



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

Criminal Case No. 10 of 2021

BETWEEN: THE REPUBLIC

PROSECUTION

AND: LOVANI JEREMIAH

ACCUSED

BEFORE: Keteca J

Date of Hearing: 05 June 2024

Date of Ruling: 12th June 2024

Case may be cited as: Republic v Lovani Jeremiah

Catchwords: Section 201 Criminal Procedure Act 1972; Evidence of the prosecution concluded, Evidence against the defendant inherently weak

Appearances:

Counsel for the Prosecution: **M. Suifa'asia**

Counsel for the Accused: **S. Hazelman**

RULING

INTRODUCTION

1. The accused, Lovani Jeremiah is charged with one count of Causing Harm to Police Officer contrary to section 77(a)(b)(c) and (i) of the Crimes Act 2016. The Court notes that the initial Information had section 77(a)(b)(c) (d) and (ii) (no aggravating circumstances).
2. The prosecution called two witnesses, PW1-Sergeat Marvin Tokaibure and PW2- Senior Constable Anton Iga.

THE CHARGE:

3. The Information reads:

Statement of Offence

CAUSING HARM TO POLICE OFFICER: contrary to section 77(a)(b)(c)(d) and (i) of the Crimes Act 2016.

Particulars of the offence

LOVANI JEREMIAH on the 10th day of April 2021 at Meneng District in Nauru, intentionally engaged in conduct, namely slapping **Acting Sergeant Marvin Tokaibure** with a Bluetooth speaker in her hand which landed on his face and the conduct caused harm to **Acting Sergeant Marvin Tokaibure** without his consent and that **LOVANI JEREMIAH** intended to cause harm to **Acting Sergeant Marvin Tokaibure**, because she believed that **Acting Sergeant Marvin Tokaibure** is a police officer and he is in fact a police officer.

THE LAW – NO CASE TO ANSWER

4. Section 201 of the Criminal Procedure Act 1972 is the relevant provision on a submission of no case to answer.

5. In **Republic v Jeremiah** [2016] NRSC 42, (applied in **R v Obadiah Dabwido**, SC Criminal Case No. 13 of 2019; **R v Foreman Roland**, SC Criminal case No. 4 of 2022) Crulci J issued guidelines on a submission of no case to answer at [4], [5] and [22] as follows:

[4] *In Nauru the statutory provision for the consideration of a submission of no case to answer is found in the Criminal Procedure Act 1972:*

“201. Where the evidence of the witnesses for the prosecution has been concluded and any written statements and depositions properly tendered in support of the prosecution case have been admitted, and the evidence or statement, if any, of the accused taken in preliminary enquiry has, if the prosecutor wishes to tender it, been tendered in evidence, the Court-

(a) If it considers that, after hearing, if necessary, any arguments which the prosecutor or the barrister and solicitor or pleader conducting the prosecution and the accused, or his barrister and solicitor or pleader if any, may wish to submit, that a case is not made out against the accused, or any one of several accused, sufficiently to require him to make a defence in respect of the whole of the information or any count thereof, shall dismiss the case in respect of, and acquit the accused as to the whole of the information or that count, as the case may be;..’

[5] *Section 201 is applicable to both the Supreme and District Courts as provided for by section 158 of the Criminal Procedure Act 1972.*

[22] *The following are guidelines when a submission of no case to answer is made:*

(1) If there is no evidence to prove an element of the offence alleged to have been committed, the defendant has no case to answer.

(2) If the evidence before the court has been so manifestly discredited through cross-examination that no reasonable tribunal could convict upon it, the defendant has no case to answer.

(3) If the evidence before the court could be viewed as inherently weak, vague or inconsistent depending on an assessment of the witness's reliability, the matter should proceed to the next stage of the trial and the submission dismissed.

CAUSING HARM TO POLICE OFFICER

6. The elements of Section 77(a)(b)(c)(d) and (i) of the Crimes Act 2017 may be summarised as:
 - a. A person (the accused);
 - b. Intentionally engaged in a conduct;
 - c. The conduct causes harm to another person;
 - d. Without the person's consent;
 - e. The accused intends to cause harm to the other person because the accused believes the other person is a police officer;
 - f. The other person is in fact a police officer
7. Penalty: (i) if aggravating circumstances apply- life imprisonment of which at least 12 years imprisonment to be served without parole or probation;
8. Section 17 of the Crimes Act 2016 defines 'intention' as:
 - (1) A person has 'intention' with respect to conduct, if the person means to engage in the conduct.
 - (2) A person has 'intention' with respect to a circumstance, if the person believes that it exists or will exist.
 - (3) A person has 'intention' with respect to a result, if the person means to bring it about or is aware that it will occur in the ordinary course of events.
9. Section 8 of the Crimes Act 2016 defines:

'conduct' means an act, an omission to do an act, or to a state of affairs, and includes a series of acts, or omissions to do acts;

'harm' means physical harm or both;

'physical harm' (a) includes any of the following, whether temporary or permanent:

 - (i) Unconsciousness;
 - (ii) Pain;
 - (iii) Disfigurement;
 - (iv) Infection with a disease; or
 - (v) Any physical contact with a person to which the person might reasonably object in the circumstances, whether or not the person was aware of it at the time; but

(b) Does not include being subject to any force or impact that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or to life in the community;

10. Section 9 of the Crimes Act 2016 defines:

‘consent’ means free and voluntary agreement by a person with the cognitive capacity to give that agreement.

(2) Without limiting subsection (1), a person’s consent to do an act is not freely and voluntarily given if the consent is obtained by any of the following:

- (a) force;
- (b) threat or intimidation;
- (c) fear of harm;
- (d) exercise of authority;
- (e) false, misleading or fraudulent representations about the nature or purpose of that to which the person consents; or
- (f) mistaken belief induced by another person.

(3) Without limiting subsection (1), a person does not have the cognitive capacity to give consent to an act if one of the following applies:

- (a) the act occurs while the person is asleep or unconscious;
- (b) the act occurs while the person is intoxicated to the extent that the person cannot choose to consent or not to consent; or
- (c) the person is unable to understand the nature of the act.

(4) Without limiting subsections (1), (2) or (3), a person who does not protest or offer actual physical resistance to an act is not, by reason only of that fact, to be regarded as consenting to the act.

SUBMISSIONS

11. Relying on the guidelines in **Republic v Jeremiah** [2016] NRSC 42, Ms Hazelman refers to this evidence:

Question- When you used force on her to bring her under your control, she was carelessly and recklessly swinging her arms?

Ans- Yes

Q- That’s when you felt her hand landing on you so hard?

A- Yes

Q- She would not intend to assault such a senior police officer in the company of two other male officers?

Ans- Yes

12. Counsel submits that this evidence negates any ‘intention’ of the accused to cause harm to the police officer.

13. Counsel also submits that both the prosecution witnesses failed to give any evidence ‘regarding the use of a Bluetooth speaker as a weapon in the commission of the offence.

14. Counsel concludes that 'the failure to establish intention beyond reasonable doubt, no reasonable tribunal would convict the accused.'

RESPONSE BY THE PROSECUTION

15. Ms Suifa'asia also refers to the guidelines in the **R v Jeremiah** case above. In referring to the 'nexus of the evidence to the offence' counsel submits the following:
- i. There is no dispute that the defendant was drinking alcohol with her friends at the location identified during the crime scene visit on 05th June 24.
 - ii. There is no dispute that the defendant did not comply with the instructions of PW1 and PW2 to move away from that area.
 - iii. The defendant was 'aggressive, careless and reckless in response to the presence of the police and instructions from PW1 and PW2.
 - iv. The defendant 'hit Acting Sergeant Marvin Tokaibure with her hand in her aggressive, careless conduct at the material time.'
 - v. Acting Sergeant Marvin Tokaibure did not consent to the harm caused by the defendant.
 - vi. PW1 is in fact a police officer.
 - vii. In light of the above, the matter should proceed to the next stage of the trial and the defendant to make her defence.

DISCUSSION

16. The court notes that from the evidence, the 'intention' of the accused to cause harm to the police officer ' is apparently absent. This is based on the evidence of the complainant himself.
17. I remind myself of the observations of CJ Fatiaki when he dealt with the Bail application in this matter. He delivered his ruling on 16th June 2021.
18. At paragraph 33, he said:
- 'What's more and relevantly in the circumstances of this case, where alcohol consumption is involved, Section 14(2) of the Crimes Act 2016 provides that: "*Conduct can only be a physical element if it is voluntary*" in the sense of being an 'act' that " is a product of the will of the person who engages in the act." In other words, the act must be willed and intentional [as defined in Section 17(1)] and not accidental or the unintended consequence of "*flailing ones' arms*" to avoid being held or restrained or being stung by a bee or mosquito."
19. From the evidence, it appears that the act or the conduct of the accused here is akin to "flailing ones arm' to avoid being held or restrained.
20. The court will not conclude at this stage that the defendant has no case to answer. Based on guideline 3 from the **R v Jeremiah** case that the evidence against the defendant is inherently weak and the possibility of being convicted of a minor offence under Section 129 of the Criminal Procedure Act 1972, this matter will proceed to the next stage of the trial.

CONCLUSION

21. The application of 'no case to answer' by the defendant is dismissed.
22. Explain the options available under Section 201(b).

DATED this 12 June 2024



Kiniviliame T. Keteca

Judge

