



IN THE SUPREME COURT OF NAURU  
AT YAREN  
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 18 OF 2019

BETWEEN

THE REPUBLIC

AND

LOMAX BAGUGA

Defendant

Before: Khan, ACJ  
Date of Hearing: 27 January 2021  
Date of Ruling: 4 February 2021

Case to be cited as: The Republic v Baguga

CATCHWORDS: Psychiatric evaluation of accused charged with murder.

APPEARANCES:

Counsel for the Republic: R Talisasa (DPP)  
Counsel for the Defendant: T Tannang

## RULING

### INTRODUCTION

1. The accused is charged with one count of murder. It is alleged that on 6 November 2019 he murdered Anna Penani.
2. After his arrest the investigating officer, Sgt Iyo Adam, wrote to the Director of Medical Services on 25 November 2019 seeking psychiatric assessment of the accused to assess his

mental capacity. Unfortunately, no assessment has been done to date and this has been further delay as the defence counsel, Mr Aingimea, questioned the qualification of Dr Toobia Smith, the local psychiatric to carry out the assessment. Mr Aingimea wrote to the Director of Medical Services, Dr Olayinka Ajayi, and he responded to Mr Aingimea on 25 May 2020 by letter and stated:

“Given the level severity of his mental illness, evaluation that could be carried out by our current senior medical psychiatrist at RON Hospital will be inadequate, and as such a higher psychiatric expert opinion will be needed.

Fortunately, we have a highly qualified psychiatrist on the island who is Dr Andrew Mohanraj, with a Fellowship, higher degrees in psychiatric qualifications, and substantive years in psychiatric experiences, compared to our senior medical officer it would be best to have Dr Andrew Mohanraj conduct the required comprehensive psychiatric evaluation.”

3. Initially the Director of Public Prosecutions was supportive of the request for psychiatric assessment, however, he now holds the view that there is no need for an assessment. I am surprised that the DPP has changed his stance when the investigating officer himself wanted the accused to undergo psychiatric evaluation to ascertain his mental capacity. This request is consistent with the provisions of section 42 of the Crimes Act 2016 which provides:

#### **Section 42**

##### **Mental impairment**

- 1) A person is not criminally responsible for an offence, if at the time of engaging in the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that:
  - a) The person did not know the nature and quality of the conduct; or
  - b) The person did not know that the conduct was wrong; or
  - c) The person was unable to control the conduct.
- 2) For subsection (1)(b), a person does not know that conduct is wrong if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, is wrong.
- 3) A person is presumed not to have been suffering from mental impairment.
- 4) The presumption is displaced only if it is proved on balance of probabilities (by the prosecution or the defence) that the person was suffering from mental impairment.
- 5) The question whether a person was suffering from mental impairment is one of fact.

- 6) If the Court is satisfied that a person engaged in conduct as the result of a delusion caused by mental impairment, the person cannot also rely on the delusion as a defence.
  - 7) The prosecution may rely on this section only with the leave of the Court.
  - 8) If the Court is satisfied that a person is not criminally responsible for an offence only because of a mental impairment, the Court must return a special verdict that the person is not guilty of the offence because of mental impairment.
4. In light of the foregoing, I request the Director of Medical Services, Dr Olayinka Ajayi, to arrange for psychiatric assessment of the accused by Dr Andrew Mohanraj.
  5. I further order that should the Director of Medical Services or Dr Andrew Mohanraj require any further information then that information is to be provided by the prosecution and defence.

DATED this 4 day of February 2021

Mohammed Shafiullah Khan  
Judge