



**IN THE SUPREME COURT OF NAURU**

**[CRIMINAL JURISDICTION]**

**Case No. 22 of 2017**

**THE REPUBLIC OF NAURU**

**V**

**DEINA JUNIOR THOMA**

Before: Va'ai J

For the Prosecution: L Tabuakuro

For the Defence: S Valenitabua

Dates of the Hearing: 11 October 2017

Date of Judgment: 18 October 2017

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Ruling

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Introduction

1. The accused is charged with one count of committing an indecent act on a child under 16 years old contrary to section 117(3) (a) (b) and(c) Crimes Act 2016. The particulars of the offence are that on the 22<sup>nd</sup> May 2017 the accused bit the neck and stomach of Caliana, a young girl under the age of 16 years, and the said act was indecent and he was reckless about the fact that the acts were indecent.

2. At the time of the alleged offending the accused, aged 19 years, was living with his parents and 11 other siblings next door to the young young girl's family house. The young girl was living with her grand mother. She often wondered over to the family of the accused and played with his younger siblings. They are related.
3. On the 22<sup>nd</sup> May 2017 the young girl walked over to the accused's family home to play. She went to one of the rooms where the accused was lying on his stomach on the floor; he was drawing while his siblings were playing. As the accused had two pens the young girl asked him to give her one. He refused. She then tried to take the pen from him by force.

### The Offending

4. During the course of her attempt to get the pen the young girl got onto the back of the accused. He then turned over, grabbed the girl and during the course of the ensuing struggle the girl was lying on the floor facing upwards when the accused bit her on the left side of the neck and on the stomach. She told the court the bites were painful.
5. One of the girl's Aunt who was returning from the shop saw the marks on the girl's neck. She described the marks as large love bites. She was told by the girl in response to her inquiry the accused inflicted the marks. The aunt then told the grandmother who immediately summoned the accused. Despite his denial the grandmother informed the police.
6. The doctor who examined the girl told the court he found three bruises to the left side of the neck and one on the abdomen. The three bruises to the neck were caused by three bites; they could not have been caused by one bite.
7. A written record of the accused's interview with the police was produced. He told the police he only bit the girl once on the neck and ear. When it was put to him he also bit her on the stomach his response was:

"No comment"

The accused was also shown the photograph of the girl showing the marks on the side of her neck. He was the asked:

Question 24: Deina Thoma did you saw the red marks on her neck?

Answer: Yes I see it

Question 25: Deina Thoma, tell me do you know what are they?

Answer: Yes love bites

## The Defence

8. The defence through a written agreed facts conceded:

- a. That the girl is under 16 years.
- b. That the girl was at the home of the accused on the 22<sup>nd</sup> may 2017

He also conceded during his testimony that:

c. He bit the girl once on the left side of the neck and on the stomach during their struggle over the pen

9. What is denied is that the biting was indecent; or that there was no sexual connotation to the act of biting. Counsel cited the New South Wales court of Appeal decision in *Harkin v. R* (1989) 38 Crim R 296 which he submitted held that for there to be an indecent assault, it was necessary that the assault have a sexual connotation.

11. It was submitted that the evidence failed to prove that the accused had sexual connotation when he bit the girl during the course of the struggle. On many occasions the girl had come over to the home of the accused to play; the association had always been an innocent one. His struggle with the girl was initiated by her in her effort to get his pen. He was not reckless as he knew what he did was not indecent.

## Discussion

12. There were three bites to the neck of the girl. Not one as the accused claimed

13. There is no fixed legal definition of indecency. Indecency is that which offends against currently accepted standards of decency: *A-G v. Hunter* (1971) 2 SASR 42. If what was done is something that the community generally regard as indecent then the act is indecent.

14. The case of *Harkin v. R* relied on by the defence is of no relevance simply because the act of inflicting love bites to the neck of the girl offends against currently accepted standards and is indecent. *Harkin v. R* dealt with an assault which objectively does not unequivocally offer a sexual connotation; in order for that assault to be indecent, it must be accompanied by some intention on the part of the accused to obtain sexual gratification.

15. If for example the only bite inflicted by the accused in this case was to the stomach of the girl I would have been obliged to apply the test provided in *Harkin v. R* because in my view an intentional bite to the stomach does not unequivocally offer a sexual connotation so that in order for the bite to the stomach to be indecent assault it must be accompanied by some intention to obtain sexual gratification.

16. There was not one but three love bites to the neck. Response by the accused to questions by the investigating police officer speaks volumes of his knowledge as to the nature of the bites he inflicted. He knew they were indecent, he also knew it was an offence. He was asked:

Question 27: Deina Thoma, do you know that indecent act is an offence?

Answer: Yes but I'll accept the punishment.

Result

The accused is guilty as charged.

  
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Judge Rapi L Va'ai  
Dated 18 October 2017

The seal of the Supreme Court of the Republic of Nauru is circular. It features a central eight-pointed star. The outer ring of the seal contains the text "THE SEAL OF THE SUPREME COURT" at the top and "REPUBLIC OF NAURU" at the bottom, separated by small decorative symbols.