



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 41 of 2020

THE REPUBLIC OF NAURU

-v-

VIANNEY DEBAO

Before: RM. P. R. Lomaloma
Prosecutor: Ms. Susan Serukai
Defence: Mr. Ravunimasei Tagivakatini
Hearing: 24 November 2020
Judgment: 3 December 2020

JUDGMENT

Catchword: *Threatening to cause serious harm contrary to section 92(a)(b)(c) of the Crimes Act 2016; The threat must be made to harm either the person to whom the threat is directed or someone else, it cannot be a threat to self-harm.*

The Resident Magistrate is not functus officio once he enters a plea of guilty but before sentence.

The summary of facts do not have proof of an element of the offence charged—accused acquitted.

Introduction

1. The accused pleaded guilty to one count of threatening to cause serious harm contrary to section 92(a)(b)(c) of the Crimes Act 2016.

The Facts

2. The facts are:-

On 28th June 2020, it was alleged that the accused, Vianney Debao was walking angrily around the house. His father, Francisco Debao noticed that he was walking in and out of the house, slamming doors and even kicked the dog. His father offered him some food and cigarettes to calm him down but the accused continued to be angry. His father suggested that he go and sleep but the accused refused to do so. Francesco Debao then called the police as he could not control him.

Before the police arrived, the accused pretended to sleep on a bed located in the lounge. The accused had a carving fork with him and hid it with the intention to use it as a threat. When his father called out to the accused, he sat up and drew out the carving fork. He aimed the carving fork at his father posing a threat to him and then aimed it at his own chest and said, "I will kill myself should you come near me." The father feared this violent act and tried to negotiate with the accused. The accused then climbed on the table and jumped from it, with the intention to stab himself in the stomach with the same carving fork. Just when he jumped off the table, the carving fork fell from his hand and his father, together with the police seized the fork and arrested the accused.

3. The accused agreed to the summary of facts which have been set out in full above. The offence of threatening to cause serious harm is set out in section 92 of the Crimes Act and it provides:-

92 Threatening to cause serious harm

A person commits an offence if:

(a) the person threatens to cause serious harm to another person (or someone else); and

(b) the person:

(i) intends the other person to fear the threat will be carried out; or

(ii) is reckless about whether the other person fears the threat will be carried out; and

(c) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.

Penalty: 5 years imprisonment.

4. Subsection 92(a) states that the threat must be to cause serious harm to another person and therefore does not apply if the threats are to do serious harm to himself. The conditional threat by the accused to his father is to do kill himself if his father approaches him. This is an element of the offence and this has not been proved beyond reasonable doubt from the facts. I turn now to the statement:- *“The accused had a carving fork with him and hid it with the intention to use it as a threat. When his father called out to the accused, he sat up and drew out the carving fork. He aimed the carving fork at his father posing a threat to him..”*
5. One of the inferences we can draw from these actions is that the accused made a threat to his father to stab his father with the fork. A threat can be made by actions or words or a combination of both.¹ This statement in italics might appear on its own to be a threat to the accused’s father but to get its true meaning, we must look at the context and it is clear that this action was accompanied by the words, “I will kill myself if you come near me.” The true meaning of the threat is that it was a conditional threat to cause harm to himself is the condition he was making is met. Again it fails to meet the requirements of section 92(a) of the Crimes Act with which he is charged that the threat must be to harm either his father or someone else.
6. The issue that comes to the fore now is whether this court can reverse its finding of guilty that it had made already on the basis that I am *functus officio*.
7. In *Jovanovic v The Queen*(1999) 92 FCR 580; 106 a Crim R 548; 165 ALR 6 (FCA) the Court in a joint judgment examined in detail the history of the general principles of *functus officio* and said at paragraph 15: ²
As a general rule, a court has no power to review, rehear, or vary or set aside any judgment or order once it is formally recorded. ...
8. Later, at paragraph 32, the court said of the position in England at common law:-
32 *The position at common law regarding summary offences is more straightforward. Once a defendant has been both convicted and sentenced the court is regarded as being functus officio irrespective of whether the conviction and sentence have been entered in the records of the court - S v Recorder of Manchester [1971] AC 481 at 489 per Lord Reid; R v Essex Justices, Ex parte Final [1963] 2 QB 816 at 820 per Lord Parker CJ. Before sentence is passed, however, a court may permit a plea of guilty to be withdrawn. That may be done even if the plea of guilty has been accepted, and a finding of guilt entered. Cf R v Manchester Justices; Ex parte Lever [1937] 2 KB 96 at 101 per Humphreys J.³ (emphasis mine)*

¹ section 8 of the Crimes Act 2016

² *Jovanovic v The Queen* (includes corrigendum dated 11 November 1999) [1999] FCA 1008 (27 July 1999)

³ *Ibid* at para 32.


9. The District Court exercises summary jurisdiction and on the authority of the cases cited in the preceding paragraph, and the fact that the accused has not been sentenced yet, I conclude that I can have a plea of guilty withdrawn. The power to withdraw a guilty plea must be exercised judicially and I have done it above with this case—where the summary of facts do not prove an element of the offence charged. I am therefore not *functus officio* and can set aside the guilty plea and I so order.

Conclusion

10. The prosecution have not proved an element of the offence charged, that ~~is~~ that the accused threatened to cause serious harm to someone other than himself and I therefore find him not guilty and acquit him.

Orders

- 11. The plea of guilty is vacated.
- 12. The accused is found not guilty and acquitted.


PENIJAMINI R. LOMALOMA
Resident Magistrate

