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

Criminal Case No. 09 of 2024

BETWEEN: THE REPUBLIC

PROSECUTION

MARONTEATA TEVE RANDOLPH

ACCUSED

BEFORE: Keteca J

Date of Judgment: 19th June 2025

Closing Submissions: 03rd July 2025

Date of Sentence: 17th July 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; Rape- Section 105 of the Crimes Act 2016.

Appearances:

Counsel for the Prosecution: **S. Shah**
Counsel for the Accused: **R. Tagivakatini**

SENTENCE

BACKGROUND

1. On 19th June 2025, the accused was found guilty on the alternative offence of rape contrary to Section 105 of the Crimes Act 2016.

SUBMISSION BY THE PROSECUTION

2. Mr Shah submitted that the aggravating factors here as:
   i. The accused is the complainant's uncle;
   ii. There is a breach of trust and the accused took advantage of the vulnerability of the complainant.

3. Counsel referred to the following provisions of the Crimes Act 2016:
   i. Section 278- purposes of sentencing;
   ii. Section 279- Sentencing considerations;
   iii. Section 280- Sentencing considerations on imprisonment;
   iv. Section 282A- Pre-trial detention; and
   v. *R v Quadina* [2023] NRSC 25; Criminal Case 09 of 2021. Counsel submits that in paragraph [24], Khan J stated that the minimum sentence of 15 years may be increased based on the seriousness of the offending. This is not quite correct. In paragraph [24], Khan J refers to the considerable delay of 27 months that the accused had spent in custody. The relevant portion of the sentence is in reference to paragraph [24] in the *R v Daniel* [2022] NRSC 15; Criminal case No. 18 of 2021.

4. Counsel adds that acts of rape against women are to be deplored and a harsh custodial sentence is appropriate here.

SUBMISSION BY THE DEFENCE

5. Mr Tagivakatini has made submissions according to the initial charge of Rape of a child under 16 years old: Contrary to Section 116(1)(a)(b) of the Crimes Act 2016. The accused was actually found guilty of the alternative offence of rape contrary to Section 105 of the Crimes Act 2016.

6. The accused is 41 years old and has been in remand for over 10 months. Counsel refers to the following provisions of the Crimes Act 2016:

   i. Section 277- Kinds of sentences;
   ii. Section 278- Purposes of sentencing;
   iii. Section 282-Power to reduce penalties; and
   iv. Counsel further refers to cases on rape of a child under 16 years old.

VICTIM IMPACT STATEMENT

7. According to the victim, people make fun of her. She is scared of her aunty and the accused. She has been through a lot in her life. She feels being let down by her family. They did not protect her. She trusts no one. She wants to carry on with her life. She is thankful of the support from Dr Angel. She wants the accused to go to jail for life.

PRE- SENTENCE REPORT

8. The accused has no previous convictions. He has 4 children with his current partner and 3 daughters from his first marriage. He is the sole bread-winner. The chief probation officer mentions twice in her report that the accused is a national of Rabi. This is incorrect. Rabi is not a country but an island in Fiji. The accused is in fact a national of Kiribati. He has lived in Nauru for more than 10 years.

DISCUSSION

9. This is another case where a young girl, barely 17 years old, has been sexually preyed upon by an older man in the same household. The accused is a foreign national.
10. The maximum penalty for rape under section 105 of the Crimes Act 2016 is life imprisonment. Of this term, at least 15 years to be served without parole or probation.

11. I have considered the following provisions of the Crimes Act 2016:
    i. Section 277- Kinds of sentences;
    ii. Section 278- Purposes of sentencing;
    iii. Section 279- Sentencing considerations;
    iv. Section 280- Sentencing considerations- imprisonment;
    v. Section 282- Power to reduce penalties
    vi. Section 282A- Pre-trial detention not to be considered for offences under Part 7

12. Considering the seriousness of this offence, **the accused is convicted accordingly**.

13. In *Republic v Bill [2024] NRSC 22*; Criminal Case 1 of 2023 (6 September 2024), I said the following:

    '27. I am required to give reasons for the sentences that I pass. In *WO (a child) v Western Australia (2005) 153 A Crim R 352 (WA CA)*, in a joint judgment, the court said:

    > *'Every court sentencing an offender is required to give reasons for that sentence. The reasons need not be elaborate, but must in every case, be sufficient to enable the offender, and the public, to understand why that sentencing disposition was chosen and to preserve to the offender the right of appeal.*

    The court added:

    > *'In a context where a sentence of imprisonment is a last resort (as it is both for children and for adults, although the principle has greater weight in respect of the former), those sentencing remarks will always be deficient if it is not possible to discern from them why a sentence of detention or imprisonment, as opposed to some other disposition, was selected.'*

    28. *In R v Thompson (2000) 49 NSWLR 383; 115 A Crim R 104 (CCA),* Spigelman CJ said (at 394-395; 113-114[42]-[44]):

'Sentencing judges are under an obligation to give reasons for their decisions. Remarks on sentence are no different in this respect from other judgments. This is a manifestation of the fundamental principle of common law that justice must not only be done but manifestly be seen to be done. The obligation of a court is to publish reasons for its decision, not merely to provide reasons to the parties."

29. In my sentencing remarks in *R v Xavier Namaduk, Criminal Case No 24 of 2021* (sentence passed on 04th October 24), I referred to **the deterrence and rehabilitation factors** as purposes of sentencing. I mentioned the following:

'. Under Section 278(b) of the Crimes Act 2016- it provides:
"to prevent crime by deterring the offender and other people from committing similar offences."

In *R v Radich [1954] NZLR 86 (CA)* the court said (at 87):

"We should say at once that this last argument omits one of the main purposes of punishment, which is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. In all civilized countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment.'

The court added:

*"**If a court is weakly merciful**, and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment."*

[29] On rehabilitation as a purpose of sentencing, Section 278(d) provides: "to promote the rehabilitation of the offender."

[30] *In Yardley v Betts (1979) 22 SASR 108*, King CJ said:

"The protection of the community is also contributed to by the successful rehabilitation of offenders. This aspect of sentencing should never be lost sight of and it assumes particular importance in the case of first offenders and others who have not developed settled criminal habits. If a sentence has the effect of turning an offender towards a

criminal way of life, the protection of the community is to that extent impaired. If the sentence induces or assists an offender to avoid offending in future, the protection of the community is to that extent enhanced."

14. The accused pleaded not guilty and defended himself with an unsworn written statement. On the issue of **remorse,** the court, in *Signato v The Queen* (1998) 194 CR 656; 159 ALR 94; 105 A Crim R 184 Gleeson CJ, Gummow, Hayne and Callinan JJ said at (633-664); 99; 189 [22] :
'A person charged with a criminal offence is entitled to plead not guilty, and defend himself or herself, without thereby attracting the risk of the imposition of a penalty more serious than would otherwise have been imposed. On the other hand, a plea of guilty is ordinarily a matter to be taken into account in mitigation; ***first, because it is usually evidence of some remorse on the part of the offender****, and secondly, on the pragmatic ground that the community is spared the expense of a contested trial. The extent of the mitigation may vary depending on the circumstances of the case. It is also sometimes relevant to the aspect of remorse that a victim has been spared the necessity of undergoing the painful procedure of giving evidence.'*

15. In the present case, the accused pleaded not guilty. He is entitled to do that. It does not mean that it will attract a more serious penalty than would be appropriate in the circumstances of the case. I note the absence of remorse of the accused.
16. There is also the issue of the breach of trust here. The accused is known to the victim. He is the partner of her aunt. The victim babysits the couple's children. His threats to the victim rings quite loudly and may continue to traumatise the complainant in years to come. As the complainant said under oath:
'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.'*
I note that the accused uttered this threat notwithstanding the complainant saying that he is the putative father of her child.
I also consider the testimony of Dr Angel Makutu. In her evidence, she said that the victim in this case was on the verge of ending her life and that of her child. Dr Makutu is now looking after the victim's child.
My remarks in paragraphs [13] - [16] above constitute the reasons for the sentence that I am about to pass.
17. I note in passing that this is another case where a foreign national is being convicted for a sexual offence against a young girl in Nauru. Our laws reflect the will of the people of Nauru. The penalties also reflect that. Everyone that call Nauru home, including foreign nationals should learn to abide by the laws of this land. This court is not a weakly merciful one. It will impose a sentence commensurate with the seriousness of the crime. It will not shirk any responsibility in fully implementing the intent of parliament in awarding the appropriate sentence; even the maximum sentence. I remind all would be offenders that one of the main purposes of punishment, is to protect the public from the commission of such crimes by making it

clear to the offender and to other persons with similar impulses that, **if you yield to those impulses, you will meet with severe punishment.**

18. Considering all the above, I find that I am left with no other option but to award the maximum imprisonment term against the accused.

CONCLUSION

19. Maronteata Teve, you are sentenced to life imprisonment. You will serve a minimum term of 18 years before you are eligible for parole or probation.

DATED this 17th Day of July 2025.

Kiniviliame T. Keteca

Judge