



IN THE DISTRICT COURT OF NAURU
CRIMINAL JURISDICTION

Criminal Case No. 47 of 20

THE REPUBLIC

-v-

JOHN-ONE DOWEDIA

JUDGMENT

For the Prosecution: Ms. Susan Serukai
For the Defendant: Mr. Ravunimasei Tagioakatini
Trial: 18-19 March 2021
Judgment: 25 March 2021

Catchwords:

Threatening to kill pursuant to section 91 of the Crimes Act.
Intention required is that the person means to engage in the conduct—s. 17(1) of the Crimes Act.
Credibility of the evidence requires assessment of credibility of the witness and the credibility of her evidence.

Introduction

1. The accused stands charged with the following offences:-

FIRST COUNT

Statement of Offence

Threatening to kill: Contrary to section 91(a),(b) (i) and (c) of the Crimes Act 2016

Particulars of Offence

John-one Dowedia on the 20th of August 2020 at Nauru threatened to kill Valentina Bill and John-one Dowedia intended Valentina Bill to fear the threat will be carried out and the threat was made in circumstances in which a reasonable person would fear the threat would be carried out.

2. The prosecution called three witnesses—Valentina Bill, her mother Olga Dowedia and Senior Constable Shane Brechtefeld, the officer who conducted the interview.
3. At the end of the prosecution case, I found that the accused had a case to answer and I put him to his defence. He elected to remain silent and adduce no evidence in his defence.

4. The facts of the case may be summarised shortly as a dispute between the accused and his niece the complainant that led to the accused telling her that **“You should move from here and return to your mother’s home. If you don’t move from here, I will murder you both because this is my home.”**

The Law

5. Section 91 of the Crimes Act 2016 provides:

91 Threatening to kill

A person commits an offence if the person:

(a) threatens to kill another person (or someone else); and

(b) the person:

(i) intends the other person to fear the threat will be carried out; or

(ii) is reckless about whether the other person fears the threat will be carried out; and

(c) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.

Penalty: 7 years imprisonment.

6. The prosecution therefore has the following elements of the offence to prove beyond reasonable doubt for a conviction:-
 - a. The accused;
 - b. On 20th August 2021;
 - c. Threatened to murder Valentina Bill and another person;
 - d. The accused intends Valentina Bill to believe the threat will be carried out; and
 - e. The threat is made in circumstances in which a reasonable person would fear that the threat would be carried out.
7. The facts not in dispute are that on the 20th of August 2020 the accused told Valentina Bill, **“You should move from here and return to your mother’s home. If you don’t move from here, I will murder you both because this is my home.”**
8. There is no doubt that elements a, b & c above have been proved beyond reasonable doubt by the prosecution and I so hold.
9. The remaining two elements require evidence and an analysis.

The Evidence

10. The evidence of the prosecution is not contested. Prosecution Witness 1 (PW1) Valentina Bill is 31 years old and the niece of the accused. She lives in Denig District with her husband. The accused lived with his brother in a house about 12 or 13 paces away from her home. On 20th August, when the offence is alleged to have happened, her husband had left for work, and her uncle who lived with the accused was still at work.
11. At about 7:10 a.m. Valentina Bill walked outside her home to get some firewood that she had kept between her house and the accused’s. The firewood had been about 8 paces away from her home but when she went outside, she discovered that they had been moved and stacked ready for lighting right next to her plastic water tank and right below overhead power lines. She said that the accused had burnt leaves and brush at

the spot before and the flames had gone about as high as her forehead. That fire was not one to chase mosquitoes. PW1 had told the accused that the fire was made too close to her water tank and below the power lines but he had said, "It's okay, it's far away from the tank and powerline."

12. PW1 said the place where the brush had been burnt before and where her firewood had been stacked on 20th August 2020 was about 4-5 paces away from her water tank. She said there were allocated areas for lighting fires in Denig and where the firewood was stacked on 20th August was not one of them. She said the accused had stacked her firewood there.
13. Valentina Bill said when she saw the firewood stacked for lighting near her water tank, she decided to move them to the side of her house. It was about 7:10 a.m. She continued:

John-one came and stood at his back door, looking at me while I moved the firewood. I told him the firewood is mine for barbeques and parties. He looked sort of creepy and I explained the firewood is not for a burn-off but for my use. There were about 8 pieces of firewood [she indicated the sizes to be about arm's length and some longer and about 4-5 inches in diameter.] There were off-cuts of 4"x 2" and 6"x2" timber.

By "creepy" I mean it looks like he is looking at me like an enemy he would kill or do something bad about. When I explained the use of the firewood to him, he said, "Why did you move them the first time?" I replied, "Is there something wrong that I did? You can tell me." I was trying to ask him if there was something wrong that I did because I can move the firewood.

He replied (using a Nauruan swear word), "Why are you screwing with me?" I replied, "You have a mouth, you can tell me what you want. No one is trying to screw with you." He then said, "**You should move from here and return to your mother's home.**" He also said, "**If you don't move from here, I will murder you both because this is my home.**" I think he was meaning he owns the land there.

14. PW1 said she was not sure who the second person was when the accused used the word "both of you." She said he could have meant her husband who lived with her or her mother, who lived in another part of Denig District.
15. She continued:-

"When he threatened to murder both of us, my heart started beating faster and I started to blank out because there were only the two of us and he was talking to me that way. His tone was angry, voice booming like someone trying to take something back that had been taken away. When said, "Why are you screwing with me, why are you screwing with my life, you should go back," his tone was a bit quiet so that

no one else would hear. It was like someone was threatening you but you didn't want anyone else to hear.

When he made the threat, I was scared, my heart was beating fast and going to my head. I told him "You have any problems, you speak to me. You have a mouth that you can use. Speak to me. Like coming to ask me for transport to go to court. We are family, we can speak to each other."

He replied, "You should move away from here or I will murder you."

I then told him, "So be it. I'll go speak to my mum."

16. PW1 said she then went inside her home and tried to calm down. She then called Joba, the accused's brother who was staying with him. Joba was at work and told her to decide what she wanted to do on her own as he had no control over the accused. PW1 then went to her mother and told her what happened. Her mother told her to call the police and she called and reported the matter at about 8:00 a.m. This was less than an hour after the incident.
17. In cross-exam, Valentina said she and her husband live in a house that is at the back of the accused's house; that their house is on the seaside while the accused's house is closer to the main road. Valentina agreed that a few days before this incident, the accused was cleaning his compound at about 2-3 a.m. He was weeding the grass and cleaning his compound of coconut husks.
18. Valentina said she is not aware that the accused has asthma but she is aware of another illness of the accused which was not revealed in court. Valentina denied that the accused was struggling for breath when he was talking to her and said, "What I saw is he was not having difficulty breathing. He was staring at my eyes."
19. Defence Counsel put to the witness that the reason the accused looked "creepy" was because he had difficulty breathing. She answered, "I don't agree because what he said was different. His demeanour is different from what he would have if he was suffering from breathing problems. What he said is different also."
20. PW1 said she has lived at her home for 4 years and that when her house was being built, the accused conducted himself well but that once the house was built, he started acting differently. She started seeing the change but she didn't do or say anything. PW1 said this was the first confrontation that they have had since she moved in. She said it is not good that he gets angry when she points out his errors or weaknesses. She said he didn't do anything to her or her husband in their house but outside it is different.
21. When it was put to Valentina that she was not scared on 20th August when he threatened her, she replied that the previous occasions were different; that on 20th August she was afraid and her heart was beating very fast. When it was put to her again that she did not fear that the threat would be carried out, she said she was afraid because her heart was beating fast.

22. The trial could not continue after lunch as there was a water problem and everyone had to go home after lunch.

Prosecution Witness 2 (PW2)—Olga Dowedia.

23. PW2 is the mother of PW1. PW2 said that her daughter, Valentina Bill came to her home on the morning of 20th August 2020 after the threat by the accused. PW2 said Valentina was scared when she told her about the threat by her uncle, the accused. The accused is her first cousin and she identified him in court. In cross-examination, PW2 said that her daughter called the police after they spoke.

Prosecution Witness 3 (PW3)—Senior Constable Shane Brechtefeld.

24. PW3 has served in the Nauru Police Force for 6 years. On 28th August, he was instructed by Sgt Shannon Kanamea to interview the accused and he did so. The witnessing officer was Reserve Roko Detabene and he was present throughout. The interview was conducted in Nauruan and translated into English. Both the Nauruan and English versions of the interview were reduced to writing. The interview was in a question and answer format.

25. The accused was given his right to remain silent and he understood that. He was given his right to counsel and named Mr. Tagivakatini (Director Public Defender). PW3 suspended the interview at 1543hrs and called Mr. Tagivakatini but receiving no reply resumed the interview 17 minutes later at 1600hrs.

26. PW3 should have tried harder to contact Mr. Tagivakatini. It was a Friday and it was working hours and someone at his office would have known where he was. The police should not have continued with the interview unless the accused agreed to it and the fact recorded in the caution interview.

27. The record of interview was tendered and marked Prosecution Exhibit 1 (PE-1).

28. The allegation put to the accused is in Q9:

Q9: John-one it is alleged that on Thursday 20th August 2020, you did verbally threatens a person namely Mrs. Valentina Bill (nee Dowedia) outside her dwelling in Denig district by means of saying, **“You better thinks because I will kill you both, cause this is my land.”** Do you understand?

A9: Understand.

Q19: What did you say to Valentina when you threatened her?

A 19: I was saying that I will harm them because they fooled me. But no, I didn't meant to what I said because I was angry.

Q20: I put to you that you did verbally threatened Mrs. Valentina Bill by saying, **“You better think because I will kill you both cause this is my land.”**

A20: No. I did not say that it's my land, I was just saying to her that they are fooling me.

Q21: Can you state in your own version what you did mean by "killing you both?"

A21: That's what I am telling you, I didn't get a good sleep last night because I was having chest pain. When I went outside my house, she told me, that before removing the timbers, I must inform her. That is why I got angry.

29. At the end of the prosecution case, I found that there was a case to answer pursuant to section 201(a) of the Criminal Procedure Act 1972 and put the accused to his defence. The accused elected to remain silent.

Analysis

30. The sworn evidence of PW1 is that the accused said to her, **"If you don't move from here, I will murder you both because this is my home."** The accused in his unsworn statement said in A19 above, "I was saying that I will harm them because they fooled me. But no, I didn't mean to what I said because I was angry." Again in answer 20 in his caution interview, he denied telling Valentina "he will kill you both." He explained in A21 that he did not get a good night's sleep because of chest pains and he was angry.
31. I saw Valentina give evidence. She impressed me with her demeanour. She answered questions confidently and without hesitation. Her evidence is that she was scared after the accused said he will murder both of them, so scared that her heart was beating fast and that she nearly blanked out. She went inside, gathered herself and went to see her mother. When she went to see her mother, she was still afraid and this was reflected in her increased heart rate. She reported the matter to the police less than an hour after it happened. Her reaction is consistent with someone who is suddenly terrified and senses or is aware of great danger to the extent that it triggers the physiological fight or flight response involving increased heart rate. Her body language did not suggest that she was telling lies and there was nothing in the evidence to suggest that she had a reason to lie. Valentina's evidence was not shaken in cross-examination. Her mother, PW2 corroborated her evidence that she was afraid because of the threat by the accused. The fact that Valentina went to see her mother and told her what happened so soon after is plausible behaviour for someone in her position. She was afraid so she went to her mother who could protect her from her uncle; she sought advice and after receiving it, reported the matter to police within 1 hour of it happening.
32. The accused relied on his unsworn record of interview and the questions and answers therein. He exercised his right to remain silent and therefore the court could not assess his demeanour. In Q12, he was asked whether he had anything to say relating to the allegations against him. He answered, "I want to apologize for what I say." He had the opportunity to deny the allegations but did not do so. An apology requires firstly that there be an admission of wrongdoing followed by remorse.

33. He was interviewed on the 28th of August, 8 days after the incident which is subject of the charge. He has had over a week to think about what happened. Facing a possible jail sentence, he has a good motive to lie or to modify his answers to put his actions in a better light. This is normal and it is human.
34. I find, from the analysis above, that I prefer the evidence of Valentina Bill to that of her uncle, the accused.
35. I am satisfied beyond reasonable doubt that the accused threatened to kill Valentina Bill and another on the 20th of August 2020.

Did the accused intend that Valentina Bill believe the threat will be carried out? & Did Valentina Bill believe that the threat will be carried out?

36. I find it convenient to deal with these two remaining issues together.
37. Intention is defined in section 17 of the Crimes Act thus:
17 Intention
(1) A person has 'intention' with respect to conduct if the person means to engage in the conduct.
(2) A person has 'intention' with respect to a circumstance if the person believes that it exists or will exist.
38. *(3) A person has 'intention' with respect to a result if the person means to bring it about or is aware that it will occur in the ordinary course of events.* This is a question of fact. The threat is to murder which involves killing. It is conduct and therefore the prosecution must prove that the accused intended to engage in the conduct as required by s. 17(1) of the Crimes Act.
39. A person's intention can only be inferred from the circumstances surrounding the incident and the nature and history of the relationship between the parties.
40. The starting point is that the accused must have intended that the natural meaning of the words he used be taken literally by Valentina. The same words used by them in a social setting and accompanied by the proper body language and a genuine smile would be treated as a joke. Valentina said however that the accused lowered his voice when he pronounced the words and his eyes went "creepy." Creepy is defined in the Collins English Dictionary as "having or causing a creeping sensation of the skin, as from horror or fear." The combination of the words, the looks as he delivered them and lowering of the voice makes the words menacing. The context in which the words were spoken is one of confrontation and anger. Even the accused admits that he was angry. From these facts, one can infer and I do infer that the accused must have intended at the time he made it that Valentina Bill should believe that the threat will be carried out. I find that this was the only inference that could be drawn from the facts.
41. There is no doubt that Valentina Bill was scared because she believed the threat will be carried out. She was so scared that physiological changes occurred to her body — the increased heart rate and near blanking out. A sudden increase in heart rate is part of the fight or flight response of humans to danger or fear.

Conclusions

42. I find, from the evidence and the analysis above that the prosecution have proved each of the elements of the offence set out in paragraph 6 above beyond reasonable doubt and I find the accused guilty as charged.

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Penijamini R Lomaloma
Resident Magistrate