



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 2 OF 2021

BETWEEN

THE REPUBLIC

AND

LAKENA DEGIA

Before:

Date of sentencing submissions:

Date of sentence:

Khan, ACJ

7 September 2022

14 October 2022

Case may be referred to as: *Republic v Degia*

CATCHWORDS: Where accused is charged with two counts of indecent act contrary to s.117 of the Crimes Act 2016 on 11-year-old child – Where accused was in a position of trust – sentenced to 6 years imprisonment on each count to be served consecutively.

APPEARANCES:

Counsel for the Prosecution:

R Talasasa

Counsels for the Defendant:

T Lee

SENTENCE

INTRODUCTION

1. You were charged with two counts of indecent act which states:

COUNT ONE

STATEMENT OF OFFENCE

Indecent acts in relation to a child under 16 years old: Contrary to s.117(1)(a), (b) and (c)(i) of the Crimes Act 2016.

PARTICULARS OF OFFENCE

Lakena Degia in Meneng District Nauru on an unknown date between 1 January 2018 and 31 December 2018 intentionally touched the private part of CG, the touching was indecent and that Lakena Degia was reckless about that fact, and the said CG was under the age of 13 years.

COUNT TWO

STATEMENT OF OFFENCE

Indecent acts in relation to a child under 16 years old: Contrary to s.117(1)(a), (b) and (c)(i) of the Crimes Act 2016.

PARTICULARS OF OFFENCE

Lakena Degia in Meneng District Nauru on an unknown date between 1 January 2019 and 31 December 2019 intentionally touched the private part of CG, the touching was indecent and that Lakena Dagia was reckless about that fact, and the said CG was under the age of 13 years.

2. On 19 May 2022 you were found guilty of the two counts of indecent act after a trial over a period of 4 days.

PENALTY

3. The penalty for the offence was 15 years imprisonment as the child was below 13 years. S.117 of the Crimes Act (the Act) was amended on 23 October 2020 by Crimes (Amendment) No. 2 Act 2020 and the penalty was increased to 30 years imprisonment of which at least 10 years is to be served without parole or probation.
4. You will be sentenced under the old provision as the offences were committed prior to the amendment to s. 117 of the Act

FACTUAL BACKGROUND

5. At the time of the offence, you were married to CG's (victim) maternal grandmother (your wife). The victim's mother was from your wife's previous relationship.
6. You lived with your wife in her two-bedroom house at Meneng Terrace. Between 2016 to October 2020 the victim together with her parents and her other siblings lived with you and your wife.
7. You and your wife used to sleep in the lounge on a mattress. On the day the first incident took place you were not at home and your wife had gone off to sleep on the mattress whilst the victim was sleeping on a couch next to the mattress. You came home late at night and lifted the victim from the couch and placed her on the mattress and touched her on her thigh and vaginal area from outside her pants. You did this whilst your wife was sleeping next to you.

8. On the day that the second incident took place the victim's parents had some arguments and her father walked out of the house and she was going out of the house to look for him. You were in the lounge as she walked past you called her over and made her lie next to you and touched her vaginal area from outside her pants.
9. After you committed these acts on the victim you told her not to tell any adult members of the family and as a result she did not tell either your wife or her parents about the incidents.
10. On 18 January 2021 you telephoned the Nauru Police Station and told the police officer that spoke to you that you wanted to discuss some matters with the police and asked them to come to your house. The police later came to your house and took you to the police station, when you told them that you had sexually assaulted the victim.
11. The police then carried out their investigations including speaking to the victim and her mother. You were later interviewed by the police and in your record of interview, you admitted to committing the first incident on the victim.

CROSS EXAMINATION

12. If you had not reported this matter to the police then in all probability this matter may have never surfaced, as you had told the victim not to tell anyone about it. I accept that you have shown remorse by contacting the police and reporting the matter and making admissions about the first incident. For this you are entitled to be given credit when the final sentence is determined.
13. Despite your admission in respect of the first incident you made a conscious decision not to hold a voir dire to challenge the admissibility of the admission. The victim was subjected to very extensive and intrusive cross examination by your counsel and of course on your instructions. She had difficulty remembering the dates of the incident and yet dates and times were put and she agreed to all the suggestions made to her by your counsel. By subjecting the victim to this kind of cross examination unfortunately you lost the credit that you would have been entitled to be given in the final sentence.

VICTIM IMPACT STATEMENT

14. The victim impact statement states that the victim has been emotionally and psychologically disturbed and she feels scared of what you did to her. She looked upon you as her grandfather and feels betrayed that you breached that trust as a grandfather.

AGGRAVATING FACTORS

15. You committed the first incident when your wife was sleeping next to you. You had absolutely no regard for your wife's presence.
16. You gained access to the victim through your marriage to your wife and you were treated as a member of their family and instead of protecting the victim you preyed on her to satisfy your lust and sexual gratification.

17. You robbed this child of her innocence. She was only 11 years old when these indecent acts were committed on her. At the time of the offence you were 42 years old and the age difference between you and the victim was 30 years.
18. You had no regard for the victim's welfare even after committing the offence and having made admissions to the police as you instructed your counsel to cross examine her very extensively and this made her to relive through the entire incident once again.

PRE-SENTENCE REPORT

19. The Chief Probation Officer states that alcohol was the main factor in this case. There is no evidence before me that you had consumed alcohol when you committed the two acts, and even if you had consumed alcohol, then that does not provide you with any excuse to indulge in this kind of behaviour.
20. The Chief Probation Officer rightly concedes that the offence is serious and that you should be dealt with accordingly.

MITIGATING FACTORS

21. You are 47 years old and married with 6 children from your previous relationship.
22. At the time of the offending, you were employed by the Refugee Processing Centre (RPC3) and earning \$300.00 per week.
23. You are a first offender.

VERY COMMON IN CLOSE FAMILY MEMBERS

24. I stated in *R v Tsiodel*¹ at [29] that:

“...it is indeed a very disturbing and worrying trend in this country that almost all sexual abuses are committed by close family members like yourself...”

25. You will be sentenced to a term of 6 years imprisonment on each count and I order that the sentence on count one is to be served concurrently with the sentence on count two making a total of 12 years imprisonment. I order that the time spent in remand awaiting the trial and sentence which is 21 months is to be deducted from the total sentence of 12 years.
26. You will serve a sentence of 10 years and 3 months imprisonment.

DATED this 19th day of October 2022


Mohammed Shafiullah Khan
Acting Chief Justice



¹ [2022] NRSC 7 Criminal Case No. 18B of 2020 (18 February 2022)