



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction
Criminal Case No. 51/2021

THE REPUBLIC OF NAURU

-v-

DON BAGAGA

Before: RM. Neil Rupasinghe
Prosecutor: DPP Ms Andi Driu
Defence: Mr Victor Soriano
Date of Sentence: 4th of August 2023

SENTENCE

Catchwords: *Threatening to Kill contrary to section 91(a)(b)(i) of the Crimes Act 2016.*

1. The accused was charged with one count of Threatening to kill his spouse Jandilla Bagaga on 10th December 2021.
2. The accused pleaded guilty to count after the charges were read, explained and understood by him at open court. Further, the defendant agreed with the below-mentioned summary of facts.
3. The summary of facts of count one suggested the accused, on the 10th of December 2021 at Aiwo District of Nauru, threatened to kill his spouse Jandilla Bagaga whilst intending that the said victim fear the threat would be carried out.

4. Upon the plea of guilt, the court ordered the parties to submit sentencing submissions, victim impact reports, and pre-sentence reports and scheduled the sentence for today.
5. According to the mitigation, the accused is 44 years old and a male first offender. The accused pleaded guilty and indicated that he was remorseful for his action. He promises he will not re-offend and has genuinely tried to reform himself. After reconciliation, the victim impact report indicated that the parties lived together until April 2023. However, on the other hand, the complainant has mentioned that she wants the accused to be taught a lesson to be a good husband. Now the victim and accused are separated. The accused has fully cooperated with the police. The accused is remanded for one month for this matter.
6. When considering the aggravating fact, I noticed the accused and victims are spouses who used to be in domestic surroundings. Per the law of Nauru, domestic issues are not subject to reconciliation under Section 123 of the Criminal Procedure Act.
7. The mischief intended to prevent by this penal section is fear of death as it takes away the peace of the victim's mind. The legislators intend to secure a person's right to live his or her life without fear of others, as it is part of the right to life and liberty. Therefore, the nature of fear would decide the nature of the sentences. There is no need for the execution of the act of killing as it amounts to another offence.
8. The penal Section of count one could be reproduced as follows.

“Sec: 91 Threatening to kill

- A person commits an offence if the person:*
- (a) threatens to kill 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: 7 years imprisonment."

9. In *The Republic Vs John-One Dowedia* DC Criminal Case No:47 of 2020, the accused was imposed two years imprisonment less the period of 7 months and 25 days spent in remand for uttering words "*you should move from here and return to your mother's home. if you don't move from here I will murder both because this is my house*" to female victim. In this, the accused was the maternal uncle of the victim. It was mentioned that it had been considered an aggravative fact when such words are uttered when no other persons are around to prevent the action by the accused.

10. Further, in *John-One Dowedia* The learned Magistrate mentioned some of the concerns at ascertaining the seriousness of the offence of Threatening to kill as follows;

" Threats made in front other people are quite often not carried out immediately or at all because either the witness can physically stop the maker of the treats or because the maker of the threat does not want a witness present when he carries out his threat."

11. I agree with the above observation, and in the present case, I noticed that when uttering those words, the accused had been holding the victim's neck with both hands, which is aggravating as it creates more fear in the victim's mind on her life. Hence it is more severe than uttering words, attracting custodial sentences.

12. The discretion of the magistrate's sentencing is broad under Nauruan Law. It has been prescribed in section 277 of The Crimes Act 2016 and which provides as follows;

"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"*

13. Since there is no compelling reason to consider, enter non-conviction I formally convict the accused for one count of Threatening to Kill contrary to section 91(a)(b)(i) of the Crimes Act 2016. However, after considering all the aspects of sentencing, I prefer to consider a partial custodial sentence with the precaution of further issues connected to the victim's safety.

The Sentence

14. Therefore, after considering the nature of the offence, mitigations, aggravating facts, and time spent at remand.

- 1] The convict will be sentenced to two years imprisonment for one count of Threatening to kill, and he will serve one year out of the same.
- 2] The remaining one-year imprisonment will be suspended for three years and will be executed consecutively with any sentence against him for breach of the below-mentioned permanent Protection Order, irrespective of subsequent sentencing date,
- 3] The convict is placed under a **Permanent Protection Order** subject to the below condition, THAT;
 - (a) the Defendant must not molest the victim mentally or physically.

13. 21 days to appeal this Sentence.

