Livigisitone for the non-consensual sexual intercourses that Viliamu and Livigisitone had with the complainant.

I accept what counsel has submitted that this rape case is perhaps not as bad as some of the other rape cases that have come before the Court.

But the fact still remains that rape is a serious offence. I also take into consideration what has been set in the probation reports of all three defendants about the favourable reports by their relatives regarding each of the defendants. In weighing all these matters, the Court has come to the view that a term of imprisonment should still be imposed and each of the defendants is convicted and sentenced to three(3) years imprisonment.

T. M. Saipala
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CHIEF JUSTICE

Solicitors:

Attorney General's Office of Apia, for informant
Kruse, Enari & Barlow Law Firm of Apia, for defendants Isaako & Viliamu
Toailoa Law Firm of Apia, for defendant Livigisitone