



IN THE SUPREME COURT
REPUBLIC OF NAURU

Criminal Case No. 88/2015

THE REPUBLIC OF NAURU

V

MWEA AMWANO

RULING

JUDGE: KHAN J
DATE OF HEARING: 20 August 2015
DATE OF SENTENCE: 21 August 2015
CASE MAY BE CITED AS: Republic v Mwea Amwano

CATCHWORDS: Defendant was charged with the offence of attempted rape - carries a sentence of 14 years imprisonment - Magistrate took plea - Facts outlined - case committed to Supreme Court for sentence section 161 of Criminal Procedure Act 1972 - issue raised whether magistrate empowered to take plea. Held magistrate did not have powers to take the plea

APPEARANCES:

For the Prosecution

Mr L Sovau

For the Defendant

Mr R Tagivakatini

1. The defendant is charged with the offence of attempted rape contrary to section 349 of the Criminal Code 1899. The charge is that on 12 June 2014 he attempted to rape a person namely Della Dediya.
2. The maximum sentence for this offence is 14 years imprisonment.
3. The defendant pleaded guilty to the charge on 14 August 2015 before the learned trial Magistrate Ms Emma Garo. After the facts were outlined and the Magistrate correctly pointed out that the penalty for this offence is 14 years imprisonment and under section 4 (2) of the Criminal Procedure Act 1972 (CPA) her sentencing powers was only 10 years. She committed this case for sentence to this Court under section 161 of CPA.
4. When this matter came before me for sentence yesterday I raised the issue as to whether the Magistrate had powers to take the plea.
5. Mr L Sovau referred to me section 158 of CPA which reads as follows;

“Certain provisions relating to Supreme Court to apply to District Court

The provisions of sections 187, 190, 191 (except subsection (1)), 192, 193, 194, 195, 198, 201, 202, 203, 204, 205, 206, 207, 210, 211 and 212 of this Act shall apply mutatis mutandis to trials in the District Court as they do to trials in the Supreme Court.”

6. Whilst Mr R Tagivakatani referred me to section 161 (1) of the CPA which reads;

“(1) Notwithstanding the provisions of sections 158, 190, 194 and 207 of this Act but subject to the provisions of this section, where an accused is tried by the District Court and convicted of any offence and, on obtaining information as to his character and antecedents, the District Court is of opinion that they are such that a greater sentence should be imposed in respect of the offence than it has power to impose, it may, in lieu of dealing with him in any manner in which it has power to deal with him, commit him in custody or on bail to the Supreme Court for sentence in accordance with the following provisions of this section.”
7. Section 4 (2) of CPA states;

“Subject to the provisions of any return law relating to children or young persons and to other provisions of this act any offence under the Criminal Code 1899 may be tried by the District Court if it is punishable with imprisonment for not more than 10 years.”

8. The offence of attempted rape as stated earlier carries a penalty of 14 years imprisonment and the Magistrate was not empowered to hear it and as such had no powers to take the plea.
9. This matter should have come before me by way of a committal after a preliminary inquiry was held pursuant to section 162 of the CPA. Since this matter is already before me I will treat the committal for sentence as if it is a committal under section 162.
10. I order that the Director of Public Prosecution to file the information so that the accused can be arraigned.

Dated 21st day of August 2015



Mohammed Shafiullah Khan

JUDGE

