



**IN THE SUPREME COURT OF NAURU AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 10 of 2021

BETWEEN: THE REPUBLIC
PROSECUTION

AND: LOVANI JEREMIAH
ACCUSED

BEFORE: Keteca J

Date of Hearing: 05 June and 12 June 2024
Date of Submissions: 17 June 2024

Date of Judgment: 05 July 2024

Case may be cited as: Republic v Lovani Jeremiah

Catchwords: Causing Harm to Police Officer: Section 77, Alternative verdict: Section 273, Obstructing public Official: Section 242 *Crimes Act 2016*

Appearances:
Counsel for the Prosecution: **M. Suifa'asia**
Counsel for the Accused: **S. Hazelman**

JUDGMENT

BACKGROUND

1. The accused, Lovani Jeremiah is charged with one count of Causing Harm to Police Officer contrary to section 77(a)(b)(c) and (i) of the Crimes Act 2016. The Court notes that the initial Information had section 77(a)(b)(c) (d) and (ii) (no aggravating circumstances).
2. The prosecution called two witnesses, PW1-Sergeat Marvin Tokaibure and PW2- Senior Constable Anton Iga.

THE CHARGE

3. The Information reads:

Statement of Offence

CAUSING HARM TO POLICE OFFICER: contrary to section 77(a)(b)(c)(d) and (i) of the Crimes Act 2016.

Particulars of the offence

LOVANI JEREMIAH on the 10th day of April 2021 at Meneng District in Nauru, intentionally engaged in conduct, namely slapping **Acting Sergeant Marvin Tokaibure** with a Bluetooth speaker in her hand which landed on his face and the conduct caused harm to **Acting Sergeant Marvin Tokaibure** without his consent and that **LOVANI JEREMIAH** intended to cause harm to **Acting Sergeant Marvin Tokaibure**, because she believed that **Acting Sergeant Marvin Tokaibure** is a police officer and he is in fact a police officer.

THE LAW - 'Causing Harm to Police'

4. Section 77 (a)(b)(c)(d) and (i) of the Crimes Act 2016 provides:

"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;
- (c) the person intends to cause harm to the other because the person believes the other person is a police officer; and
- (d) the other person is in fact a police officer.

Penalty;

- (i) If aggravating circumstances apply- life imprisonment of which at least 12 years imprisonment to be served without parole or probation; or
- (ii) In any other case- 20 years imprisonment, of which imprisonment term at least one third to be served without parole or probation.

THE EVIDENCE

PW1- SGT Marvin Tokaibure

- 5. He has served in the Nauru Police Force for 11 years. On 10 April 2021, in the early morning, he was tasked to do mobile patrol around the island. Close to the Menen Hotel junction, he saw some people drinking by the seaside. He instructed his subordinates in the vehicle to remove the drunkards from the area.
- 6. The accused was not complying with the police instructions. He got off the vehicle himself. Assessed the situation. He asked the accused to find another place to drink as this space 'in the public view.'

7. The accused got aggressive. She said that she was a landowner. In his view, she maybe a landowner as she's a Jeremiah and the place they were drinking in was opposite the Jeremiah's place. She was asked politely to move from that place.
8. He asked her a third time to move and find another place to drink. He told her that she'll be arrested for not complying with police instructions. Told her of her right to remain silent. He told police officer Anton Iga to call for another vehicle as the accused is a female. Whilst waiting for the other police vehicle, the group continued drinking. The accused swore at him saying - 'you're a penis.' He ignored her. The accused swore again- 'Fuck your own mother.'
9. No females came on the other police vehicle. Accused stood up. He held her down. She was resisting. He was behind her. The accused swung her arm. An object hit his face. It was painful. He held her arm from behind and escorted her to the vehicle. The accused was aggressive. She looked drunk. He was the arresting officer. They were on duty. In uniform.

Cross- Examination

10. He's trained to diffuse certain situations. The drinking group was 'in public view.' The Girls committed the offence of public nuisance. There were no complaints by members of the public. There were about 10 in the group. Two were males. Girls appeared to be under 18. She was aggressive/careless.

Q- She swung her hand?

Ans- Yes

Q- You used force?

Ans- Yes

Q- When you used force – she was recklessly swinging her arms?

Ans- Yes

Q- That's when you felt her hand landing on you?

Ans- Yes

Q- She would not intend to assault you being accompanied by two other police officers?

Ans- Yes

PW2 Senior Constable Anton Iga

11. He was on patrol with Sgt Marvin on 10th April 21. Saw some people drinking on the seaside close to Menen Hotel. (The court visited the site earlier). He instructed the group to move to another place- they were in the open- not a good place to be drinking. The group refused to comply. Accused got angry and slapped Const Adam. She also slapped Sgt Marvin. The Accused got into the police vehicle by herself. He and Sgt Marvin arrested the accused. He accompanied the accused to the police station.

Q- Accused said anything?

Ans- We're okay here. Our family lands. We're safe.' He told her that it's in public view and they should move.

Q- How did the accused appear to you?

Ans- She was okay, normal.

Q- Was the accused also drinking?

Ans- Not sure

Cross -Examination

- Q- Girls were not committing any offence when you arrived at the drinking spot?*
Ans- That's right but need to be removed as not a place to drink Q-
Main purpose was to warn them to leave the area?
Ans- Yes
Q- Careless of Accused to talk back to Sgt Marvin?
Ans- Yes
Q- Sgt Marvin used force to control accused?
Ans- Yes, he had to
Q- Accused swung her hand carelessly it landed on Sgt Marvin?
Ans- No- she intentionally slapped him because Sgt Marvin tapped her on the shoulder
Q- She intend to assault PW1 in the presence of two other officers? Ans-She
would have complied

EVIDENCE OF THE DEFENDANT

12. The accused chose to give unsworn evidence.
13. She's 22 years old now. Unemployed. She's seeking employment in the PALM project in Australia. On the day in question, she and her friends had just started drinking when the police arrived. Sgt Marvin told us to leave the area as it's a public area. I asked – 'can we just finish our drinks and we'll leave as my house is just across the road?
14. Marvin got out of the vehicle. He was angry. She was sitting down. He grabbed her by the collar of her tee- shirt. He hung her and asked why she was not listening. She was scared. She asked to be put down. Sgt Marvin pushed her and she fell on her back. He came towards her again. She was frightened. She swung her hands. He grabbed her hands and twisted them behind her. She believed that he was going to hurt her.
Q- did you intend to assault the police officer? Ans-
No
15. As he held her hands behind her back, she was crying. She asked him to loosen his grip. She did not intend to assault the police officer.

DISCUSSION

16. I refer to the line of questioning in the cross -examination of the PW1.

- Q- She swung her hand?*
Ans- Yes
Q- You used force?
Ans- Yes
Q- When you used force – she was recklessly swinging her arms?
Ans- Yes
Q- That's when you felt her hand landing on you?
Ans- Yes
Q- She would not intend to assault you being accompanied by two other police officers? Ans- Yes

17. In my ruling on the 'no case to answer submission' I said:

'16. The court notes that from the evidence, the 'intention' of the accused to cause harm to the police officer' is apparently absent. This is based on the evidence of the complainant himself.

17. I remind myself of the observations of CJ Fatiaki when he dealt with the Bail application in this matter. He delivered his ruling on 16th June 2021.

18. At paragraph 33, he said:

'What's more and relevantly in the circumstances of this case, where alcohol consumption is involved, Section 14(2) of the Crimes Act 2016 provides that: "Conduct can only be a physical element if it is voluntary" in the sense of being an 'act' that " is a product of the will of the person who engages in the act." In other words, the act must be willed and intentional [as defined in Section 17(1)] and not accidental or the unintended consequence of "flailing ones' arms "to avoid being held or restrained or being stung by a bee or mosquito."

19. From the evidence, it appears that the act or the conduct of the accused here is akin to "flailing one's arm' to avoid being held or restrained.

18. In assessing the evidence of PW1- he said:

'Accused stood up. He held her down. She was resisting. He was behind her. The accused swung her arm. An object hit my face.'

19. In cross examination, he agreed that the accused was recklessly swinging her arms. He further agreed that when she swung her arms, that is when her hand landed on his face. PW1 further agreed that the accused could not have intended to assault him.

20. The accused said that she did not intend to assault the police officer. She was swinging her arms carelessly. It was not a direct slap or punch to the body of the police officer. **It was more the 'unintended consequence of 'flailing one's arm to avoid being held or restrained.'**

21. In my considered view, there is no intention to cause harm to the police officer here.

SECTION 129 OF THE CRIMINAL PROCEDURE ACT 1972

22. Section 129 provides:

'(1) Where an accused is charged with an offence consisting of several particulars, one or a combination of some only of which constitutes another complete offence, and that one particular, or such combination, is proved but the remaining particulars are not proved, he or she *may be convicted* of that other offence although he or she is not charged with it.

(2) Where a person is charged with an offence and facts are proved which reduce it to a minor and cognate offence, he or she *may be convicted* of the minor offence although he or she is not charged with it.

(3) In this subsection, a minor offence is one for which, upon conviction, a lesser maximum sentence I provided by any written law.'

23. Counsel for the prosecution submits that based on the evidence before the court, the defendant is liable for **common assault**; contrary to Section 78 (1)(a)(i) of the Crimes Act 2016.
24. Counsel for the accused refers to alternative verdicts under Section 273 of the Crimes Act 2016. She submits that the accused can only be found guilty of an alternative offence if she has been afforded procedural fairness.
25. I refer to Schedule 1 under the Crimes Act 2016. I am not satisfied that the accused is guilty of the Section 77 Causing Harm to a Police Officer – first offence. I am minded to find her guilty of the ‘alternative offence’ in Column 2 of Schedule 1- Obstructing a Public Official contrary to Section 242. In accordance with Section 273(2), the court is required to afford the accused, procedural fairness.
26. In paragraph [20] of my ruling on the ‘no case to answer’ application, I said:
- ’20. The court will not conclude at this stage that the defendant has no case to answer. Based on guideline 3 from the R v Jeremiah case that the evidence against the defendant is inherently weak and the possibility of being convicted of a minor offence under Section 129 of the Criminal Procedure Act 1972, this matter will proceed to the next stage of the trial.*
27. I note that Section 129 of the Criminal Procedure Act 1972 deals with ‘conviction’ of a minor offence ‘although he or she is not charged with it.’
28. Counsel for the defendant, in addressing this issue has referred to Section 173 (should be 273) of the Crimes Act 2016. In my view, this is the correct provision in dealing with ‘alternative verdicts’ and not Section 129 of the Criminal Procedure Act 1972 as the accused has not been found guilty yet.
29. Section 273 of the Crimes Act 2016 deals with the ‘finding of guilt’ for the alternative offence as listed in Schedule 1.

Has the Accused been afforded procedural fairness here?

30. I mentioned in my ruling on the ‘no case to answer’ submission of the possibility ‘of being convicted of a minor offence under Section 129 of the Criminal Procedure Act 1972.’ Both counsels covered this in their closing submissions. Counsel for the defendant, rightly in my view, also made submissions on ‘alternative verdicts’ under Section 273 of the Crimes Act 2016. I say rightly as I have not reached a finding yet on whether the accused is guilty of any alternative offence.
31. Procedural fairness relates to the process of how a decision is made. The person who is the subject of a possible adverse decision has the right to be heard. It also covers the rule against bias. As I have stated in paragraph [30] above, I had indicated in my ‘no case to answer ruling’ of the possibility of considering the commission another offence. Counsel for the defendant was thorough in addressing the requirement for procedural fairness under Section 273(2). She also made submissions on the absence of the requisite intention in committing the alternative offence. **The totality of these, in my view, amounts to affording procedural fairness to the accused.**

32. Section 242 of the Crimes Act 2016 provides:

'A person commits an offence, if:

(a) the person obstructs, hinders, intimidates, resists another person in the exercise of the other person's function as a public official; and (b) the person believes the other person is a public official.

Penalty: 2 years imprisonment.

33. The elements for this offence as relevant to the evidence adduced in this case are:

- i. 'A person commits an offence if the person
- ii. Obstructs, hinders, intimidates, resists
- iii. Another person
- iv. In the exercise
- v. Of the other person's function
- vi. As a public official'

34. I note that this offence does not provide a 'fault element.' In this case, Section 22 of the Crimes Act 2016 applies and imports 'intention' as the fault element.

RELEVANT EVIDENCE

35. In his evidence, PW1 said:

*'He asked her a third time to move and find another place to drink.
He told her that she'll be arrested for not complying with police instructions. Told her of her right to remain silent.
He told police officer Anton Iga to call for another vehicle as the accused is a female.
Whilst waiting for the other police vehicle, the group continued drinking.
The accused swore at him saying- 'you're a penis.' He ignored her. The accused swore again- 'Fuck your own mother.'*

36. PW2 said:

Q- Careless of Accused to talk back to Sgt Marvin?

Ans- Yes

Q- Sgt Marvin used force to control accused?

Ans- Yes, he had to

Q- Accused swung her hand carelessly it landed on Sgt Marvin?

Ans- No- she intentionally slapped him because Sgt Marvin tapped her on the shoulder

37. PW2 said that the accused slapped PW1. This is contrary to what PW1 said:

'No females came on the other police vehicle. Accused stood up. He held her down. **She was resisting.** He was behind her. **The accused swung her arm.** An object hit my face. It was painful.

38. I have already held in [20] above that the swinging of the accused's arm- was more the unintended consequence of "flailing one's arm to avoid being held or restrained." This negated the 'intention' to cause harm to the police officer.

39. Did the accused resist PW1 in the exercise of his function as a public official?

To 'resist' is to 'oppose'. 'Trying to prevent', 'not complying.' The accused was told, three times to leave the area. She did not comply. She swore at PW1. Not once, but twice. She resisted being arrested. She was aggressive. This element of 'resists' in the offence is present here.

40. Is PW1 a public official exercising his function/ role as a policeman? Section 8 of the Crimes Act 2016 includes a 'police officer' in the definition of a public official. This element of 'a public official' is present also.

41. Was PW1 exercising his function as a public official? PW1 and PW2 were on patrol duties. They were in uniform. They travelled to the drinking spot where the accused and her friends were drinking in a police vehicle. PW1 asked the accused and the group to leave the area. According to the accused herself: *Sgt Marvin told us to leave the area as it's a public area.* She knew that PW1 was a police officer.

42. It is clear that PW1 was exercising his police powers or function as a public official. This is the element - 'in the exercise of his function as a public official.'

43. Did the accused have the requisite 'intention' to 'resist' PW1 whilst he was exercising his 'function as a public official'?

44. Looking at the 'conduct' of the accused at the material time, the following are apparent:

She did not comply with PW1's instructions despite being asked three times to leave the area.

According to the evidence, other members of the group were about to comply, except the accused.

She swore at PW1. Not once, but twice.

She resisted being arrested. She

was aggressive.

45. From the above, I infer that the accused had the requisite intention to resist PW1. It follows that the accused 'meant to engage in conduct' as in Section 17 of the Crimes Act 2016- in resisting PW1 in the exercise of his function as a public officer. All the elements of the offence of 'obstructing a public official' are present.

CONCLUSION

46. Considering all of the above, I find the accused guilty of the alternative offence of 'Obstructing public official: Contrary to Section 242 of the Crimes Act 2016.

DATED this 05th day of July 2024



Kiniviliame T. Keteca

Judge

