



IN THE DISTRICT COURT OF NAURU
CRIMINAL JURISDICTION

Criminal Case No. 47 of 20

THE REPUBLIC

-v-

JOHN-ONE DOWEDIA

SENTENCE

For the Prosecution: Ms. Susan Serukai
For the Defendant: Mr. Ravunimasei Tagioakatini
Trial: 18-19 March 2021
Judgment: 25 March 2021
Sentence: 28 April 2021

Catchwords:

Sentence--Threatening to kill pursuant to section 91 of the Crimes Act.

Introduction

1. The accused was found guilty of one count of threatening to kill, contrary to section 91 of the Crimes Act 2016. The facts are set out fully in my judgment of 25 March 2021.

The Facts

2. Mrs. Valentina Bill lives in Denig District with her husband. The accused is her uncle and neighbour. He lives with his brother in a house that is about 12-13 paces away from Valentina Bill's house.
3. At about 7:10 am on 20th August 2020, Valentina was alone at her home as her husband had gone to work. Her husband built their house on the land next to the accused about 4 years ago and she noticed changes to his behaviour towards her as the building progressed.
4. On 20th of August 2020, Valentina woke up and went outside to find that some firewood which she had placed between their two houses had been moved so that it was now about 4-5 meters from her water tank and directly below some power lines. Valentina believed the firewood was moved by the accused. She said that it was set up ready to be lit so she moved them away from her house because there was a lot of firewood and if lit, would threaten her plastic water tank and the power lines. The accused was watching her do this and asked her why she moved it.

5. They exchanged words and then he told her in a menacing way, “**You should move from here and return to your mother’s home. If you don’t move from here, I will murder you both because this is my home.**” She believed he meant it was his land when he said it was his home.
6. Valentina said she was not sure who the second person was when the accused used the word “both of you.” She said he could have meant her husband who lived with her or her mother, who lived in another part of Denig District.
7. Valentina said the threat caused her heart to beat so fast that she started to blank out because he lowered his voice but said the words in a menacing way like he didn’t want anyone but them to hear it. They were alone at the time and she was terrified.
8. Valentina said she then went inside her home and tried to calm down. She then called Joba, the accused’s brother who was staying with him. Joba was at work and told her to decide what she wanted to do on her own as he had no control over the accused. PW1 then went to her mother and told her what happened. Valentina said her heart was beating very fast and she nearly blanked out again when she recounted the incident to her mother. Her mother told her to report the matter to the police and she did so at about 8:00 a.m, less than an hour after the offence.

Seriousness

9. The starting point in any sentence is to establish the objective seriousness of the offending. This requires the examination of the accused’s culpability or fault and the harm caused, intended or likely to be caused. Harm is defined in section 8 of the Crimes Act to include both physical and mental harm. The culpability starts with negligence at the bottom of the scale, followed by recklessness, knowledge and with intentional acts at the top of the scale. The seriousness of the offending determines the starting point of the sentence.
10. This was an intentional act and therefore highest on the culpability scale. The victim said she was so scared by the threat that her heartbeat increased so much that she “blanked out.” When she went to see her mother, she was still afraid and her heartbeat still elevated. The words themselves are scary—he told her that he will murder them unless they leave. This was a long term conditional threat. It is not an easy thing for Valentina to leave her house which she had had built in the last 4 years. As long as she remains in that house, the threat exists. Valentina Bill was so scared that she underwent physiological changes that are associated with the fight or flight response not only when the threat was made but when she recounted the incident to her mother.
11. I would therefore rate this offending at above the midpoint of the seriousness scale.

Personal Circumstances

12. The accused is 36 years old and lives in Denig with his brother. He has been in remand on another case in the Supreme Court since 20th August 2020, but was charged with this offence on 3 September. He is the maternal uncle of the victim. The accused was sober but angry when he made the threat.

Mitigating Factors

13. The accused is a first offender and he is remorseful.

Aggravating Factors

14. The aggravating factor for this offending is that the threat was carried out when they were alone. Threats made in front of other people are quite often not carried out immediately or at all because either the witness can physically stop the maker of the threats or because the maker of the threat does not want a witness present when he carries out his threat.
15. The fact that they were closely related can sometimes be a breach of trust and therefore an aggravating factor but not in this situation as the accused and Valentina's family were not on good terms before this incident.

Tariff

16. The maximum sentence for this offence is 7 years imprisonment. There is no tariff for this offence as this is the first such case under the Crimes Act 2016. Defence Counsel referred to the case of *R v AD NRDC Crim Case No. 19/2019* where this court sentenced the accused to 12 months imprisonment for threatening to cause serious harm contrary to section 92 of the Crimes Act 2016 with a maximum sentence of 5 years imprisonment. In the same sentence, however, the court sentenced the accused to 2 years imprisonment for intentionally causing serious harm. That offence carries a maximum sentence of 9 years imprisonment.

Sentence

17. From my assessment of the seriousness of the offending, I would pick a sentence of 2 years imprisonment as the starting point. I would add 3 months for the aggravating factor and reduce the sentence by 3 months for the mitigating factors, leaving a sentence of 2 years imprisonment.
18. The accused has been in remand for this offence from 3 September 2020, a total of 7 months and 25 days. When he was charged, he was already in remand by the Supreme Court and so he could not be bailed by this court. When a person surrenders to the jurisdiction of this court, he is in remand until bailed. Since he was not bailed, the accused was in remand also from this court for the period from 3 September 2020. The accused's sentence will therefore be reduced for the time in remand.

Orders

19. The accused is convicted and sentenced to 2 years imprisonment less the period of 7 months and 25 days spent in remand.
20. 14 days to appeal.


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Penijamini R. Loma
Resident Magistrate

