



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No. 5 of 2018
*In the matter of an appeal from the
District Court at Yaren of Criminal Case
No. 16 of 2017*

BETWEEN

The Republic

Appellant

And:

Jaden Adun

Respondent

Before: Khan, J
Date of Sentencing Submission: 26 April 2019
Date of Sentence: 27 April 2019

Case may be cited as: *Republic v Adun*

CATCHWORDS:

Where accused is a member of Parliament charged with the offence of intentionally causing harm contrary to section 74 of the Crimes Act 2016- Where there is a need to have consistency in sentencing approach- Whether custodial sentence is warranted.

Held: Custodial sentence is warranted- 13 months imprisonment.

APPEARANCES:

Counsel for the Appellant: F Lacinavalu
Counsel for the Respondent: S Valenitabua

SENTENCE

INTRODUCTION

1. On 16 March 2017 you were charged with the following offences:

Count 1

Statement of Offence

Intentionally causing harm contrary to s.74(a), (b) and (c)(2) of the Crimes Act 2016.

Particulars of Offence

Jaden Adun on 16 March 2017 at Anabar District in Nauru intentionally engaged in conduct which caused harm to Saraj Hamedan Mojtaba without his consent and Jaden Adun intended to cause harm to Saraj Hamadan Mojtaba.

Count 2

Statement of Offence

Damaging property contrary to s.201(a) and (b) of the Crimes Act 2016.

Particulars of Offence

Jaden Adun on 16 March 2017 at Anabar District in Nauru caused damage to a Samsung Galaxy S6 Edge Mobile Phone belonging to Saraj Hamadan Mojtada and was reckless about causing damage to the said Samsung Galaxy S6 Edge Mobile Phone.

2. On 20 March 2018 the District Court acquitted you on both counts and an appeal was filed on 22 March 2018 by the Director of Public Prosecutions against the acquittal on count 1.
3. The appeal was heard on 12 April 2019 and a judgement was delivered on 25 April 2019 setting aside the order of acquittal and you were found to be guilty of the charge of intentionally causing harm.
4. Having heard submissions from the counsels for the Republic and your counsel I have entered a conviction against you in respect of the charge of intentionally causing harm.
5. You are a member of Parliament for Anabar District having been elected to Parliament in the last election in July 2016.
6. The complainant was a refugee and had been living in Nauru since 2013. The complainant was a handyman and/or a carpenter.
7. Both you and the complainant knew each other quite well and he did some work around your house. Initially, he tiled your bathroom for which he was paid. He subsequently did some interior painting and claimed that you owed him the sum of \$1,380. On 16 March 2017 he came to your house to ask for the money, which according to him was owing for some 8 months.
8. When he asked you for his money you in turn asked for a receipt/quotation. He advised you that he already gave you a quotation. An argument ensued between the two of you and the complainant was assaulted by you and he received superficial injuries to his upper and lower lip and the upper lateral thigh.

SENTENCING SUBMISSIONS

9. I have read sentencing submissions from both counsels.

The Republic's Submission

10. Mr Lacinavalu made written as well as oral submissions for and on behalf of the Republic. Although he was not personally in carriage of this matter either in the District Court or on appeal to this court, however, he has made some very helpful submissions on law and the sentencing options. Amongst others things he submitted that a probation order could be made under the Criminal Justice Act 1999 and/or an immediate custodial sentence can be imposed. In support of his submission for a custodial sentence he relied on the case of *Amran v R*¹ in which a sentence of 8 months was not disturbed on appeal.

The Respondent's Submission

11. Mr Valenitabua also made written and oral submissions on your behalf in which he provided your personal details and addressed the court as the circumstances of the offending and urged the Court not to enter a conviction as it may disqualify you from contesting the forthcoming elections due later this year. He admitted that you have 2 previous convictions were. He also provided 3 cases authorities in which conviction was not entered for 2 matters.

Your personal circumstances

12. You are 42 years old, married with 8 children and your spouse is unemployed. You are the sole bread winner in the family and you provide for them from your Parliamentary salary and the additional income that you earn as a diver to catch fish.

APPROPRIATE SENTENCE

13. The onus on the court is to impose an appropriate sentence as provided for by s.278 of the Crimes Act 2016, which inter alia requires this court to promote your rehabilitation and to denounce your conduct. A further onus on the court and an important one is to provide some consistency in the sentencing and of course depending on the circumstances of the offending the courts can impose different sentences.
14. Mr Lacinavalu relied on *Amran v R* in which the accused was charged for a similar offence and a sentence of 8 months was imposed by the District Court and it was not upset on appeal. The circumstances of offending were very different. At [2] of the judgement the facts were detailed as:

[2] The victim is a female and was on duty as a community liaison officer at Location, Denig District, at 2pm on 27 May 2016 with another colleague. The defendant was with a group of men partying in a hut, drinking alcohol and playing loud music. The victim called the police because she was worried that

¹ [2017] NRSC 89 Khan J

the drinking party may cause harm or damage property in the area. Following the complaint by the victim the police arrived and dispersed the party. Everyone left except for 2 women who were displeased as to why the victim complained to the police and they confronted her. She told them to go away and they did. The defendant then ran and confronted the victim and asked her as to why she called the police. She told the defendant that she was only carrying out her duties. The defendant then argued with her and told her not to be smart. The defendant then poked his finger in the area around the victim's right eye. When she told him to stop, the defendant used his finger to poke her left eye. The defendant then punched her in the face and she started to bleed from her mouth and she covered her face with her hands. The defendant then punched her on the side of her head causing her to fall to the ground. She then covered her head because she was hurt. When she was on the ground, the defendant continued to assault her by stomping on her thighs and legs causing her to urinate and wet her clothes. Her colleague, Rubiana, who was with her called the police to assist. The victim was helpless during the assault and she screamed out 'Jesus help me'. During the assault the defendant was swearing at her and also threatened to assault her more. The defendant threw a fake punch at her and drove away on his motor bike.

15. On the other hand, Mr Valenitabua relies on 3 cases from the District Court which are as follows:

- 1) *Republic v Reweru*² in which the accused, a police officer, hit the complainant with an iron post repeatedly whilst he was asleep. The accused was a first offender and the District Court imposed a fine of \$900 and made an order for compensation in the sum of \$300 without entering a conviction.
- 2) *Republic v Deireragea*³. In this case a police officer whilst on duty assaulted the complainant who was alleged to have sexually harassed his sister. At the time of the assault the complainant was handcuffed and was unable to protect himself and the assault took place in the presence of other police officers. The accused was a first offender and a fine of \$1,400 was imposed without a conviction being entered.
- 3) *Republic v Agir*⁴. The facts were set out at [2] as follows:

[2] The facts are that at about 9.30pm on 21 April 2018 Yvette's son Rodell Depaune when to his home with injuries to the right side of his head and shoulder. Yvette asked him as to what happened and he replied that you struck him with your car. Yvette was furious and got into her car and came to see you. You were sitting outside your laundry at your home at Aiwo District with your wife when Yvette drove up in her car and got out and confronted you on why you had run over her son with your car. You then punched her in the face and you continued to punch her face. It is alleged that you punched her several times in the face but she covered her face with her hands. She fell to the ground and said you kicked her several times when she was on the ground. In the summary of facts, and in the caution interview with the police

² [2018] NRDC 5; Criminal Case 8 of 2018 (1 June 2018)

³ [2018] NRDC 6; Criminal Case 49 of 2018 (9 August 2018)

⁴ [2018] NRDC 9; Criminal Case 41 of 2018 (26 November 2018)

which was tendered by agreement, you denied that she fell to the ground and you kicked her. You said that she came straight to you after getting out of the car and without saying anything she slapped you on the face. You had had some liquor before that. You asked her 'you did not come to talk but instead you assaulted me'. According to you, she slapped you again on the face and poked her fingers in your eyes. You then retaliated by grabbing her and punching her in the face. Nobody stopped you from committing the assault.

Subsequently the complainant's family assaulted the accused in retaliation causing him a black eye. The complainant and her family were not charged and forgave the accused.

The District Court entered a conviction against the accused and placed him on a probation order under section 7 of the Criminal Justice Act 1999.

YOUR PREVIOUS CONVICTIONS

16. Unlike the accused referred to in paragraph 15 above, you have 2 previous convictions and under section 279 of the Crimes Act I am required to take that into consideration. In *Republic v Jaden Adun*⁵ you were sentenced for 2 counts of public nuisance under the Crimes Act and your counsel in mitigation submitted that you have a short temper and in the District Court you admitted yourself that you have a 'bad temper'.

AGGRAVATING CIRCUMSTANCES

17. One of the aggravating features of this case is that at the time of the offence you were a Member of Parliament and engaged the complainant, who was a refugee to do work around your house, and you literally gave him the runaround for the money. You did not pay him for 8 months and when he demanded payment, you assaulted him instead of resolving the issue through dialogue and the reason you assaulted him was because you have a bad temper.
18. The other aggravating feature about this case is that the complainant and others were sent to Nauru as asylum seekers. The Government of Nauru was responsible for their welfare and protection. You were an integral part of the Government by virtue of your appointment as an Assistant Minister and you assaulted the complainant when your Government had undertaken to protect him. Your action has the potential of damaging the image of Nauru.
19. The most aggravating feature about this case is that the Crimes Act 2016 was enacted during your term as a Member of Parliament and you yourself have breached the Act on 3 different occasions. Parliament makes the law and if its own members are not able to uphold it and breach it on a frequent basis, as you did, then the whole Parliamentary system would collapse and people's confidence in it would be lost.
20. As can be seen from the earlier discussions that there is great deal of variance in the sentences imposed in the District Court. In *R v Amran* a sentence of 8 months was imposed by the District Court and the appellant appealed against the magistrate's act of

⁵ Criminal Case Nos. 44 of 2016 and 17 of 2018

adding 5 months as an aggravating factor to the head sentence. The prosecution did not file a cross appeal and it was held by this court that the magistrate was justified in doing so. In other cases, fines were imposed without a conviction. The onus on the courts is to provide consistency in sentencing offenders.

PREVELANCE OF THIS KIND OF OFFENCE

21. It is very obvious that this kind of offence is quite prevalent as can be seen from the sentencing of the District Court discussed above and most cases involved very vicious assault and weapons were used and yet the sentences imposed were very lenient.
22. In *John Jeremiah and Job Cecil & others v Republic* Criminal Appeal No 1 of 2018 the Nauru Court of Appeal stated at [26] that:

“ that sentencing is not a mathematical exercise..... A judge must reach a single sentence for each offence and must do so by balancing many different and conflicting features.
23. Sentencing is indeed a very difficult task and more so when there is so much variance in the sentences imposed for similar offences. It is the court’s duty to ensure that there is consistency in approach in sentencing offenders. In *R v Timothy* criminal case number 3 of 2019 (Khan J) – the accused was charged with the offence of recklessly causing harm contrary to s.72 of the Crimes Act 2016 which carried a maximum penalty of 15 years imprisonment. The accused was a first offender and only 20 years old. He was sentenced to a term of 4 years imprisonment which was just under 1/4 of the maximum sentence of 15 years imprisonment.

MAXIMUM SENTENCE FOR THIS OFFENCE

24. The maximum sentence for this offence is 7 years imprisonment and if I were to use the same proportion that I used in the case of *R v Timothy* then I could sentence you to a term of 21 months imprisonment.
25. Unlike Timothy you are not a first offender and you used violence to make your point when as a Member of Parliament you should have used your talking skills to persuade the complainant. All kind of violence must be condemned. Having taken all the matters into consideration you are sentenced to 13 months imprisonment.

DATED this 27 day of April 2019


Mohammed Shafiullah Khan
Judge

