



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL DIVISION

CRIMINAL CASE 1 OF 2017

BETWEEN

THE REPUBLIC

AND

KENNEDY OLSSON

Before: Khan ACJ

Date of Hearing: 26 April 2017

Date of Sentence: 9 June 2017

Case may be cited as: Republic v Olsson

CATCHWORDS:

Digital rape of child under 13 years of age - under Crimes Act 2016 - maximum sentence of life imprisonment - sentencing guideline of 12 to 18 years.

Deprivation of liberty – maximum sentence of 10 years’ imprisonment – sentencing guideline of three to seven years.

APPEARANCES:

For the Republic: D Tonganivalu (DPP)

For the Defendant: R Tagivakatini

SENTENCE

1. The defendant is charged with one count of rape and one count of deprivation of liberty. The victim in this case is a seven-year-old girl. Before I set out the charges in detail, I make a suppression order in respect of the victim and order that her name should not be revealed. I further order that henceforth she should be referred to as "XY" and all the documents including the charges should be amended accordingly.
2. At this juncture, I would like to issue a direction to the DPP in respect of sexual offences charges relating to children under 13 years of age. The charge can be framed to name the victim and immediately upon filing the charge an application should be made to the District Court for a suppression order to suppress the name of the victim so that her identity is not made known. Further, as soon as the matter is transferred to the Supreme Court, an application for suppression order should be renewed and a further application should be made that the victim should be known by a pseudonym so that her identity is not revealed.
3. The defendant is charged with the following:

Count 1

Statement of Offence

Rape of Child under Sixteen Years: Contrary to section 116(1)(a)(b)(i) of the Crimes Act 2016.

Particulars of Offence

Kennedy Olsen on the 13th day of January 2017 at Meneng did intentionally engage in sexual intercourse with another person namely "XY", a child under the age of 16 years old.

Count 2

Statement of Offence

Deprivation of Liberty: Contrary to section 88(1)(a)(b)(c)(ii)(i), 2 of the Crimes Act 2016.

Particulars of Offence

Kennedy Olsen on the 13th day of January 2017 at Meneng did intentionally take another person namely "XY", a child, intending to cause the other person namely "XY" to be confined.

DIGITAL RAPE

4. This is the first case of digital rape under the *Crimes Act 2016* (the Act) and the charge on Count 1 under section 116(1) carries the maximum penalty of life imprisonment for a child under 13 years old; and in any other case 25 years' imprisonment. Under the old legislation namely the *Criminal Code 1899* there was no

offence for digital penetration of the vagina which would have been treated as indecent assault and the maximum penalty was two years' imprisonment.

5. Sexual intercourse is defined in section 8 of the Act as:

- a) the penetration, to any extent, of or by any part of the person's genitals with any part of the body of another person; or
- b) the penetration, to any extent, of the anus of a person by any part of the body of another person; or
- c) the penetration, to any extent, of or by any part of a person's genitals by an object, carried out by another person; or
- d) the penetration, to any extent, of the anus of a person by an object, carried out by another person; or
- e) oral sex; or
- f) the continuation of an activity covered by paragraphs (a) to (c).

FACTS

6. On 13 January 2017 at around 6.30pm the victim went with her grandmother to visit a relative at Meneng District. After they got out of the car, the victim saw Barbie doll clothes lying under a tree and was attracted by it and went to fetch it. The grandmother went into the relative's house and the victim went to play on the swings.
7. Whilst the victim was playing at the swing set, the defendant approached her and got hold of her by the hand and took her to his house. The victim did not see anyone around them.
8. After the defendant took the victim in his house, he turned the lights off and was whispering to her the word "mummy" in a ghost-like manner to scare her. The victim did not like it and scratched the defendant's face and the defendant also scratched her on her chest and her back.
9. The defendant then lifted the victim and put her on his lap with her face up. The victim struggled and shouted and the defendant blocked her mouth to stop her from shouting. The defendant then removed his hand and the victim agreed that she would stop shouting. The defendant then removed the victim's pants and underpants.
10. He inserted his finger in the victim's vagina and moved it in and out about 10 times. He then turned the victim on her stomach and inserted his finger in her anus and moved it in and out several times. The defendant then lay on top of the victim and strangled her before turning her face towards him. While turning her around, the defendant maintained a very strong grip around her neck.

11. Whilst this was going on in the defendant's house the grandmother was very concerned and started to search for the victim as she was missing for almost two hours. She went to the defendant's house and asked him several times about the victim and he told her that he had not seen her. She was not satisfied with the defendant's response and forced herself into the defendant's room and heard a child crying from inside the room.
12. The grandmother broke the door, the victim came running to her and she was crying.
13. The grandmother lodged a complaint with the police and the victim was medically examined and the doctor's findings were "slight erythema and mild tenderness" on the vaginal wall and "mild tenderness on the anal area".
14. The defendant was charged with the two offences.
15. The defendant is related to the victim.

MITIGATION ON BEHALF OF THE DEFENDANT

16. The defendant is 53 years old. He is single and he is currently unemployed. The defendant has been remanded in custody since 16 January 2017.
17. The defendant pleaded guilty to the charges on 23 March 2017.

PREVIOUS HISTORY

18. The defendant has three previous convictions:
 - a) Criminal Case No. 2 of 1983 – attempted rape – sentenced to 21 months' imprisonment;
 - b) Criminal Case No. 2 of 1996 – unlawful anal intercourse and indecent treatment of a child under 12 years of age, assault with intent to have unlawful anal intercourse, grievous bodily harm – convicted and sentenced to six years' imprisonment;
 - c) Indecent assault - case number 1905 of 2013. This file could not be located but the defendant admits that he was charged and dealt with for this offence.

VICTIM IMPACT STATEMENT

19. The victim was assessed by a psychologist at International Health and Medical Services (IHMS) and the findings were:

Acute Impact of Sexual Assault on a Child

This has been traumatic event for all involved as Mr Olsson attempted to conceal the assault by denying the child was in his room, until the Grandmother broke the door to rescue “XY”.

It is often profound fears that are initially evident, making a child vulnerable and fearful. This may manifest in nightmares, poor sleep patterns, food refusal, school refusal and separation anxiety from care givers. These are symptoms to identify and seek supportive treatment for “XY” should they arise.

Effect of Sexual Intercourse on the Family

“XY’s Grandmother” had undertaken to protect all the children from Mr Olsson, whose forensic history was reportedly well known to the Police.

“XY” is a much loved child within the family, with several generations involved in her care and protection. “XY’s” Grandmother, ... had undertaken to protect all the children from this gentleman, ... and she has taken practical steps to ensure the children’s safety by not allowing contact with him. There is often guilt, shame and fear when events such as this take place within a family. It is reported the children are not allowed to leave the house or to go outside without being accompanied by an adult.

Long Term Effects of Sexual Assault

The effect of childhood sexual trauma can be revealed as the child develops into adolescence. It can be associated with post traumatic stress disorder (PTSD), depression, suicide, alcohol problems, and eating disorders.

A pervasive sense of helplessness may exist, persistent fear, anxiety, sleep disturbance, relationship difficulties. Given the close family bonds that exist within the family, “XY” is likely to obtain the most necessary support as she grows and develops into adulthood.

SENTENCE GUIDELINES


20. As I mentioned earlier, this is the first case under the Act and so there are no sentencing guidelines. I am assisted by the case of *Republic of Nauru v AB*¹ where for an offence of rape on a child of seven years under the *Criminal Code 1899* a starting point was set at 10 years.
21. The DPP has referred me to several cases from Fiji where the offence of digital rape was dealt with. In the case of the *State v Vila*² a sentencing range of 10 to 15 years was set as a guideline. In Vila’s case, the defendant was 66 years old and the victim was six years old and the defendant was the victim’s grandfather. The learned Judge set a starting point of 14 years.

¹ [2016] NRSC 29 (Crulci ACJ).

² [2012] FJHC 907.

22. The sentencing range of rape of a child under 13 years should be in the range of 12 to 18 years.
23. All the defendant's previous history relates to sexual offences and in 1996 he was sentenced to six years' imprisonment for unlawful anal intercourse of a child under 12 years of age. It appears that he has not learnt his lesson as he was again convicted for indecent assault in 2013. He is a real danger to children.
24. In this case, having considered the seriousness of the offence and the defendant's previous history, I will set a starting point of 16 years for the first count.
25. The defendant, after committing the offence of rape, unlawfully detained the victim against her will whilst she was sought by the search party including her grandmother.
26. When the defendant was questioned as to whether he had seen the victim, his response was that he had not. In fact, she was detained in his house and was only found when the grandmother pushed the door open.
27. The offence of deprivation of liberty carries a sentence of 10 years' imprisonment when a child is detained and in other cases the sentence is seven years' imprisonment.
28. Again, this charge has not previously come before this Court so there is no sentencing guideline. The DPP in his submission has urged the Court to set a guideline and I will do so.
29. I believe a range of three to seven years would be appropriate and in this matter a sentence of three years would be appropriate for the second count.
30. There are hardly any mitigating features in this case except an early guilty plea for which I will give a discount of 20% which reduces the sentence for the first count to 12 years and ten months. He has been in custody for five months and I will reduce his sentence for the time spent in custody so the total sentence will 12 years and three months.
31. The sentence for the second count is to be served concurrently with that for the first count.

Dated this 8th day of June 2017.



Mohammed Shafiullah Khan

Acting Chief Justice

