

**IN THE SUPREME COURT OF NAURU**

**CRIMINAL CASE NO. 2/2006**

**THE REPUBLIC**

**vs**

**JOSAIHA DOWEDIA**

Mr. Peter MacSporran for the Republic  
Mr. Pres Nimes for the Accused

**DECISION**

Arising out of an incident on 20<sup>th</sup> July 2004 the accused has been charged with raping a girl of 15 (she said in evidence she was 16 but her birth certificate shows she was 15 at the time) or alternatively of indecently assaulting her.

Before the hearing Legal Aid was arranged for Mr. Nimes to appear for the accused.

On arraignment Mr. Nimes complained that there were no sufficient particulars of either offence. I ruled against him. The particulars given in the two documents, the Charge and the Information, together with the evidence given at the Preliminary Inquiry were sufficient.

I arraigned the accused myself. He pleaded not guilty to each charge.

On the night in question the victim was in a group drinking. She said she was drinking vodka. After some time she needed to relieve herself. She got someone to accompany her to the beach. Her escort waited a little distance away. As she finished a man came up from behind, picked her up and took her to another place. Despite her resistance and protest, by force he took off her clothes, laid her on her back, had his hand over her mouth, was on top of her, strangling her on the throat, had intercourse with her. Her evidence, unchallenged in cross examination, was that he put his penis inside her. She recognized him as the accused, Josaiha, whom she knew before. She fainted and next remembers being in hospital.

Mrs. Hetty Tom in whose house the victim was living, found the victim on the porch crying. She was covered in dirt; her clothes torn; red marks on her neck. The victim told Mrs. Tom that Josaiha had abused her, had sexual intercourse with her. After being cleaned up the victim was taken to the hospital, was examined by a doctor who has now left the country. The report of the examination was tendered but it was neutral: does not advance the case of either prosecution or defence.

Orsono Hubert is aged 27. Up to this time he and Josaiha had been friends. Orsono was in the group drinking. As a result of something he was told Orsono went to the place where the victim and the accused were. He saw Josaiha on top of the victim. They were both naked. He

recognized Josaiha, told him to stop. The victim was crying and telling Josaiha to get off. Josaiha did get off only when Orsono punched him in the face. Josaiha challenged Orsono to a fight but two others held him down. Orsono took the victim to Mrs. Tom's house, not far away. I accept that all prosecution witnesses were telling me truthfully what they saw and heard. There evidence is entirely reliable.

The accused, Josaiha, did not give evidence; there was no evidence for the defence. In his address Mr. Nimes argued that there was evidence of actual penetration. He reminded me that although is not a rule of law, corroboration is highly desirable and is a rule of practice. I accept that that is the principle of law yet I reject Mr. Nimes argument for three reasons. First, the victim's evidence of penetration was not challenged by cross examination. Secondly, there is the evidence of the victim's recent complaint to Mrs. Tom that the accused had sexual intercourse with her.

Third, Orsono Hubert corroborates - really so far as a bystander ever can corroborate - the victim's account of what happen.

The prosecution has proved beyond reasonable doubt all elements of the offence of rape - the identity of the accused and that he had sexual intercourse with the victim without her consent.

The accused is guilty of rape.

**THE HON. ROBIN MILLHOUSE QC.,  
CHIEF JUSTICE  
15<sup>th</sup> DECEMBER 2006**

*7 years*