

IN THE SUPREME COURT
REPUBLIC OF NAURU

Criminal Cases Nos. 13 of 2011
and 47 of 2011

REPUBLIC OF NAURU

v

CARNOS SCOTTY

JUDGE: Eames, C J.
DATE OF HEARING: 16 November 2011
DATE OF SENTENCE: 22 November 2011 (Ex tempore)
CASE MAY BE CITED AS: The Republic v Carnos Scotty
MEDIUM NEUTRAL CITATION: [2011] NRSC 21

Sentence - Robbery, s. 411 Criminal Code of Queensland 1899- Rape, s. 348 Criminal Code of Queensland 1899 - Offender aged 21 years - Offender has one prior conviction for assault - Offender on bail when present offences occurred Pleas of guilty - Sentence of 3 years' imprisonment for rape - 9 months' imprisonment for robbery, 6 months concurrent - total effective sentence 3 years' 3 months', imprisonment.

APPEARANCES:

For the Prosecution

For the Defendant

Solicitors

W. Kurisaqila, D.P.P

V. Clodumar (pleader)

CHIEF JUSTICE:

1. Carnos Scotty, you have pleaded guilty to one count of robbery contrary to section 441 of the *Criminal Code of Queensland Act 1899* and one count of rape contrary to section 348 of the *Criminal Code of Queensland Act, 1899*. The offence of rape carries a maximum sentence of life imprisonment; the offence of robbery carries a maximum sentence of 14 Years' imprisonment.
2. The robbery offence occurred first.
3. On 3rd April 2011 you approached the Chinese proprietor of a shop in Denig. When you did so you had your face covered with a cloth, as a disguise. In an aggressive manner, you demanded that the victim purchase a mobile phone that you had. Having been intimidated by you she handed over \$38.00 and you gave her the phone. You later returned to the shop pretending that it had been your brother who earlier had demanded she buy the phone. You said that your brother had no right to sell the phone and you wanted the phone back. The victim did not want to give the phone back.
4. A security guard saw these events and told you to leave the premises. You did so but then came back 20 minutes later, once the victim was again alone. This time you pushed her against the wall while you were holding a stick with a sharp edge to her neck. You demanded she return the phone and she did so. Another person intervened to support the victim and you pointed the stick at him and then left the scene. At the time of these events you were under the influence of intoxicating liquor.
5. Your victim was very scared during these events. She told police that she was trembling with fear when she handed over the telephone.
6. I turn to the rape offence, which occurred about five weeks later.
7. On 13 May 2011, late at night, your victim, a 16-year-old school girl, was drinking alcohol with a group of friends near the sea wall in Denig district. You joined that group and at about 1am you requested the complainant to follow you to have a talk. You then grabbed her right arm and pulled her away from the other people in the group. You took her into a wrecked building and told her to have sex with you. She refused to have sex with you but you ignored that and, placing her on the ground, you forcibly removed her shorts. You tried to remove her shirt as well, but she held on to her top. You then raised her legs and placed your penis in her vagina.
8. This was done without her consent. She was screaming and crying and telling you to stop, but you refused to stop. You then got off her and told her that you wanted her to take a different sex position, for oral sex. She refused and grabbed her panties and put them on. She tried to get her shorts but you stood on them and would not let her take them. You told her not to leave.
9. During this time your victim had been screaming and the other drinkers had heard her crying out. They came to the scene and found you standing naked. Your victim was

- crying. You told the others to leave, but your victim asked them not to leave her. She grabbed her shorts and moved away.
10. She subsequently reported that she had been raped by you.
 11. When interviewed by police you admitted that your victim had told you to stop when you are having sexual intercourse with her, and when asked why he did not stop, you said you did not know why you did not.
 12. You admitted to police that you had grabbed the girl's right arm and that you ordered her to come away from the other persons. You admitted that you told her to have sexual intercourse with you.
 13. Statements made by some of the other persons who were present agreed that they heard your victim crying and shouting and swearing at you. Your victim told police that she had been crying in pain when you penetrated her and that she had been in fear of you.
 14. I turn to your background.
 15. You have one prior conviction. In 2005 you were convicted of assault and sentenced to 100 hours community service. In 2011 you were again convicted of assault and sentenced to 12 months probation.
 16. In submissions to me the Director said that, too, was a prior conviction. That offence occurred on 22nd January 2011 but you were not convicted until 24th August 2011. So the conviction occurred after you committed the prior offence, and is not a prior conviction.
 17. However, you had been bailed on 24th January for that offence and were on bail when the present offences occurred. That is an aggravating factor.
 18. You were not in breach of the probation order when you committed the present offences. Nonetheless, the fact that you have one previous conviction for assault is a matter of significance.
 19. You pleaded guilty to these offences and through your pleader, and also in your own words to me, you expressed deep remorse for what you had done and asked forgiveness.
 20. You told me that you did not know what you were doing when these offences occurred, but of course you did. I think that you meant that you did not know what made you act in such a manner, and that is a question that you will, no doubt, ask yourself many times in the future.
 21. You are 21 years of age. You are married. In 2009 you lost your first son, aged 11 months, in tragic circumstances, when he was electrocuted. Your wife is now six months pregnant and will suffer considerably by your absence in prison.
 22. You were last employed in 2009 when you got three weeks work at the M & M store. The owner of the store described you as very quiet and hard-working, and able to work

well with your workmates.

23. You have limited education, leaving school at year seven. Your fishing skills have been vital for providing food to your family
24. Your mother gave character evidence for you. She said that you are not really a bad person. That is similar to the words used by your grandmother, when she was interviewed by the chief probation officer.
25. It is very much in your favour that you pleaded guilty to these charges. You did so against the advice of your pleader. That shows your willingness to accept responsibility. You expressed deep remorse for your actions and your pleas of guilty are also evidence of that remorse. You have spared your victim from giving evidence.
26. The offence of robbery was somewhat unusual. Although you were aggressive and disguised, your original dealings with the store owner could almost have been described as hard bargaining. However, when you return to her shop and demanded the return of the mobile phone you were aggressive and threatening, and were armed. You greatly frightened the victim. Nonetheless, I accept that this particular offence of robbery is not at the most serious end of the scale of such offences, although it was by no means a trivial or minor case of robbery.
27. The rape charge is particularly serious. Your young victim suffered a humiliating and terrifying experience although, fortunately, she did not suffer physical injuries.
28. I accept that you were affected by liquor when the rape occurred, as you were when you committed the robbery, but this does not excuse your conduct.
29. The offences of rape and robbery create alarm in any community, but no doubt even more so in a small community, where people might feel more vulnerable to such offences. The sentences of the Court must reflect the Court's great concern that the community be protected.
30. On the count of robbery you will be sentenced to 9 months imprisonment.
31. On the count of rape you will be sentenced to 3 years' imprisonment.
32. I order that six months of the sentence of imprisonment for robbery shall be served concurrently, that is, at the same time as the sentence for rape.
33. The sentence is therefore three years' and three months' imprisonment.
34. Had you not pleaded guilty to the offences, I would have imposed an effective additional 12 months imprisonment.
35. In other words, by pleading guilty you have received a 12 months reduction in the overall sentence I would otherwise have imposed.

The Hon Geoffrey M Eames AM QC

Chief Justice

22 November 2011