

THE QUEEN

R

v.

AGALEI TAUVAGA LETELE

Coram: Cooke P.
McMullin J.
Somers J.

Hearing: 10 July 1986

Counsel: C.B. Ruthe for Appellant
C.P. Browne for Crown

Hearing: 10 July 1986

ORAL JUDGMENT OF THE COURT DELIVERED BY SOMERS J.

This is an application by Agalei Tauvaga Letele for leave to appeal against a sentence of 8 years imprisonment imposed on him in the High Court at Auckland on 30 January 1986 on a charge of rape to which he had pleaded guilty after the taking of depositions.

The circumstances emerge from the evidence of the complainant at the preliminary hearing and from Letele's statement to the Police. It appears that Letele, then aged 17, and another man Lemalu, aged 22, spent the early evening of 9 August 1985 drinking at an hotel. They drove off in Letele's van

looking for female company. They heard sounds of music from a house, stopped, and went in. They dragged the complainant, a 16 year old girl who was unknown to them, out of the house and drove off with her. They stopped near another house at which members of a gang to which they were connected were having a party. Both men then raped the girl in the back of the van. They took her into the party and later left with her. Lemalu was dropped off. The girl was taken by Letele to the place where he was residing where she was raped again. She was returned to her home the next morning.

Mr. Ruthe submitted that the sentence was excessive having regard to the absence of any serious physical violence other than that inevitably involved in rape, to Letele's age, his plea of guilty, and the subsequent sentence of 6 years imprisonment imposed on Lemalu after a trial by jury; and further, that the Judge ought not to have taken into account the second act of intercourse for it was not the subject of a separate charge of rape.

We do not think there is any substance in the last point. The girl's evidence of a second rape was emphatic enough and Letele's own statement is entirely corroborative. It would be unrealistic to isolate his conduct in relation to the first act of intercourse without reference to what went before and after. Nor do we think we can give weight to the sentence imposed on Lemalu. The Judge in that case having heard the evidence thought that Lemalu was not the ringleader and was less

culpable than Letele. He noticed particularly that Letele had had connection with the girl on two occasions. The material we have in Letele's case certainly does not lead us to question that opinion.

We do not doubt that credit was due to Letele in respect of his plea of guilty but as it came after the girl had given evidence at the preliminary hearing it cannot attract the weight which might have been given it had the plea been made earlier. And we agree too that Letele's age was an important aspect of the case. Both of these matters however were mentioned by the Judge and both taken into account by him.

The aggravating features of the case have also to be considered. They include the forcible abduction from a private house of a 16 year old girl who was unknown to Letele; her rape by both men in the back of the van; the girl's detention by Letele for the rest of the night and his further rape of her.

The sentence imposed was severe, particularly having regard to Letele's age. The case however was a bad one and in the end we are unable to say that the sentence was so excessive that we ought to interfere.

Accordingly leave to appeal is refused.



Solicitors

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