



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

Criminal Case No. 09 of 2024

BETWEEN: THE REPUBLIC

PROSECUTION

MARONTEATA TEVE RANDOLLAH

ACCUSED

BEFORE: Keteca J

Date of Hearing: 20th – 22nd May 2025

Closing Submissions: 05th June 2025

Date of Judgment: 19th June 2025

Catchwords: Rape of Child under 16 years old: contrary to Section 116(1) (a) and (b) of the Crimes Act 2016; Alternative verdict: Section 273 Crimes Act 2016.

Appearances:

Counsel for the Prosecution: **Saif I. Shah**

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

JUDGMENT

BACKGROUND

1. The accused is charged as follows:

COUNT 1

Statement of Offence

Rape of a Child Under 16 Years Old: contrary to Section 116(1) (a) and (b) of the Crimes Act 2016.

Particulars of Offence

Maronteata Teve Randolph between 22nd day of December 2021 and 22nd day of January 2022 at Denig District in Nauru, intentionally engaged in sexual intercourse with another person MD and the said MD is a child under 16 years old.

COUNT 2

Statement of Offence

Rape of a Child Under 16 Years Old: contrary to Section 116(1) (a) and (b) of the Crimes Act 2016.

Particulars of Offence

Maronteata Teve Randolph on the 27th day of January 2024 at Denig District in Nauru, intentionally engaged in sexual intercourse with another person MD and the said MD is a child under 16 years old.

COUNT 3

Statement of Offence

Rape of a Child Under 16 Years Old: contrary to Section 116(1) (a) and (b) of the Crimes Act 2016.

Particulars of Offence

Maronteata Teve Randolph between 17th day of March 2024 and 18th day of April 2024 at Denig District in Nauru, intentionally engaged in sexual intercourse with another person MD and the said MD is a child under 16 years old.

LAW

2. Section 116 of the Crimes Act 2016 provides:

‘116 Rape of Child under 16 years old

- (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.

Penalty: Life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

THE EVIDENCE

3. **PW1-** PPS Joleen Raidinen was on duty at RON hospital in August 2024, looking after a 17-year-old juvenile patient M.D. She asked MD about a rumour whether she was raped. MD said she was terrified of her aunt’s boyfriend, ‘Maro’, as he raped her when she was 15 years old. MD was crying as she told her story. MD asked PW1 to tell MD’s mother. PW1 relayed the story to her Boss- PPS Ilcon Cain.

4. Upon cross examination, MD was in hospital because her baby was admitted. PW1 knew MD's mother as 'cannibal but did not know that MD was her child.
5. **PW2-** Marisha Tsitsi is MD's mother. MD chose to live with her cousin 'Mama.' MD's father is a Tuvaluan. She doesn't know why and how old MD was when she went to live with Mama. MD only went up to Grade 3. She only found out about MD's pregnancy when she gave birth. MD told her that Maro was the father of her baby. After giving birth, MD still lived with Mama and Maro. After Mama found out that Maro was the father of the baby, she chased MD out of her house. MD lived in an empty shop with her baby. MD is living with some friends now.
6. On cross- examination- Cannibal is her nickname. She's 39 years old now. She never supported MD. She does not know how long MD was living alone in the empty shop. She only visited MD at the hospital. She reported the alleged rape to police after PW1 had told her about it. She did not report it because no one was supporting MD. MD's baby was admitted for one year in hospital.
7. **PW3 MD-**she lived with Mama and Maro. She didn't live with her mother, PW2, because it was her stepfather's house. She went up to Form 3. Maro would tell her to follow him to the room. On a day between Dec 21 and Jan 22, Maro, the accused told her to go to the kitchen. Maro told her to take her pants off. He took them off himself. Maro told her for them to have sexual intercourse. She didn't say anything. She was scared. Maro lifted her leg up and inserted his penis into her vagina. She was in pain and scared. Maro told her not to say anything. *He also said that when he comes out of prison, he will 'come straight for me, my mother and my child and he will kill us.'* She was 16 at that time. She did not tell anyone about this episode. This had happened before.
8. It happened again in Mama's and the accused bedroom. She was still pregnant then. Maro called her into the room. He asked- 'Do you want to have sex? She said No. The accused pulled her down, took off her pants and his pants. He inserted his penis into her vagina. She does not how long it lasted. After the accused finished, he told her to go and look after the kids.
9. After her child was born, she then told Mama that the accused was the father of the child. Mama got angry.
10. *She did not consent to the accused having sexual intercourse with her in the kitchen and in the bedroom.*
11. On cross- examination-she left school at form 3 and stayed with the accused and Mama. She had to look after their kids. Her son's DOB is 17th Jan 23. **(I note that the Birth certificate shows 17th Jan 24)** She didn't know she was pregnant until informed by the hospital staff when she was into her 8th month. Moma's brother did not tell her to blame Maro to be the father of the child.

12. On cross examination, she confirmed that the bedroom incident happened. The kitchen incident also happened. She's not aware of maintenance processes.
- Q- Maro is not the father of your son?
 - Ans- Wrong
13. She confirmed that her son was born in 2024 and not 2023. She thought that this year was 2024 and not 2025!!
14. **PW4- Const Darg** received the report. She arrested the accused after explaining the allegations and his rights to him.
15. **PW5 Dr Angel Makutu** looks after children at RON hospital. She attended to MD and her son. The boy had fits. **(The court had to be adjourned as we had to vacate the premises due to suspected unexploded ordnance found on the runway!)**
16. She confirmed that MD's son was born on 17th Jan 24 as recorded in the RON hospital Register of Births. In Sept 24, MD came to hospital with her sick baby- had 'fits' and difficulty in breathing. Diagnosed with meningitis- infection of the brain. MD was on the verge of 'ending her life and that of her son.' The child was not looked after well.
17. On cross- examination- the child recovered. MD had mental health issues as she did not have any close relationship with her mother. MD needs a lot of family support to empower her as she behaves like a 15-year-old rather than an 18-year-old. She, PW5 is now looking after the young boy and he is recovering well.
18. **PW6 Senior Const My- Girl Cecil** was the Investigating Officer. She obtained the statements, the Record of Interview, birth certificates of MD and her son. She interviewed the accused in English and Nauruan.
19. Under cross- examination- the accused spoke to his lawyer and the interview proceeded. He understood English.

DEFENCE CASE

20. Mr Tagivakatini conceded that there was a case to answer. The accused opted to give an unsworn written statement.

CLOSING SUBMISSIONS

21. Mr Shah highlights the following:

- MD testified that the accused inserted his penis into her vagina.
- She was scared as the accused said- he would come out of prison and kill her, her son and her mother.
- On the second incident, in the accused's bedroom, the accused again inserted his penis into her vagina.
- On cross- examination, MD stuck to her testimony that the incidents did happen.
- The second incident happened on 27th January 2024 after the birth o the child on 17th January 24. MD was 17 years old then. The accused is guilty of the alternative offence of Rape under Section 105 of the Crimes Act 2016.
- All the elements of the offence for Count 1 are also satisfied.

22. Mr Tagivakatini submits the following:

- At paragraph 10 – ‘The accused denies any sexual intercourse with PW3 and denies being the father of PW3’s son, My- Boy Doguape’;
- PW3 claims that the Accused had sexual intercourse with her on 2 occasions:
 - i. Bedroom incident, whilst pregnant with her son; and
 - ii. Kitchen incident, after giving birth to her son.
- PW3 was born on 08th February 2007. She turned 16 on 08th Feb 2023. The bedroom incident would have occurred between April 2023 – 17th January 2024- the 9th month period for her pregnancy. This is before the child was born. The Information is not clear on the dates.
- The kitchen incident supposedly occurred after the child was born on 17th Jan 2024. Counts 2 & 3 in the Information refer to sexual intercourse incidents occurring after 17th January 24. MD, the complainant was over 16 years old then. The element of ‘under 16 years old’ in Section 116(1)(a) (b) of the Crimes Act 2016 are not satisfied.
- The credibility of PW2 and PW3 (MD) are questionable. Counsel refers to my remarks in R v Olsson [2024] NRSC 34; Criminal Case 6 of 2024 (19th November 2024)
- Section 273 of the Crimes Act 2016 is relevant regarding ‘Alternative verdicts.’ Counsel agrees that Rape under Section 105 of the same Act would be the alternative. **Counsel notes in [23] of his submissions that the complainant, M.D. ‘maintained that she did not consent to the alleged incidents of sexual intercourse.’**
- The accused ‘claims that PW3 was forced by Kangros to say that the Accused is the father.’
- The question of motive raised by the accused is reasonable in the circumstances here.
- Reasonable doubt has been raised here and they seek that the accused be acquitted on all Counts.

DISCUSSION

23. The kitchen incident - the examination in chief of MD:

- Ques- Between Dec 2021- and Jan 2022, anything happened?
- Ans- (MD – ‘I’m scared.’ Looking down and breathing heavily) said- ‘he told me to go to the kitchen.’ He came to me in the kitchen. He told me to take off my pants. He took off my pants. (MD – long pause) he told me for us to have sex. I was scared. He lifted my leg. He inserted his penis into my vagina.
- Ques- How old were you then?
- Ans- 16.
- Ques- The kitchen incident, before or after giving birth?
- **Ans- After son was born.**

24. Room incident- examination in chief of MD

- Ques- Bedroom incident, before or after you gave birth?
- Ans- I was still pregnant at that time. He called me into the room. He said - ‘you want to have sex? I said- ‘No, I’m scared. He said- ‘don’t be scared. Just between us.’ He pulled me down. He took off my pants. He inserted his penis inside my vagina. I was scared.
- Ques- how old were you then?
- Ans- 15 years.
- **Ques- You consented to having sex with Maro in the kitchen and the bedroom?**
- **As- No.**

25. At paragraph [10] of his sentencing submissions, Mr Tagivakatini states: ‘The accused denies any sexual intercourse with PW3 and denies being the father of PW3’s son. I note that there is no evidence before the court of such denial by the accused. However, as in *Griffiths v The Queen* (1994) 69 ALJR 77; 76 A Crim R 164; 125 ALR 545 (HC) Brennan, Dawson and Gaudron JJ said (at 79; 547-548; 167)

‘A plea of not guilty puts all the elements of the offence charged in issue.’

This case is different. The accused pleaded not guilty and opted to give an unsworn written statement. I note that in that statement, the accused does not refer to the allegations by MD against him. I note the submission by Mr Tagivakatini at paragraph [23]– *‘Seeing that PW3 was above the age of 16 years when the two alleged incidents occurred, the issue then would be ‘consent.’ PW3 maintained that she did not consent to the alleged incidents of sexual intercourse.*

26. The allegations of PW3 against the accused that he engaged in sexual intercourse with her without her consent are unchallenged in the written statement of the accused. Am I to believe PW3, MD who testified that the accused engaged in sexual intercourse with her on 2 occasions without her consent? Or am I to believe the accused who pleaded not guilty and opted to rely on a written statement where he does not deny the allegations against him by PW3?

27. In *RPS v R* [2000] HCA 3 Gaudron ACJ, Gummow, Kirby and Hayne JJ observed:

‘In a civil trial there will very often be a reasonable expectation that a party would give or call relevant evidence. It will, therefore, be open in such a case to conclude that the failure of a party (or someone in that party’s camp) to give evidence leads rationally to the inference that the evidence of that party or witness would not help the party’s case (*Jones v Dunkel* (1959) 101 CLR 298 at 321 per Windeyer L) and that:

‘where an inference is open from facts proved by direct evidence and the question is whether it should be drawn, the circumstance that the defendant disputing it might have proved the contrary had he chosen to give evidence is properly to be taken into account as a circumstance in favour of drawing the inference.’

At [27] they added-

*‘By contrast, however, it will seldom, if ever, be reasonable to conclude that an accused in a criminal trial would be expected to give evidence. The most that can be said in criminal matters is that there are some cases in which evidence (or an explanation) contradicting and apparently damning inference to be drawn from proven facts could come only from the accused. In the absence or explanation, the jury may more readily draw the conclusion which the prosecution seeks. As was said in *Weissenteiner v R* (1993) CLR 217 at 227-8:*

‘In a criminal trial, hypotheses consistent with innocence may cease to be rational or reasonable in the absence of evidence to support them when the evidence, if it exists at all, must be within the knowledge of the accused.’

28. In the present case, evidence or explanation contradicting the allegations of sexual intercourse by MD against the accused **‘could only come from the accused.’** MD alleges that the accused engaged in sexual intercourse with her on 2 occasions. One was in the kitchen and one in his bedroom. On both occasions, MD did not consent to the sexual intercourse. As in the *Weissenteiner v R* case above, ***‘the hypotheses consistent with innocence (of the accused) may cease to be rational or reasonable in the absence of evidence (or explanation) to support them when the evidence, if it exists at all, must be within the knowledge of the accused’*** himself. I keep the above remarks in mind as I consider whether the accused had sexual intercourse with MD as alleged. The dates on the Information are:

- i. Count 1- Between December 2021 and 22nd January 2022;
- ii. Count 2- 27th January 2024; and
- iii. Count 3- Between 17th day of March and 18th Day of March 2024.

29. It is to be noted that MD was born on 08th February 2007. She is 18years old now. Her son was born on 17th Jan 2024. For the kitchen incident, MD was asked about what happened between Dec 2021 and Jan 2022. She said that she was 16. **She further said that it was after her son was born.** MD’s son was born 2 years later; on 17th January 24.

30. For the sexual incident in the bedroom, MD said she was 15 years old. She was still pregnant at that time. For MD to be pregnant and give birth on 17th January 24, the sexual intercourse would need to have occurred after April 2023. MD would have been more than 16 years then. She was not below the age of 16 years then. MD testified that she did not know that she was pregnant until she went to hospital and the staff told her that she was 8 months pregnant.
31. MD is clearly mixed up on the dates here. During her testimony, she was tense. She said that she was scared. She recounted how the accused had told her- **when he comes out of prison, he will ‘come straight for me, my mother and my child and he will kill us.’** She testified that her son was born on 17th January 2023. She added that the Birth Certificate, showing that her son was born on 17th January 2024, was wrong! Further, in the testimony of PW5, Dr Angel Makutu, she stated that PW3, MD’s development/ behaviour is like that of a 15-year-old rather than an 18-year-old. Dr Makutu also testified that **‘MD was on the verge of ‘ending her life and that of her son.’** From the demeanour of MD in court, I find that she was truly traumatised whilst giving evidence. She struggled to recall the dates of the sexual incidents.
32. From the evidence, I find that the accused could not have engaged in sexual intercourse with MD between December 21 and January 2022 *after MD’s son was born*. Her son was born 2 years later. I give the benefit of the doubt to the accused here.
33. However, I find that MD clearly mixed up the ‘after her son was born’ in describing the kitchen incident with the ‘I was still pregnant’ in describing the bedroom incident. I further find that that the accused engaged in sexual intercourse with MD, without her consent, in the bedroom as in Count 2; not when she was still pregnant, (as she did not know that she was pregnant until told by the hospital staff) but after her son was born. MD was 17 years old then.
34. As to Count 3, no evidence was led on this count.
35. Having found that the accused had sexual intercourse with MD on Count 2, it is clear that the element of ‘a child under 16 years old’ in Section 116 is not satisfied.

ALTERNATIVE VERDICTS

36. Section 273 of the Crimes Act 2016 provides for this. The possible alternative offence here is ‘Rape- under Section 105. It provides:
- ‘(1) A person (the defendant) commits an offence if:
- (a) the defendant intentionally engages in sexual intercourse with another person; and
 - (b) the other person does not consent to the sexual intercourse and the defendant:
 - (i) Knows that fact; or
 - (ii) Is recklessly indifferent to consent of the other person.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

37. Did the accused intentionally engage in sexual intercourse with MD? The accused removed MD's pants. He then inserted his penis into MD's vagina. This shows that the accused meant to engage in this conduct as per Section 17 of the Crimes Act 2016. Inserting his penis into MD's vagina amounts to sexual intercourse under Section 8.
38. Did MD consent to having sexual intercourse with the accused? The evidence is clear that she did not consent to do so.
39. I remind myself that the burden of proof under Section 25 of the Crimes Act 2016 rests with the prosecution. Am I satisfied beyond reasonable doubt that the accused raped MD? What does the term 'beyond reasonable doubt' mean? In *Keeley v Brooking* 1979) 143 CLR 162; 25 ALR 45 Barwick CJ said:
'To be satisfied beyond all reasonable doubt is, for the purposes of the law, to be certain.'
40. In considering the totality of the evidence, I am certain that the accused raped MD on 27th January 2024 as in Count 2.

CONCLUSION

41. I make the following findings:
- i. Count 1- Not Guilty;
 - ii. Count 2- Guilty; and
 - iii. Count 3- Not Guilty.

DATED this 19th day of June 2025.



Kiniviliame T. Keteca

Judge

