



IN THE SUPREME COURT OF NAURU

[CRIMINAL JURISDICTION]

Case No. 52 of 2015

THE REPUBLIC OF NAURU

v.

JACKO GADEANANG

Before: Crulci J
For the Prosecution: L. Savou
For the Defence: R. Tagivakatini

Dates of the Hearing: 20 – 24, 27 July, 2015
Date of Sentence: 29 July 2015

Rape – sentence – aggravating features – guidelines

SENTENCE

FACTS OF RAPE

1. The accused was found guilty of rape of a woman in her mid-thirties. The victim knew the accused and he is related to a friend of the victim's sister. The rape took place at night after both parties had consumed alcohol.
2. The accused asked the victim to have sexual intercourse with him and she refused. The accused then placed his arms around her neck in a

stranglehold and forcibly pulled her into an empty room. The victim tried to shout out but the accused was holding her around the neck.

3. Once in the room the victim was pushed to the ground, had her underwear pulled off and she was raped. The accused then instructed the victim to perform oral sex (a 'blow job') which she did unwillingly.
4. The victim was again pushed to the floor and raped a second time. Upon hearing voices outside calling the victim, the accused dressed and ran away.
5. The victim reported the rape directly to a friend who observed that the victim was in a distressed state. The accused's evidence to the court was that the sexual intercourse was consensual.

COUNSEL SUBMISSIONS

6. The prosecution has placed before the Court the accused's antecedents. He is 27 years of age and has previously been sentenced by this court on similar matters¹. On the 28 March 2009 Millhouse CJ sentenced the accused to a term of three and a half years imprisonment (term to commence from 13 December 2008) for one count of attempted rape, 3 counts of indecent treatment of a girl under 14 and 1 count of deprivation of liberty. The victim at the time was five to seven years; the accused was then 21 years of age. These were his first convictions and he pleaded guilty.
7. In her victim impact statement Terra Akibwib states that she is a 36 year old woman with five children ranging in age from six years to eighteen years. Her neck, throat and eyes pained for a while after the incident due to being strangled. In relation to emotional and psychological effects of the rape she states that in the beginning she would have nightmares and think of the shame of what the accused had done to her. She has the support of her family. Every time she sees a member of the accused's family she feels scared and goes out of her way to avoid them.

¹ *R v Gadeanang* [2009] NRSC 3

8. Initially about what the victim didn't feel good about what had happened to her, she was angry and frustrated but couldn't do anything. The victim kept going back to the time of the rape and that she had wanted to shout but couldn't because of the pain in her throat from being strangled. She no longer goes to the Location anymore as it brings back memories she doesn't want to think about. She came forward to save other girls.
9. The prosecution has provided the Court with comprehensive written submissions to the Court detailing comparable rape cases in this jurisdiction, the Solomon Islands and Republic of Fiji Islands.
10. Counsel for the accused agrees that the accused has a previous conviction of a similar matter and submits on the accused's behalf that the accused regrets that he took the love and support of his fiancée and mother for granted. The accused's fiancée is seven months pregnant. Counsel asks the Court to take into account that both the victim and the accused are adults. Counsel concedes a tariff of four years imprisonment for the offence.
11. The accused served three and a half years imprisonment² and was released around the 25th of July 2012. The accused was charged with an offence (dated the 17 December 2013) under section 210 of the Criminal Code for indecent treatment of a boy under 14. The date of charge being 24th September 2014. The accused awaits sentence for that matter by this Court. For this matter the accused was charged on 29th December 2014, therefore offence was committed whilst on bail for the charge of indecent treatment.
12. Both prosecution and defence counsel pray for the Court to set forth sentencing guidelines for the offence of rape in Nauru.

CASES CONSIDERED

13. The Court notes that sentences in the region of three to four years have previously been imposed by this Court³. These are able to be

² Ibid.

³ *R v Scotty* [2008] NRSC 5; *R v Adam* [2008] NRSC 16; *R v Scotty* [2011] NRSC 21; *R v Diehm* [2011] NRSC 27; *R v Notte* [2012] NRSC 18; *Diehm v DPP* [2013] HCA 42

distinguished from this case by reference to their mitigating features *inter alia* guilty pleas; no previous convictions; youthfulness of offender; deep remorse; good work history; offences not committed whilst on bail. Mitigating features not present in this case.

14. The Court notes the case of *R v Dimapilis*⁴ where the 21 year old offender and 17 year old victim had five acts of sexual intercourse in the early hours over a short time frame; the issue was one of consent. After trial Millhouse CJ sentenced the accused to a term of six years imprisonment.
15. Looking to other jurisdictions Lord Lane, Chief Justice expressed the view that for matters of rape a custodial sentence is the starting point:
*"Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence. . . . A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasise public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last but by no means least, to protect women. The length of the sentence will depend on all the circumstances. That is a trite observation, but those in cases of rape vary widely from case to case."*⁵
16. The guidelines set out by Lord Lane in *R v Billam*⁶ have been regularly followed by the Courts and approved of by Lord Chief Justice in *R v Millberry*⁷. These guidelines outline four levels for sentencing offences of rape, reflecting increasing levels of seriousness:
"For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the starting point should be eight years."

⁴ *R v Dimapilis* [2009] NRSC 2

⁵ *R v Roberts and Roberts* [1982] 4 Cr App R (S) 8

⁶ *R v Billam* [1986] 8 Cr App R (S) 48

⁷ *R v Millberry* [2003] 1 WLR

At the top of the scale comes the defendant who has carried out what might be described as a campaign of rape, committing the crime upon a number of different women or girls. He represents a more than ordinary danger and a sentence of 15 years or more may be appropriate.

Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time, a life sentence will not be inappropriate."⁸

17. The question of guidelines has been considered in the Fiji Court of Appeal in *Kasim v State*:

"Enquiries we have made indicate that whilst there has been no generally consistent starting point for sentencing for rape the Courts in Fiji have endeavoured to follow the guidelines laid down by Lord Lane in Keith Billam & Others (1986) 8 Cr. App. R. (S) 48. In this case he said, inter alia, that "For rape committed by an adult without aggravating or mitigating features a figure of 5 years should be taken as a starting point." Mr Wikramanayake the Assistant Director of Public Prosecutions who appeared for the Respondent informed us that the starting point for sentencing in such a case as is before us and as applied by the High Court generally has been 6 years.

*While it is undoubted that the gravity of rape cases will differ widely depending on all the circumstances, we think the time has come for this Court to give a clear guidance to the Courts in Fiji generally on this matter. We consider that in any rape case without aggravating or mitigating features the starting point for sentencing an adult should be a term of imprisonment of seven years. It must be recognized by the Courts that the crime of rape has become altogether too frequent and that the sentences imposed by the Courts for that crime must more nearly reflect the understandable public outrage. We must stress, however, that the particular circumstances of a case will mean that there are cases where the proper sentence may be substantially higher or substantially lower than that starting point."*⁹

⁸ *R v Billam*, supra.

⁹ *Kasim v State* [1994] FJCA 25

18. As recently as 2013 the Solomon Islands Court of Appeal reviewed the guidelines when considering three cases on appeal, and endorsed the approach in *R v Billam*¹⁰, their Lordships held:

"In England and Wales, the opportunity to review the guidelines set out in Billam arose in R v Millberry [2003] 1 WLR. The Court of Appeal in Millberry had the benefit of advice from the Sentencing Advisory Panel for England and Wales and noted that the advice of the panel 'retains the basic structure established in R v Billam, but with some significant modification to take account of both new legislation and changes in the nature of the offence since the existing guidelines were issued.' Many of the legislative changes referred to do not, of course, apply in this jurisdiction whereas some of the changes in the nature of the offence are applicable here.

The Court of Appeal for England and Wales in Millberry accepted the advice and comments of the sentencing advisory panel as to starting points and indicated that this meant no substantial departure from the general approach laid down in R v Billam.

The effect of that decision is to leave the five, eight and fifteen year starting points set out in Billam intact.

Just as the Court of Appeal for England and Wales has determined, it is the view of this Court that the guidelines adopted in Ligiau and followed subsequently both in the High Court and this Court of Appeal are not in need of substantial change. The offence of rape, its seriousness, its potential effect on the victim, and the need for the imposition of a custodial sentence, in our view, over time has not changed. Guidelines with regard to sentencing should be regarded as sufficiently flexible to take into account any societal changes that may have taken place over time. As noted in Millberry:-

"It is essential that having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Double accounting must be avoided and can be a result of guidelines if they are applied indiscriminately. Guideline

¹⁰ *R v Billam*, [1986] 8 Cr App R (S) 48

judgments are intended to assist the judge arrive at the correct sentence. They do not purport to identify the correct sentence. Doing so is the task of the trial judge.”¹¹

GUIDELINES

19. This Court notes and approves as good practice the position of the Solomon Island High Court in relation to guilty pleas in rape cases:

A plea of guilty will reduce the sentence considerably. It has long been accepted that, by so doing, the accused not only shows remorse and contrition but saves the victim having to go in the witness box and relive such a frightening experience.¹²

20. The Court adopts the reasoning in *R v Billam*¹³ as a general guideline for the offence of rape, sending a clear public message that offences of a sexual nature are not tolerated in Nauru.

OBSERVATIONS AND SENTENCE

21. The offence of rape is a particularly distressing one for the victims as it brings the offender into close personal proximity with the victim, and reduces what our society values as an act of love into one of violence and degradation.
22. The Court is concerned that a few years after his release from prison the accused is back before the court on a similar charge. The community needs protection from the accused’s subsequent lack of control and offending behaviour.
23. The accused was found guilty after a trial in which the victim relived the incident by giving evidence in court and the offence of rape was committed whilst on bail for the charge of indecent treatment. The starting point for this case is seven years imprisonment. The aggravating features of a repeated rape, the victim being subjected to further sexual indignities and lack of remorse on behalf of the accused

¹¹ *Soni v Reginam* [2013] SBCA 6

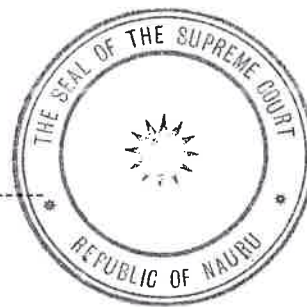
¹² *R v Ligigu & Dori* [1986] SBHC 15

¹³ *R v Billam*, [1986] 8 Cr App R (S) 48

(any regret being directed only to his family) result in the sentence being increased to eight years imprisonment.

24. The accused was found guilty of the charge of rape. Having heard of the accused's character and considering submissions from counsel and in regard to all the circumstances the accused is convicted, and a sentence of eight years imprisonment is imposed to commence from the date of remand into custody (given as on 29 December 2014).


Justice J.E. Crulci



Dated this 29th day of July 2015