

**IN THE DISTRICT COURT OF NAURU  
(Criminal Jurisdiction)**

CRIMINAL CASE NO. 31 of 2016

BETWEEN:

**THE REPUBLIC OF NAURU**  
Complainant

AND:

**SH**  
Defendant

Mr. Filimoni Lacanivalu for the Republic  
Mr. Sevuloni Valenitabua Public Legal Defender for Defendant

*Dates of hearing: 30<sup>th</sup> September 2016*  
*Date of Sentence: 17<sup>th</sup> October 2016*

Sentence

1. The defendant is charged with one count of recklessly causing harm contrary to section 75(a), (b), (c) and (i) of the Crimes Act 2016. He has pleaded guilty to the offence as charged. The maximum penalty for this offence is 7 years imprisonment<sup>1</sup>
2. The agreed facts submitted to the court are:

On the 19<sup>th</sup> July 2016 the complainant about 6:00 am, had returned from drinking grog at Bodura Whippy's house and was heading home when he stopped at Paul Finch's place and spoke to some guys when the defendant came to them with a chopping knife and struck his left arm before he was

---

<sup>1</sup> Section 75(a)(b)(c) and (i) of the Crimes Act of 2016

stopped by one of Paul Finch's worker who then rang the police. The defendant at that time was drunk. The complainant at that time was also armed with a knife but threw it away when the police arrived. The complainant was taken to the RON Hospital and a medical report regarding the injuries he sustained was provided to the court. The defendant was interviewed by the police. The defendant admitted that on that day at about 8:00am he was walking from Aiwo to Boe and explained that the reason for striking the complainant with the chopping knife was because he said that he had kicked the Paradise Store on his way and the complainant told him that he was going to get a knife which he did. They fought and he managed to take the complainant down with a kick to his stomach. The defendant then went to his friend's house and got a chopping knife and went looking for the complainant. He saw the complainant at Paul Finch's place and then struck him with the knife. He admitted that he could not control his anger because the complainant first wanted to stab him with a knife.

The medical report shows that the complainant suffered a laceration to his left forearm. The length of the laceration is 4 centimeters. The laceration was stitched and the complainant was given antibiotics. A laceration is described in the Glossary of terms appendix 6 to be a tear in the skin caused by blunt force.

3. The defendant was born on the 23<sup>rd</sup> March 2000. He is now 16 years old going onto 17 years old. He comes from a family of 7 brothers and 1 sister. He no longer attends school. He is a first offender and has pleaded guilty to the offence. The defendant accompanied by his mother has gone and apologized to the complainant and they shook hands and I am informed by Mr. Valenitabua in his submissions that the complainant had accepted the defendant's apology.
4. As properly conceded to by Mr. Valenitabua, the aggravating feature in the commission of the offence by the defendant is that he used an offensive weapon to inflict the injury.
5. The defendant was drunk at the time he committed the offence. He could be guilty of underage drinking which is a separate offence under the Liquor Act. However he is not charged with the offence. Mr. Valenibua has submitted that the effect of intoxication on an adult is known to cause adults to loose inhibitions. The defendant being a juvenile and getting intoxicated may cause loss on inhibitions on

him more easily on him than on an adult person faced with the same situation. The upshot of the submission by Mr. Valenitabua is that the defendant may have lost the inhibition to use the chopper and strike at the complainant because of the intoxication. Firstly the defendant pleaded guilty to the offence. Secondly the defendant admitted that he angry because the complainant first tried to attack him with a knife. That was when he went looking for a knife at his friend's house and returned to attack the complainant with the chopper.

6. I find that both the complainant and the defendant were intoxicated at the time the offence was committed by the defendant. Also on the agreed facts submitted to the court, the complainant was the aggressor. The defendant on the other hand could have walked away. He chose not to. And instead went looking for a knife and returned to strike the complainant with it. This is serious. Intoxication is not a mitigating factor. It is an aggravating feature in the commission of the offence. Also there are a lot of cases involving violence with the use of weapons to inflict harm.
7. The injury sustained by the complainant could be described as minor as opposed to serious or life threatening. A deterrent sentence ought to be imposed.
8. The factors to take into consideration when determining whether or not a term of imprisonment should be imposed are provided for under section 280 (a) (i), (ii) (iii) (ii) (v) of the Crimes Act 2016.
9. When juveniles or young persons as in the case of the defendant come before the court, the imposition of a custodial sentence is often the last option that the court should consider. This is because with young person's there must always be hope that they will rehabilitate and that all possible opportunities should be given to ensure that this opportunity to allow them to rehabilitate must be explored, exhausted and expressed in the type of sentences imposed by the court. There is no evidence submitted to the court to show that the defendant has a tendency to be violent towards other people. Nor is there evidence to show that the defendant is likely to commit a serious offence if allowed to go at large; or that the defendant has previously been convicted of an offence punishable by imprisonment or that any other sentence would be inappropriate having regard to the gravity or circumstance

of the offence; or the protection of the community. Taking into consideration the factors as outlined in section 280(a) (i) (ii) (iii) and (v) of the Crimes Act 2016, the defendant before the court now and the circumstances of the offending by the defendant in this case, despite the use of a weapon, is in my view that a custodial sentence is not warranted to be imposed in the first instance. The protection of the community in the long term is in my view best served with rehabilitating the defendant.

10. Division 15.3 of the Crimes Act 2016 deals with sentencing. The kinds of sentences that can be imposed under the section 277 of the Crimes Act 2016 are:

- (a) Record a conviction and order that the offender serve at term of imprisonment;
- (b) With or without recording a conviction, order the offender to pay a fine;
- (c) Record a conviction and order the discharge of the offender;
- (d) Without recording a conviction, order the dismissal of the charge for the offence;
- (e) Impose any other sentence or make any order that is authorized by this or any other law;

11. The other option is to impose a fine under section 277(b) of the Crimes Act 2016. However he is a juvenile and no submissions has been made to the court with regard to his ability to pay a fine if a fine is to be imposed. There is nothing to show that he is employed. In the circumstances I am unable to impose a fine. I want to know more about the defendant. Does he live with his parents? Do his parents work? What is his family background? I will therefore reserve my judgment on sentence and order that a probation report be made in respect of this defendant pursuant to section 5(a) and (b) the Criminal Justice Act 1999. The matter is adjourned to the 26<sup>th</sup> October 2016 at 10 am for sentence pending the probation report.

Dated this 17<sup>th</sup> day of October 2016

