



IN THE SUPREME COURT OF NAURU  
AT YAREN  
CRIMINAL APPELLANT JURISDICTION

CRIMINAL APPEAL NO. 18/2017

BETWEEN

Keanun Amran

APPELLANT

AND

The Republic of Nauru

RESPONDENT

Before: Khan J  
Date of Hearing: 22 September 2017  
Date of Judgment: 29 September 2017

Case may be cited as: Amran v The Republic

**CATCHWORDS:**

Whether the Court is empowered to add the 'aggravating factors' to the head sentence if a defendant is charged under s 74(ii) of the Crimes Act 2016.

Held: that the Court is not bound by the list of matters set out in s 279 of the Crimes Act 2016 – in addition to matters set out there the Court is entitled to take into consideration the common law principles of sentencing – appeal against sentence dismissed.

**APPEARANCES:**

Counsel for the Appellant: V Clodumar  
Counsel for the Respondent: F Lacanivalu

## JUDGMENT

1. The appellant was charged under s 74(2) of the *Crimes Act 2016* (the Act) for intentionally causing harm; in that it was alleged that he on 27 May 2016 caused harm to Ailasha Mwareow [victim] (a community liaison officer) [the District Court made a finding that she was doing similar work as a police officer].

### FACTS

2. The victim is a female and was on a duty as a community liaison officer at a Location, Denig District, at 2am on 27 May 2016 with another colleague. The defendant was with a group of men partying in a hut, drinking alcohol and playing loud music. The victim called the police because she was worried that the drinking party may cause harm or damage property in the area<sup>1</sup>. Following the complaint by the victim the police arrived and dispersed the party. Everyone left except for two women who were displeased as to why the victim complained to the police and they confronted her. She told them to go away and they did. The defendant then went and confronted the victim and asked her as to why she called the police. She told the defendant that she was only carrying out her duties. The defendant then argued with her and told her not to be smart. The defendant then poked his finger in the area around victim's right eye. When she told him to stop the defendant used his finger to poke her left eye<sup>2</sup>. The defendant then punched her in the face and she started to bleed from her mouth and she covered her face with her hands. The defendant then punched her on the side of her head causing her to fall to the ground. She then covered her head because she was hurt. When she was on the ground, the defendant continued to assault her by stomping on her thighs and legs causing her to urinate and wet her clothes. Her colleague Rubiana who was with her called the police to assist<sup>3</sup>. The victim was helpless during the assault and she screamed out, 'Jesus help me'. During the assault the defendant was swearing at her and also threatened to assault her more. The defendant threw a fake punch at her and drove away on his motor bike<sup>4</sup>.
3. After the appellant pleaded guilty he was sentenced to a term of eight months imprisonment. In sentencing him the learned Magistrate imposed a sentence of six months imprisonment and thereafter increased it by a period of five months for 'aggravating factors' and later reduced it by three months for 'mitigating factors' – so the appellant received a total sentence of eight months imprisonment.

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<sup>1</sup> Paragraph 1 of the Sentence.

<sup>2</sup> Paragraph 2 of the Sentence.

<sup>3</sup> Paragraph 3 of the Sentence.

<sup>4</sup> Paragraph 4 of the Sentence.

## PETITION OF APPEAL

4. The appellant filed two grounds of appeal which are:
- i) Whether the learned trial Magistrate had authority to add five months to the appellant's sentence for aggravating factors when the appellant was charged under s 74(ii) and not under s 74(i) of the Act which is for aggravated offences.
  - ii) That the learned trial Magistrate took into consideration matters which were not material in the agreed facts.
5. At the hearing of the appeal the appellant's pleader, Mr Clodumar, only advanced arguments on ground one.

6. Section 74 states as follows:

### Intentionally causing harm

A person commits an offence if:

- a) the person intentionally engages in conduct;
- b) the conduct causes harm to another person without the person's consent; and
- c) the person intends to cause harm to that or any other person by the conduct.

### Penalty:

- i) if aggravating circumstances apply – 9 months imprisonment; or
- ii) in any other case – 7 years imprisonment.

7. As stated above, the appellant was charged under s 74(ii) of the Act.
8. Aggravating circumstances as contained in s 74(i) is defined by s 79 which states:

### Aggravating Circumstances for Assault Offences

- 1) If an offence under this Division provides for a penalty if aggravating circumstances apply, then that penalty may be imposed if the conduct constituting the offence occurs in any of the following circumstances:
  - a) the defendant is, or pretends to be, armed with an offensive weapon;
  - b) the defendant is in company with 1 or more other people;
  - c) the defendant intends to commit another offence;

- d) the defendant intends to avoid the local arrest or detention of any person.
9. Mr Clodumar submits that it is agreed that none of the 'aggravating circumstances' as stipulated in s 79 were present in this case.

### SUBMISSIONS

10. Mr Clodumar submits that the learned trial Magistrate's act of adding five months for 'aggravating factors' and subsequently reducing it for 'mitigating factors' was wrong as the defendant was not charged under s 74(i). He submits that the learned Magistrate could have imposed any sentence within the range of seven years but once a sentence of six months was imposed the Magistrate had no powers to make any adjustments by way of addition of the 'aggravating factors' or reducing the sentence by way of 'mitigating factors'. He further submits that the learned Magistrate correctly pointed out that the matters he was required to take into account at [9]<sup>5</sup> under s 279 of the Act and this section does not make any provision for addition/reduction of aggravating factors and mitigating factors. Section 279(2) provides:

In addition to any other matters, the court must take into account whichever of the following matters are relevant and known to the court:

- a) the nature and circumstances of the offence;
- b) any other offences required or permitted to be taken into account;
- c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or similar character – the course of conduct;
- d) any injury, loss or damage resulting from the offence;
- e) the personal circumstances of any victim of the offence;
- f) the effect of the offence on any victim of the offence;
- g) any victim impact statement available to the court
- h) the degree to which the person has shown contrition for the offence by taking action, or making reparation for any injury, loss or damage resulting from the offence or in any other way;
- i) if the person pleaded guilty to the charge for the offence – that fact;
- j) the degree to which the person cooperated in the investigation of the offence;
- k) the deterrent effect that any sentence or order may have on the person or on anyone else;

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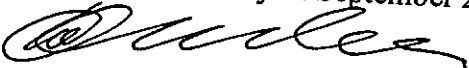
<sup>5</sup> Paragraph 9 of the sentence.

- l) the need to ensure that the person is adequately punished for the offence;
  - m) the character, antecedents, age, means and physical or mental condition of the person;
  - n) the prospects of rehabilitation;
  - o) the probable effect that any sentence or other order under consideration would have on any person's family or dependents;
  - p) if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child (other than another offender or a victim of the offence) – those circumstances.
11. The respondent submits that it is wrong to suggest that the learned Magistrate was precluded from taking 'aggravating factors' into account just because the appellant was not charged under s 74(i). The respondent further submits that the list of matters provided for in s 279(2) of the Act is not an exhaustive list and the key words in s 279(2) is 'in addition to any other matters...'; and submits that apart from the matters listed in s 279(2) the Court in imposing a sentence is also guided by the common law principles of sentencing.

#### CONSIDERATION

12. Unlike other jurisdictions, Nauru does not have a Penalties and Sentencing Act; and there is very limited provision provided for in s 279(2) of the Act; prior to the coming in of the Act, sentencing was provided for under s 19 of the *Criminal Code of Queensland 1899* which is now repealed.
13. Aggravating factors amongst other things include the 'amount of harm to the victim' under the common law principles and that may well be covered by s 279(2)(d) [any injury, loss or damage resulting from the offence]; and if not, then it is covered by the provisions in '*in addition to any matters ...*'.
14. In the circumstances, the sentencing principles adopted by the learned Magistrate were correct and the appeal is dismissed.
15. I notice that there is a marked increase in the filing of serious offences in this Court; offences including murder, serious sexual offences and robbery with violence and perhaps it is timely that Nauru should also have a Penalties and Sentencing Act as sentencing is a very difficult task performed by the courts; and a specific legislation on sentencing would greatly assist the courts in imposing sentences.

DATED this 29th day of September 2017

  
Mohammed Shafiullah Khan  
Judge

