

IN THE SUPREME COURT
REPUBLIC OF NAURU

Criminal Case No.83/2015

THE REPUBLIC OF NAURU

V

JACKO GADEANANG

JUDGE: Khan J
DATE OF HEARING: 20th August 2015
DATE OF SENTENCE: 21st August 2015
CASE MAY BE CITED AS: Republic v Jacko Gadeanang
MEDIUM NEUTRAL
CITATION:

CATCHWORDS: Sentence - Indecent Treatment of a boy under the age of 14 -contrary to section 210 of the Criminal Code 1899 - Sentenced to 4 years imprisonment - at the time of sentence defendant serving 8 years imprisonment for rape - whether sentence to run concurrently or consecutively - held sentence to run concurrently as reference made in the rape sentence about the defendant being on bail for this offence.

APPEARANCES:

For the Prosecution

Mr L Sovau

For the Defendant

Mr R Tagivakatini

SENTENCE

1. The accused is charged with the offence of indecent treatment of a boy under the age of 14 years contrary to section 210 of the Criminal Code 1899.
2. The learned trial Magistrate Ms Emma Garo made a suppression order with respect to the identity of the child and the defendant and henceforth the child is to be referred as 'OD' and the defendant as 'JG'.
3. The offence took place on 17 December 2013 and the charge was filed in the District Court on 24th September 2014. The child at the time of the offence was 2 years and 10 months old.
4. The matter was set down for trial in the District Court on 7 July 2015. On that day the defendant's pleader Mr Knox Tolenoa informed the Court that there will be a change of plea. On 13 July 2015 the defendant entered a plea of guilty and facts were outlined which are as follows:

"The eyewitness who was 14 years old at that time was looking for the child, and when "she went towards one of the rooms of the house that is used as a storage room where she saw the defendant and the victim. Both were facing the door and the victim was bent down while the defendant stood behind him. The victim was in the front faced away from him crying. He was trying to call out but the defendant covered his mouth with his right hand while his other hand was between him and the victim. As the witness moved closer to the room, she saw that the victim's pants were so low that she could see his buttocks while the defendant stood behind him. At seeing her, the defendant placed the victim on the floor and turned away to fix the front of his pants. She then requested for her nephew but he placed him on the suitcase and tried to make him stop crying... She asked the defendant to give her nephew back as he was crying but he refused. She quickly grabbed him away from the defendant and felt him holding her tightly and closing his eyes. She told the defendant that the child will stay back but he demanded to take the victim with him... she observed that the defendant was under the influence of liquor as his speech was blurring and he had bloodshot eyes"

5. The maximum sentence that the District Court could impose is 3 years imprisonment pursuant to section 7 (b) of the Criminal Procedure Act 1972

(CPA). The defendant had previous convictions for similar offences in 2009 when he was convicted of 1 count of attempted rape, 3 counts of indecent treatment of a girl under 14 years of age and 1 count of deprivation of liberty for which the defendant was sentenced to a term of 3 years imprisonment.

6. The learned trial magistrate in light of the defendant's previous history and the seriousness of this offence was of the view that the defendant deserved a higher sentence than what the District Court could impose. She therefore committed the defendant to the Supreme Court for sentence pursuant to section 161 of CPA.

AGGRAVATING FEATURES

7. The aggravating features in this case are:
 - i. the victim was a child only 2 years and 10 months old;
 - ii. the defendant was looking after the child and he was in a de facto relationship with the child's mother and as such the child became a stepchild of the defendant;
 - iii. the defendant breached the trust that was placed in him by the victim's mother;
 - iv. the age gap between the accused and the child is huge;
 - v. the victim needed protection but instead was abused by the defendant;
 - vi. The defendant was under the influence of alcohol at the material time.

MITIGATING FEATURES

8. Perhaps the only thing that goes to the defendant's credit is that he pleaded guilty and spared the child witness who had witnessed the incident from the indignity of relating the incident in court.

9. It is not clear as to whether the victim was medically examined. It seemed that he was not. In cases of this nature I think it is important that the victims should be medically examined.
10. In all the circumstances of the case in my view a sentence of 4 years imprisonment would be an appropriate penalty.
11. The accused was sentenced on 29 July 2015 for the offence of rape for which took place on the 19th of December 2014 for a term of 8 years imprisonment.
12. In sentencing the accused Crucci J set the sentencing guidelines for the offence of rape. She stated at paragraph 13 as follows:

“The court notes that sentences in the region of three to four years have previously been imposed by this Court. These are able to be distinguished from this case by reference to their mitigating features inter alia guilty pleas; no previous convictions; youthfulness of offender; deep remorse; good work history; offences not committed whilst on bail. Mitigating features not present in this case”
13. She distinguished this case to the other cases and made reference to the offences “not committed whilst on bail”. At paragraph 23 of the sentence under the subheading observations and sentence, reference was again made for the offence of rape to be committed whilst on bail for charge of indecent treatment. The learned Judge arrived at a sentence of 8 years imprisonment. It seems that in arriving at the sentence of 8 years imprisonment the issue of being on bail was taken into consideration and as to what extent it is not clear.
14. In determining the totality principle usually the major offence subsumes the minor offence but the court still has the discretion to make the whole sentence concurrent to the major offence committed subsequently or to make it partially concurrent and partially consecutive.
15. The counsels for the prosecution and defence appeared in both cases and prior to the commencement of the rape trial both counsels knew that the defendant had pleaded guilty to the charge of indecent treatment. Both were under obligation in my view to ensure that that matter was disposed of prior to the commencement of the rape trial. Had they done that, the situation faced by the

Court in determining as to whether the sentence should be consecutive or concurrent would have been avoided.

16. In all the circumstances I order that this sentence shall be served concurrently with the 8 years imprisonment for the offence of rape in case No 52 of 2015.

Dated this 21 day of August 2015



Mohammed Shafiullah Khan

JUDGE

