



**IN THE SUPREME COURT OF NAURU**

**AT YAREN  
CRIMINAL JURISDICTION**

Criminal Case No.17 of 2019

BETWEEN

Republic

V

Rocky Thoma

Before: Rapi Vaai, J

APPEARANCES:

Counsel for the Prosecution: F.Lacanivalu

Counsel for the Defendant: F.Akubor

Date of Sentence: 16<sup>th</sup> June 2020

Case may be cited as: *Republic v Rocky Thoma*

**Sentence**

**Introduction**

1. The defendant was found guilty of the crime of indecent assault. Pursuant to section 350 of the Criminal Code 1899, he is liable to imprisonment with hard labour for two years.
2. He is the grandfather of the young girl, the victim of his offending who has been granted name suppression to protect her identity. She was 13 years old at the time of the offending.

3. The defendant is 61 years old. The victim and her parents were at the time living with the defendant at the house of the defendant.

### **The facts**

4. The victim together with her cousins were telling stories in the defendant's bedroom one evening in 2016 when she fell asleep facing downwards. She woke up when she felt her pants pulled down to her ankles. She looked over and saw the defendant licking her vagina and backside. The room was dark at the time as there was no light. She was then turned over onto her back and the defendant continued to lick her vagina. He stopped when she told him she wanted to go to the toilet. She pulled up her pants and ran to her parent's room.

### **Prosecution submissions**

5. Five aggravating features were listed by the prosecution against the accused's offending. They are:
  - (a) the young age of the victim;
  - (b) complete breach of trust;
  - (c) seriousness of the indecency;
  - (d) impact of the offending on the victim, and
  - (e) the victim reliving the trauma by giving evidence.
6. Counsel submitted that despite the absence of a victim's impact report, the court should nonetheless consider the likely effects and impact of sexual offending on a young girl particularly at the hands of her own grandfather.
7. The court was also referred to a report of a survey commissioned by UNICEF and UNFPA in 2015 on women and children in the South Pacific titled: "*Harmful Connections: Examining the relationship between violence against women and children in the South Pacific.*" Part of the report states:

"Studies show that girls under 15 who were subjected to sexual assault were significantly more likely to suffer later in life from physical and/or sexual abuse by their partner. According to international studies on child Sexual Abuse, other impacts include low self-esteem, depression, self-harm, suicidal thoughts, early sex exposure, use of alcohol and substance abuse. There is also the risk of unwanted teenage pregnancy and the risk of sexually transmitted infections including HIV."

8. Counsel also invited the court to consider the Domestic Violence and Family Protection Act 2017 and the orders available thereunder which it may issue against the accused.
9. In conclusion the prosecution submitted a custodial sentence to be the appropriate punishment to emphasise deterrence and retribution.

**Submissions by the defence.**

10. The defendant is a first offender, married with children and grandchildren. As a consequence of his bail conditions he is currently living away from his own home. He is presently employed as a security officer and also does carpentry services to earn extra to make ends meet.
11. Counsel submitted that the wife of the defendant plead in writing for the Court's leniency due to her need for his support. It was also submitted that the pre-sentence report and letter from his employer shows that he is a person of good character concerned with the well-being of his family.
12. In terms of sentence counsel concedes that the sentencing guidelines provided under the Crimes Act 2016, particularly sections 278, 279 and 280 should be adopted. Having regard however to his age, and physical condition, his first offender status, his remorse and his impeccable previous record a lengthy custodial sentence may not be appropriate.
13. The court's attention was also drawn to previous cases in which the court imposed sentences for indecent assault. Custodial sentences were imposed for all the cases cited.
14. In conclusion the defence conceded and acknowledged that a custodial sentence may be inevitable due to the age of the victim. A custodial sentence of 9 months was submitted to be appropriate.
15. In imposing a custodial sentence, defence counsel submitted that the defendant be given a suspended custodial sentence pursuant to section 656 of the Criminal Code, 1899.

**Sections 278, 279, 280 Crimes Act 2016**

16. It is common ground that the purpose of sentence and sentence considerations provided under the above three sections are relevant and applicable in the consideration of the

appropriate sentence. Although the defendant was charged and convicted under the 1899 Criminal Code, sections 278, 279, and 280 are essentially a codification of the common law principals on sentencing.

**Convention on the Rights of the child.**

17. Although neither counsel addressed the significance of the Convention on the Rights of the child, which the Republic ratified, the court should nonetheless take it into account in consideration of the sentence.

**Discussion**

18. Sexual offending against young girls is a serious offence; it is even more serious when committed by fathers and grandfathers against their so called young loved ones. Prosecution of these offences must convey a clear message that such conduct will not be tolerated and the court will without exception punish offenders severely.

19. Our young children must be protected. Every young child is entitled to expect that he or she will grow up in a joyful family environment, receiving support and comfort from the older ones and without fear of molestation or any other form of abuse whatsoever.

20. In response to its obligations under the Convention for The Protection Of The Child and other international conventions, our parliament enacted laws like the Child Protection and Welfare Act 2016 and the Domestic Violence and Family Protection Act 2017 to provide for the welfare, care and protection of all children. In the Crimes Act 2016, penalties for sexual offences, particularly relating to children, have been increased, to protect the most vulnerable from being abused.

21. The message from Parliament is loud and clear. Protection of the child is paramount. Those who sexually violate our children must be dealt with severely to reflect society's denunciation and condemnation.

22. Despite the absence of the victim impact report, the young victim, as counsel for the prosecution correctly submitted has undoubtedly been affected both physically and mentally. She told the court that on the day she reported the incident to the police, she was angry with her grandma who was teasing her about making up stories about her

grandpa. Before then, she had, apart from her two close friends to whom she confided, kept the incidents to herself for years.

23. Whether she can erase the humiliation from her system is beyond comprehension, particularly so when it involved someone she obviously trusted. On the evening of the incident she went with her other cousins to the defendant's room. She was quiet entitled to expect, as a granddaughter, that she was welcomed, loved and safe. She fell asleep and unfortunately awoke to the horror of the defendant's offending.
24. Despite his age, his obvious good record and first offender status, this defendant as his counsel conceded must get a custodial sentence to send out a clear stern message that sexual offending, particularly sexual abuse of our young ones will not be tolerated.
25. The court notes the submission by counsel for the defendant, pursuant to section 656 Criminal Code for a suspended sentence. The submission is rejected for the very simple reason that the court will not pay lip services to the International Convention as well as our legislations which provide for the protection of our young ones. The court will be viewed as a failure in meeting its obligations mandated by the convention and legislations if a suspended custodial sentence is imposed.
26. Given the culpability of the defendant, the circumstances of the offending, I consider 18 months as the appropriate starting point for sentence. There are no aggravating factors personal to the defendant which justifies an increase. As for the mitigating factors in his favour, particularly his age and previous good record I will make a deduction of 6 months.

### **Order**

- (a) The defendant is convicted and sentenced to 12 months imprisonment, less any time spent in custody.

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**Judge Rapi Vaai**