



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

**Criminal Case No. 17 of 2020**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

**AND:** MYSON TANNANG

**ACCUSED**

**BEFORE:** Keteca J

**Date of Judgment:** 29<sup>th</sup> January 2025

**Date of Sentence:** 25<sup>th</sup> March 2025

**Case may be cited as:** Republic v Myson Tannang

**Catchwords:** Indecent Acts: Contrary to Section 106(10(a)(b)(c)(ii) of the Crimes Act 2016.

**Appearances:**

Counsel for the Prosecution: **S. Shah**

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

**SENTENCE**

**BACKGROUND**

1. On 29<sup>th</sup> January 2025, the accused was found guilty of one count of indecent act contrary to section 106(1) (a) (b) (c) (ii) of the Crimes Act 2016.

## THE CHARGE

2. The Information reads:

### *Statement of Offence*

Indecent Acts: Contrary to Section 106(1) (a)(b)(c) (ii) of the Crimes Act 2016.

### *Particulars of Offence*

MYSON TANNANG on the 16th of August 2020 at Denig District in Location, Nauru, intentionally touched ZIVANIA BATSIUA on her breast and the touching was indecent and that MYSON TANNANG is reckless about that fact and that ZIVANIA BATSIUA did not consent to the touching and MYSON TANNANG is recklessly indifferent to consent of ZIVANIA BATSIUA.

## THE LAW

3. Indecent Acts

(1) A person (the defendant) commits an offence if:

- (a) the defendant intentionally touches another person;
- (b) the touching is indecent and the defendant is reckless about that fact;
- (c) the other person does not consent to the touching and the defendant:
  - (i) knows that fact; or
  - (ii) is recklessly indifferent to consent of the other person.

## PROSECUTONS SUBMISSIONS

4. Mr Shah submits, correctly that the maximum penalty for this offence is 8 years imprisonment if aggravating circumstances apply or 5 years imprisonment, for any other case. The penalty was increased in October 2020 to 20 years and 10 years imprisonment respectively.

5. Counsel refers to Section 278 on the purposes of sentencing and the following cases:

- i. *R v Thoma* [2017] NRSC 86 on the term 'indecent.'
- ii. *R v Uddin* [2023] NRSC 3- the accused removed the pants of the complainant and attempted to climb on top of her. He was sentenced to 18 months imprisonment. For his time on remand, 4 months were deducted.
- iii. *R v Aubiat* [2023] NRSC 15- a police officer, in a police vehicle, indecently touched a female fellow police officer on two occasions. He was sentenced to 14 months imprisonment on both counts, concurrent to each other.
- iv. *R v Pickering* [2023] NRDC 10, an accused convicted of indecent act when he touched the nipple of the complainant was sentenced to 42 months imprisonment by the District Court. Twelve months were suspended for 3 years.
- v. *R v Douglas* [2021] NSWDC 646, - the accused, a farmer, committed several sexual offences against several complainants. For the offences of indecent assault, the accused was sentenced to 18 months imprisonment.

vi. *R v Antony Paul Hanney* [2014] NSWDC 13, the accused who pretended to be a doctor and touched the vaginal areas of two patients was sentenced to 18 months imprisonment.

vii. *R v Robinson* [2020] NSWDC 425- on separate occasions, the accused touched the complainant's vaginal area and rubbed his penis on her buttocks. The complainant was his sister. He suffered from Schizophrenia and pleaded guilty to one count of attempted sexual intercourse and a count of indecent assault. The accused was sentenced to 9 months imprisonment.

viii. *R v Jasim Alseed* [2008] NSWDC 284- the accused forcefully kissed the complainant and proceeded to force her mouth onto his penis. He was charged on two counts of sexual assault and indecent assault and a third count of sexual intercourse. He was sentenced to concurrent terms of 3 years imprisonment.

6. Counsel further submits:

- i. Women in Nauru should be protected from men who prey on them;
- ii. The court has a duty to send a clear message that likeminded persons will not be tolerated by the courts; and
- iii. That I should impose a harsh custodial sentence here.

#### **SUBMISSION FOR THE ACCUSED**

7. Mr Tom submits as follows:

- i. The accused did take advantage of an intoxicated person!!
- ii. He is remorseful;
- iii. He has joined church groups since then;
- iv. He has been married for 10 years and has no previous convictions
- v. He is the sole breadwinner and assists his wife with household duties too;
- vi. He is now working for the Education Department.
- vii. Through Community leader David Dowiyogo, he says:
  - a. He heads the RON Hospital Health Information and is a representative of their catholic community in Boe;
  - b. He is the president of the Praesidium Our Lady of the Sacred Heart and they do weekly visits to homes, prion, hospital and those ' in need of spiritual growth and guidance;'
  - c. He worked with the accused at Ron Hospital where he found him to be a responsible worker;
  - d. He pleads that the accused not be imprisoned.
- viii. Through Tamarontarae Tannang, she says:
  - a. She's 32 years old and is married to the accused;
  - b. They have 3 children;
  - c. She relies heavily on her husband at home and the accused is a good father and husband;
  - d. That the accused not be sent to prison.

8. In mitigation Counsel submits:

- i. No injury was caused to the complainant in this case neither did it involve any form of penetration or sexual intercourse;
- ii. The accused is willing to do community work.
- iii. Referring *to R v Aubiak* [2024] NRSC 18, Counsel submits that a 6 months imprisonment term and a good behaviour bond is suitable here.

#### DISCUSSION

9. 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

10. Considering the above provisions and case law, I enter a conviction against the accused.

11. What is the appropriate sentence here? With reference to the case authorities submitted by both counsels, it is clear that a custodial sentence is warranted here. The tariff for the offence ranges between 14 and 18 months.

12. I sentence the accused to 14 months imprisonment. Should I suspend a portion or the whole sentence? I note the mitigation submitted by Mr Tom. There was no breach of trust. In his answers to questions posed by the court at trial, the accused admitted that he struggled with the accused for about a minute or two. In his words- *'I asked permission and if she doesn't agree then she can leave, she's not mine to control.'* He did not continue to force himself upon her. When the victim refused his advances, the accused stopped. Further, this case was heard back in 2021 before the then Chief Justice Fatiaki. There was a long delay in obtaining the transcripts. The delay in the finalisation of this case and the time lapse from the trial were not the accused's doing. Had the accused been sentenced in 2021, he would have served his time. After the trial, the outcome of the case had been hanging over his head for four years. The accused, his wife and three children would face considerable hardship if the accused was to be imprisoned today. Considering the totality of this case, an immediate custodial sentence would not be just or fair.

#### CONCLUSION

13. The accused is sentenced to 14 months imprisonment. This term is suspended for 2 years.

DATED this 25<sup>th</sup> day of March 2025

  
Kinivillame T. Keteca  
Judge

