



**IN THE SUPREME COURT OF NAURU**

**AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No.6 of 2017

BETWEEN

Republic

V

Sankey Amram

Before: Rapi Vaai, J

**APPEARANCES:**

Counsel for the Prosecution: F.Lacanivalu

Counsel for the Defendant: V.Clodumar

Date of Hearing 10<sup>th</sup> & 11<sup>th</sup> July 2019

Date of Submissions 05<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> June 2020

Date of Decisions 23<sup>rd</sup> June 2020

Case may be cited as: *Republic v Sankey Amram*

**DECISION**

1. The accused pleaded not guilty to one count of indecent acts and one count of rape which were alleged to have occurred at Location Compound between the 1<sup>st</sup> October 2016 and 31<sup>st</sup> January 2017. The complainant a 12 year old at the time is the daughter of the niece of the accused. She has been granted name suppression to protect her identity.

2. When the accused stepped off the plane from overseas on the morning of the 14<sup>th</sup> April 2017 he was taken by police to the police station where he was told he was not arrested but he cannot leave. On the afternoon on the same day the complainant and her mother gave written statements to the police. Neither of them knew who lodged the complaint against the accused. Other police witnesses were taken to the police station the same afternoon and their written statements taken.
3. The accused was interviewed and informed of the allegations against him about 8.30pm, kept in police custody; taken before the Magistrate the following day, Saturday the 15<sup>th</sup> ; and was remanded in custody to the Supreme Court on 24<sup>th</sup> April. On the 24<sup>th</sup> April he was remanded to the 5<sup>th</sup> May and again to the 15<sup>th</sup> May. He was granted bail on the 18<sup>th</sup> May.

#### **Count 1 Indecent Acts.**

4. Two incidents of indecent acts are alleged in count 1. It is alleged that on two separate occasions within the same span of time, the accused intentionally touched the complainant and the touching was indecent and the accused was reckless about that fact.
5. It is not contested that the complainant was under 16.
6. Both counsels agreed that not only were the two incidents of indecent acts as alleged are the subject of Count 1, they also agreed that two alleged incidents are alleged to have occurred in the house where the accused was living.
7. In support of the first incident of indecent act, the complainant told the court that she was asleep in the lounge in the evening when she felt someone kissed her on the lips. It was the accused. He also tried to remove her pants. He stood up and walked away when she woke up.
8. In relation to the second incident of indecent act, the complainant said she was asleep at the lounge when the accused laid down beside her and sucked her breast over her T.shirt. Her uncle Appin and Teneke were asleep in the room and the girls had gone out.

## **Count 2 - Rape**

9. As to the allegation of rape she told the court she and others accompanied the accused to the airport early in the morning on the 13<sup>th</sup> January 2017 as the accused was to fly out but the flight was cancelled and all went back to Location compound. She went into the bedroom with three others and slept. She slept with Hannah on one bed and the other two female relatives shared the other bed. It was about 7 in the morning; it was hot; she took off her pants and t-shirt and slept with her underwear and bra. She woke up when the accused licked her vagina and inserted his finger. She put her pants back on and cried after he left.
10. She did not call for help or told anyone immediately after. She did not tell her mother because she was scared.
11. After the accused left for overseas on the 18<sup>th</sup> January 2017 the complainant told the court that she told her uncle Appin and Whalon everything the accused did to her.

## **Recent complaint**

12. Appin Manier, thirteen years old, testified that it was in January 2017, he Whalon and the complainant were talking when the complainant said that before the accused left Nauru the accused kissed her and put his tongue inside her mouth.
13. This witness went on to say there was one particular evening while he, the accused and complainant were watching a movie in the lounge when he saw the accused moved closer to the complainant. The following day he also noticed the accused holding the complainant's bottom.
14. Testimony by Appin of what he allegedly saw in the lounge is not evidence of recent complaint, neither was it relied upon by the prosecution as evidence of indecent act. Neither can it be admitted as evidence of similar fact or of propensity. No leave was sought to introduce such evidence. In any event the evidence was not of a sufficiently high degree of relevance to justify its admissibility. Obviously that high degree of relevance can only occur where propensity evidence is related to a specific offence upon an identified occasion.

15. The complainant's mother also testified. She was told by her aunt of what the accused did. What the aunt actually said is unknown. The mother then spoke with the complainant who told her that the accused sucked her breast and licked her vagina. If the mother testified to provide evidence of recent complaint nothing was forthcoming from her as to the question or questions she asked which lead to the response from the complainant.
16. But there is a further hurdle for the prosecution if the mother's evidence was intended to be one of recent complaint. The complainant testified she did not talk to or told her mother regarding the alleged incidents, and bearing also in mind that the complainant had already told her uncle Appin about what the accused did to her.

### **Case for Defence**

17. The accused testified. He is 47 years old and was at the time of the alleged offending engaged as a fisheries observer on fishing vessels that fishes in Forum Fisheries Authority regional areas. His employment required him to leave Nauru from time to time.
18. For his intended trip in January 2017 he was initially booked by his employer to travel on the 13<sup>th</sup> January 2017 to Majuro and Marshall Islands, but in December 2016 he received an email that he will travel on the 18<sup>th</sup> January 2017 to Brisbane and onto Ecuador. A copy of this email was provided as exhibit. It was therefore unnecessary and illogical for him to be at the airport on the 13<sup>th</sup> January 2017 to catch a flight as alleged by the complainant.
19. Accordingly he denies the allegation of rape on the 13<sup>th</sup> April 2017 which the complainant alleged took place at the house after she, the accused and others got back from the airport.
20. He also denied the two allegations of indecent acts in Count 1. In respect of the first incident of indecent act he told the court he was working on his laptop in the lounge when the complainant came out of the bedroom and laid down behind him. When he finished his assignment the complainant was fast asleep. He picked her up and carried

her back to the bedroom laid her down and kissed her on the cheek. The complainant responded and kissed him on the lips.

21. He also denied the second incident. His attempt to explain what happened during the second incident was, according to his counsel was prohibited by an earlier order of the court which denied the accused the opportunity to question the complainant as to her past sexual inclinations. As a consequence he could tell the court his side of the story because his explanation involved matters which his counsel could not put to the complainant under cross examination.
22. The accused also told the court that on three occasions he physically removed the complainant from the location compound house and took her to her biological parent's home once and to her adoptive parents twice. He did so because he was concerned about her conduct towards him.
23. His association with the complainant was normal and innocent. His concern over her conduct towards him caused him to return her on 3 occasions to her parents and also drove him to request his employer for an earlier assignment to observe so he could leave Nauru.

### **Submissions**

24. Both counsels addressed the evidence extensively in their submissions. It is the word of the complainant against that of the accused. There was no contest on the relevant law concerning the elements of the offences.
25. Despite the strength of convincing documentary evidence that the accused could not have gone to the airport on the 13<sup>th</sup> January 2017 as he knew on 29<sup>th</sup> December 2016 that his flight plan had changed, the complainant insisted she was at the airport on the 13<sup>th</sup> with the accused to catch his flight and on their return to the house that morning she was subsequently raped in the bedroom.
26. She was also adamant that whilst she was asleep with one of her aunt on the bed whilst two others were on nearby bed in the same room, the accused walked into the room at about 7am, took off her pants and licked her vagina. This alleged incident occurred after

the visit to the airport which according to logic and common sense could not have happened because there was no reason for the accused to go to the airport.

27. Appin whom the complainant said was one of the persons who went to the airport did testify but he was not questioned on this issue. Other aunts of the complainant who also allegedly went to the airport did not testify. Prosecution rested its allegation on the blatantly illogical, irrational and unreliable testimony of the complainant.
28. Neither the mother nor the complainant lodged a complaint with the police against the accused. As noted above the mother and complainant were taken to the police station and their statements taken after the accused was arrested upon his arrival at the airport. It was after the police had gathered and taken statements from the prospective witnesses that the accused was charged. According to defence counsel calculations it was some nine hours after the accused was detained that he was formally charged.
29. Having completed its unlawful detention and operation, the police rested its case solely on the evidence of the complainant. The court has already dealt with the evidence of the other witnesses above. The supposedly recent complaint evidence of Appi does support consistency to the evidence of the complainant and therefore renders her credibility very susceptible.
30. The direct conflict of testimony of the complainant with that of her mother does not assist the prosecution whichever testimony the court decides to accept. The blame in my view must fall squarely on the police investigation. Unless and until the police diligently pursue investigations with some degree of conviction and in compliance with the law, the successful prosecution of child molesters, sexual offenders and the like will continue to be hampered and frustrated.
31. There were three people in the room with the complainant on the morning of the 13<sup>th</sup> January 2017 when the accused allegedly entered, took off the complainants pants licked her vagina and inserted his finger. She cried. One of the ladies was sleeping next to the complainant. Any reasonable person, judge or jury, cannot accept that the accused would commit such a crime in the circumstances described by the complainant.
32. The allegation of rape is dismissed.

33. In relation to the indecent acts, the accused recalled that on two occasions while he was working on his laptop in the lounge in the evening, the complainant came from the bedroom and slept in the lounge. After his work he carried her to the bedroom. He honestly kissed her goodnight and she responded by kissing her on the lips.
34. Although counsel for the prosecution in his written submissions contended the second incident of indecent act happened in the bedroom, the evidence given by the complainant was that it was at the lounge.
35. It was as a result of the complainant's conduct towards the accused that the accused decided to remove the complainant from the house and returned her to her parents. He did return her; twice to her adoptive parents and once to the biological parents.
36. On three occasions the complainant admitted she returned to location compound because she wanted to be with her aunts who were also her classmates. No sensible explanation was given why she decided to move from the bedroom to sleep at the lounge, or why she decided to sleep in the lounge rather than the bedroom.
37. It is no secret that quite a number of family members occupy the same house in Nauru; overcrowding is common. It is also no secret that the complainant told Appin of the alleged acts after the accused had left Nauru on the 18<sup>th</sup> January 2017. No evidence was elicited for the delay in complaint. There was no threat of violence. There was no evidence of conduct which tended to normalize the alleged abusive conduct of the accused.
38. There is undisputed evidence that the accused did remove the complainant from the household because of her undesirable conduct towards him.
39. In scrutinizing the prosecution evidence the court has no difficulty in reaching the conclusion that the evidence falls far short of proving the elements of the charges of indecent acts against the accused to the required standard.
40. The two allegations of indecent acts are also dismissed.

**Results**

(a) The accused is not guilty as charged and both counts are dismissed.

*M. Vaai*

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**Judge Rapi Vaai**

