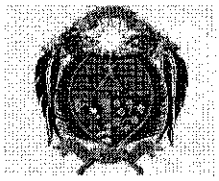

IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 2 of 2021

THE REPUBLIC OF NAURU

-v-

SAMBORA ADEANG

NO CASE TO ANSWER RULING

Coram: *Penijamini R. Lomaloma*

Prosecution: *Debora Togoran with Ms. Serukai & the Director*

Defence: *Ms. Francilia Akubor*

Trial: *30-31 March, 1 April 2021*

Ruling: *1 April 2021*

Catchwords: *Threatening to cause serious harm to a public Official contrary to section 93 of the Crimes Act 2016*

Introduction

1. The defendant is charged with one count of: Threatening to cause serious harm to a public official contrary to section 93(a)(b)(c)(d)(ii) & (e) of the Crimes Act 2021. The particulars of the offence alleged that this was committed against Sergeant Wilhelm Appi, a police officer. There are two counts of damaging property contrary to section 201(b) of the same Act.
2. The prosecution called 8 witnesses and at the end of the prosecution case, I invited submissions, pursuant to section 201(a) of the Criminal Procedure Act 1972 on whether there is a case for the accused to answer with respect to count 1 only as I was satisfied that the accused had a case to answer for the other two counts.
3. The summary of the evidence given by the prosecution relating to count 1 is given below.
4. It is common ground in the evidence of the police witnesses that on the evening of 13th of January 2021, a team of police officers attended a report in Meneng District of teenagers using jelly guns to shoot at each other and at passing vehicles. The team was led by Sgt

Wilhelm Appi and consisted of Constable Merit Halstead (PW1),Sgt Wilhelm Appi (PW2), Senior Constable Eobob Denitage (PW3), ASgt Marvin Junior Tokaibure(PW4), Senior Constable Drusky Dabwadauw (PW5), Constable Jonas Menke (PW6) and a couple of others.

5. The witnesses went in Nauru Police vehicle No. NPF 105, a Hilux twin cab clearly marked on the side with the words "Police."
6. When they got to Meneng, the road was blocked by teenagers in the middle of the road and two or three cars had stopped. Sgt Wilhelm Appi was driving and he applied the brakes. According to his evidence, only one of the breaks was working and so the vehicle swerved and hit a teenager. He got out of the car and chased the teenager who had got up after being hit and ran away. He chased the teenager with Constable Jonas but returned to their vehicle as he was afraid of leaving it unoccupied. When he returned, a crowd had gathered around their vehicle and they were getting angry and agitated. Sgt Appi called for police backup as he was worried about their safety.
7. Sgt Appi stated:

   As we were about to leave, Constable Jonas told me the left windscreen was damaged. He said he saw Sambora damage it. I heard the bang behind the passenger side door. I couldn't see the stone as it was so crowded. I called my colleagues to board the vehicle so we could leave the area and we did and left. Fifty meters away, we stopped and did a head count. We then proceeded back to the police station.
8. Later in his evidence he said he said,

   "The windscreen was damaged on the left side. I couldn't identify who threw the rock as it was so crowded and so dark. .... The lighting was dark. The only light was from our car. We used two cars. Only the headlights. From the headlights, I can only see 5 meters in front of me. Beyond that, I could recognize anyone."
9. In his evidence, Sgt Wilhelm Appi did not say that the accused ever said anything to him. The evidence of the other witnesses about what happened that night is very detailed yet none of them ever testified that they heard the accused, Sambora Adeang say anything to Sgt Wilhelm Appi or to any of them.

The Law

10. The law on no case to answer in Nauru was traversed by Crulci J in ***Republic v Jeremiah [2015] NRSC 42*** where she said; [1]

    *In Nauru, section 201(a) Criminal Procedure Act 1972 has the requirement of **'sufficiency'**, rather than that of 'no evidence'. In considering 'sufficiency', some assistance may be found in a Practice Note [20] dated 9 February 1962, Queen's Bench Division. Here Lord Parker, CJ issued guidelines in relation to justices faced with submissions of no case to answer: -*

    'A submission that there is no case to answer may properly be made and upheld:
    (a) when there has been no evidence to prove an essential element in the alleged offence;
    (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.
    Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either

[1] Criminal Appeal Case 119 of 2015 (17 March 2016)

side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.'

11. Section 93 of the Crimes Act states:-

93 Threatening to cause serious harm to public official
A person commits an offence if:
(a) the person threatens to cause serious harm to another person; and
(b) the person threatens to cause the serious harm because the person believes the other person is a public official; and
(c) the other person is in fact a public official; and
(d) the person:
.....
(ii) is reckless about whether the public official fears the threat will be carried out; and
(e) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.

12. A threat is defined in section 8 of the Crimes Act 2016 as:

'threat' means a threat directly or indirectly communicated by words (written or spoken) or by conduct, or partly by words and partly by conduct.

13. The elements of the offence are:-
    a. That the accused;
    b. Threatened to cause serious harm to Sgt Wilhelm Appi;
    c. The accused made the threat because he believes Sgt Wilhelm Appi is a public official;
    d. Sgt Wilhelm Appi is in fact a public official;
    e. The accused is reckless about whether Sgt Appi fears that the threat will be carried out; and
    f. The threat is made in circumstances in which a reasonable person would feat the threat will be carried out;
14. Defence Counsel listed the elements of the offence and stated that there was no evidence that a verbal threat had been made by the accused to Sgt Appi by the sergeant himself in his evidence or in the evidence of any of the other witnesses. Furthermore, she added that there was no evidence given that Sgt. Appi had identified the accused as the person who made the threat to him. Both grounds on their own if accepted by the court would by the operation of the first limb of the test in the Practice Direction in **Republic v Jeremiah** [2], mean that there is no case to answer for the accused.
15. The prosecution submitted that the Court should wait until all the evidence is in. Sgt Appi was the leader of the police team and that when the threats were made from the crowd, the threat by Madi Kepae who was leaning with his head in the police vehicle, Sgt Appi and his team felt threatened and knew their safety was no longer guaranteed. As their leader, Sgt Appi decided the better option was to retreat because the threat was serious. She submitted that the threat was made when Sambora smashed the

[2]Criminal Appeal Case 119 of 2015 (17 March 2016)

windscreen with a rock and the crowds reaction of being agitated and angry. She submits that there is sufficient evidence of the threat for the accused to be put to his defence.

Analysis

16. When an offence is created by the criminal law, its definition is carefully thought out before it is made into law. By the time we draft our Crimes Act here, each offence has been in existence for many years in other jurisdictions and they have modified it to make sure all persons bound by the law is certain what is prohibited. Section 93 has undergone such changes to make sure that there is certainty in the law especially one which carries a long sentence of imprisonment. This means that when section 93 prohibits a threat being made, the threat must be clear that it came from the accused and was clearly directed at Sgt Wilhelm Appi.
17. The situation as argued by the prosecution is that the crowds were threatening the police, on Madi Kepae had actually got his head into the police vehicle and the evidence of two witnesses was that he was yelling swear words at the police officers inside the vehicle. The effect of all this on Sgt Appi is that he feared for the safety of the team, called for backup and retreated from there.
18. Clearly, their were multiple threats coming from multiple sources and in that situation, it is incumbent on the prosecution to identify the specific words used by the accused or a combination of words and action that would convey the message to Sgt Appi that the accused intends or is reckless about **causing serious harm to Sgt Appi**.
19. This was not done by the prosecution. Instead they rely on the threats generated by the action of the crowd, by Madi Kepae to constitute the threat posed by the defendant. The accused cannot be held criminally responsible for the actions of others. For him to be criminally responsible, the prosecution must adduce evidence of words specifically said by him and directed to Sgt Wilhelm Appi and meeting the other elements of section 93 of the Crimes Act.

Conclusion

20. For the reasons given, I find that the prosecution has failed to adduce evidence of an element of the offence in count 1, namely that the accused threatened to cause serious harm to Sgt Appi.
21. I therefore find the accused not guilty of Threatening to cause serious harm to a public officer pursuant to section 93 of the Crimes Act as charged in Count 1 and I acquit him of it.

Penijamini R Lomalomra
Resident Magistrate

DISTRICT COURT OF NAURU