



**IN THE SUPREME COURT OF NAURU  
AT YAREN  
[CRIMINAL JURISDICTION]**

**Criminal Case No. 4 of 2022**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

**AND:** RENACK MAU

**ACCUSED**

**BEFORE:** Keteca J

**Date of Submissions:** 16th August 2024

**Date of Judgment:** 30<sup>th</sup> August 2024.

**Case may be cited as:** Republic v Renack Mau

**Catchwords:** Rape of a Child under 16 years

**Appearances:**

Counsel for the Prosecution: **M. Suifa'asia**

Counsel for the Accused: **R. Tom**

**RULING**

**A. BACKGROUND**

1. The accused is charged with three counts of 'Rape of child under 16 years.' It is alleged that he raped VD once (first complainant) and LC twice (second complainant).
2. The prosecution called nine witnesses. On Wednesday 07<sup>th</sup> August, the Court and parties visited the crime scene. At the close of the prosecution case, Mr Raynor Tom, for the accused submitted a no case to answer application.

**B. THE CHARGE**

3. The Information reads;

**Count 1**

*Statement of Offence*

**RAPE OF CHILD UNDER 16:** contrary to Section 116(1) (a) (b) of the Crimes Act 2016.

*Particulars of the offence*

**RENACK MAU** on the 16<sup>th</sup> of February 2022 at Topside in Nauru, engaged in sexual intercourse with VD, and VD is a child under 16 years.

**Count 2**

*Statement of Offence*

**RAPE OF CHILD UNDER 16:** contrary to Section 116(1) (a) (b) of the Crimes Act 2016

*Particulars of Offence*

**RENACK MAU** on the 17<sup>th</sup> of February 2022 at Topside in Nauru, engaged in sexual intercourse with LC, and that LC is a child under 16 years.

**Count 3**

*Statement of Offence*

**RAPE OF CHILD UNDER 16:** contrary to Section 116(1)(a)(b) of the Crimes Act 2016

*Particulars of Offence*

**RENACK MAU** on the 18<sup>th</sup> of February 2022 at Topside in Nauru, engaged in sexual intercourse with LC and that LC is a child under 16 years.

**C. SUBMISSION BY THE DEFENCE COUNSEL**

4. Mr Tom submits that his client is charged with two counts of Causing a child under 16 years old to engage in sexual activity: contrary to Section 118 of the Crimes Act 2016. It appears that Counsel is referring to the initial charges that were brought before the District Court on 28<sup>th</sup> Feb 2022. There were two Amended Information filed by the DPP in the Supreme Court. The first was on 10<sup>th</sup> August 22 and the second on 13<sup>th</sup> June 2023.
5. The Amended Information are as in para [3] above- three Counts of Rape of Child Under 16 years old.
6. Having referred to charges that his client is *not* facing, Mr Tom relies on *R v Jeremiah [2016] NRSC 42*, where Crulci J listed the guidelines in ‘no case to answer’ submissions’ as:

*‘The following are guidelines when a submission of no case to answer is made:*

*(1) If there is no evidence to prove an element of the offence alleged to have been committed, the defendant has no case to answer.*

*(2) If the evidence before the court has been so manifestly discredited through cross-examination that no reasonable tribunal could convict upon it, **the defendant has no case to answer.***

*(3) If the evidence before the court could be viewed as inherently weak, vague or inconsistent depending on an assessment of the witness’s reliability, the matter should proceed to the next stage of the trial **and the submission dismissed.**’*

7. Counsel adds that the evidence of PW1 and PW2 as regards the allegations relating to 18<sup>th</sup> Feb 22 are not credible. The phone logs provide the ‘only evidence of contact’ but do not confirm who made the calls.

#### **D. SUBMISSIONS BY THE PROSECUTION**

8. Ms Suifa'asia also relies on the guidelines from *R v Jeremiah* above.

**Count 1:** Counsel submits that PW1 identified the accused. She had a good look at him when he picked her up and took her to Topside. She had a good look at him when he had sexual intercourse with her. It was around 1pm. She also had a good look at him when he dropped her back.

9. On 'intention', Counsel submits that the accused had pre-planned his actions. He picked PW1 up from her school and took her to a secluded area.

10. 'Engaging in sexual intercourse'- at the secluded area at Topside, the accused had sexual intercourse with PW1 at the back seat of the car.

11. As per her testimony, PW1 is 15 years old now. Her birth certificate shows that she was born on 12<sup>th</sup> March 2009.

**Count 2:** PW2 identified the accused. She recognized the accused as the person who picked her from Nauru College on 17<sup>th</sup> Feb 22. She had a good look at him as the person who had sexual intercourse with her in the car. The accused also dropped her off near Nauru College after the incident on Topside. It was around 2-4pm.

12. On 'intention', the accused called her on her phone. He arranged to pick her up from Nauru College. He took her to a secluded area at Topside.

13. On 'engages in sexual intercourse'- PW2 states that the accused had sexual intercourse with her at the back seat of the vehicle.

14. PW2 stated that she was born on 12 April 2009. Her birth certificate shows the same. She was 12 years old on the date in question.

**Count 3:**

15. PW2 identified the accused as in Count 2 above. The accused was the same person that picked her up the day before. The accused was with them between 3-4pm, after school hours.

16. On intention- she and PW1 called the accused and arranged for him to pick them up. He picked them up. He took them to Nibok Topside, the place where he took PW2 the day before. The accused had sexual intercourse with PW2 in the car while PW1 sat outside. The accused had pre-planned to pick PW1 and PW2 on the day, took them to a secluded area at Topside, where no one would discover them.

17. The evidence in the 'call- log' confirms the calls between the accused's phone and PW2's.

18. Engages in 'sexual intercourse'- PW2 testified that the accused had sexual intercourse with her in the car whilst PW1 sat outside on a chair. After that, the accused took PW1 and PW2 and dropped them off behind the containers at Eigigu.

19. Counsel submits that 'consent' is not an element of this offence. There is sufficient evidence to prove each element of the offences in Counts 1, 2, and 3.

#### **DISCUSSION**

20. I have considered all the evidence adduced so far. I have carefully observed the demeanors of the all the witnesses; in particular PW1 and PW2, whilst they testified in Court and when we visited the scenes of the alleged crimes.


21. Considering the guidelines enunciated in the *R v Jeremiah* case above, I find that the matter should proceed to the next stage of the trial.

**CONCLUSION**

22. The application of 'no case to answer' by Counsel for the accused is dismissed.

23. Explain the options under Section 201(b) Criminal Procedure Code 1972.

DATED this 30<sup>th</sup> Day of August 2024.

  
**Kiniviliame T. Keteca**  
**Acting Chief Justice**

