



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 4 of 2022

BETWEEN: THE REPUBLIC
PROSECUTION

AND: RENACK MAU
ACCUSED

BEFORE: Keteca J

Date of Submissions: 18th September 2024.

Date of Judgment: 24th September 2024.

Case may be cited as: Republic v Renack Mau

Catchwords: Rape of a Child under 16 years, Pre- meditation, Consensual and non- consensual sexual intercourse

Appearances:

Counsel for the Prosecution: **M. Suifa'asia**

Counsel for the Accused: **R. Tom**

SENTENCE

A. BACKGROUND

1. On 13th September 24, the accused was found guilty of three counts of 'Rape of child under 16 years' contrary to Section 116(1)(a)(b) of the Crimes Act 2016.
2. The facts are that on three separate days, you took the two complainants to two different sites at Topside and engaged in sexual intercourse with them. The offending lies on the victims being below the ages of 16 years.

B. MAXIMUM PENALTY

3. The maximum penalty for this offence is life imprisonment, of which imprisonment term, at least 15 years to be served without any parole or probation.

C. ANTECEDENT

4. The accused was born on 04th October 1989. He is now 34 years old.
5. This is his first sexual offence.

D. SUBMISSIONS BY THE PROSECUTION

AGGRAVATING CIRCUMSTANCES

6. Counsel submits that there is an age disparity between the accused and both victims.
7. There is premeditation here and taking the victims to secluded areas on the three occasions is an aggravating factor.
8. The accused pretended to be someone else.

MITIGATING FACTORS

9. The defendant showed remorse in his prayer seeking forgiveness.

SENTENCING TARIFF

10. Counsel refers to the following cases:
 - i. *R v Kanimea [2024] NRSC 7*- the accused was convicted of rape of a child under 16 years. The victim was a 11-year-old girl who was asleep. The accused penetrated her anus with his finger. He was sentenced to life imprisonment with a minimum of 15 years to be served before parole.
 - ii. *R v Vision Bidimini Engar [2024] 11*- The accused was convicted on two counts of rape of a child under 16 years. The victim was his fifteen-year-old first cousin. He was sentenced to life imprisonment on both counts. He was to serve a minimum of 18years imprisonment before being eligible for parole or probation.
 - iii. *R v Zak Buramen [2021] NRSC 31*- the accused was convicted of rape of child under 16 years. The victim was 12 years old. They had consensual sex. The accused was sentenced to 36 months imprisonment. This was before the penalty was increased by parliament.

11. VICTIM IMPACT STATEMENT

12. For the first complainant in Count 1-PW1VD- the VIS reports-
 - i. On the emotional and psychological effects- PW1VD- says that when she was picked up by the accused, she thought they were going for a ride. She felt scared when the accused turned to Topside 'and when he told her to go the boot of the car. She had nowhere to escape.' The accused took off her shorts and underwear. She was scared the whole time of the incident and when she was dropped off at RON hospital.'

- ii. This is the second time that she has been sexually abused. The first perpetrator is in jail.
 - iii. The court notes here that PW1VD did appear distressed whilst giving her evidence.
13. For the second complainant in Counts 2 & 3- PW2LC- the VIS reports-
- i. On the emotional and psychological effects, PW2LC says that 'she knew what she was doing and she wanted to do it.' She said that she took off her clothes because she knew what she wanted to do.
 - ii. Her mother states that PW2LC was 'sexually abused as child by my husband who was charged and is in jail.'

E. SUBMISSION BY DEFENCE COUNSEL

14. The accused is 35 years old. He is engaged to his fiancé and he has one previous conviction. The defendant is remorseful and accepts the guilty verdicts against him. There were no injuries or losses from the offence.
15. A lenient sentence is to be given here. If he is imprisoned and conviction recorded, the accused will be unable to support his family. **Counsel then recommends a term of imprisonment of 10 years for each count, to be served concurrently with possible parole in five years.**
16. I have considered the letters of support from the following:
- i. Pastor Jezza Valentino Agadio;
 - ii. Pastor Michael Sosefo;
 - iii. Hon. Richard Hyde Menke MP;
 - iv. Marcina Harris;
 - v. Hon Jesse Jeremiah MP; and
 - vi. Pastor Damien Kakiber Adeang.
17. The common thread connecting all the above letters of support are that the accused is remorseful for what he did to the two young victims. They also plead that the accused be given a second chance and that the court be lenient.

F. DISCUSSION

18. In **Republic v Buramen [2021] NRSC**, Fatiaki CJ said-'This case is reflective of modern day society where children own or have unrestricted use of mobile phones and uncontrolled access to the internet.' This observation equally applies in this case. It is through mobile phones that the accused and the victims got to know each other.

G. SENTENCING GUIDELINES

19. I have considered the following provisions of the Crimes Act 2016:
- i. Section 277- Kinds of sentences;
 - ii. Section 278- Purposes of sentencing;
 - iii. Section 279- Sentencing considerations;
 - iv. Section 280- Sentencing considerations- imprisonment;

- v. Section 282- Power to reduce penalties
- vi. Section 282A- Pre-trial detention not to be considered for offences under Part 7

20. Considering the above provisions, I enter convictions against the accused on all three counts.

21. The accused chose to give unsworn evidence. He said a prayer seeking forgiveness instead. He sought the forgiveness of the court, the prosecutor, his defence counsel, his family and friends. Glaringly clear from the above prayer is the absence of any remorse or apology shown to the victims. I refer to-

‘ Signato v The Queen (1988) 194 CLR 656, Gleeson CJ, Gummow, Hayne and Callinan JJ said (at page 663-663; 99; 189[22]):

‘A person charged with a criminal offence is entitled to plead not guilty, and defend himself or herself, without thereby attracting the risk of the imposition of a penalty more serious than would otherwise would have been imposed. On the other hand, a plea of guilty is ordinarily a matter to be taken into account in mitigation; first because it is usually evidence of some remorse on the part of the offender, and secondly, on the pragmatic ground that the community is spared the expense of a contested trial. The extent of the mitigation may vary depending on the circumstances of the case. It is also sometimes relevant to the aspect of remorse that a victim has been spared the necessity of undergoing the painful procedure of giving evidence.’

22. In this regard, both victims had to testify in court. PW1VD was adamant, in her distressed state, that she thought they were only going for a drive. She suggests that she did not consent to having sexual intercourse with the accused. She looked distressed when she testified that the accused pulled her onto his lap. When the accused asked her to remove her undergarments, she said No. She refused to take off her panties. The accused took her panties off. In the VIS, ‘ I had nowhere to escape to.’ She added- when he took my underwear off, I was very scared.’ The court notes however that in her testimony in court, PW1VD told the accused that she did not know how to kiss. The accused replied that he would teach her. PW1VD added- “We kissed.’ The court further notes that the next day, the accused called her again. The accused came to meet her but picked up PW2LC instead. On 18th Feb 22, PW1VD and PW2LC called the accused again. The accused came to pick them. PW1VD got into the car with the accused and PW2LC. The accused took them to a secluded spot. She was sitting outside the vehicle when the accused was having sexual intercourse with PW2LC in the car. These facts bring into question what PW1VD implied in the VIS that she considered escaping. In totality, although consent is not an element of this offence and it is not a defence under Section 126 of the Crimes Act 2016, I find that PW1VD did not consent to having sexual intercourse with the accused on 16th Feb 2022.

23. PW2LC was different. In her testimony and as she stated in the Victim Impact Statement, she was a willing partner. It was consensual on her part. When asked in cross examination-

- i. “You wanted to have sex? She answered – “Yes’.
- ii. Ques- Your intention of calling (the accused)?
- iii. Ans- Wanted to have sex again.

24. In the VIS- PW2LC said- ‘At the time of the incident, I knew what I was doing and wanted to do it.’ She added- “I took off my clothes because I knew what I wanted to do.’

25. It is clear from the above that for Count 1, PW1VD did not consent to having sexual intercourse with the accused. PW2LC did consent.
26. For Counts 2 & 3, PW2LC was a consenting party. She wanted to have sex with the accused.
27. I refer to **Republic v Buramen [2021] NRSC 31; Criminal Case 5 of 2021 (25 August 2021)**. The case involved a 25-year-old man having consensual sexual intercourse with a 12-year-old girl. At paragraphs [40] and [41], CJ Fatiaki said this-
40. I am satisfied that “...*general deterrence, denunciation and the protection of the community are principles of sentencing that are relevant to cases involving child sexual abuse. The concern of the Court is to send a message to those who sexually abuse children intentionally that their actions will not be tolerated and they will receive significant punishment.*” (per Hoeben CJ in EG v R [2015] NSWCCA 21 at 42.)
41. A sentence of imprisonment is inevitable in this case “... *to mark the gravity of the offence, to emphasize public disapproval, to serve as a warning to others, to punish the offender and to protect women (and girls).*” per Lord Lane CJ in R v Roberts [1982] 1 All ER 609.
28. On the consensual nature of the sexual intercourse between the accused and PW2LC, I refer to [29] of the *R v Buramen* case above where CJ Fatiaki said
- ‘ 29. Finally, I disagree that the consensual nature of the relationship between the defendant and the complainant is “irrelevant” in sentencing the defendant. In my view, that feature is part and parcel of “the nature and circumstances of the offence” which by section 279(2)(a) of the Crimes Act 2016 “...the Court must take into account”.
29. I agree with CJ Fatiaki. The question before me is how long the accused should be imprisoned for?
30. I note the cases-in [10] above:
- i. *R v Kanimea [2024] NRSC 7*- the accused was convicted of rape of a child under 16 years. The victim was a 11-year-old girl who was asleep. The accused penetrated her anus with his finger. He was sentenced to life imprisonment with a minimum of 15 years to be served before parole.
- ii. *R v Vision Bidimini Engar [2024] NRSC 11*- The accused was convicted on two counts of rape of a child under 16 years. The victim was his fifteen-year-old first cousin. He was sentenced to life imprisonment on both counts. He was to serve a minimum of 18years imprisonment before being eligible for parole or probation.
- iii. *R v Zak Buramen [2021] NRSC 31*- the accused was convicted of rape of child under 16 years. The victim was 12 years old. They had consensual sex. The accused was sentenced to 36 months imprisonment. **This was before the penalty was increased by parliament.**
31. I draw the following distinguishing features in the present case:
- i. The accused committed this offence against two victims. They were 12 years old.
- ii. PW1VD did not consent to the sexual intercourse. PW2LC did.
- iii. The offences were not committed under the cover of darkness. Rather, the commission of the offences were in broad daylight.
- iv. The victims were school children. They were in school uniform. They were picked from the vicinity of their school. *It was a primary school.*
- v. The conduct of the accused on the three occasions of calling the victims on the phone, picking them up in his vehicle, taking the victims to a secluded spot,

having sexual intercourse with them and dropping them back show that the rapes were premeditated.

32. I remind myself of what parliament has prescribed to be the penalty in this case. As in [3] above- the maximum penalty for this offence is **life imprisonment**, of which imprisonment term, at least 15 years to be served without any parole or probation. This means that the minimum penalty that I can award is **15 years imprisonment**. I note that for the same offence, in other jurisdictions in the region, the maximum penalty ranges from 5 to 10 years.

H. CONCLUSION

33. Considering all the above, I sentence the accused as follows:

- i. Count 1- 16 years imprisonment;
- ii. Count 2- 15 years imprisonment; and
- iii. Count 3- 15 years imprisonment.
- iv. The imprisonment terms are to run concurrently.

34. The accused will serve a minimum term of 15 years imprisonment before any parole or probation maybe considered.

35. As I have said in previous cases, this sentence communicates Nauru society's condemnation of your conduct and represents ' *a symbolic, collective statement*' that when one commits any sexual offence against a child, such a person will go to prison for a very long time.

36. After sentencing the accused in the *R v Zak Buramen* case mentioned above, CJ Fatiaki said this:

'I am confident that the defendant will serve his sentence productively and that his behaviour in prison will be exemplary. It is also hoped that on his return to society, he will be a changed man committed to his vow never to re-offend.'

37. I share the same confidence here with the fervent hope that the accused will have a positive spiritual impact on other inmates during his term in prison.

DATED this 24th day of September, 2024


Kiniviliame T. Keteca

Judge

