

IN THE DISTRICT COURT OF NAURU

Criminal Case No 41 of 2018

THE REPUBLIC

-v-

ROCKARNY AGIR

SENTENCE

*Before:* RM P. R. Lomaloma  
*For the Prosecution:* Mr. Filimone Lacanivalu  
*For the Defendant:* Mr. Sevuloni Valenitabua  
*Sentencing hearing:* 14 November 2018  
*Sentence:* 26 November 2018

*Catchwords:* Intentionally causing harm; section 74(ii) of Crimes Act 2016, sentence; where complainant forgives defendant; provocation, defendant retaliated to assault by complainant.

Introduction

1. You pleaded guilty to one count of Intentionally causing harm contrary to section 74(ii) of the Crimes Act 2016. You agreed to the statement of facts which were tendered. The Prosecution then provided a statement of the victim, Yvette Depaune for purposes of sentencing and your counsel submitted written mitigation on your behalf on 19 November.

## The Facts

2. The facts are that at about 9:30 pm on the 21<sup>st</sup> of April 2018, Yvette's son, Rodell Depaune went to his home with injuries to the right side of his head and shoulder. Yvette asked him what happened and he replied that you had struck him with your car. Yvette was furious and got into her car and came to see you. You were sitting outside your laundry at your home in Aiwo District with your wife when Yvette drove up in her car, got out and confronted you on why you had run over his son with your car. You then punched her on the face and you continued to punch her face. It is alleged that you punched her several times in the face but she covered her face with her hands. She fell to the ground and she said you kicked her several times when she was on the ground. In the summary of facts, and in your caution interview with Police, which was tendered by agreement, you denied that she fell to the ground or that you kicked her. You said that she came straight to you after getting out of her car and without saying anything, she slapped you on the face. You had had some liquor before that. You asked her, "you did not come to talk but instead you assaulted me?" According to you, she slapped you again on the face and poked her fingers into your eyes. You then retaliated by grabbing her and punching her in the face. Nobody stopped you from continuing the assault.
3. Yvette then got back into her car and left. She reported the matter to Police and she was examined at the RON Hospital. The medical report and photographs of her injuries were tendered by agreement. These showed that she suffered a contusion or swelling below her left eye, a loosened incisor on her upper jaw, and a deep abrasion on the lateral side of her right knee. The doctor assessed the injuries as "simple injury."
4. Later that evening, several of Yvette's male relatives came to your place and assaulted you in retaliation. When you were charged and brought into Court you complained that you had been assaulted. You said through your counsel that you had visible injuries to your right eye, left forehead and the right lip. I then ordered the Corrections Officers to take you to RON Hospital to be examined and a medical report prepared. This was done and the history recorded by the medical officer states that you were beaten by a group of Nauruan men who punched you and kicked you and hit you with a piece of timber at your back. Your medical report, which was tendered, showed you suffered a

black eye on the right eye (subconjunctival haemorrhage) but your vision was intact. There were no fractures seen and the x-ray of your head showed no fractures either.

### **Elements of the offence & Aggravating Factors**

5. The offence of Intentionally causing Harm under section 74(ii) requires the prosecution to prove beyond reasonable doubt that you intentionally engaged in conduct which caused harm to Yvette Depaune and that you intended to cause harm to Yvette Depaune.
6. The aggravating factors for assault offences are set out in section 79 of the Act.
7. I find from the evidence tendered that the prosecution has proved each element of the offence and I therefore find you guilty of the offence of intentionally causing harm to Yvette Depaune but that the prosecution has failed to prove that the offence was aggravated. The maximum sentence for your offending is therefore 7 years imprisonment. However, the Court needs to look at the non-statutory aggravating factors. The only such aggravating factor that I could find from the facts are that this was a sustained attack with more than one hit. Every time you hit the complainant, an assault is committed and the more such assaults you carry out increases your culpability. The other aggravating factor is that the complainant was a woman of 49 and a vulnerable victim.

### **Victim's views**

8. The prosecution tendered a victim statement from Mrs Yvette Depaune on 16 November in which she stated that she has forgiven you for what happened and she does not want you to go to jail. She has 7 children and 15 grandchildren. She has forgiven you because you had a son born last month in Fiji and he is only 1 month old. She understands that you are the only one working to support your family as your wife is not working and looking after your family in Fiji. She said she is at peace as she has forgiven you and that she will be more at peace if you are not locked up. She added that she has asked her husband and her children to forgive you and forget what you did and they have forgiven you also. She has asked them to treat you as a friend the next time they see you and talk to you as a friend. Mrs Depaune has also asked forgiveness from the Court and

said she was angry at what happened to her son. She acknowledged that if she had not started it, you would not be in this situation.

### **Personal Circumstances and Mitigation**

9. Your counsel said that you are 37 years old and married. Your wife is unemployed. You have 6 children ranging in age from 1 month to 14 years. All are in school in Luatoka, Fiji, except the baby.
10. In mitigation, your counsel said that you are a first offender; that you pleaded guilty and saved the Court the time for a trial; that you regretted what you did; that you were provoked; that the complainant assaulted you first; and that Yvette Depaune has forgiven you.
11. Counsel submitted further that the assault on you by the complainant's family and other men was punishment for your offending.

### **The Sentence**

12. The sentencing provisions of the Crimes Act 2016 details the kinds of sentences which can be given (s. 277); purposes of sentencing (s. 278); the factors to be taken into account if present (s 279); and that a sentence of imprisonment should be imposed on a person only if one of the conditions in section 280 is present. These provisions do not tell the Court what weight is to be given to particular factors in a given situation or the procedure to be followed in applying these provisions. The sentencing process is therefore at the full discretion of the Court.

### **Custodial threshold**

13. When the complainant got out of her car and started slapping you, you were entitled to defend yourself but your response should have been proportional to her assault. You went beyond that so the defence was not available. That was great provocation. Had you been sober, you might not have retaliated but a person who assaults someone takes the victim as is. You were later assaulted by several of the complainant's male relatives and also hit with a piece of timber in retaliation and suffered injuries as set out above. Neither the complainant nor any of her relatives have been charged. The complainant has acknowledged that she was wrong and forgiven you for what you did to her. She has in fact asked her relatives to forgive you and treat you as a friend. I give her

statement great weight especially when she asked that you not be incarcerated with a young family of 6 children all dependent on you. Five of your children are studying in Fiji and you are the sole provider for your family. All these combine to convince me that a custodial sentence is not suitable in your case.

**Your sentence**

14. I have taken account of all the factors set out above and I convict you and sentence you to: -

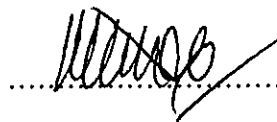
(a) Probation for a period of 12 months pursuant to section 7(1) of the Criminal Justice Act 1999; and

(b) A fine of \$300. \$200.00 of the fine shall be paid as compensation to the victim.

15. The \$200 of compensation ordered above is to be paid into Court within 14 days to be given to the complainant, Mrs. Yvette Depaune, and in default you will serve 20 days imprisonment.

16. The remainder of the fine, \$100.00 is to be paid to Revenue within 28 days and in default of payment you will serve 10 days imprisonment.

17. 14 days to appeal.



Penijamini R. Lomaloma  
Resident Magistrate

