

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 20 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

KK
Defendant

Mr. Livai Sovau for the Republic
Mr. Ravunimase Tangivakatini for the defendant

Date of hearing: 24 June 2016, 6th July 2016 and 7th July 2016
Date of Sentence: 11th July 2016

Sentence

1. The defendant pleaded guilty to 1 count of indecent act contrary to section 227(2) of the Criminal Code 1899 and 1 count of Publishing of indecent or obscene information contrary to section 16 of the Cyber Crime Act 2015. On the 3rd of April 2016 when the offence was committed by the defendant, the defendant was 16 years old and the victim was 17 years, 8 months and 8 days old. Both the victim and the defendant are juveniles. I will not publish the name of the defendant and the victim to protect their identities.
2. The facts are that on the 3rd of April 2016, the defendant victim and others were drinking beer at Buada District. The victim fell asleep and started to scratch herself. The defendant then started filming the victim scratching herself doing this on his phone without the victim's

consent. The defendant then went to where the victim was sleeping, pulled down her pants and even pulled her panties up to get a clear shot of the victim scratching herself. The victim was scratching herself because she had a skin condition and was itchy. The defendant took an image of the victim scratching her private parts on his phone and blue toothed it around the island.

3. The defendant was asked by the others to stop and delete the video on his phone but he did not and instead blue toothed it to those around the nation
4. The maximum penalty for the offence of indecent acts contrary to section 227(2) of the Criminal Code 1899 is two years imprisonment and this offence is classified as a misdemeanor. The maximum penalty for the offence of publication of indecent or obscene information contrary to section 16 of the Cyber Crime Act 2015 is a fine of \$30,000.00 or a term of imprisonment for ten years. This reflects the seriousness with which parliament views this offence.
5. The circumstances of the offending in this case are serious. The effect of what the defendant has done could be described as having stripped the victim in public and then exposed her privacy to the public via blue tooth to others. I have read the victim impact statement, and the victim admitted to having suicidal thoughts after having been told of what happened and the video of her being circulated to others via blue tooth. It has taken her time and support from her family to be able to leave her house and go out in the community. Not only had the complainant been the victim of this, but also her parents and family as well.
6. I also note from the report by Ms. Raelyta Daoe, Acting Chief Probation Officer that the defendant regrets what he has done and seeks forgiveness from the complainant and her family. Ms. Daoe has also observed that the defendant is genuinely contrite for what he has done.
7. In terms of his personal background the defendant left school last year to find employment to help support his family. Ms. Daoe said in her report that the defendant comes from a very stable, supportive and loving family. Ms. Daoe says that in her opinion she believes that it is the folly of his youthfulness coupled with alcohol that is the

major factor to these offences being committed by the defendant.

8. It is my view that despite being a very young juvenile offender, the circumstances of the offending by the defendant must attract the imposition of an immediate custodial sentence. The only issue for this court to determine is how long the sentence to be served will be and how the sentence imposed is to be served.
9. The defendant is a first offender, and he has pleaded guilty in the first instance. The defendant is also a juvenile offender and he must be sentenced as a juvenile offender. As a young offender the court must balance the need to punish him with the need to rehabilitate him. As is pointed out in the report by Acting Chief Probation Officer Ms. Raelyta Daoe, taking into account his young age and the fact that this is his first offence, there is a good chance of his being set on the right path with proper guidance and support.
10. The court must not lose sight of those affected by the defendant's actions. The victim and her family. Ms. Daoe has also interviewed the parents of the victim. They have refused to reconcile with the defendant. They have been much affected by what the defendant has done to their daughter.
11. It is my view that a sentence imposed should be one with a view to reminding the defendant that what he did is serious, wrong and will not be accepted by the community. At the same time, a sentence imposed should also be imposed with a view to enabling the defendant to be rehabilitated. But for his age I would have sentenced him to a longer period than the one imposed.
12. For the offence of indecent assault contrary to section 227(2) of the Criminal Code 1899 the defendant is convicted and sentenced to 9 months imprisonment. For the offence of Publishing of indecent or obscene information contrary to section 16 of the Cyber Crime Act 2015, the defendant is convicted and sentenced to 18 months imprisonment. Both sentences are to be served concurrently backdated to the 25th May 2016 when he was first taken into custody. He will serve 9 months of the total term of imprisonment at the Nauru Correctional Services and the

remaining 9 months he will serve it in the community on probation subject to the following conditions:

- i) He is not to commit any offence within the period of 9 months of probation. If he commits any offence he will serve the remaining 9 months in prison in addition to any sentence imposed for any other offence he had committed whilst on probation.
- ii) He is to keep the peace and be of good behavior
- iii) Upon his release he is to report to Acting Chief Probation Officer Raelyta Daeo to receive his probation orders.

Dated this 11th July 2016

