



IN THE SUPREME COURT OF NAURU  
AT YAREN

CRIMINAL CASE: 14 of 2017

BETWEEN

The Republic

AND

AD

DEFENDANT

Before: Khan J  
Date of Hearing: 14 February 2018  
Date of Sentence: 20 February 2018

Case may be cited as *Republic v AD*

CATCHWORDS:

Sentence of juvenile offender charged for rape and indecent assault under Crimes Act 2016-  
offence committed on children aged 9 and 6 years respectively- Probation Orders

APPEARANCES:

Counsel for the Republic: F Lacanivalu

Counsel for the Defendant: R Tagivakatini

### SENTENCE

#### INTRODUCTION

1. AD is charged with the offence of indecent assault in Criminal Case No. 14 of 2017. The charge reads as follows:

#### Statement of Offence

Indecent acts in relation to a child under 16 years: contrary to s.117(1) and (1) of the Crimes Act 2016.

#### Particulars of Offence

AD on 17 April 2017 at Nauru intentionally touched a child under 16 years of age namely GN and the touching was indecent and AD was reckless about that fact.

2. Further in relation to Criminal Case No. 15 of 2017 he is charged with the offence of rape which reads as follows:

Statement of Offence

Rape of a child under 16 years of age: contrary to s.116(1)(a), (b) and (1) of the Crimes Act 2016.

Particulars of Offence

AD on 18 June 2017 at Nauru intentionally engaged in sexual intercourse with a child under 16 years of age namely MG.

3. AD is 15 years old. He was born on 27 March 2002 and lives with his parents at Buada District.
4. He pleaded guilty to the above charges on 11 September 2017 and facts were outlined on 13 November 2017.
5. The facts are as follows:

(1) Case No. 14 of 2017 – indecent assault:

- a) On 17 April 2017 at about 4pm the victim went to AD's house. She was sitting on the foundation of the house peeling coconuts and he approached her and told her to be aware of dogs. She told him there were no dogs around. She then left him and went on her way to feed some pigs.
- b) While she was there AD came from behind and pulled her hand and said 'What am I going to do to you?' She followed him and when he pulled her hand they went and sat outside the washroom on plastic pallet.
- c) He then touched GN's buttocks and pulled her trousers down. She fell to the ground and Mulligan saw her when she fell down. She then stood up and ran home. The touching was indecent and AD was reckless about the fact that it was indecent. The matter was reported to police by GN's mother on the same day and AD was taken to the police station for questioning. He agreed that he had touched her buttocks and he said that it was for pleasure.

(2) Facts in relation to Case No. 15 of 2017 – a rape

- a) AD and MG who is 9 years old were sleeping in the same room. She was sitting on the bedside and was feeling bored.
- b) AD then pulled down his pants and showed her his penis. After that he stood up and shut the door and locked it. He then walked to MG pulled down her underwear where she was lying face down, got on her and intentionally had sexual intercourse with her by inserting his penis into her anus.

- c) MG screamed when he inserted his penis as it was painful. He quickly stood up and wore his pants and told her to be quiet. She started crying and was looking for her underwear and she kept on crying and someone knocked on the door. AD told her to be quiet but she kept crying and stood up and opened the door. She went in another room still crying where her mother was who asked her what happened. She then told her that AD had inserted his penis in her anus.
- d) The matter was reported to police on the same day and AD was interviewed under caution with his uncle. MG was medically examined and the medical examination revealed that there was a small abrasion on her anus.

#### MITIGATION

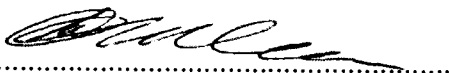
6. In his mitigation, Mr Tagivakatini submitted that AD does not attend school and is currently unemployed. He has never been employed. He submitted that he had been watching pornographic movies and wanted to experiment on young girls and therefore ended up committing the 2 offences.
7. His counsel accepted the victims in both cases where children of very tender years aged 6 and 9 respectively.
8. His counsel submitted that AD pleaded guilty to the charges at the earliest possible opportunity and not only that he readily made admissions to the police; and that he is extremely remorseful; that he has no previous convictions and that he will reform himself; and that the Court should exercise leniency.

#### CHILD PROTECTION OFFICER

9. The child protection officer Mr H Cook has been involved in this matter since 20 July 2017 when AD was released on bail in respect of the charge of rape. He made an assessment on 12 January 2018 and 12 February 2018 and submitted a report in which he stated that AD does not drink alcohol, that he does not take any drugs, that he was supervised 3 times a week for 1 month by child protection officer, he has been on good behaviour and complied with all his bail conditions, that he stopped going to school after he committed these offences, that he lives with his parents in Buada. In his general comments Mr Cook stated 'AD has been on good behaviour during his supervision and has been very quiet. He does not go to school and feels the boredom from not being able to go out in the community as freely as before. He recently disclosed that he did not want to go to school.'
10. Mr Tagivakatini submitted that given his age, guilty plea and his contrition the Court should exercise leniency.
11. Mr Lacanivalu in his sentencing submissions which was very helpful has discussed the various options for sentencing including custodial sentence and non-custodial sentence. He submits that if a non-custodial sentence were to be imposed then a probation order can be made under the provisions of Criminal Justice Act 1999.

12. AD is a very delicate age in his life and in imposing the sentence I have to be mindful of the consequences the sentence can have on his life. If an immediate custodial sentence is imposed, then notwithstanding the fact that he will be kept away from the adult prisoners, it will no doubt have a detrimental effect in his life.
13. In *R v CD* Case No. 9 of 2017 Crulci J imposed a probation order where the juvenile offender was charged with the offence of an indecent act and for publishing of indecent and obscene information. In relation to the charge of indecent act the facts were that the juvenile put his penis into the mouth of the complainant who was 13 years old and the juvenile offender was 15 years of age.
14. I think that a probation order will be an appropriate sentence in this case as it may assist AD pass through the teenage process until he turns 18 years of age.
15. AD is convicted of both offences and released on bail on a probation order with the following conditions:
  - (1) That the probation order shall be for a period of 2 years 11 months;
  - (2) That within 24 hours AD shall report to a probation officer and shall further report as and when required by the probation officer;
  - (3) That AD shall reside with his parents and shall notify the probation officer of change in address;
  - (4) That AD shall not reside at an address not approved by the probation officer;
  - (5) That AD shall continue to pursue further studies that suits him;
  - (6) That he shall keep peace and be of good behaviour and commit no offence.
16. I would like to bring to the attention of AD the provisions of s.16 of the Criminal Justice Act 1999 wherein it is provided that should he breach the probation order or fail to comply with the orders made therein and should he commit another offence during the period of the probation, then he may be resentenced for both the offences of indecent act and rape that he was dealt with today.

Dated this 20 day of February 2018



Mohammed Shafiullah Khan  
Judge