



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 92/2022

THE REPUBLIC OF NAURU

-v-

STARISON ENGAR

Before: RM. Neil Rupasinghe

Prosecutor: Ms Andie Driu

Defence: Mr Ravuanimasei T.

Date of Sentence: 18th April 2023

SENTENCE

Catchword: Sentence— Intentionally Causing Harm contrary to Section 74(a)(b) and (c) of the Crimes Act 2016.

1. The accused pleaded guilty to one count of Intentionally Causing Harm contrary to Section 74(a)(b) and (c) when the charge was read and explained at the open court.
2. Summary of fact suggests accused Starison Engar, on the 4th Day of December 2022 at Meneng District of Nauru, did intentionally engage in conduct that caused harm to Treasure Hunt without her consent by punching her and slapping her, with the intent of harming the said Treasure Hunt without her consent.

3. The Accused admitted the summary of facts after the Prosecution served a copy of the same and read it at open court. Then the parties were advised to file sentencing submissions. Both parties tendered written submissions supporting their position connected to the sentence, and this Court acknowledged the same.
4. According to the mitigation of the accused, he is a 23 years old, single first offender. He was employed as a clerk at the Department of Justice and earned \$ 650 per fortnight. He entered a plea of guilt at the very first opportunity. He acknowledges his action was wrong and is remorseful for it. He had complied with the police at arrest. He assisted by giving them the password to his phone. Upon retrieving his phone, he deleted the other intimate videos and photos of himself and was accused after police officers asked him to do so at the police station. He added that he is still in a relationship with the victim, AND the victim had indicated that she wishes to plead for leniency during the sentence.
5. The defendant added that Due to the alleged incident, he was suspended from his employment and is now doing odd jobs to pass the time. And re-employment is highly unlikely if he is issued a conviction. The defendant suggests that there are no aggravating facts. However, he acknowledges and accepts the impact on the victim, the pain and the suffering. It is further submitted that the offending of the defendants does not meet the custodial threshold. Therefore sought a non-custodial sentence, a fine or a suspended sentence as the punishment.
6. The Prosecution submitted that the defendant had agreed for the victim to have a sexual threesome with one of his friends and then attacked the victim due to jealousy he had when he saw the sexual act between the victim and his friend. Further, the offending was unprovoked. Therefore, it should be considered aggravating facts of this case.it is also submitted that there is a need for specific deterrence in this matter.
7. Further, the prosecution suggests that when deciding the appropriate sentence, the court must bear in mind the prevalence of this type of offence in the communities, the community's revulsion and the value placed on women in general. I do agree with this suggestion without any hesitation.

8. Referring to the Victim Impact Report, the Prosecution confirmed that the victim had forgiven the Accused. However, per the medical report, I noted that the victim had suffered headaches, brushers on her face and blurred vision in her left eye. Therefore I can not consider it a complete mitigation that would lead to a non-custodial sentence. In addition, the victim stated they are in a casual relationship, not a girlfriend/boyfriend.
9. In this sentence, I would like to give attention to the Director of Public Prosecutions' suggestion of the prevalence of offence against the woman as the protection and respect for vulnerable persons or women in a society reflects the social standards of the relevant community. No civilised society would tolerate any violence against women.

The Law

10. Section 74 of The Crimes Act 2016 could be reproduced as follows;

“ Sec. 74. *Intentionally causing harm*

A person commits an offence if:

- (a) the person intentionally engages in conduct; and*
- (b) the conduct causes harm to another person without the person's consent; and*
- (c) the person intends to cause harm to that or any other person by the conduct.*

Penalty :

- (I) if aggravating circumstances apply, -9 years imprisonment; or*
- (II) if any other case -7 years imprisonment . ”,*

11. In the case of **Republic v Jeremiah [2018] NRDC 2, Criminal Case 32 of 2018 (3rd October 2018)**, it was stated that the severity of the sentence must match the circumstances of the offending.

“The severity of the sentence required by section 279(1) requires the examination of the objective seriousness of an offending. This is arrived at by looking at the culpability of the offender and any injury, loss or damage resulting from the offence. This was an intentional act and therefore, highest on the culpability scale. The evidence shows however that the intention always of the defendant was to get away from the Police that were chasing him. I find that the intention to carry out this offence was held by him for a very short period as to be a reaction to being caught. The longer a person holds intent, the greater the moral culpability for the offence. This is the subjective part of the seriousness of the offending. His culpability is not increased.”

12. In *Republic v Jeremiah*, three months imprisonment was imposed for causing harm to a police officer. In *R v Akubor* [2020] NRDC 4; Criminal Case 18 of 2019 (10th March 2020), the Court imposed 12 months imprisonment for causing harm.
13. In the *Keanun Amram v Republic* Criminal Appeal 18 of 2017, the accused, 24 years old, pleaded guilty to one count of “Intentionally Causing Harm” upon a female victim aged 23 years old. The accused was sentenced to 8 months imprisonment, which was upheld on appeal.
14. In *Republic v Jaden Adun* Criminal Case 5 of 2018, the accused was a member of parliament and convicted for “Intentionally Causing Harm”, a male refugee. At the district court acquitted. However, at the appeal, The Supreme Court considered the MP post an aggravating factor and overturned the acquittal by imposing 13 months imprisonment.
15. The Parliament of Nauru has recognised well-settled sentencing principles of the world, which range from retaliation to rehabilitation of the accused.

"Kind of Sentences

Sec: 277.

Where a court finds a person guilty of an offence, it may subject to any particular provision relating to the offence and subject to this act, do any of the followings;

- (a) record a conviction and order that the offender serve a 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; or***
- (e) imposed any other sentence or make any order that is authorised by this or any other written law of Nauru" (emphasis added)***

- 14 . In this case, the accused has attacked the victim for jealousy, and there is no reason to be provoked. Therefore I convicted the accused as charged for one count of “Intentionally Causing Harm” contrary to 74(a)(b) and (c) of the Crimes Act 2016.

15. Accordingly, I would follow *Keanun Amram v Republic*, and for the above reasons, the convict deserved a custodial sentence; however, I consider the fact that the defendant is a first offender, the victim has forgiven the accused, and the injuries caused to the victim, I ruled that the convict deserves a partial custodial sentence in the lower range.

The sentence

16. After considering all the facts, sentencing submissions, the sentencing principles, this Court imposes that The Defendant is subjected to the following sentence;

- (a) For one count of Intentionally Causing Harm, The Defendant is sentenced to Ten (10) months, and he will serve Five (5) months. The remaining Five (05) months will be suspended for two (02) years.

17. Defendant has 21 days to appeal this sentence.

The seal of the District Court of Muru is circular, featuring a central emblem with a shield and a crown, surrounded by the text "DISTRICT COURT OF MURU" and "S.A.D.R.D.". Two stars are positioned at the bottom of the seal.
Neil Rupasinghe
(Resident Magistrate)