



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 28 of 2020

THE REPUBLIC

-v-

TEBWEEBWEE AROMAN

SENTENCE

Before: RM P. R. Lomaloma
For the Prosecution: DPP Ronald Talasasa
For the Defendant: Ravunimasei Tagioakatini
Judgment: 20th October 2020
Sentence: 6th November 2020

Catchwords: *Indecent acts—sentence; Being Found in certain places without lawful authority—sentence.*

Introduction

1. The accused was found guilty of 2 counts of indecent acts contrary to section 106(1)(a)(b)(c)(i) and (ii) of the Crimes Act 2016. He was also found guilty of one count of being in certain places without lawful authority contrary to section 164(a)(i) of the Crimes Act.

The Facts

2. On 11th May 2020, Maggie Mae, 22, was asleep in her room with her boyfriend. She was woken up at about 5:00 a.m. when someone touched her breast. She thought initially that it was her boyfriend but when the pressure on her breast was too great, she called out to her mother as she realised it was not him. She looked and found out that it was the accused who had been squeezing her breasts. Her son was also in bed with her. Her boyfriend told him to leave but he refused and kept asking for cigarettes from her. The victim was wearing a lavalava and he squeezed her through that. She did not consent to the touching. I found the accused guilty of count 1 on these facts.

3. Count 2 took place the same day before count 1. Sarai Depoudu was sleeping on her bed outside her house when the accused came and pulled her blanket. She woke up and asked him what he was doing there. He replied by asking her if she had cigarettes. While doing that, his hands were rubbing on her stomach and moving onto her genital area over her clothes. According to Sarai, he stopped when he reached the top of her genital area. The touching was without the victim's consent. The accused then opened the fridge and kept on talking to Sarai who ignored him. Sarai did not know when the accused left but she heard her daughter scream when the accused grabbed her breasts as set out in paragraph 2 herein.
4. The accused is married to Sarai's sister and live in the same compound but in a different house. He is well known to both victims because of the relationship.
5. Count 3 is for being found in certain places without lawful authority and relates to his entry into the house where counts 1 & 2 were committed.

Seriousness

6. The starting point for each sentence is to look at the seriousness of the offending, taking into account his culpability and the harm caused, intended or likely to be caused by the offending. Culpability or blameworthiness is the measure of the fault and starts with negligence followed by recklessness, knowledge and with intentional acts at the top of the scale. The starting point for the sentence depends on the seriousness of the offending.

Count 1

7. This was an intentional act and highest on the culpability scale. There was no physical harm in any of the counts but harm is defined in the Crimes Act as including psychological harm. I have not received the victim impact assessments from the DPP but I can infer that the victim in count 1 would have suffered psychologically as a result of the actions of the accused in Count 1. I can infer that she would have felt violated, felt unsafe and insecure in her own home. I would assess the seriousness of the offending in count 1 as beyond the midpoint.

Count 2

8. Count 2 was an intentional act. There was no physical harm but I can infer that the victim must have suffered mental harm as a result of the offending. She would have felt violated, and would not feel safe in her home again for some time. The touching was very intimate and I would for these reasons, consider the seriousness of the offending to be above the midpoint.

Count 3

9. This was an intentional act. The harm caused is the invasion of the privacy of the victims. I would rate the seriousness of the offending at about the mid-level.

Aggravating Factors

10. The aggravating factor for all 3 counts are:-
- a. The offences took place at night;
 - b. The indecent acts were committed on victims asleep at their beds in their home and is therefore an invasion of their home and their person;
 - c. There is a breach of trust;
 - d. All three offences were committed whilst on bail on Nauru District Court Crim. Case No.16 of 2020; and
 - e. The offence in counts 1 & 2 were committed in the presence of others—this adds to the shame or embarrassment of the victim and could have led to a fight.

Personal Circumstances and Mitigation

11. The offender is 32 years old. He is a Kiribati national married to the sister of Sarai. He was living in a house in the same compound and about 10 meters from the complainant's house. He was sentenced to 9 weeks imprisonment in case No. 16 of 22 and after his sentence which expired on 13 September, has been in remand for this offence. That is a total of 6 weeks and 11 days.
12. In mitigation, the accused, through his counsel said he is remorseful for what he did.

Sentences for Indecent Acts Under the Criminal Code 1899

13. The maximum sentence for this offence under the Criminal Code 1899 was 2 years imprisonment with hard labour. In *R v Bronson Notte*¹ Crucci J sentenced the defendant to 2 years imprisonment for this offence. The facts there are that the victim, who was 14 at the time, had been indecently assaulted by the defendant before he raped her. The victim was in a drunken sleep when he took off her clothes and videotaped her while he inserted his fingers into her vagina. Later he raped her and she only found out when she was awake. A major aggravating factor there was that he had publicized the video leading to great shame for the young victim. The maximum for this offence is now 5 years under the Crimes Act 2016.
14. In *R v Adam, [2007]NRSC 42*, the Court handed down a sentence of 9 month's imprisonment to the defendant who had forcefully kissed the victim, got on top of her and tried to put his tongue in her mouth.

¹ Nauru Supreme Court Criminal Case No. 49A of 2016,

² Criminal Case No. 2 of 2007 (6 December 2007)

15. In *R v Tanner Benjamin*³ the defendant went into the child victim's room while she and her parents were asleep. He then tried to take off her pants. When she awoke, she saw him with his pants half-way down with his underwear showing. He was sentenced to 6 months imprisonment.

Sentences under the Crimes Act 2016

16. The maximum sentence for this offence under the Crimes Act is 8 years imprisonment if aggravating circumstances apply and 5 years imprisonment otherwise. The maximum sentence for the accused for counts 1 & 2 is 5 years imprisonment.
17. In *R v Jojo Agege [2019]*⁴, the offender was sentenced to 18 months imprisonment by this court for the offence of indecent acts. He was a police officer who committed this offence by "dry-humping" a girl who was in custody for a traffic offence. In *Republic of Nauru v AD (Juvenile) [2019]*⁵, the Supreme Court sentenced a 16 year old to 18 months for committing an indecent act against his 14 year old sister but the charge under section 117 of the Crimes Act, carrying a maximum sentence of 15 years.
18. In *R v John Raidi*⁶, the offender was sentenced to 18 months imprisonment for this offence. He had touched the vagina of the complainant.

Sentencing considerations

19. The maximum sentence for this offence under the Crimes Act is 5 years imprisonment. This offence can be committed in many ways and the maximum is reserved for those more heinous such as where there is direct contact with the genitalia of the victim, touching of the penis with the genitalia of the victim, the relative ages of the victim and the defendant being great, and breach of trust and the degree of trust in the relationship, to name a few examples.
20. Sentences show that if you touch the genitalia of the victim, the sentence goes up; that if you penetrate the genitalia with your fingers, it increases the sentence further. Bronson Notte (supra) got the maximum of two years because he videotaped the indecent assault and distributed it. It was also not the head sentence as he was sentenced to 5 years for rape and 6 months for videotaping his actions and distributing it on the internet, contrary to 16(1)(a) of the *Cybercrime Act 2015* to be served concurrently.
21. The Crimes Act sets out in sections 277-282 the matters that the Court should take into account in sentencing offenders.

³ District Court Criminal Case No. 6 of 2012 (unreported); Sentence delivered on 8 April 2016.

⁴ NRDC Criminal Case No 83/2017

⁵ NRSC 1; Criminal Case 19 of 2018 (2 February 2019)

⁶ [2019] NRDC Criminal Case No. 11 of 2018

Prevalence

22. The District Court is aware of the prevalence of sexual offences in Nauru ~~from~~ since all criminal charges are first filed in the District Court and it is necessary to reexamine the sentences to deter the offender and others from committing these offences, consistent with the requirements of section 278(b) of the Crimes Act 2016.

The sentence

23. I have considered all the matters set out above, in particular the seriousness of the offending and the offender's personal circumstances and consider that a conviction and a custodial sentence is necessary for all 3 counts.
24. Count 1—Indecent acts: I pick a starting point of 15 months imprisonment. I add 6 months for the aggravating factors and reduce it by 1 month for the mitigating factors leaving a sentence of 20 months.
25. Count 2—Indecent acts: I pick a starting point of 15 months. I add 6 months for the aggravating factors and reduce it by 1 month for the mitigating factors, leaving a sentence of 20 months imprisonment.
26. Count 3—Being in certain places without lawful authority: The maximum sentence for this is 12 months imprisonment. The aggravating factors for this offending are:
- a. the offender entered not only the dwelling house but also violated the sanctity of the victim's bedroom,
 - b. The offence was committed at night.
 - c. There was a breach of trust.
- I would rate the seriousness of this offending at above the midpoint. I pick a starting point of 6 months imprisonment. For the aggravating factors, I would add 3 months and reduce it by 1 month for the mitigating factor, leaving a sentence of 8 months imprisonment.
27. Counts 1 & 2 were committed against 2 separate victims and should be served consecutive to each other. That would take the total sentence to 40 months or 3 years and 4 months imprisonment. Count 3 was committed concurrent to counts 1 & 2 and will be served concurrent to counts 1 & 2.

The Totality principle

28. The totality principle requires the court to "stand back and look at the overall picture and decide whether the total of what would otherwise be the appropriate sentence is fair and reasonable total sentence to impose." : *R v Creed (1985)*⁷. I am satisfied that a sentence of 3 years and 4 months imprisonment for the 3 offences committed is not manifestly excessive.

⁷ (1985) 37 SASR 556 (Court of Crim Appeal) per King CJ

Orders

29. The offender is convicted and sentenced to:-

- a. 20 months imprisonment for count 1;
- b. 20 months imprisonment for 2 to be served consecutive to count 1.
- c. 8 months imprisonment for count 3 to be served concurrent to counts 1 & 2.
- d. The total sentence is therefore 40 months or 3 years and 4 months.
- e. The total sentence is to be reduced by 6 weeks and 11 days being the time spent in remand.

30. 14 days to appeal.


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Penijamini R Lomaloma
Resident Magistrate

