



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 18 of 2021

BETWEEN

THE REPUBLIC

AND

GREG-HALL DANIEL

Before:	Khan, ACJ
Date of Sentencing Submissions:	19 May 2022
Date of Sentence:	7 June 2022

Case to be known as: The Republic v Greg Daniel

CATCHWORDS: Criminal Law – Charge of rape of child under 16 years of age contrary to section 118 of the Crimes Act 2016 – Where the maximum mandatory sentence is life imprisonment with a minimum mandatory period of 15 years imprisonment to be served without parole or probation – Whether the minimum period of 15 years should be increased.

APPEARANCES:

Counsel for the Prosecution:	F Puleiwai
Counsels for the Accused:	E Soriano

SENTENCE

INTRODUCTION

1. You were charged with one count of rape contrary to s.118 of the Crimes Act 2016 and the particulars of the offence stated that you engaged in sexual intercourse by performing oral sex on AC (victim), a child under 16 years of age.
2. You pleaded guilty to the charge on 18 January 2022, although your counsel had indicated much earlier to the Court that this course would be taken.
3. You were charged with this offence on 13 September 2021 and you have been remanded in custody since and still continue to be in custody as bail could not be granted for sexual offences under s.4A of the Bail (Amendment) Act 2020.
4. You are married to the victim's mother who will be referred to as AD and through this marriage you had three children including the victim and a stepdaughter (a child born to AD from her earlier relationship). The victim is your eldest child. She was 6 years old at the time of the incident. You lived with your family in Buada District.

CIRCUMSTANCES OF OFFENDING

5. On the day in question, you had gone out drinking with your friends and returned home at about 12 noon and your wife and children were at home.
6. Whilst your wife was busy cooking in the kitchen you called the victim into your bedroom and then locked the door; you then took off the victim's pants and underwear and laid her on a mattress and started licking her vagina.
7. The victim's other siblings started to knock on your bedroom door and you refused to open it and told them that: "No, we are not friends, you guys stay out" a term that you and your wife use when you were intimate. Your wife saw your children knocking on the door and at first, she didn't bother and then found out that the victim was missing so she called out to her to collect the clothes scattered everywhere in the house.
8. The victim responded to her mother's call and came out of the bedroom and collected the clothing and disappeared once again; she became concerned and suspicious as the children continued knocking on the door and the victim coming in and out of the bedroom as you and your wife usually lock the bedroom when having sex. Your wife then went to see through the bedroom window and pulled the curtain to see what was happening and saw that you were on your knees bending towards the victim's private parts.
9. Having seen you in that position your wife knocked on the door and the victim came out and she told her to collect the cards scattered in the lounge area and later she spoke to her in the garage.
10. She asked the victim as to what happened in the bedroom and she burst out in tears and told her that: "I am scared to tell you because daddy told me not to tell anyone or he will smack me". She tried to comfort the victim whereupon she told her that you licked her vagina.

11. Your wife then confronted you about what happened and you denied the allegation and suggested that the victim was crazy and your wife chased you from the house and told you to never come back.
12. The matter was reported to police on the same day and the police investigations commenced.
13. The victim was taken to RON Hospital by police for medical examination and the doctor's finding was that her vagina appeared to have been tampered with.

VICTIM IMPACT STATEMENT

14. I received two victim impact statements, one from the victim, and the other one from her mother.
15. In the victim's impact statement, it is mentioned that she is very scared of you and cannot face you. Your wife visited you in Court during a call over of your case and the victim was present in the car and she hid behind the passenger's seat. Further, her statement states the victim has been crying and has been very emotional since the incident and she is very reluctant to talk about it; she has completely lost her faith in you and considers her mother to be a strong person and she feels safe with her.
16. The victim was a child with an outgoing character and used to dance a lot but, now she is very withdrawn and shy of people and is extremely conscious that people are watching her. She cannot stop thinking of what you did to her to and feels disgusted. She is making efforts to move on with her life.
17. Your wife in her victim impact statement stated that the victim has become very disturbed and traumatised of what you did to her and she is making efforts to help her forget the incident. She states that the victim was a very cheerful and talkative child but now is withdrawn and shy and very conscious of people watching her. She is a completely different child now. Your wife personally feels betrayed at what you did to the victim as a father.
18. She does not want to think about what you did but every time she goes to bed to sleep it reminds her of what you did to the victim and it makes her very angry and depressed.
19. Before this incident your wife was very trusting of the male members of the family but after what you did to the victim, she has lost faith in all male family members.

NEW SENTENCING REGIME

20. The sentencing regime for the offence of rape changed in October 2020 when Parliament enacted that the sentence for rape would be life imprisonment of which at least 15 years is to be served without parole or probation. Prior to this the sentence was life imprisonment if the victim was under 13 years of age or otherwise 25 years of age.
21. According to the Minister of Justice Honourable Maverick Eoe's speech the changes in the sentencing regime was brought about because of an increase in child sexual offences cases

who were considered to be weak and very vulnerable members of the society and could be preyed upon like the victim in this case.

22. Prior to the changes in the sentencing regime the courts were given very wide discretions on sentencing but unfortunately there was no consistency in the sentencing approach. This is evident from my discussions at [18], [19], [20], [21], [22] and [23] of *Republic v Tsiode*¹:

SENTENCING TARIFF OR STARTING POINT

- [18] The court has been at variance in setting up a sentencing tariff or starting point for rape and the tariff has ranged from 6-16 years.
- [19] In *Republic v Notte*² Crulci J set a tariff/starting point at 6 years for rape for 21-year-old first offender and the victim was a 14-year-old neighbour who was charged under the Criminal Code 1899 and after making adjustments imposed a final sentence of 5-year imprisonment.
- [20] In *R v AB*³ Crulci ACJ set a tariff/starting point of 10 years for rape where the accused was 35 years old and the victim was his 7-year-old step-daughter. Again, the case was under the Criminal Code 1899 and after making adjustments, she sentenced the accused to 11 years imprisonment.
- [21] In *R v Olsson*⁴, where the accused was 53 years old, was charged with rape and various other sexual offences of his 7-year-old niece. A tariff/starting point of 16 years was set and after adjustments for aggravating and mitigating circumstances a sentence of 12 years imprisonment was imposed.
- [22] In *R v Tannang*⁵ where a 44-year-old close family member was charged for digital rape of a 10-year-old – a starting point of 6 years was fixed and after all adjustments for aggravating and mitigating circumstances and the time spent in custody, a final sentence of 4 years 8 months was imposed.
- [23] In *R v Buramen*⁶ where a 25-year-old accused convicted for rape of a 12-year-old student – a starting point of 6 years was set and after deducting 18 months for good character and remorse and a further 18 months for guilty plea, a final sentence of 3 years imprisonment was imposed. I would like to add that this matter is currently on appeal to the Nauru Court of Appeal.

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

² [2017] 53

³ [2016] NRSC 29

⁴ [2017] 47 Criminal Case No. 10 of 2017 (9 June 2017) Khan ACJ

⁵ [2019] NRSC 25 Criminal Case No. 15 of 2018, Jitoko CJ

⁶ [2021] NRSC 31; Criminal Case No. 5 of 2021 (25 August 2021) Fatiaki CJ

MANDATORY MINIMUM AND MANDATORY MAXIMUM TERMS

23. Under the new sentencing regime Parliament has prescribed mandatory minimum and mandatory maximum terms and I discussed that in *R v Harris*⁷ and I stated at [10] as follows:

[10] At [4.3] of the NJC article the relevance of mandatory minimum sentencing is discussed where it is stated:

In *Bahar v The Queen* [2011] WASCA 249 the Court considered the interaction of statutory minimum penalties for offences against the *Migration Act 1985* (Cth) with s 16A of the Crimes Act 1914. The Court held that mandatory maximum and minimum penalties reflect the seriousness of an offence for the purpose of s 16A and inform the proportionality assessment.⁸

McLure P (Martin CJ and Mazza J agreeing) stated at [54]:

[54] The statutory maximum and minimum also dictate the seriousness of the offence for the purpose of s 16A(1). It would be positively inconsistent with the statutory scheme for a sentencing judge to make his or her own assessment as to the “just and appropriate” sentence ignoring the mandatory minimum or mandatory maximum penalty and then to impose something other than a “just and appropriate” sentence (whether as to type or length) in order to bring it up to the statutory minimum or down to the statutory maximum, as the case may be. **The statutory minimum and statutory maximum penalties are the floor and ceiling** respectively within which the **sentencing judge has a sentencing discretion** to which the general sentencing principles are to be applied (emphasis added).

... In very many cases, sentencing an offender will require the exercise of a discretion about what form of punishment is to be imposed and how heavy a penalty should be imposed. **But that discretion is not unbounded. Its exercise is always hedged about by both statutory requirements and applicable judge made principles. Sentencing an offender must always be undertaken according to law.**

In *Markarian v The Queen*, the plurality observed that “[l]egislatures do not enact maximum available sentences as mere formalities. Judges need sentencing yardsticks.” **The prescription of a mandatory minimum penalty may now be uncommon but, if prescribed, a mandatory minimum penalty fixes one end of the relevant yardstick.**

24. Under the new sentencing regime the only sentence that I can impose upon you is one of life imprisonment of which at least 15 years has to be served without parole or probation and as I as I stated at [25] of *R v Harris* that: “[25] ... **is one end of the yardstick and it can go up depending on the circumstances and seriousness of the offending.**” (Emphasis added)
25. I stated in *R v Tsiode* (supra) 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”.

⁷ [2021] NRSC 44; Criminal Case No. 25 of 2020 (21 October 2021)

⁸ *Bahar v The Queen* [2011] WASCA 249, [54] (McLure P, Martin CJ and Mazza J agreeing)

FIRST RAPE BY FATHER

26. In Nauru's history this would be the first case of rape by a biological father on his own child, a very shameful act and you will have to live with this stigma for the rest of your life.
27. What concerns me is that despite the continuous knocking on the door by your children and your wife and the victim leaving the bedroom on one occasion and you allowed her back in and continued to abuse her to satisfy your lust. Parents are known to have put their lives on the line to protect their children from sexual abuse, however, you abused your own child.
28. Your counsel in mitigation has submitted that your children including the victim need you as their father to look after them in this "uncertain world". The question that I ask you is do they really need a father like you. The victim does not trust you anymore and as soon as you committed this act on her you lost your parental right for a minimum period of 15 years and I do not have any powers to reduce that term. The sad reality is that all your children including the victim will grow up without you, and will unfortunately be vulnerable in this "uncertain world". But who can you blame for that? You cannot blame anyone except yourself. Did you not think about that when you were committing this heinous act on your own child?

WHETHER I SHOULD INCREASE THE MINIMUM TERM?

29. I stated in *R v Harris* that depending on the circumstances and seriousness of the offending the 15-year minimum prison term could go up.
30. You are an evil and an immoral person. Your actions fall in the worst category of offending. What really concerns me is that you did not spare your own child and therefore you are a real menace and danger to all children and I am certain that it will weigh very heavily against you when you are considered for parole and probation.
31. Your acts fall in the worst category of offending and the prosecution submits that I should increase the minimum prison term of 15 years and I am persuaded that I should do so. Having taken into account your early indication for a guilty plea I will only increase it by one year to 16 years.
32. You are sentenced to life imprisonment and I order that you are to serve a minimum term of 16 years imprisonment before you will be eligible for parole or probation.

GENERAL DETERRENCE

33. On the issue of deterrence, I wish to reiterate the sentiments of the Minister for Justice that the overriding consideration in bringing about the new sentencing regime was one of deterrence to address the increase in sexual offences cases involving children.
34. In the sexual offences data prepared by the Registry it shows the following:
 - a) 11 sexual offences cases were filed in the year 2020;

- b) 16 cases filed in the year 2021;
 - c) only 2 cases were filed in 2022 to date.
35. If this is a correct reflection of what the current position is, then the sentence in *R v Harris* which implemented the new sentencing regime appears to be having an effect.

PRESIDENTIAL PARDON

36. It is my duty to inform you that your only recourse to seeking an earlier release from prison before the expiry of 16 years is to seek the Presidential pardon under Article 80 of the Constitution, and of course this is after you have exhausted your right of appeal against sentence.

DATED this 7 day of JUNE 2022



Mohammed Shafiullah Khan
Acting Chief Justice

