



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

**Criminal Case No. 1 of 2023**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

**AND:** TOM TOM BILL

**ACCUSED**

**BEFORE:** Keteca J

**Date of Submissions:** 04<sup>th</sup> October 2024

**Date of Sentence:** 11<sup>th</sup> October 2024

**Case may be cited as:** Republic v Tom Tom Bill

**Catchwords:** Rape of Child under 16 years old: contrary to Section 116(1)(a)(b) of the Crimes Act 2016, admission of Count 2

**Appearances:**

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

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

**SENTENCE**

**A. BACKGROUND**

1. The accused was found guilty of two counts of 'Rape of child under 16 years contrary to Section 116(1) (a) (b) of the Crimes Act 2016.
2. He performed oral sex on two victims.

## B. MAXIMUM PENALTY

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

## C. ANTECEDENT HISTORY

4. The accused was born on 22 July 1997. He was 25 years old when he committed the offences.
5. He has no previous convictions.

## D. SUBMISSIONS BY THE PROSECUTIONS

### AGGRAVATING FACTORS

6. Counsel submits the following:
  - i. The disparity in the ages of the accused (25 years) and the victims (12 years) aggravates the offending.
  - ii. The accused took the two victims for a joy ride, allowed them to watch pornographic movies and took advantage of the boys in the early hours of that particular morning.
  - iii. The video of the accused and one of the victims in the act embarrasses the victim's family.

### MITIGATING FACTORS

7. The accused has no prior convictions.
8. Counsel then looked at the following sentencing principles under the Crimes Act 2016:
  - i. Section 277- Kinds of sentences;
  - ii. Section 278- Purposes of sentencing;
  - iii. Section 279- General Sentencing Considerations;
  - iv. Section 280- Sentencing Considerations- Imprisonment.

## E. SENTENCING TARIFF

9. 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 Bidinimi 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. The accused removed his cousins' pants and licked her vagina. On the second count, the accused had sexual intercourse with the victim. ***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 Renack Mau* [2024] NRSC 26- the accused was convicted on three counts of rape. The victims were 12 years old and attended Nauru College. On three separate occasions the accused arranged to meet them, individually on two occasions and together on one occasion. He took them to secluded spots on Topside and had sexual intercourse with them. ***He was sentenced to 16 years imprisonment on Count 1, 15 years on Counts 2 & 3. The sentences were concurrent and he had to serve a minimum of 15 years before parole or probation.***
  
- iv. *R v Daniel* [ 2022] NRSC 15- the accused pleaded guilty to a count of Rape of a child under 16 years old contrary to Section 116 of the Crimes Act 2016. The accused was the biological father of the 6-year-old victim. He took the victim to a room, laid her on a bed and licked her vagina. The wife of the accused, who is the mother of the victim caught the accused in the act by peeping through a window. **The accused was sentenced to life imprisonment. He has to serve a minimum term of 16 years before parole or probation.**
  
- v. *R v Harris* [ 2021] NRSC 44- the accused was convicted of one Count of Causing a child to engage in sexual activity contrary to Section 118(1)(a)(b)(c)(iii) of the Crimes Act 2016. The accused lived with the victim and they are first cousins. He was 27 years old, the victim, 11. The accused kissed the victim and put his penis in her mouth. When disturbed by an uncle, the accused ran out naked. ***He was sentenced to life imprisonment with a minimum of 15 years to be served without any parole or probation.***

## F. VICTIM IMPACT STATEMENT

- 10. Victim 1- On the emotional impacts- he says that it was his first sexual encounter. He was scared. After being dropped at home, he felt scared, angry and ashamed.
  
- 11. On the psychological impact- he was ashamed when the video went viral. He stopped going to school. He does not think about it now. He wants to forget the episode and move on with his life.
  
- 12. Victim 2- he lives with his grandmother after his parents separated when he was very young. He does not attend school now. On the emotional impacts- it was his first sexual encounter too. He felt embarrassed when told that there's a video of him going around.
  
- 13. On the psychological impact- he tries not to think about it. He gets teased by his friends and he thinks that everyone in Nauru knows about this case.

## G. COMPARABLE CASES

- 14. Counsel concludes that for this offence, case laws show a maximum sentence of life imprisonment and between 15-18 years imprisonment as the minimum.

## H. SUBMISSION BY DEFENCE COUNSEL

15. Mr Tom filed late submissions on behalf of Tomtom, the accused. He submits:
- i. The accused accepts his convictions;
  - ii. The accused complied with police instructions in the investigation of the case;
  - iii. The accused is well respected in his family and the community;
  - iv. He now attends church;
  - v. A lenient term of imprisonment will be appropriate here.
16. Counsel also relies on the affidavits filed by the following:
- i. Knorad Ika- President of Anetan community- pleads that the accused be given a second chance; and
  - ii. Garrison Grundler- Community leader of Anetan District-he does not know the accused personally. He asks that the accused be given a second chance.

## I. DISCUSSION

17. This is another case where the unrestricted use of mobile phones, in this case to watch porn, provided the catalyst to the commission of the offences in this case.

## J. SENTENCING GUIDELINES

18. 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
19. Considering the above provisions, **I enter convictions against the accused on both counts.**
20. The accused gave sworn evidence in this case. He admitted performing oral sex on Victim 2. In *DPP Reference (No 1 of 1992) v M (1993) 9 WAR 281; 65 A Crim R 197 (CCA)* Malcom CJ and Walsh J said ( at 287; 203):  
‘The word ‘fellatio’ is derived from the Latin verb *fellare* which means ‘to suck’. As a matter of common usage, fellatio has been extended to licking. On this basis, fellatio does not necessarily involve penetration.’
21. I found that he also performed fellatio on Victim 1.
22. I note that both the victims consented to the accused performing oral sex on them.

23. On this note, 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-  
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.)
24. 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.
25. I further 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”.*
26. I agree with CJ Fatiaki.
27. I am required to give reasons for the sentences that I pass. In *WO (a child) v Western Australia* (2005) 153 A Crim R 352 (WA CA), in a joint judgment, the court said:  
‘*Every court sentencing an offender is required to give reasons for that sentence. The reasons need not be elaborate, but must in every case, be sufficient to enable the offender, and the public, to understand why that sentencing disposition was chosen and to preserve to the offender the right of appeal.*  
The court added:  
‘*In a context where a sentence of imprisonment is a last resort (as it is both for children and for adults, although the principle has greater weight in respect of the former), those sentencing remarks will always be deficient if it is not possible to discern from them why a sentence of detention or imprisonment, as opposed to some other disposition, was selected.*’
28. In *R v Thompson* (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA), Spigelman CJ said (at 394-395; 113-114[42]-[44]):  
‘*Sentencing judges are under an obligation to give reasons for their decisions. Remarks on sentence are no different in this respect from other judgments. This is a manifestation of the fundamental principle of common law that justice must not only be done but manifestly be seen to be done. The obligation of a court is to publish reasons for its decision, not merely to provide reasons to the parties.*’

29. In my sentencing remarks in *R v Xavier Namaduk*, Criminal Case No 24 of 2021 (sentence passed on 04<sup>th</sup> October 24), I mentioned about the prevalence of sexual offences against children in this jurisdiction. In that case, the victim was a young girl. In the present case, they are two young boys, being preyed upon by an adult male. On the deterrence and rehabilitation factors as purposes of sentencing, I mentioned the following: ‘ Under Section 278(b) of the Crimes Act 2016- it provides: “to prevent crime by deterring the offender and other people from committing similar offences.”

[28]. *In R v Radich [1954] NZLR 86 (CA)* the court said ( at 87):  
“We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. In all civilized countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment.’

The court added:

“If a court is weakly merciful, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment.”

[29] On rehabilitation as a purpose of sentencing, Section 278(d) provides: “to promote the rehabilitation of the offender.”

[30] In *Yardley v Betts (1979) 22 SASR 108*, King CJ said:  
“The protection of the community is also contributed to **by the successful rehabilitation of offenders**. This aspect of sentencing should never be lost sight of and it assumes particular importance in the case of **first offenders** and others who have not developed settled criminal habits. If a sentence has the effect of turning an offender towards a criminal way of life, the protection of the community is to that extent impaired. If the sentence induces or assists an offender to avoid offending in future, the protection of the community is to that extent enhanced.”

30. I consider the cases outlined in paragraph [9] above. All the accused persons were sentenced to life imprisonment in those cases.

31. As in [3] above, the maximum penalty for this offence is life imprisonment. The prisoner would need to serve a minimum of 15 years before the possibility of probation or parole.

32. I also consider Section 282 of the Crimes Act 2016 which provides:  
'(1) Where under this Act, an offender is liable to life imprisonment, a court may nevertheless impose a sentence of imprisonment for a stated term.  
(2) Where, under this Act, an offender is liable to imprisonment for a stated term, a court may nevertheless impose a sentence of imprisonment for a lesser term.
33. In this case, parliament has prescribed that those convicted of the rape of a child under 16 years, will be awarded a sentence of imprisonment. It is not a question of whether he should be imprisoned or not. Rather, it's how long he should be imprisoned for. This message should be declared and shouted from the rooftops throughout Nauru. Accused persons who are convicted for sexual offences against children will be punished severely. The sentence will reflect Nauru society's condemnation of such criminal conduct. It also represents a symbolic, collective statement, as legislated by parliament, that when you sexually assault a child, be prepared to spend time in prison, for a very long time.

## K. CONCLUSION

34. I hope that the accused, would be offenders, and other persons with similar impulses would be deterred from committing similar offences. I further hope that for the protection of young boys in Nauru, the accused will be successfully rehabilitated during his term of incarceration.
34. I sentence the accused as follows:
- i. Count 1- 16 years imprisonment;
  - ii. Count 2- 16 years imprisonment;
  - iii. Sentences are to run concurrently.
  - iv. The accused is to serve a minimum term of 15 years before any probation or parole.

DATED this 11<sup>th</sup> day of October 2024

  
Kiniviliame T. Keteca  
Acting Chief Justice

