



IN THE NAURU COURT OF APPEAL
AT YAREN
CRIMINAL APPELLATE JURISDICTION

**Criminal Appeal No. 01
of 2024
Supreme Court Criminal
Case No. 16 of 2020**

BETWEEN

THE REPUBLIC

Appellant

AND

OSHAE STEPHEN

Respondent

BEFORE:

**Justice R. Wimalasena,
President
Justice Sir A. Palmer
Justice K.A. David**

DATE OF HEARING: **29 August 2025**

DATE OF JUDGMENT: **22 October 2025**

CITATION: **The Republic v Oshae
Stephen**

KEYWORDS: Intentionally causing serious harm; domestic violence; purpose of sentencing; sentencing considerations in domestic violence; aggravating factors in domestic violence; reconciliation; custodial sentences.

LEGISLATION: Sections 71, 79, 278., 279, and 280 of the Crimes Act 2016, section 29 (3)(b) of the Nauru Court of Appeal Act 2018, sections 6, 17, 20 and 37 of the Domestic Violence and Family Violence Act 2017

CASES CITED: Jeremiah v Republic [2018] NRCA 2; Criminal Appeal No. 1 of 2018 (24 August 2018); Republic v Atsime [2023] NRSC 27; Criminal Case No. 10 of 2022 (22 November 2023); Republic v Kepae [2022] NRSC 4; Criminal Case No. 19 of 2020 (21 January 2022)

APPEARANCES:

COUNSEL FOR the
Appellant:

Mr. S Shah

COUNSEL FOR the
Respondent:

Mr. R Tagavakatini

JUDGMENT

1. This is an appeal against sentence filed by the Director of Public Prosecutions (Appellant). The Respondent pleaded guilty to one count of intentionally causing serious harm, contrary to section 71 of the Crimes Act 2016 (Crimes Act) and was sentenced by the Supreme Court on 15 March 2024 to a term of four years imprisonment, suspended for a period of five years.
2. The Appellant filed a timely Notice of Appeal on 28 March 2024 with the following ground of appeal:

“That the learned Judge erred in law and in fact when he imposed a suspended sentence on the Respondent and disregarded the severity of the offence.”
3. Section 29 (3)(b) of the Nauru Court of Appeal Act 2018 (Court of Appeal Act) provides that the Director of Public Prosecutions may appeal against a judgment, decision or order of the Supreme Court in relation to the sentence unless the sentence is one fixed by a written law.
4. As per section 71 of the Crimes Act, intentionally causing serious harm carries a maximum penalty of 15 years imprisonment, and if aggravating circumstances apply, the sentence extends to 20 years imprisonment. Section 79 of the Crimes Act sets out the aggravating circumstances applicable to assault offences:

79 Aggravating circumstances for assault offences

(1) Where an offence under this Division provides for a penalty if aggravating circumstances apply, then that penalty may be imposed if the conduct constituting the offence occurs in any of the following circumstances:

- (a) the defendant is, or pretends to be, armed with an offensive weapon;
- (b) the defendant is in company with one or more other people;
- (c) the defendant intends to commit another offence; or
- (d) the defendant intends to avoid the lawful arrest or detention of a person.

(2) For the purposes of subsection (1)(c), it is not necessary to prove that the defendant intends to commit a particular offence.

5. The parties filed their written submissions, and the appeal was taken up for hearing on 29 August 2025. Both parties made oral submissions in addition to their written submissions.
6. The Respondent was initially charged with attempted murder for assaulting his wife. However, on 23 September 2022, an amended information was filed charging him with intentionally causing serious harm, following lengthy negotiations between the parties. On 15 November 2022, the Respondent pleaded guilty to the amended information, and the summary of facts was admitted. The complainant in this case did not undergo a medical examination, and therefore no medical report was tendered in the court below. The parties relied on photographs depicting the injuries sustained by the complainant. The summary of facts reads as follows:

“The accused in this matter is Oshae Stephens. The complainant in this matter is Eida Stephens. On the 9th of August 2020, Oshae Stephens, 39 years old of Baitisi District punched his wife. Eida Stephens, 37 years old of Aiwo District multiple times whereby she sustained injuries.

On the 9th of August 2020, at about 12pm the accused was drunk and asked his sick wife to drive him and his friends to another venue. As they were in a vehicle they got into a heated argument, whereby she started to panic and he got off the vehicle and ran to the bushes beside the beach to hide

When she saw that the accused had calm down, she emerged from the bushes returned to the vehicle, as she was sitting in the vehicle, the accused noticed that the tyre of the vehicle was punctured. He got more furious as he saw this and attacked the complainant, with a closed fist and threw several punches on her face as well as her head. She does not recall how many times he punched her. When one of the accused's friends. Apwed Dieema tried to stop the accused from punching his wife, the accused continued with the assault.

When the complainant tried to escape the accused grabbed her by the hair and continued to punch her. When she tried to tackle him by holding him on the waist, they both fell onto the ground, and he gripped her between his legs. He held her down and punched her.

There was no medical report as the complainant refused to have the medical recorded. However, there are photographs that were taken of the injured on the complainant. (Annexed as 'A1')

The matter was then reported to the police. The accused was arrested and caution interviewed where he made partial admissions.”

7. Although no medical report was tendered in evidence before the court below, thirteen photographs depicting the complainant's injuries were produced in this case. Those photographs provide compelling evidence of a brutal physical assault, most notably showing the complainant's face thickly covered in blood. They reveal swelling on the forehead and above the eyebrows, bruises on the face, a swollen nasal bridge and cheeks, heavy bleeding from the nostrils, bruises on the left arm and back, scratches on the right arm, a laceration on the upper right leg, and scratches on the lower right leg near the ankle. The multiple injuries visible in these photographs are clearly indicative of severe

physical abuse. Upon the admission of the summary of facts and the photographs showing the extent of the injuries suffered by the complainant, the learned sentencing judge convicted the Respondent. The main contention of the Appellant is that the learned sentencing judge disregarded the severity of the offence when imposing a suspended sentence. The reasons for the suspended sentence are set out in the sentencing remarks as follows:

[21] If I were to impose an immediate custodial sentence, it would affect your children adversely. Your children are at very vulnerable ages and need the care and assistance and guidance of both parents. After the incident, although the Court had ordered your wife to live separately from you, but she moved back to the matrimonial home because of the children.

[22] That act of moving back by your wife to the matrimonial home to be with the children a huge sacrifice on her part.

[23] If I were to impose an immediate custodial sentence it would affect your children adversely, and your wife's sacrifices in reconciling with you to be with the children would be in vain.

[24] I must confess that I was minded to impose an immediate custodial sentence on you but because of your wife's act of reconciling with you for the sake of your children I will not impose an immediate custodial sentence. You are sentenced to a term of 4 years imprisonment which is suspended for a period of 5 years, and should you commit any offence of domestic violence in that period then this sentence is to be activated.

8. The Appellant submitted that the court below acted upon a wrong principle in sentencing the Respondent, by failing to properly consider the severity and gravity of the offending as required under the Crimes Act. It was further submitted that the learned sentencing judge gave undue weight to the effect a

custodial sentence would have on the children, as opposed to the trauma and impact the assault had on the victim.

9. The respondent submitted that the learned sentencing judge considered and applied the sentencing guidelines justly and the Appellant failed to demonstrate an error of law or fact in the sentence.
10. The Appellant relied on the decision in *Jeremiah v Republic* [2018] NRCA 2; Criminal Appeal No. 1 of 2018 (24 August 2018), to illustrate the circumstances in which the Court of Appeal will interfere with a sentence. That decision involved an application for leave to appeal against sentence under section 30(2)(a) of the Nauru Court of Appeal Act. This provision applies to appeals from the appellate jurisdiction of the Supreme Court, which is distinct from appeals arising from its original jurisdiction. For appeals to the Nauru Court of Appeal against a sentence imposed by the Supreme Court in its appellate jurisdiction, the Director of Public Prosecutions may appeal only in limited circumstances. However, no such limitations apply to appeals by the Director of Public Prosecutions against sentences imposed by the Supreme Court in the exercise of its original jurisdiction, provided the sentence is not one fixed by written law. Be that as it may, where a sentence is wrong in principle, manifestly excessive, manifestly lenient, or otherwise inappropriate, it justifies interference by the Court of Appeal under section 29(3)(b) of the Nauru Court of Appeal Act.
11. The Appellant invited this Court to consider the purposes of sentencing, the general sentencing considerations, and the specific considerations applicable when imposing a term of imprisonment, as set out respectively in sections 278, 279, and 280 of the Crimes Act, in order to assess whether the learned sentencing judge imposed an appropriate sentence by applying the correct principles. Section 278 of the Crimes Act sets out the purposes of sentencing as follows:
 - (a) to ensure that the offender is adequately punished for the offence;

- (b) to prevent crime by deterring the offender and other people from committing similar offences;
- (c) to protect the community from the offender;
- (d) to promote the rehabilitation of the offender;
- (e) to make the offender accountable for the offender's actions;
- (f) to denounce the conduct of the offender; and
- (g) to recognise the harm done to the victim and the community.

12. Furthermore, the Appellant drew this Court's attention to the fact that the learned sentencing judge considered only section 279(2)(o) of the Crimes Act, by focusing solely on the probable effect that any sentence or order would have on the offender's family or dependants. The Appellant submitted that the learned sentencing judge failed to give adequate consideration to the other matters set out in section 279 and to impose a sentence that was appropriate in all the circumstances. It was also pointed out that even the Respondent conceded that a custodial sentence was inevitable, as noted in paragraph [21] of his submissions in mitigation before the court below. Section 279 sets out a range of sentencing considerations which, according to the Appellant, were overlooked by the learned sentencing judge:

279 Sentencing considerations – general

- (1) In deciding the sentence to be passed, or the order to be made, in relation to a person for an offence against a law of Nauru, a court shall impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.
- (2) In addition to any other matters, the court shall take into account whichever of the following matters are relevant and known to the court:
 - (a) the nature and circumstances of the offence;
 - (b) any other offences required or permitted to be taken into account;
 - (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character, the course of conduct;
 - (d) any injury, loss or damage resulting from the offence;

- (e) the personal circumstances of any victim of the offence;
 - (f) the effect of the offence on any victim of the offence;
 - (g) any victim impact statement available to the court;
 - (h) the degree to which the person has shown contrition for the offence by taking action to make reparation for any injury, loss or damage resulting from the offence or in any other way;
 - (i) if the person pleaded guilty to the charge for the offence, that fact;
 - (j) the degree to which the person cooperated in the investigation of the offence;
 - (k) the deterrent effect that any sentence or order may have on the person or on anyone else;
 - (l) the need to ensure that the person is adequately punished for the offence;
 - (m) the character, antecedents, age, means and physical or mental condition of the person;
 - (n) the prospects of rehabilitation of the person;
 - (o) the probable effect that any sentence or other order under consideration would have on any of the person's family or dependants;
- or
- (p) if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child, other than another offender or a victim of the offence, those circumstances.
- (3) For the purposes of subsection (1), the appropriate severity of a sentence not only include mitigating factors but other aggravating considerations such as:
- (a) deterrence of prevailing nature of common;
 - (b) the impact on the victims and the community; or
 - (c) matters that in the opinion of the court are appropriate for the prevention of prevailing or certain nature of offences or protection of the vulnerable members of the community.

13. The Appellant also, submitted that the learned sentencing judge failed to give appropriate regard to the victim impact statement, the photographs demonstrating the extent of the injuries inflicted, and the summary of facts admitted by the Respondent when imposing sentence. The learned sentencing judge appears to have overlooked several key statutory considerations mandated by section 279(2) of the Crimes Act. These include the nature and circumstances of the offence, any injury, loss, or damage resulting from the offence, the personal circumstances of the victim and the effect of the offence upon them, and any victim impact statement available to the court. In particular, when considering the nature and circumstances of the case, the learned sentencing judge ought to have taken into account the specific legislative provisions pertaining to domestic violence offences in assessing the seriousness of the offence.
14. This is a case where the Respondent offended in a domestic context. Courts should be mindful, when sentencing in cases involving domestic violence offences, to attach appropriate weight to the circumstances in which such offences occur.
15. The Domestic Violence and Family Protection Act 2017 (Domestic Violence Act) specifically sets out matters that must be considered by courts when dealing with offences of this nature. Section 37 of the Domestic Violence Act stipulates the aggravating factors that courts must take into account in relation to offences committed in a domestic context:

37 Aggravating Circumstances

Where an offence occurred in the context of a domestic relationship and the court convicts an offender under the Crimes Act 2016 or any other written law relating to domestic violence, the court shall consider the following aggravating circumstances when imposing sentence:

- (a) the offence was committed against a child or in the presence of a child;

- (b) the offence was committed against a person with a disability;
- (c) the offence was committed against a pregnant woman;
- (d) the offence was committed at night;
- (e) a weapon was used in the commission of the offence;
- (f) a drug or alcohol were contributing factors to the commission of the offence; or
- (g) the conduct constituting the offence was repeated.

16. Section 6 of the Domestic Violence and Family Protection Act 2017 defines domestic violence, and it is evident that the offence committed by the Respondent falls within that definition. Therefore, it was mandatory for the court to consider the presence of the aggravating factors set out in section 37 when imposing sentence. In this regard, the fact that alcohol was a contributory factor in the commission of the offence is also relevant as an aggravating factor. The learned sentencing judge noted at paragraph [12] of the sentencing remarks that, "at the time you inflicted those injuries on your wife, you were adversely affected by alcohol." However, it is not clearly stated whether the learned sentencing judge treated this circumstance as an aggravating or mitigating factor. In the full context of the sentencing remarks, it appears that this factor was not treated as an aggravating circumstance but rather as a mitigating one, contrary to the legislative intent.

17. It should be noted that the legislation on domestic violence was enacted for a specific purpose, and it is the duty of the courts to give effect to the intention of the legislature. The intention of the legislature is evident from the Second Reading Speech delivered on 21 March 2017, when introducing the Domestic Violence and Family Protection Bill, where it was stated:

"Our message as a government is very clear: we will not tolerate domestic violence. We will not tolerate breaches of safety and protection orders. We will not tolerate the non-performance of duties and responsibilities of public officers under this law.

To sum up there is zero tolerance for violence anywhere be it in the homes and in the work environment and in our everyday social environment.”

18. It does not appear that the learned sentencing judge gave full effect to the provisions of the Domestic Violence and Family Protection Act 2017 when sentencing the Respondent, as expected by the legislature. The duty of the court is evident in light of clause 3 of the Explanatory Memorandum to the Bill, which states:

“The Act is meant to address issues of domestic violence and to provide protection for people who experience violence in the context of a domestic relationship. The Act will introduce measures which ensure that not only will the relevant institutions within Nauru give full effect to the provisions of the Act, but the message is conveyed that Nauru is fully committed to addressing domestic violence.

The Act also seeks to give full effect to Nauru’s commitment and obligations under the United Nations Convention on the Elimination of all Forms of Discrimination against Women and the United Nations Convention on the Rights of the Child.

In interpreting the Act, due consideration must be given to the objects of the Act as set out.”

19. As such, the learned sentencing judge failed to consider the relevant legislative provisions necessary to identify and assess the proper aggravating factors, thereby overlooking material considerations in determining the appropriate sentence based on the nature and circumstances of the case.

20. Further, it appears that the learned sentencing judge placed significant reliance on the reconciliation between the Respondent and the complainant. At paragraph [15] of the sentencing remarks, the learned sentencing judge considered the victim impact statement as follows:

[15] In the victim impact statement, it is stated, and quite rightly so that your wife is very traumatized because of the incident, and she is emotionally disturbed. When she was asked to describe whether the incident changed her life she stated:

“The good thing is that he has not been physically violent since it happened. I can always understand when he turns violence [sic] and so I have been able to adapt and be cautious of what triggers him. My children are the reason I continue living my life and so my life changes is being [sic] there for my children and surviving.”

21. The victim impact statement does not appear to indicate that there was genuine reconciliation. Rather, it suggests that the complainant continues to live in fear, primarily for the sake of her children. The learned sentencing judge acknowledged this as a “sacrifice” by observing at paragraph [22] of the sentencing remarks that “the act of moving back by your wife to the matrimonial home to be with the children is a huge sacrifice on her part.” The purpose of domestic violence legislation is undermined if parties are encouraged to “sacrifice” their personal safety and welfare for competing interests such as the well-being of children, financial dependence, or sustainability of the household. The court must assess submissions relating to reconciliation with objectivity and caution. Where a person is coerced, pressured, or persuaded to return to the home following an incident of domestic violence, such a circumstance should not be regarded as genuine reconciliation. Likewise, if a victim returns home out of desperation, that should not be considered a sign of reconciliation. The victim’s statement, “My children are the reason I continue living my life and so my life changes is being [sic] there for my children and surviving,” does not sound like a convincing indication of reconciliation.

22. It should also be noted that domestic violence is not confined to acts of physical assault on a person in a domestic relationship. The mere absence of physical abuse does not mean that domestic violence is absent. The definition of domestic violence extends beyond physical assault, and section 6 of the Domestic Violence and Family Protection Act 2017 provides that:

“A person commits domestic violence if he or she threatens to or commits the following against a person with whom he or she is or has been, in a domestic relationship:

- (a) assault;
- (b) coercive control;
- (c) economic and financial abuse;
- (d) sexual violence;
- (e) stalking;
- (f) persistently behaving in an abusive, cruel, inhumane, degrading, provocative or offensive manner; or
- (g) damage to property”

23. A court should not encourage a person to “sacrifice” that person’s safety in a manner that contravenes the legislative intent underlying domestic violence laws. Moreover, reconciliation in domestic violence cases carries little weight as a mitigating factor. Any evidence of reconciliation must be assessed in light of all the circumstances of the case, bearing in mind that the paramount consideration for the court is the safety and protection of the victim and the prevention of any repetition of domestic violence in any form.

24. In this context, the United Kingdom Sentencing Council guidelines on domestic abuse provide useful guidance. Paragraph 10 of the Overarching Principles: Domestic Abuse – Definitive Guideline (2018) offers insight into the limited weight that should be attached to reconciliation between the parties when sentencing:

10. A sentence imposed for an offence committed within a domestic context should be determined by the seriousness of the offence, not by any expressed wishes of the victim. There are a number of reasons why it may be particularly important that this principle is observed within this context:

- The court is sentencing on behalf of the wider public.
- No victim is responsible for the sentence imposed.
- There is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender.
- The risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.

25. In cases of domestic violence, sentences must be imposed in the interest of the wider public and in accordance with the legislative intent, rather than being influenced by the expressed wishes of the victim. The aspirations or pleas for leniency by victims should be given little or no weight, as doing so risks encouraging offenders to exert pressure or coercion on victims to reconcile, thereby undermining the protective purpose of domestic violence legislation.

26. It should be noted that courts must impose sentences in cases involving domestic violence having regard to the seriousness of the offence. The Appellant contended that the learned sentencing judge failed to consider the objective seriousness of the offence, as required under the Crimes Act. It appears that the sentence was based primarily on subjective factors, which are inconsistent with the provisions of both the Crimes Act and the Domestic Violence Act. In assessing the objective seriousness of an offence, the court must consider the nature and extent of the harm caused, the degree of violence used, the circumstances in which the offence was committed, and the level of culpability of the offender. The offence was committed within a domestic relationship, where the victim was entitled to feel safe and protected. It

represents a clear breach of trust and a grave abuse of the sanctity of the family relationship.

27. There is no dispute that the welfare of the children or dependants should be taken into account when sentencing an offender. While section 279(2) of the Crimes Act sets out a range of relevant considerations, it appears that the learned sentencing judge placed disproportionate emphasis on “the probable effect that any sentence or other order under consideration would have on any of the person’s family or dependants” and thereby disregarded the overall circumstances of the case, as reflected in paragraph [23] of the sentencing remarks:

[23] If I were to impose an immediate custodial sentence it would affect your children adversely, and your wife’s sacrifices in reconciling with you to be with the children would be in vain.

28. While the welfare of the children and other dependants is an important consideration within a family context, the court must carefully weigh and balance this against the impact of the offence on the victim and the potential harm to the children arising from exposure to domestic violence. In assessing the probable effect of the sentence on the children, the court must also consider the safety of the victim and the psychological harm that may result from continued exposure to such violence. The United Kingdom Sentencing Council’s Domestic Abuse: Overarching Principles – Definitive Guideline 2018 provides guidance on how these competing interests should be weighed in domestic violence cases, as follows:

12. The offender or the victim may ask the court to consider the interests of any children by imposing a less severe sentence. The court should consider not only the effect on the children if the relationship is disrupted but also the likely effect of any further incidents of domestic abuse. The court should take great care with such requests, as the

sentence should primarily be determined by the seriousness of the offence.

29. Therefore, courts should be mindful to consider the seriousness of the offending and to strike an appropriate balance between the probable effect of a custodial sentence on the children and the likely consequences of further incidents of domestic violence, together with the general sentencing considerations prescribed by law. In addition to the general considerations set out in section 279(2), courts are required to give due consideration to deterrence, the impact of the offence on the victim and the community, and the need to protect vulnerable members of the community, as provided in section 279(3) of the Crimes Act. In cases involving domestic violence, as opposed to offences where there is no domestic relationship between the accused and the complainant, courts must be particularly mindful of these legislative obligations when determining an appropriate sentence.

30. I have also considered previous cases where offenders were sentenced for the same offence. In *Republic v Atsime* [2023] NRSC 27; Criminal Case No. 10 of 2022 (22 November 2023), the accused was charged with intentionally causing serious harm by stabbing the complainant. The parents of the accused and the complainant were first cousins. The Supreme Court imposed a sentence of 60 months imprisonment, half of which was suspended. The accused was ordered to serve 24 months after deducting six months for time spent in remand. In *Republic v Kepae* [2022] NRSC 4; Criminal Case No. 19 of 2020 (21 January 2022), the accused was also charged with intentionally causing serious harm and was sentenced to 30 months imprisonment, partly suspended, requiring him to serve eight months after deducting eight months for time spent in remand custody. There was no domestic relationship between the complainant and the accused.

31. Section 280 of the Crimes Act provides the matters that must be taken into account when a sentence of imprisonment is imposed by a court:

A sentence of imprisonment may be imposed on a person only if:

(a) in the opinion of the court:

(i) the person has shown a tendency to violence towards other people;

(ii) the person is likely to commit a serious offence if allowed to go at large;

(iii) the person has previously been convicted of an offence punishable by imprisonment;

(iv) any other sentence would be inappropriate having regard to the gravity or circumstances of the offence; or

(v) the protection of the community requires it; or

(b) a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279

32. The present case is distinguishable from the two cases referred to above, as it involves the infliction of severe violence within a domestic relationship, aggravated by the contribution of alcohol to the commission of the offence. However, it appears that the learned sentencing judge overlooked the seriousness of the offending and placed undue weight on the “sacrifice” made by the complainant in returning to the matrimonial home for the sake of the children, when deciding to suspend the entire sentence. That appears to have been the principal consideration upon which the suspended sentence was based.

33. In cases involving domestic violence offences, the court must consider whether any sentence other than imprisonment would be inappropriate, having regard to the gravity and circumstances of the offence, the protection of all members of the family unit, and the need to give proper effect to sections 278 and 279 of the Crimes Act. These provisions, read together with the Domestic Violence Act, reflect the legislature’s intent to adopt a policy of zero tolerance towards domestic violence. Unless there are compelling reasons, courts must objectively assess whether a wholly suspended sentence is justifiable, having regard to the

seriousness of the offence and the purposes of sentencing in cases of this nature. Although there is no reason to interfere with the length of the sentence imposed by the learned sentencing judge, the total suspension of the sentence does not demonstrate that due regard was given to the seriousness of the offending.

34. For these reasons, I am satisfied that the learned sentencing judge erred in principle by failing to consider the objective seriousness of the offence and by not giving due regard to the statutory provisions governing the sentencing of domestic violence offences. The total suspension of the custodial sentence rendered the penalty manifestly inadequate in light of the seriousness of the offence, the legislative intent, and the purposes of sentencing set out in sections 278 and 279 of the Crimes Act.

35. Accordingly, the appeal is allowed.

36. The Respondent was arrested for the offence on 14 August 2020 and was released on bail on 28 August 2020. Accordingly, the period of 14 days that he spent in custody is to be taken into account and reflected in the sentence imposed.

37. Section 20 of the Domestic Violence Act provides that “the court may, on its own initiative, grant a protection order against a person if that person is convicted of an offence arising from domestic violence or a domestic relationship under the Crimes Act or any other written law.” I am of the view that the circumstances of this case require the Court to issue a protection order, although it does not appear that such an order was made in the court below. While there is insufficient material before this Court to issue a detailed protection order in terms of section 17 of the Act, section 17(4) provides that the Court may impose other conditions on the respondent if it considers it necessary in the circumstances, or desirable in the interests of the victim or the children of the domestic relationship. Accordingly, a protection order is hereby issued for the safety of the complainant and her children, restraining the Respondent from engaging in any behaviour likely to result in domestic

violence against the complainant, or from inciting another person to do so. The complainant is at liberty to seek any further orders under the provisions of the Domestic Violence Act, should it become necessary.

Orders of the Court

- i. The sentence imposed by the Supreme Court is set aside.
- ii. A sentence of four (4) years imprisonment is substituted. The sentence is to be partly suspended, with the Respondent to serve eighteen (18) months imprisonment, and the remaining two (2) years and six (6) months suspended for a period of five (5) years. After deducting the period of fourteen (14) days spent in remand custody, the Respondent shall serve a total effective sentence of seventeen (17) months and two (2) weeks imprisonment.
- iii. A Protection Order is issued for the safety of the Complainant and her children restraining the Respondent from engaging in any behaviour likely to result in domestic violence against the complainant, or from inciting another person to do so.

Dated this 22 October 2025

Justice Rangajeeva Wimalasena



President

Justice Sir Albert Rocky Palmer

I agree.



Justice of Appeal

Justice Kingsley A. David

I agree.

A handwritten signature in blue ink, consisting of several overlapping loops and lines, positioned above the text 'Justice of Appeal'.

Justice of Appeal