

IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 18 OF 2019

BETWEEN

THE REPUBLIC

AND

LOMAX BAGUGA

Before: Khan, ACJ
Date of Sentencing Submissions: 23 May 2022
Date of Sentence: 8 June 2022

Case may be referred to as: *Republic v Baguga*

CATCHWORDS: Murder – Sentence is life imprisonment – s.282 of the Crimes Act allows the Court to impose a sentence for a stated term – Whether a sentence of stated term should be imposed or life imprisonment.

APPEARANCES:

Counsel for the Republic: R Talasasa
Counsel for the Accused: A Lekenaua

SENTENCE

INTRODUCTION

1. After a trial over 12 days you were found guilty of one count of murder which reads:

STATEMENT OF OFFENCE

Murder: Contrary to section 55(a), (b), (c) of the Crimes Act 2016.

PARTICULARS OF OFFENCE

Lomax Baguga (aka Lomax Craig Baguga) on 6th day of November 2019 intentionally engaged in conduct, that is to say, by stabbing Anna Penani (aka Annamelina Penani) with a knife, and that caused the death of Anna Penani (aka Annamelina Penani) and that the said Lomax Baguga (aka Lomax Craig Baguga) intended to cause or was reckless about causing the death of Anna Penani (aka Annamelina Penani) by the conduct.

2. You are found guilty for the offence of murder on 26 April 2022 and having heard your counsel's submissions in mitigation I now convict you of the charge of murder under s.207 of the Criminal Procedure Act 1972.
3. The penalty for the offence of murder as provided for in s.55 of the Crimes Act 2016 (the Act) is life imprisonment, however, under s.282(1) of the Act the Court is empowered to impose a sentence for a stated term instead of life imprisonment. S.282(1) states:

(1) Where, under this Act, an offender is liable to life imprisonment, a Court may nevertheless impose a sentence of imprisonment for a stated term.
4. Your counsel submits that instead of imposing a sentence of life imprisonment I should impose a sentence for a stated term which I did in the case of *Republic v Engar*¹; and should I impose a sentence for a stated term then I should deduct the time you spent in custody awaiting the trial which is calculated as 2 years 5 months.
5. In *R v Engar* I imposed a sentence of 19 years imprisonment and reduced it by a term of 15 months for the time spent in custody awaiting trial.
6. In imposing the sentence on you I am required to take into consideration inter alia the circumstances of the offending.
7. *R v Engar* was a case which involved two young couples and at the time of the sentencing the accused had just turned 20 years of age; they were in a relationship and the accused was very possessive and jealous and the actual circumstances of how the death was caused by the accused did not come out in evidence as it was a case purely on circumstantial evidence.
8. In this case you blamed the deceased for carrying out witchcraft on you and your son which you say caused both of you to have skin diseases and you had a swelling at the back of your neck. You had no evidence or proof that the deceased carried out witchcraft and you acted purely on speculation after you consulted a Tuvaluan guy for the skin disease; and he told you that it was the deceased who carried out witchcraft on you and your son. Thereafter you became completely obsessed with the idea that the deceased carried out witchcraft on you and your son. Dr Mohanraj the psychiatrist that you

¹ [2018] NRSC 25; Criminal Case 3 of 2017 (3 May 2018) Khan J.

consulted stated in his report and later in his evidence to court that you were acting under a delusional disorder when you stabbed the deceased and that at the material time you were suffering from mental impairment.

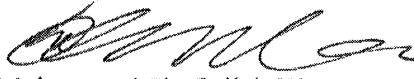
9. The issue of mental impairment was rejected by the Court and I made a finding that the death of the deceased was a pre-meditated act; and that in preparation to cause her death you had earlier sent away your girlfriend and your child away to her house; you picked up the knife that you usually used to slaughter pigs with as a weapon and waited for the deceased to come down the stairs. As she came down the stairs from your aunt, Melina's house, you waited in your room downstairs and confronted her and stabbed her twice in the abdomen and as she tried to flee from you, you stabbed her twice in the back. The stabbing took place in the presence of the deceased's 9-year-old grandson, referred to as LD.
10. Whilst stabbing the deceased you said to her, and I repeat what I said at [126] of my judgement:

[126] As she was coming down the steps he picked up a kitchen knife and stabbed her 4 times. Not only did he stab her 4 times he also said: 'It hurts, hurts, feel good, hurt as you need to make it feel good because if it doesn't feel good then it's not my problem, tell it to your witchcraft spirit to help you'. Then she said, 'what did I do wrong, what did I do wrong?' Then I told her, 'why you don't know what you did wrong when you die you will see where you are going'.
11. You surrendered to the police after the stabbing and waited for them to arrest you at the Meneng Church and upon your arrest you made admissions and assisted the police.
12. You are 49 years old and a first offender and at the time of the incident you were living in a defacto relationship and you have a son who is 2 years old.
13. You grew up with the deceased's parents after your father passed away as your mother could not afford to bring you up. The deceased and you were like brother and sister and you both enjoyed a very good relationship with her until you became obsessed with this idea that she carried out witchcraft on you and your son.
14. I have two victim impact reports from your aunt, Melina Baguga, and the deceased's 9-year-old grandson LD. Both have been adversely affected by the death of the deceased. LD is yet to come to terms that the deceased whom he treated like her own mother is dead. After witnessing the stabbing, he became very traumatized and does not talk much, and suppresses his emotions and cries when he is alone.
15. Your aunt Melina is also emotionally and psychologically affected by the death of the deceased. She feels responsible for her death as she was returning from her house when you stabbed her and she lay in her arms after the stabbing and was bleeding profusely. She is not able to forgive you for what you did and nor is she willing to accept you back in the house in Meneng.
16. The Acting Chief Probation Officer in his report states that when he met you to prepare the pre-sentencing report and you stated as follows:

“He was very disappointed at the outcome of his trial. He said “God is his witness, he blames the victim for performing a curse on him and his infant son, that he did what he did” (like self defence) for he was in so much pain that he thought he was going to die.”

17. You have shown no remorse or contrition that you caused the death of the deceased despite clear finding against you and unfortunately you are still obsessed with witchcraft.
18. The deceased at the time of her death was like yourself 49 years old and you killed her in the most gruesome and cruel manner. You have no regard for the fact that she was in company of her 9 year-old grandson and you carried out this act in his presence. This was a completely senseless act and cannot be forgiven or condoned
19. You are sentenced to life imprisonment.

DATED this 8 day of JUNE 2022


Mohammed Shafiullah Khan
Acting Chief Justice

