

IN THE SUPREME COURT OF NAURU

Criminal Case No. 7/2009.

THE REPUBLIC

V

NINIO DIMAPILIS

Paul Bannister for the Republic
Pres Nimes for the accused

Date 02 April, 2009

JUDGMENT

Ninio Dimapilis, a man of 23, married with 2 young children, pleaded not guilty to 5 counts of rape.

The incidents were in the early hours of last 14th October. The complainant, now 17 and still at school, had been sitting with a friend, Patrick, near the Bible shop by the church not far from the Civic Centre: no smoking or drinking: only chatting. The accused came along his motorbike. He asked if they had seen another girl. They had not. The accused rode away. He returned and asked the complainant to come with him to help with a motorbike. The two were acquainted, distant relatives. She agreed and got on the bike. They set off going anti-clockwise. When they were in Meneng he said they would go round the island: he admitted he had lied about needing help. She said if she'd known that she wouldn't have gone with him. He said they would turn back at the Menen Hotel. Instead he sped up the hill, turned right at the top along a path to the beach.

From notes of the complainant's evidence in chief:

"At top right turn. Can we have a quick chat? Bushes down toward beach. I tried to jump but he grabbed my shorts. Took me down to the beach. Got off bike trying to get away but he kept on coming after me: wherever I went he followed me. Told me to kiss him but I said I didn't know how to. Kept on insisting: I kept saying 'no smoke. I sat, started to cry. Grabbed me on skirt: kissed me. Said it wasn't enough for him. Crying (made me smoke). Asked for sex: said I don't as I was having periods (not true). (He wanted to check). I was on ground crying. He had a rock in hand: so I said: " OK. I'll give you what you want." That he was going to kill me. Left beach across road on motorbike."

The accused denied any coercion, denied ever threatening her with a rock: asserted that what happened in the area after they went to the beach was all consensual. He said the first act of intercourse was on the beach, three at an unfinished house and a final act of intercourse back on the beach. She said four acts of intercourse in the house and a final act on the beach. Apart from

that their accounts of the sexual intercourse are similar, differing only in a few details. There is no need to decide on that evidence. The intercourse is admitted. The defence is consent.

After the fifth act he took her back to near the Civic Centre. The complainant says that on the way:-

....."Near airport runway, stopped at a turn – to the edge: said he'd push me over the edge. He standing holding my neck not saying anything, scared. Told me to get on bike: dropped me off to Boe."

The accused absolutely denied that they ever stopped by the runway extension.

The complainant immediately went to the Civic Centre looking for her friend Rikko Thoma who worked there as a security guard. She found him. Rikko took her to her friend, Lulu Aegigiu's house. Lulu is a probationary constable. Lulu took the complainant to the police station. The complainant was taken to the hospital. Dr. Ako Millan examined her. He concluded:-

".....from the above examination finding it is obvious that there was actual penetration of the vagina recently resulting in the fresh bruises and abrasions of vaginal wall."

Her two friends, Lulu and Constable Kirsty Kala, both gave evidence that the complainant was 'crying sitting with her arms around her body' (Lulu) and 'sad-crying – pain - usually always making jokes.' (Kirsty)

These young ladies – whose evidence I accept - describe the complainant as being distressed: in contrast, Kirsty said, to her usual self. Evidence corroborative of the complainant's own.

Even stronger corroborative evidence came from Rikko Thoma. After being dropped off by the accused, the complainant asserted she saw the accused some distance away, watching. Rikko confirmed the complainant: he saw the accused watching. The complainant told him what had happened:-

".....know Naszeem and accused ...saw them that night: saw Ninio watch me: saw Nazzeem appear later at Civic security house. Don't remember time. She came to me told me to drop her home. She was frightened. Keeping head down: in a rush to get home. Went to cemetery first – she asked –went there behind Civic. Ninio stopped by the church. Naszheem cried on bike: heard her. At cemetery – she told me then just raped. 'You know who' I said 'Ninio'. Told me. Took her to Lulu's. I was surprised she was crying. Normally happy and loud"

Rikko Thoma was a good witness. I have no hesitation in accepting his evidence. It is strong corroboration of the complainant's distressed condition: evidence of recent complaint: confirmation that the accused was watching. The accused denied it saying "Rikko has it wrong." Rikko did not have it wrong.

The witnesses, Lulu Aegigu, Kirsty Kala and Rikko Thoma corroborate the complainant.

The complainant herself was a believable witness: I accept her account, that she submitted to intercourse, which she did not want, out of fear because of the actions and threats of the accused.

The accused gave his evidence in chief quite well, asserting the intercourse was consensual. In cross examination his demeanor was unimpressive.: he was evasive. Finally he was not a witness whose story I could believe.

Even without the corroborative evidence I would have had little doubt of the accused's guilt. He forced the victim to have intercourse with him without her consent. The corroborative evidence puts that well beyond reasonable doubt.

On the whole of the evidence the prosecution has proved the guilt of the accused on all counts.

**ROBIN MILLHOUSE
CHIEF JUSTICE**

6 mos imprisonment.