

In the Supreme  
Court Of Nauru

Criminal Case No. 13/09

THE REPUBLIC

Vs

JOHANNES QUADINA

Mr. Wilisoni Kurisaqila for the prosecution  
Mr. Rueben Kun for the defendant

Date of hearing : 23<sup>rd</sup> March, 2010

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**JUDGMENT**

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Johannes Quadina has been charged with rape on one occasion and with indecent assault on another.

**Particulars:-**

Rape –

“**JOHANNES QUADINA** on an unknown dated between 1<sup>st</sup> of December 2008 and the 22<sup>nd</sup> July 2009, at Nauru did rape **ALASHA MWAREOW**”

Indecent Assault –

“**JOHANNES QUADINA** on an unknown date between 1<sup>st</sup> of December 2008 and the 22<sup>nd</sup> July 2009 did unlawfully and indecently assault **ALASHA MWAREOW**.”

The only issue is consent. All other elements of both charges are admitted, even the accused's acknowledgment that he is the father of Alisha's child.

After their mother's death, Alisha and her twin sister (perhaps other siblings – the evidence is not clear) went to live with their aunt, Zanna Quadina, her husband (the accused) and their children.

On one occasion soon after, Alasha said, her sixteenth birthday, the accused came into her bed and obliged her to have sex with him. She agreed because she was afraid of him. Thereafter there were many occasions when they had sex together.

Once the two were lying together when Zanna Quadina came into the room, saw them touching each other. "He said he didn't touch his niece but obvious" (my note of Zanna's evidence).

At no time - even when her aunt found them together -- did Alisha say anything to her aunt or anyone else of what was going on. It was only when she and the accused realized Alisha was pregnant did the accused tell his wife.

The prosecution must prove beyond reasonable doubt the lack of consent by Alisha to the intercourse. Perhaps there was no consent, yet there are a number of things which raise a reasonable doubt: the lack of any complaint by Alisha until her pregnancy was known, the many times intercourse occurred and she remained living in the house, even bearing in mind the accused's threat that if she left the family would have nothing more to do with her.

The accused, as was his right, remained silent but he had given a statement to the Police. The statement takes the question of consent or none no further.

Reviewing the whole of the evidence I would feel uncomfortable about convicting the accused. Maybe all these occasions both of intercourse and indecent touching were without Alisha's consent: maybe her will was overborne but I have a reasonable doubt about it.

The accused is not guilty on either count.



*Robin Millhouse*

Robin Millhouse QC  
CHIEF JUSTICE

