

IN THE SUPREME COURT OF NAURU

Criminal Case No. 6/09

THE REPUBLIC OF NAURU

V

RHUDI DONGIBIR

Mr. Paul Bannister for the prosecution

Mr. Rueben Kun for accused

Date of Hearing: 28 March, 2009.

JUDGMENT

Rhudi (also known as Adagi) Dongobir is charged with 3 offences:-

- 1) ENTERING A DWELLING HOUSE WITH INTENT TO COMMIT A CRIME:-

"That on the twenty-third day of November 2008 at Nauru, RHUDI DONGIBIR did enter the dwelling house of a person namely TEMAUA FRITZ with the intent to commit a crime therein."

- 2) RAPE:-

"That on the twenty third day of November 2008 at Nauru RHUDI DONGIBIR did rape TEMAUA FRITZ."

- 3) ASSAULT OCCASSIONING BODILY HARM:-

"That on the 23rd day of November 2008 at Nauru, RHUDY DONGIBIR did unlawfully Assault a person namely TEMAUA FRITZ and hereby caused bodily harm."

The incident out of which charges there arise occurred somewhere about five o'clock in the morning. On the preceding evening and into the earlier hours of the morning the alleged victim and her then boyfriend, Baitiki Katanguwa, both I-Kiribati, had been out drinking. They went back to Baitiki's unit and drank some more. Supply ran out. Baitiki left to replenish it. They were both drunk.

Temaua had a bath, put on a lava lava and lay down to sleep. The next she knew a man was on top of her having intercourse. At first she thought it was Baitiki. She opened her eyes and found it wasn't. She pushed the man (whom she didn't know) off and called for Baitiki. The man mimicked her calls for Baitiki: became angry: kicked her in the face: left wearing only underpants, taking with him Baitiki's bottle of rum. Baitiki came back soon after. Temaua was angry with him: he had not been there when she needed him. She went for his genitals. He pushed her against the wall; noticed her face it was swollen.

The next day she was medically examined. Exhibited is a photograph showing swelling on the left side of her face and a split lip. Someone caused it. Both Temaua and Baitiki deny that Baitiki hit her. Temaua says it was the accused who kicked her.

This account comes from the prosecution witnesses. I accept them all as telling the truth; giving a reliable account of what happened.

Dongibir in his evidence said he had met Temaua nine months earlier. On the morning of the 23rd November he went uninvited to see her; woke her up; had consensual intercourse with her until she pushed him off. He left in his underpants; returned ten minutes later for his t-shirt.

The accused gave two statements to the police. In neither did he mention having met Temaua nine months earlier. Mr. Kun had not cross examined Temaua on it. I conclude the accused made up the story while giving evidence: recent invention.

In his statement, Dongibir did not deny the offences, indeed admitted them.

From the record of the interview of the 27th of November 2008:-

14. "Adagi, it is alleged that in the early hours of 23 November 2008, you unlawfully entered the residence of Mrs. Temaua Katangauwa and had sexual intercourse with her. What do you say about that?"

A. "I admit that I was drunk when I committed the offence."

15. "Adagi, it is alleged that while you were having sex with Mrs. Temaua, she woke up finding you on top of her and intends to push you where you then assaulted her. What do you say to that?"

A. "That was not mine, I didn't assault her"

16. "Adagi, it is alleged that she cried to set herself free from you but you continuously maintain your position on her and continued to have intercourse with her, what do you say to that?"

A. "Nothing"

29. "Adagi, you are facing serious sexual charges, such as sexual assault, Rape and Aggravated assault have you anything to say to these charges?"

A. I just wanted to say that I was doing it because I was fully drunk, I didn't mean to spoil her.

From the Record of Interview 16/01/09 (after giving his account of consensual intercourse):

36. "Adagi, you are facing sexual charges, such as sexual assault, rape and have you anything to say about these charges?"

A. "I just wanted to say that I was doing it because I was fully drunk, I didn't mean to spoil her."

I was not impressed by the accused. His demeanor – quite apart from what he said – did not lead me to think he was telling the truth. Considering the whole of the evidence, prosecution

and defence, the prosecution has proven the case beyond reasonable doubt.

The oral evidence for the prosecution, even without the admissions in the Records of Interview, was sufficient for me to conclude beyond reasonable doubt that the accused is guilty of all offences charged. He has no permission to go into Baitiki's premises, he had intercourse with Temaua without her consent, he assaulted her.

The accused is guilty of three offences charged against him.

Dated the 01 day of April, 2009.

ROBIN MILLHOUSE
CHIEF JUSTICE

Tyre Amantus