



**IN THE SUPREME COURT OF NAURU**

[CRIMINAL JURISDICTION]

Case No. 52 of 2015

**THE REPUBLIC OF NAURU**

**v.**

**JACKO GADEANANG**

Before: Crulci J  
For the Prosecution: L. Savou  
For the Defence: R. Tagivakatini

Dates of the Hearing: 20 – 24 July, 2015  
Date of Judgment: 27 July 2015

**JUDGMENT**

1. Jacko Gadeanang is charged with two offences of rape, contrary to section 347 of the Criminal Code 1899.

**COUNT ONE**

**Statement of Offence**

**RAPE: Contrary to section 347 of the Criminal Code 1899**

### **Particulars of Offence**

Jacko Gadeanang on the 19<sup>th</sup> day of December 2014 did rape Terra Akibwib

### **COUNT TWO**

#### **Statement of Offence**

**RAPE:** Contrary to section 347 of the Criminal Code 1899

### **Particulars of Offence**

Jacko Gadeanang on the 20<sup>th</sup> December 2014 did rape Lily Ketner

2. The punishment for the offence of rape under section 348 Criminal Code 1899 is imprisonment with hard labour for life.
3. The accused pleaded not guilty to the two counts of Rape and the prosecution called nine witnesses. At the close of the prosecution case defence counsel accepted that there was a case to answer and called one witness, the accused, who gave sworn evidence (interpreters were required for the majority of the witnesses).
4. The accused admitted having sexual intercourse with Terra Akibwib, raising as his defence that she consented to the act. He denied having sexual intercourse with Lily Ketner.
5. In Nauru the Criminal Code remains substantially without the amendments and reforms that have been applied to sexual offences in Australia, New Zealand, the United Kingdom and other Pacific Island countries. The common law prevails in Nauru.
6. The prosecution must prove its case beyond reasonable doubt. For count one it must prove beyond reasonable doubt that Terra Akibwib did not consent to sexual intercourse with the accused; for count two the prosecution must prove beyond reasonable doubt that it was the accused that had sexual intercourse with Lily Ketner, and that this sexual intercourse was without her consent.
7. Corroboration is required as a matter of law in certain cases. For sexual offences, including rape, it became a matter of practice. In a matter

dealing with rape and carnal knowledge of a girl under sixteen, Channell J stated in *R v Graham*:

*"It is not a case in which corroboration is necessarily required. But it is one of those cases in which the judge should explain that the burden of proof is upon the prosecution to make out the case to the satisfaction of the jury; that it is dangerous to act upon the evidence of one person ... unless corroborated; and at the same time he explained that strictly speaking the law did not require her evidence should be corroborated, and that if they believed the girl's evidence they could act upon it."*

8. What amounts to corroboration was considered in *R v Baskerville*, which looked at accomplice evidence; the judgment was delivered by Lord Reading CJ:

*"We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute.*

*...The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime."*<sup>2</sup>

9. The condition of the complainant has been held by the courts as capable of evidence of corroboration. Byrne J in *R v Zielinski* considered the evidence given by the complainant's son as to the complainant's condition shortly after the incident complained of:

*"The corroboration consisted, if the jury accepted it, as no doubt they did, of the evidence of Mrs. Greaves' son that a few minutes after the appellant had left her house he found her in a shocking state, and that she seemed frightened and ashamed. That was circumstantial evidence which confirmed the evidence of Mrs.*

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<sup>1</sup> *R v Graham* (1910) 4 Cr A R 218, at 219

<sup>2</sup> *R v Baskerville* 1916 2KB 658, at 667

*Greaves in a material particular and was therefore evidence upon which the jury were fully entitled to act.”<sup>3</sup>*

10. This approach was approved of in *R v Redpath* where Lord Parker CJ stated:

*“It seems to this court that the distressed condition of a complainant is quite clearly capable of amounting to corroboration.”<sup>4</sup>*

11. The requirement at common law for there to be a complainant made at the earliest reasonable opportunity was considered in *R v Camelleri*<sup>5</sup>, adopting the approach in *R v Lillyman*:

*“It was held that on a charge of rape not only the fact of a complaint having been made but the terms of the complaint were admissible, not as being evidence of the facts complained of but to show the consistency of conduct on the part of the prosecutrix and as negating consent.”<sup>6</sup>*

#### SWORN EVIDENCE OF FIRST COMPLAINANT TERRA AKIBWIB

12. The complainant in count one is Terra Akibwib. She is a married woman with five children ranging in age from 6 to 18 years. On the night in question she was drinking with friends in Meneng and later went with friends including Joleen Hubert to Location. At Location they were drinking at Single Block and there was loud music playing. The complainant agreed that she had been drinking but in answer to a question ‘were you tipsy?’ she replied ‘I still know everything.’

13. The complainant went outside to see two boys and after speaking with them she saw the accused who she calls Jacko. She denied going outside to meet the accused. The accused asked her to have sex with him and she said ‘No.’ She stated that he only asked her the one time. The accused then ‘strangled me and then he pulled me he locked me on the neck’. He then pulled her into room 3 which was empty, pushed her to lie down, pulled down her pants and had sex with her by putting his penis into her vagina.

<sup>3</sup> *R v Zielinski* (1950) 34 Cr.App.R 193, at 197

<sup>4</sup> *R v Redpath* (1962) 46 Cr.App.R. 319, at 321

<sup>5</sup> *R v Camelleri* [1922] 2KB 122: Held that complainant witness could be male or female.

<sup>6</sup> *R v Lillyman* [1986] 2Q.B. 167

14. The accused then told the complainant to sit down and give him a 'blow job' which she did unwillingly. After that he told her to lie down again and he had sexual intercourse with her a second time. She states did not willingly have sex with him. During this time she heard her friends outside who called her name and the accused reaction was to *'quickly put his pants on and then he run away'*.
15. She put her pants on and went outside to her friends: *'Then I go to my friend Joleen, I told her everything. I told Joleen that I have been raped'*. The complainant told Joleen it was Jacko who had raped her. Afterwards she had a bit to drink and went home.
16. The complainant was scared to shout and felt not good. She shouted but her neck pained. She knows the accused who is the husband of her sister's friend.
17. Her daughter Lily (complainant in count two) told her *'of the incident when Jacko punched her on the belly and then forced by him to have sexual intercourse.'* She discussed the name Jacko with Lily. She denied that it was her who told Lily to blame Jacko, rather that it was Misty (Jacko's wife's sibling) who told Lily to report Jacko.
18. The matter was reported to Police three days later. She did not report it at the time as she was scared and a bit drunk. The matter was reported after speaking with her daughter, and her family told her to report it.

#### SWORN EVIDENCE OF JOLEEN HUBERT

19. The witness lives at Location compound. She was drinking on the night in question with the first complainant Terra Akibwib and others at the Meneng, dropped the complainant at Location and went back to Meneng, later coming to Location compound with others. At Location there were a lot of people, there was dancing and loud music.
20. Later she saw the first complainant *'she came to me crying and asked me if we could leave this place, and I said why we just got here we want to enjoy ourselves, she said Jacko has strangled me and raped me.'* The witness stated the complainant was unhappy and afraid.

#### SWORN EVIDENCE OF SECOND COMPLAINANT LILY KETNER

21. The witness gives her age as 17 years, date of birth 11 July 1997. She lives at Location with her grandmother and mother.
22. She had been with her friend Nancy at the Single Block drinking alcohol, and was on her way home when she felt someone behind her. She was pulled by the hair and punched in the stomach and then '*carried like a bag of rice*' to a nearby single block. There her panties were removed and '*he did what he had to do and then he told me not to tell anyone else he would repeat the act.*' She was afraid.
23. At the time she was punched, carried and raped she did not see who the assailant was as it was too dark. She had not seen the assailant before this incident and after the rape saw his face in the light. The light appears to have been from a motor bike and the sighting was for a short time.
24. There was some confusion on the part of the witness in cross-examination as to whether she had first told her mother or her boyfriend about the rape. Her mother disclosed that she too had been recently raped. Jacko's name was mentioned and this was by her mother.
25. She did not attend an ID parade and identified the accused in court in the dock as she had done previously (during the preliminary enquiry) in the District Court.

#### SWORN EVIDENCE OF ACCUSED JACKO GADEANANG

26. The accused is 27 years of age having been born on 16 September 1987. He left school at 16 years of age, Form 3 and has not been employed. He lives at Location Compound with his family.
27. The accused first drank with complainant Lily Ketner and the next night with complainant Terra Akibwib. His evidence is conflicting as to which night he drank with whom, when he was arrested and how long he was remanded for, but the clear evidence is that there were separate drinking incidents.

28. He was at Location, Single Block 19 and was drinking inside with friends. There was no light inside the room. He met with complainant Terra Akibwib and drank with her for a short time.
29. He gave conflicting answers in relation to having sex with Terra. Firstly saying *'She just left; Nope I didn't talk to her again'* and denying that they had had sex. Shortly thereafter his evidence was that he asked her to have sex and she agreed. He states he did nothing to her and *'After sex I just stood up and we went'*. The reason given by the accused for the case being brought against him by Terra Akibwib is *'Because someone told the police about this and then the Police told them to report it.'*
30. The accused's evidence in relation to Lily Ketner is that he was drinking in Location with friends and saw two girls one of whom was the complainant Lily Ketner. He saw her go home and he went home too. He denies any other contact with her. He believes people are saying he raped her because they were drinking together. In relation to Lily naming him *'She heard my name and people blaming me that I was the person.'*

#### RECORD OF INTERVIEW

31. The record of interview with the accused was held in the presence of the interviewing officer and witnessing officer. The questions were asked in mixture of English and Nauruan and typed in English. The accused requested that his legal representative be contacted. It appears that the pleader was unavailable and the interview continued without the accused having legal representation.
32. A number of questions were put to the accused in interview in relation to the commission of the offences charged and to the recorded response was *'Yes, guilty'*. He agreed that he answered the questions in that way; that he understood what they were saying and; that the questions were put to him in Nauruan.
33. When asked if he agreed that he committed the offences against the two women he answered *'No'*. The reason given for answering as he did in interview, *'At the time I was scared so I just said "Yes guilty".'* He identified his signature on the bottom of each page of the typed record.

34. There are questions recorded after the last Question and Answer No. 23 which are not numbered. In relation to these, the accused evidence is that to most of these are correct and he was not threatened, assaulted, nor had any promises held out to him during the interview. The accused maintains that he was not offered the opportunity to amend or make any changes to the statement.

#### SWORN EVIDENCE OF POLICE OFFICERS

35. Six police officers gave evidence in relation to the apprehension, transportation to the police station and subsequent interview with the accused. There were questions in relation to compliance with the Judge's Rules. I note that these are not rules of law and whilst compliance is preferred, failure to follow these may not be fatal.

#### OTHER EVIDENCE

36. There was a medical report tendered at the preliminary enquiry but not placed before this Court. Whether it benefitted the prosecution, defence or was neutral it should have been placed before the Court. It is for the Court and not for counsel to determine the weight of evidence.
37. There was no identity parade held nor any other identification made by the complainant Lily Ketner of the accused prior to the matter being before the Court.

#### ASSESSMENT

38. The accused's evidence was unimpressive, his demeanour and evasive manner of answering questions leads the Court to conclude that he is not telling the truth. The two complainants on the other hand impressed as witnesses. Whilst presenting as subdued and quiet, both gave their evidence in a direct and consistent manner, unshaken by cross-examination. The evidence of Joleen Hubert was given in a straightforward fashion, without hesitation, and is accepted.
39. The Court finds that the evidence of Joleen Hubert is corroborative of the complainant Terra Akibwib. The evidence of Lily Ketner that she was the victim of a sexual assault is accepted; however the identification



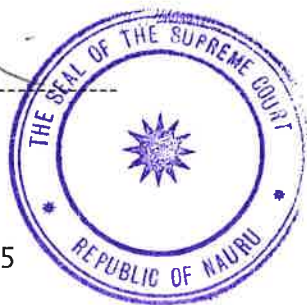
evidence of the accused in Count Two does not meet the standard required by law.

40. The Court's findings are based on the evidence of the witnesses without reliance upon the record of interview. As such it is not necessary for the Court to make a determination on the processes and procedures followed, nor the weight to be given to the accused's answers.

HELD

41. Having considered the evidence before the court and mindful of the burden and standard of proof required:
- (a) On Count One the accused is found guilty;
  - (b) On Count Two the accused is found not guilty and is acquitted of this count.

  
Justice J.E. Crulci



Dated this 27<sup>th</sup> day of July 2015