



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 16 OF 2020

BETWEEN

THE REPUBLIC

Prosecution

AND

OSHAE STEPHEN

Defendant

Before: Khan, ACJ
Date of Guilty Plea: 11 May 2023
Date of Sentence: 15 March 2024

Case may be cited as: *Republic v Stephen*

CATCHWORDS: Intentionally causing harm contrary to Section 71 of Crimes Act 2016 – Where the defendant assaulted his wife after consuming alcohol – Where the defendant and his wife have reconciled after the incident and are living together – Whether the defendant should receive a custodial sentence or whether the sentence should be suspended.

APPEARANCES:

Counsel for the Prosecution: S Shah
Counsel for the Defendant: R Tagivakatini

SENTENCE

INTRODUCTION

1. On 9 August 2020 you assaulted your wife as a result of which she received facial and bodily injuries.
2. Following the assault the matter was reported to the police but your wife did not submit to a medical examination, and therefore, there is no medical report outlining the exact nature of the injuries that she sustained.

3. On 13 August 2020 you were charged with the offence of attempted murder.
4. On 1 December 2020 an amended information was filed which still had the charge of attempted murder with an alternative count of intentionally causing serious harm contrary to s.71 of the Crimes Act 2016 (the Act).
5. Following a very lengthy negotiation between your counsel and the office of the Director of Public Prosecution (DPP) the charge of attempted murder was withdrawn on 23 September 2022, and an amended information was filed which only had the charge of intentionally causing serious harm.
6. On 15 November 2022 you pleaded guilty to the amended information of intentionally causing harm, and the facts were outlined which included photographs of the injuries that your wife received. Your counsel objected to the photographs being tendered, and again a lengthy discussion ensued between your counsel and the office of the DPP.
7. On 11 May 2023 the summary of facts was agreed on including the photographs which was tendered by consent.
8. On that day you pleaded guilty to the offence of intentionally causing serious harm and today you are convicted of that offence.

YOUR PERSONAL CIRCUMSTANCES

9. You are a first offender.
10. You are 42 years old and you are married to the complainant and as a result of your marriage you have 6 children – 4 daughters and 2 sons. Your eldest child is your daughter who is 18 years old, your second child is 16 years old, your third child is 13 years old, your fourth child is 11 years old, your fifth child is 10 years old and your sixth child is 7 years old.
11. Both you and your wife have been gainfully employed.
12. At the time you inflicted those injuries on your wife you were adversely affected by alcohol.
13. After you were charged you spent a period of 14 days in custody before bail was granted, and the bail conditions were that you were prohibited from consuming alcohol, and your wife was required to live at her parents' house. You were allowed to live in the family house with the children. A further condition of the bail was that you were not to contact your wife except for the purposes of making arrangements for the children and this was by way of electronic means, but according to the pre-sentence report prepared by the Chief Probation Officer your wife moved back to live with you and the children.
14. I am informed by both counsels that you have not consumed alcohol since the date of the incident.

VICTIM IMPACT STATEMENT

15. In the victim impact statement, it is stated, and quite rightly so that your wife is very traumatized because of the incident, and she is emotionally disturbed. When she was asked to describe whether the incident changed her life she stated:

“The good thing is that he has not been physically violent since it happened. I can always understand when he turns violence and so I have been able to adapt and be cautious of what triggers him. My children are the reason I continue living my life and so my life changes is being there for my children and surviving.”

16. Both counsels submitted that this offence calls for an immediate custodial sentence, and that a part of the sentence should be suspended.

PRE-SENTENCE REPORT

17. The pre-sentence report was prepared by the Chief Probation Officer after he interviewed you and your wife and in the report he states as follows:

- a) That you acknowledge that you did wrong by assaulting your wife as a result of which your family has suffered;
- b) That you are very remorseful of your action;
- c) You have quit alcohol since the incident; and
- d) The children are very close to both you and your wife and any immediate custodial sentence would affect them adversely.

18. The pre-sentence report is consistent with the observations made in the victim impact statement that the children are very close to you and your wife and notwithstanding the violent assault that you inflicted upon her she agreed to move back with you purely for the sake of the children. She has indeed made a huge sacrifice.

19. You were very violent to your wife and your actions were very selfish – you did not care about her welfare – all you cared about was your drinking and your friends.

20. S.279(o) of the Act requires me to take into consideration:

“The probable effect that any sentence or other order under consideration would have on any of the person’s family or dependants.”

21. If I were to impose an immediate custodial sentence, it would affect your children adversely. Your children are at very vulnerable ages and need the care and assistance and guidance of both parents. After the incident, although the Court had ordered your wife to live separately from you, but she moved back to the matrimonial home because of the children.

22. That act of moving back by your wife to the matrimonial home to be with the children is a huge sacrifice on her part.
23. If I were to impose an immediate custodial sentence it would affect your children adversely, and your wife's sacrifices in reconciling with you to be with the children would be in vain.
24. I must confess that I was minded to impose an immediate custodial sentence on you but because of your wife's act of reconciling with you for the sake of your children I will not impose an immediate custodial sentence. You are sentenced to a term of 4 years imprisonment which is suspended for a period of 5 years, and should you commit any offence of domestic violence in that period then this sentence is to be activated.

DATED this 15 day of March 2024


Mohammed Shafiullah Khan
Acting Chief Justice

