

IN THE DISTRICT COURT OF NAURU
(Criminal Jurisdiction)

CRIMINAL CASE NO. 17 of 2016

BETWEEN:

THE REPUBLIC OF NAURU
Complainant

AND:

HOSSEIN NOUROUZI NASAB
Defendant

Mr. Livai Sovau for the Republic
Mr. Sevualoni Valenitabua Public Defender for the defendant

Date of Hearing: 22, and 23rd August 2016
Date of Submissions: 25 August 2016
Date of Ruling: 29 August 2016

Judgment

INTRODUCTION

1. The defendant is charged with 1 count of Threats to kill contrary to section 359(1)(b) of the Criminal Code 1899. Section 359 (1)(b) of the Criminal Code 1899 read:

- (1) "Any person who threatens to kill or to do any injury, or cause any detriment, of any kind to another with intent to prevent or hinder that other person from lawfully doing any act which the other person is lawfully entitled to do, or with intent to compel the other person to do any act which the other person is lawfully entitled

to abstain from doing, or with intent to cause public alarm or anxiety"¹

(a)....

(b) 10 years imprisonment if the threat includes a threat to kill"²

2. The defendant pleaded not guilty. The prosecution called two witnesses and then closed its case.

PROSECUTION CASE

3. The first witness called by the prosecution is Ms. Karen Angove. Ms. Angove is a case manager with Connect Settlement Services. She works as an intake officer and that role is located at the Beach house at Anibare. As an intake manager at the beach house they provide support roles to refugees around housing issues, id cards, access to support payments and access to regular case worker and accessing other services such as IHMS.
4. Her evidence is that on 28th April 2016, she made contact with Hossein Nourazi Nazab and this took place at Anibare. She gave evidence that she was working as an intake worker that day and at approximately 3:20pm that day in the afternoon, she was asked by the receptionist to see a man. She then went into the waiting area of the beach house where Hossein was pointed out to her. Ms Angove said she introduced herself and then asked if he would prefer to speak in English or be supported in another language. Ms. Angove's says that she was unclear with the answer he gave her and then she was not too sure. She however engaged a Farsi speaking cultural guide to assist her with the language.
5. Ms. Angove's evidence is that the cultural guide, herself and Hossein then walked out of the beach house and then sat at the verandah. Ms. Angove's evidence is that Mr. Hossein started to talk about his housing issue. He spoke about his concerns for his child, his concerns for his child's mental health and physical development and his living situation in the community

¹ Section 359 (1) of the Criminal Code 1899

² Section 359(1)(b) of the Criminal Code 1899

house where he felt his child was not free to have access to any other room other than the bedroom. Hossein has applied for a housing relocation with the housing team and felt that it had taken beyond reasonable time for his family to be rehoused in a more suitable accommodation. Ms. Angove said the conversation centered on his concern for his house, his wife and child was the majority of their conversation. Ms. Angove in her evidence said at that time Hossein was talking with her he was calm and did not raise his voice. He was calm and very unsuspecting. The next thing according to Ms. Angove's evidence is that Hossein stated connect has three weeks to relocate his family or he would take mixture of oil and petrol and set fire to himself, his wife, his baby and his home. Ms. Angove in her evidence said that at the time the defendant said this he was calm and unsuspecting. Ms. Angove said that was the first and last time she had contact with the defendant

6. The evidence of Ms. Amy Blair is that she is the team leader for case managers. Ms. Amy Blair's evidence is that on the 3rd May 2016, she spoke with the defendant by telephone and that she completed the call at about 8:30 that night. Ms. Blair's evidence is that when she made the call a male voice answered. Ms. Blair's evidence is that she can't recall how the call the call started but that she did have cultural guide offering language support on the phone. Ms. Blair gave evidence that she asked Hossein how he felt about his housing needs and the defendant said words to the effect of my plans are in place. Ms. Blair said she attempted to clarify this by asking the defendant is this to set yourself and your family and the defendant responded yes. Ms. Blair gave evidence that the phone call ended with her saying that someone will be in touch with the defendant shortly.
7. The court can take judicial notice of the fact that the defendant speaks Kurdish and that the court has to use the services of interpreters to assist the court in interpreting for the defendant each time the defendant comes to court since 12th May 2016 when this matter first came to court. Both Ms. Angove and Ms. Blair gave evidence that they had to use cultural guides to offer language support when they said they communicated with the defendant. The cultural guides

who translated for Ms. Angove and Ms. Blair were not called to give evidence to confirm that they had translated for Ms. Angove and Ms. Blair.

FAILURE BY THE PROSECUTION TO CALL CULTURAL GUIDES WHO WERE SAID TO HAVE INTERPRETED FOR MS. ANGOVE AND MS. BLAIR

8. After the prosecution closed its case, the court of its own motion invited submissions from Mr. Sovau and Mr. Valenitabua on the effect of the failure by the prosecution to call the cultural guides who interpreted for Ms. Angove and Ms. Blair.
9. Mr. Valenitabua submits that the failure by the prosecution in this case to call the cultural guides who were said to have translated for Ms. Angove and Ms. Blair must equally be ruled inadmissible hearsay evidence. Mr. Valenitabua urged this court to follow the decision it made in the case of R v Chen Jian Ping³ when it ruled inadmissible the evidence of police officers who interviewed Mr. Ping a Chinese national who speaks Cantonese with the assistance of a Chinese interpreter who speaks Cantonese but did not call the Chinese interpreter to give evidence at the voir dire hearing.
10. Mr. Sovau submits that the District Court's decision in R v Chen Jian Ping⁴ only applies to police when they are conducting interviews with defendants. The submission by the prosecution ignores the fact that once a court finds that evidence is inadmissible because it infringes the hearsay rule, then it is hearsay for all purposes in terms of the procedure.
11. The evidence of Ms. Angove and Ms. Blair without the cultural guides who purportedly translated the conversations purported to have taken place between the defendant and Ms. Angove, the defendant and Ms. Blair is inadmissible hearsay evidence. I reject it. The end result is that there is no evidence before this court to show that the defendant has a case to answer. The charge against the defendant is dismissed and the defendant is acquitted. I find the defendant not guilty

³ District Court of Nauru Criminal Case No. 30 of 2016

⁴ District Court of Nauru Criminal Case No. 30 of 2016

Dated this 29 day of August 2016

