



**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: 04th & 12th September 2024.

Date of Judgment: 13th September 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**

JUDGMENT

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 seven witnesses:
 - i. PW1VD
 - ii. PW2 LC
 - iii. PW3 LC's mother

- iv. PW4 Constable George Herman
 - v. PW5 Rosey Akarumo
 - vi. PW6 Senior Constable Dogei Alefaio Ramanumanu
 - vii. PW7 Acting Commissioner of Police Simpson Deidenang
3. The following exhibits were tendered:
- i. PE1- Photo identification board
 - ii. PE2 – Call Logs
 - a. PE2 A- call log number 5542922
 - b. PE2 B- call log number 5541593
 - c. PE2 C- call log number 5589980
 - iii. PE3 -Birth Certificates
 - iv. PE3 A- BC of- LC
 - v. PE3 B- BC of VD
4. At the conclusion of the prosecution case, Mr Tom made submissions that his client had no case to answer to the charge of – Causing a child under 16 years old to engage in sexual activity: contrary to Section 118 of the Crimes Act 2016. Mr Tom’s client, the accused, is not charged under Section 118 but Section 116. Two different provisions. Two different offences.
5. On 30th August 2024, the court ruled that there was a case to answer and for the accused to submit his defence.
6. The accused said a prayer seeking forgiveness.

B. THE CHARGE

7. 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 16th 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 17th 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 18th of February 2022 at Topside in Nauru, engaged in sexual intercourse with LC and that LC is a child under 16 years.*

C. ISSUES

8. Whether the accused engaged in sexual intercourse with VD, a child under 16 years, on 16th February 2022?
9. Whether the accused engaged in sexual intercourse with LC, a child under 16 years, on 17th and 18th February 2022?

D. THE LAW

10. Rape of a child under 16 years old: Section 116(1)(a)(b) and (i) of the Crimes Act 2016:
 - (1) *A person commits an offence, if:*
 - (a) *The person intentionally engages in sexual intercourse with another person;*
and
 - (b) *The other person is a child under 16 years old.*
11. Section 17 of the Crimes Act 2016 defines:

'Intention' means

 - (1) *A person has 'intention' with respect to conduct, if the person means to engage in the conduct.*
 - (2) *A person has 'intention' with respect to a circumstance, if the person believes that it exists or will exist.*
 - (3) *A person has 'intention' with respect to a result, if the person means to bring it about or is aware that it will occur in the ordinary course of events.*
12. Section 8 of the Crimes Act 2016 defines:

'sexual intercourse' means

 - (a) *The penetration, to any extent, of or by any part of a person's genitals with any part of the body of another person; or*
 - (b) *The penetration to any extent, of the anus of a person by any part of the body of another person; or*
 - (c) *The penetration, to any extent, of or by any part of a person's genitals by an object, carried out by another person; or*
 - (d) *The penetration, to any extent, of the anus of a person by an object, carried out by another person; or*
 - (e) *Oral sex; or*
 - (f) *The continuation of an activity covered by paragraphs (a) to (e).*

E. THE ELEMENTS OF SECTION 116 (1) (a)(b) OF THE CRIMES ACT 2016

‘A person
Intentionally
engages in sexual intercourse
with another person; and
the other person
is a child under 16 years’

F. SUBMISSION BY THE PROSECUTION

Count 1- Rape of a Child under 16: Complainant 1- VD

13. **A person-** the accused was identified by PW1 in Court by dock identification. She recognised the accused as the one who picked her up in a vehicle and took her to Topside. It was around 1pm. She had a good look at the accused when he had sexual intercourse with her in his car. She had a good look at him when he dropped her back.
14. **Intentionally** - on 16th Feb 2024, the accused told VD to wait for him at Martin store at Denig. She went to Martin store from her home as she did not go to school on that day. He picked her up at Martin store. ‘The accused had pre-planned his action when he picked up VD and then taken her to a secluded area at Buada Topside.’
15. Counsel refers to the ‘Call Logs’ between VD’s number 554922 and the number 5541593 (supposedly the accused’s number) leads to the inference that links the accused to the evidence of PW1 and corroborates her evidence that the person she identified in court as the accused is the one that picked her up at Martin Store on 16th Feb 2022.
16. **Engages in sexual intercourse-** PW1 gave evidence that the accused had sexual intercourse with her at the back seat of the car. He kissed her. Removed her pants and penetrated her vagina with his penis.
17. Counsel refers to the evidence of PW9 where the doctor said:
‘small laceration noted at right labia minor, no active bleeding, very tender on palpation. Some swelling noted at the vaginal orifice, hymen ruptured. Vaginal wall swollen and tender on examination accompanied with some old blood clot’
18. PW9 could not tell whether VD was sexually active but ‘can tell that her genitalia has been tampered with.’
19. **The other person is a child under 16 years old-** PW1 testified that she’s 15 years old. Her date of birth is 12th March 2009. She was 12 years old on the day in question.

Count 2- Rape of LC

20. **A person-** Through dock identification, PW2 identified the accused. On 17th Feb 2022 she had a good look at him when he picked her up from Nauru College and took her to Nibok District, Topside. She had a good look at him when he had sexual intercourse with her in his car. The accused dropped her off close to Nauru College. They were together between 2-4pm.
21. PW2 also picked out the accused through a photo board identification procedure at the police station. PW4 testified that he carried out the photo board process and PW2 pointed to the person number 16. That same person is the accused as identified in court by PW2.
22. **Intentionally-** Both VD and LC were at school on 17th Feb 2022. The accused picked up LC and took her to Nibok Topside.
23. The Call logs support PW2's evidence that she and VD had called the accused. The logs also showed that the accused had been calling VD's number in the morning and around 2pm on that day. Counsel suggests that this implies that the accused intended to go and meet PW1 and PW2 on that day.
24. **Engages in sexual intercourse-** the accused undressed LC and penetrated her vagina with his penis. He had sexual intercourse with PW2 in his car.
25. PW9's evidence and medical report reports:
'No lacerations, no swelling, none tender, has some milkfish substance in the vagina and along the wall.'
The doctor, testified that PW2's 'hymen' being ruptured may suggest the penetration of the vagina.
26. **The other person is a child under 16 years old-** PW2 LC testified that she's 15 years old now. She was born on 12th April 2009. She was still 12 years old on 17th Feb 2022. Her birth certificate confirms her date of birth.

Count 3: Rape of PW2- LC

27. **A person-** The accused was identified by PW2 as in para [20] above. She recognised the accused. Through a photo board procedure, she also picked out the accused.
28. **Intentionally-** PW2 LC testified that on 18th Feb 2022, she and PW1 called this 'Monotony' person on his phone. The accused picked them up. He took them to Nibok Topside. This was the same spot he had taken PW2 the day before. The accused had sexual intercourse with PW2 LC in the car whilst PW1 VD sat outside. Counsel rightly notes that PW1 VD did not give any evidence about this episode. When examined in chief, she said that she could not remember.
29. Counsel refers to the evidence of the 'Call Log' and notes the times the accused's phone called PW2 VD's number.

30. **Engages in sexual intercourse-** Counsel submits - “At the secluded area at Nibok Topside, LC testified that VD went out of the car and sat on a chair. The defendant had sexual intercourse with LC in the back seat. The defendant had penile intercourse with LC, going in and out of her vagina. After he had finished with her, the defendant took LC and VD and dropped them off again behind the containers at Eigigu.’
31. Counsel then refers to the evidence and PE3 that shows the birthdate of LC as 12th April 2009. On the day of the alleged rape, she was 12 years old.

G. THE DEFENCE CASE

32. The accused opted to give unsworn evidence. He did not deny the allegations by PW1VD and PW2LC. Instead he said a prayer accepting Jesus Christ and promising to follow Jesus every day of his life. Part of his prayer addressed the Court, the prosecution and his defence lawyer ‘and others and all my family and friends.’ He added- ‘Please forgive me.’
33. Counsel for the accused, filed his closing submissions yesterday at 11.30am. In essence, Counsel submits that PW1 and PW2 “*were not questioned of other distinguishing features that would prove beyond reasonable doubt of the identity*” (whatever that means).
34. The court notes that it was not put to PW1VD and PW2LC in cross examination that they were mistaken as to the identity of the accused.

H. EVIDENCE & DISCUSSION

35. **Identification-** Through dock identification, PW1 and PW2 both identified the accused as the person who picked them up from spots close to Nauru College. **For PW1VD** on 16th Feb 2022, she suggested to the accused that she be picked up next to RON hospital. The accused said that he’ll pick her from Martin’s Store. She waited there. He arrived. She got into the Harrier vehicle. When she asked- ‘where are we going? He replied- ‘Just driving around.’ The accused took her to a secluded place. The court visited this site.
36. It was about 2pm. The accused got into the back seat with her. He pulled her onto his lap. He told her that he’ll teach her how to kiss. They kissed. The accused told her to remove her panties. She said ‘No.’ He took them off. The accused inserted his penis into her vagina. She was in pain. Then he stopped and gave her some wipes to clean herself. She wiped her vagina and there was blood on it. The accused then dropped her off at RON hospital. PW1 VD had a good look at the accused throughout the whole episode of being picked up, driven to Topside, having sex with him in the car and being dropped off at RON hospital. In her words, ‘she had a good look at him as he took off his glasses.’
37. **For PW2LC-** she picked out the accused in a ‘photo board process’ at the police station and also identified him in court. The accused called PW1 again on 17th Feb 2022. He wanted to pick her up again. When he came to their school, PW1’s friend, PW2LC wanted to go with him. PW2LC got into his car. The accused took PW2LC towards Nibok, Topside

to a secluded place. He got into the back seat of the car with PW2LC. He removed her shorts and underwear. He licked her vagina. He put his penis into her vagina and had sexual intercourse with her. After he stopped, they both got dressed. She had a good look at him. The accused drove her back to Nauru College.

38. On 18th Feb 2022, PW1VD and PW2LC called the accused. Both of them got into his vehicle, the same white Harrier. He took them to the same place he'd taken PW2 LC to the day before. PW1VD got off the car. The accused got into the back seat with PW2LC. According to PW2LC, the accused did the same things he did to her the previous day. As in her evidence- 'he undressed me, licked me, penetrated me again in the car.' She had a very good look at him. The accused then dropped them off close to their school. The court visited this site too.

39. In *Festa v The Queen (2001) 208 CLR; 185 ALR 394*, McHugh J referred to three forms of identification:

- i. Positive identification as direct evidence;
- ii. Positive identification as circumstantial evidence;
- iii. Circumstantial identification evidence.

40. On positive identification as, direct evidence his Honour said-

*'Most cases concerned with identification evidence are cases of positive identification. That is to say, cases where a witness claims to recognise the accused as the person seen on an occasion that is relevant to the charge. Positive – identification evidence may be used as direct or circumstantial proof of the charge. A **positive identification of the accused is direct evidence of the crime when it identifies the accused as the person who committed one or more of the acts that constitute the crime in question.**'*

41. From the above evidence, it is clear that PW1VD and PW2 LC had a good look at the accused when he picked them up in his vehicle, when they had sexual intercourse with him and when he drove and dropped them off after each episode. PW2LC picked the photograph of the accused out of the 16 that were on the photo board as the one that picked her and PW1 up, drove her and PW1 to Topside and had sexual intercourse with her. It was not a case of "this photograph **looks like the person**" as in *Pitkin v The Queen (1995) 69 ALJR 612* nor is it a case of the accused being picked out as "**similar**" as in *Murphy v The Queen (1994) 62 SASR 121(CCA)*. Rather, this is a case of **positive identification** as direct evidence. Both PW1VD and PW2LC positively identified the accused. This is direct evidence.

42. **Intentionally engages in sexual intercourse-** I remind myself of the definition of 'intention' under Section 17 of the Crimes Act 2016. In assessing the conduct of the accused, on all the three days, he did this:

- i. He arranged to pick up PW1VD on 16th Feb 2022;
- ii. He arranged to pick up PW2LC on 17th Feb 2022;
- iii. He arranged to pick up PW1VD and PW2LC on 18th Feb 2022;
- iv. He picked them up on those three days;
- v. He drove them to two secluded sites at Topside;

- vi. At a site, at Topside, on 16th Feb 2022, he got out of the driver's seat, got onto the back seat where PW1VD was sitting, he undressed her and had sexual intercourse with her;
- vii. At a different site, at Topside, he got out of the driver's seat, got into the back seat where PW2LC was sitting, he undressed her, he licked her vagina and he had sexual intercourse with her on 17th and 18th Feb 2022.
- viii. After each incident on those three days, the accused dropped PW1VD and PW2LC back, close to their school.

43. The sequence of events above as per the testimonies of PW1VD and PW2LC show a clear 'intention' on the part of the accused that **he meant to engage in the conduct-** intentionally engage in sexual intercourse with PW1VD and PW2LC.

44. **Other person is a child under 16 years old-** The evidence is clear that both PW1VD and PW2LC were born on 12th March 2009 and 12th April 2009 respectively. They were 12 years old at the time of the incidents. They are 15 years old now.

I. THE DEFENCE

45. The accused chose to give unsworn evidence. He did not deny any of the evidence of PW1VD and PW2LC. In fact, he did not say anything at all relating to the three counts of rape laid against him. Instead, with a prayer, he sought the forgiveness of the court, the prosecutor, his counsel and all his family and friends. The evidence of PW1 and PW2 remain unchallenged.

46. I remind myself of the burden of proof on the prosecution under Section 25 of the Crimes Act 2016. From the above, all the ingredients of Section 116(1)(a)(b) of the offence of Rape of a child under 16 years old, for the three counts are met.

J. CONCLUSION

47. I make the following findings against the accused:

- i. Count 1- Guilty
- ii. Count 2- Guilty
- iii. Count 3- Guilty

DATED this 13th Day of September 2024


Kiniviliame T. Keteca

Judge

