



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

**Criminal Case No. 23 of 2019**

**BETWEEN:** THE REPUBLIC

**PROSECUTION**

ELKO-JOE AGIR

**ACCUSED**

**BEFORE:** Keteca J

**Date of Hearing:** 18<sup>th</sup> -19<sup>th</sup> Feb, 12<sup>th</sup>, 27<sup>th</sup> March 2025

**Date of Judgment:** 17<sup>th</sup> April 2025

**Catchwords:** Intentionally Causing Serious Harm: Contrary to Section 71(a)(b)(c)(ii) of the Crimes Act 2016.

**Appearances:**

Counsel for the Prosecution: **S. Shah**

Counsel for the Accused: **R. Tom**

**JUDGMENT**

**BACKGROUND**

1. The accused is charged with one count of Intentionally Causing Harm. It is alleged that he caused serious harm to Jecain Menke by striking him with a knife.

## **THE CHARGE**

2. The Information reads:

### **Statement of Offence**

**INTENTIONALLY CAUSING SERIOUS HARM**: Contrary to Section 71(a)(b)(c)(ii) of the Crimes Act 2016.

### **Particulars of Offence**

Elko- Joe Agir on the 28<sup>th</sup> of November 2019, at Uaboe District in Nauru, intentionally engaged in conduct that is striking Jecain Menke with a knife, and the conduct caused serious harm to Jecain Menke and ELKO- JOE AGIR intended to cause harm to Jecain Menke by the conduct.

3. The prosecution called 4 witnesses. **PW1**, the victim stated as that his complaint related to him being chopped by the accused. On 28<sup>th</sup> Nov 2019, he was drinking Vodka with the accused outside the accused's home. They argued. He was drunk. The accused went into his house. Brought a knife. PW1 had his back towards the accused as he was struck with the knife. PW1 turned around and saw the accused with the knife. PW1 ran away. He identified the accused in court. He did not consent to the accused striking him with a knife. The medical report of PW1 was tendered as PEx-1 under Section 147A Criminal Procedure Act 1972. Counsel for the accused did not object.
4. Under cross- examination, he said that he wanted to withdraw his complaint as he had reconciled with the accused. When questioned by the Court, PW1 said that what he said in his examination in chief was true.
5. **PW2**- Hibbed Temaki testified that on 28<sup>th</sup> Nov 19, he saw the PW1- he was bleeding. PW1 said- 'the other guy did it.' PW1 referred to the accused. He approached the accused. He saw blood on PW1's arm.
6. PW3- Georstina Togagae works for the Public Health Department. PW1 called out to her to drop him home. Initially, she didn't notice that he was bleeding. As PW1 got off, she then noticed that he was bleeding from the left shoulder. She covered the wound with a piece of cloth. A police officer drove PW1 to hospital. She followed them. PW1 said that he had an argument with the accused. The accused went inside his house, got a bush knife and hit him from the back.
7. PW4 – Derrick Deduna was the IO. He is no longer in the NPF now. He attended to the report and came across the badly injured PW1. He took photos of the wounds- he was badly injured. He was instructed to arrest the accused. The accused was 'knocked out' on the ground. He arrested the accused who was 'full drunk.' He informed the accused that what he did was serious and he was being placed under arrest.
8. On cross- examination he advised the accused of his right to a legal practitioner.

9. I ruled that there was a case to answer. The accused opted to give evidence on oath. He is 43 years old and has worked for 23 years with the Nauru Fisheries Marine Resources Authority. He was drinking at his home before he joined 2 friends at Nibok. The victim joined them. He argued with PW1. He left with PW2 to go and drink at his place. PW1 arrived uninvited and started challenging him to a fight. He turned and went to his house as he did not want to fight. He heard footsteps behind him. He grabbed a tool from a cabinet inside the house. He turned and hit PW1 with what he was holding. PW1 ran away. In his words- 'When he ran, I saw the knife in my hand.' He was scared. He didn't know what to do. He sought forgiveness from PW1. He informed PW1 that he intends to seek forgiveness from his parents. He went to PW1's house. 'I asked for forgiveness. They accepted it.' He said that it's part of Nauru custom. He says that it's quite a significant/ high customary practice.
10. Under cross – examination he said that the argument with PW1 was over a girl who was related to him. He had been drinking from the night before till 6am the next day. He told PW1 to stop talking about her as she's his family. He returned to his residence in Uboe. PW1 came and started arguing with him again. He did not want to fight PW1. PW1 was smaller than him. When PW1 took his shirt off-'he had muscles.' He was scared of PW1. He was not angry but scared. He was asked the following questions:

<b>Question</b>	<b>Why did you go to your house and get a weapon?</b>
Answer	I wasn't going for a weapon. I was going to go in and lock the door. I heard his footsteps behind me, I was scared. I grabbed whatever I could get to defend myself. That's when I grabbed the knife, turned around and struck him. I struck him once on his shoulder.'
<b>Question</b>	<b>You knew he was unarmed and intentionally struck him?</b>
Answer	In my assumption – by grabbing a weapon, it'll scare him to run away. I was wrong."
<b>Question</b>	<b>You struck him because of the argument in Nibok?</b>
Answer	I struck out of fear. On reconciliation, he said that he told PW1's parents that after this case, they'll have a big feast.
<b>Court Question</b>	<b>What were the actual words you used when you spoke to PW1's parents?</b>
Answer	I have come today to ask from my heart for your forgiveness. I understand your feeling as a parent as I am a parent too. PW1's father said- 'We already forgave you.

11. The accused did not present any items in seeking forgiveness. He kept saying that after their talk, they had a meal. When asked as to what food did he take for their meal- 'Some packets of Twisties, the accused responded.'
12. I asked the accused to stand and noted that he is more than twice the size of PW1, the person he was supposedly scared of.

## DISCUSSION

13. Section 71 (a)(b) (c) of the Crimes Act 2016 states:  
 'A person commits an offence, if:
  - (a) The person intentionally engages in conduct;
  - (b) The conduct causes serious harm to another person; and
  - (c) The person intends to cause serious harm to that or any other person by the conduct.
 Penalty:  
  - (i) If aggravating circumstances apply- 20 years imprisonment; or
  - (ii) In any other case- 15 years imprisonment
14. Section 17 provides:  
 '(1) A person has **intention** with respect to conduct, if the person means to engage in the conduct.'  
 '(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.'
15. In Kural v The Queen (1987) 162 CLR 502; 70 ALR 658; 29 A Crim R 12 Mason CJ, Deane and Dawson JJ said this on the *mens rea* of drug importation-  
 'What we said is designed to emphasise that the existence of the **requisite intention** is a question of fact and that in most cases the outcome will depend on an inference to be drawn from primary facts found by the tribunal of fact. In this, as in other areas of the law, it is important not to succumb to the temptation of transforming matters of fact into proposition of law.'
16. In *Cutter v The Queen* ( 1997) 71 ALJR 638; 143 ALR 498; 94 A Crim R 152 Kirby J, with whom McHugh J agreed said:  
 'Attempts have been made to define the meaning of 'intent' or its derivatives. However, the better view is that the word, being one of ordinary acceptance, should not be defined but should be left to the trier of fact, without elaboration as to its meaning (R v Moloney [1985] AC 905 at 926. ... Clearly enough, where there is no direct evidence to which the trier of fact can safely resort, so as to draw an inference as to the 'subjective' intention of the accused, **the principal focus of attention will ordinarily be the facts surrounding the alleged offence.**'

17. Section 17 of the Crimes Act 2016 has defined the word- 'intention.' In looking at the definition, the 'principal focus of attention' will be the facts 'surrounding the offence.'

18. In this case, the identity of the accused is not in dispute. The issues are twofold:

- i. whether the accused 'intentionally' struck PW1 with the knife?
- ii. whether the accused, in striking PW1 with the knife, 'intended' to cause serious harm' to PW?

19. What do the facts say? PW1 said:

- a. 'We argued. He came, took a knife. He struck me with the knife. I had my back towards him.'
- b. He told PW3- 'Elko Joe went inside, got a bush knife and struck him from the back.'

20. The accused said:

- a. Q- Why then did you go to your house and get a weapon?  
Ans- **I wasn't going for a weapon. I was going to go in and lock the doors.**
- b. 'That's when I grabbed the knife, turned around and struck him. I struck him once on his shoulder.'
- c. 'In my assumption, by grabbing a weapon, it'll scare him to run away.'
- d. He was afraid. He grabbed what he could. He was going to enter his house and lock the door. He heard footsteps behind him. He struck the victim out of fear.

21. Who am I to believe here? If the accused intended to go into his house and lock the doors, why didn't he do so? The victim (PW1) had his back towards the accused when he was struck with the knife. PW1 clearly said this. The accused also admitted this. He said- **'That's when I grabbed the knife, turned around and struck him.'** The accused went further. He knew how many times he struck PW1. He also knew the part of PW1's body that he struck with the knife. In his words- **'I struck him once on his shoulder.'** The injury on PW1's shoulder also suggest that he was struck from the back. The testimony by the accused that he was scared of PW1 and that he struck him out of fear is rather difficult to believe. He had ample time to enter his house and close the doors, if he was really scared of PW1. The accused is also much bigger than the small and lightly built victim. PW1 clearly had his back towards the accused when he was struck with the knife. These facts in their totality, support my inference that the accused 'intentionally' struck PW1 with the knife.

22. Did the accused '**intend to cause serious harm**' to PW1? The accused went inside his house. He returned with a knife. PW1 had his back towards the accused. The accused knew that he was holding a knife. He intentionally struck PW1 with it. As per the definition of 'intention' under Section 17(3) of the Crimes Act 2016- '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 cause of events.**' The facts support the inference that 'with respect to a result, in this case, the serious harm caused by being struck with a knife, the accused is aware that such harm will be a result of his striking PW1 with the knife. This clearly shows that the accused intended to '*cause serious harm*' to PW1.
23. I remind myself that the prosecution has the burden of proving all elements of the offence as charged under Section 25 of the Crimes Act 2016.
24. What does 'beyond reasonable doubt' mean? In *Keeley v Brooking* 1979) 143 CLR 162; 25 ALR 45 Barwick CJ said:  
'To be satisfied beyond all reasonable doubt is, for the purposes of the law, to be certain.'
25. For the present case, I am certain that on the day in question, the accused intended to strike PW1 with a knife and that he intended to cause serious harm to him as per the charge under Section 71(a)(b)(c)(ii) of the Crimes Act 2016.

## **CONCLUSION**

26. I find the accused guilty as charged.

**DATED this 17th Day of April 2025**

  
**Kiniviliame T. Keteca**  
**Judge**

