



IN THE SUPREME COURT OF NAURU  
AT YAREN (CRIMINAL JURISDICTION)

Criminal Case No 3 of 2017

BETWEEN

The Republic

PROSECUTION

AND

Samaranch Engar

ACCUSED

Before: Khan J  
Date of Sentencing Submissions: 2 May 2018  
Date of Sentence: 3 May 2018

Case may be cited as: *Republic v Engar*

CATCHWORDS:

Murder-Sentence – life imprisonment – under Crimes Act 2016- where under section 282 court has discretion to impose a fixed term of imprisonment- Whether the court should exercise discretion to impose a fixed term of imprisonment.

Held: Discretion exercised in favour of the accused and a fixed term of imprisonment imposed.

APPEARANCES:

Counsel for the Prosecution: L Tabuakuro

Counsel for the Accused: S Valenitabua and R Tagavakatani

SENTENCE

INTRODUCTION

1. The accused was charged with murder. The charge read as follows:

### Statement of Offence

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

### Particulars of Offence

Samaranch Engar on 10 December 2016 at Nauru, intentionally engaged in a conduct that caused the death of Unique Lee Dick (deceased), and he was reckless about causing the death of Unique Lee Dick by that conduct.

2. After a lengthy trial the accused was convicted of murder and it is now my duty to sentence him. Under s.55 of the Crimes Act 2016 (the Act) the penalty for murder is life imprisonment.

### PRELIMINARY OBSERVATION

3. Before I sentence the accused I want to discuss an issue raised by his counsel Mr Valenitabua in his sentencing submissions. He submitted that in relation to the issue of him putting to the deceased's mother, Ronay Dick, that she caused the injuries to her neck which resulted in her death. I stated in my judgement<sup>1</sup> that Mr Valenitabua asked those questions on the accused's instructions. He made submissions that he was not instructed by the accused to ask those questions and further that he asked those questions of his own accord as a counsel. He submitted that acting in the capacity as a barrister he is allowed to ask any questions or make any submissions without the client's instructions.
4. I pointed out to Mr Valenitabua that in the circumstances of the case he could not have asked any questions without accused's instructions. He insisted that he could do so. I drew his attention to the case of *R v MAP*<sup>2</sup> where it is stated as follows:

"It is well established that the terms in which a party's counsel cross-examines a witness for the opposite side may be taken by the jury to reveal the version of event with which the party has instructed that party's counsel. In *R v Robinson*<sup>3</sup> Dunn, J with whom Wanstall ACJ and Douglas J agreed, said:

"...cross-examining counsel is concerned with primary facts. His instructions are to primary facts and it is his obligation – a strict obligation – that, if he 'puts' occurrences to witnesses, he 'put' them in accordance with his instructions. This being so, the instructions may be inferred from the questions. If there is a discrepancy in a significant particular (I do not mean an explicable discrepancy, for whilst perfection in communication between client and legal advisor is aimed at, it is not always achieved) between questions based on instructions as inferred and the evidence of the person from whom the instructions must be taken to have come, it seems to me to be quite permissible [sic] for a Judge to ask the jury to have regard to the discrepancy in evaluating the evidence.

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<sup>1</sup> Page 20 [102]

<sup>2</sup> [2006] QCA 220 [57]

<sup>3</sup> [1977] QdR at 394

The truth is, I think, that whilst in a strict sense questions are not evidence, questions asked (and indeed questions unasked) form part of the conduct of his client's case by counsel. The conduct of the case is something from which the jury may be asked to draw inferences, so long as the due regard is heard to the requirement of fairness and the possibility of human error (especially in relation to peripheral matters)."

## SENTENCE

5. As I said earlier the sentence for murder is life imprisonment and in the ordinary course of events life means life, subject to for release on parole. However, s.282 of the Act gives powers to the Court 'to reduce penalties.' Section 282 states:

### **Power to reduce penalties**

- a) If, under the Act, an offender is liable to imprisonment for life, a Court may nevertheless impose a sentence of imprisonment for a **stated** term. (emphasis added)
6. Under s.282(2) of the Act the Court has a discretion to reduce the sentence. Mr Valenitabua has submitted that I should exercise those discretions favour of the accused.

## CRIMINAL JUSTICE ACT 1999

7. If I were to sentence the accused to life imprisonment, then under the Criminal Justice Act 1999 (CJA 1999) he would be entitled to make an application to be released on parole to the Parole Board under s.32 of CJA 1999 after having served 10 years of imprisonment<sup>4</sup>.

## FACTS

8. The accused and the deceased were in a relationship of boyfriend and girlfriend. It was a 'rocky' relationship. There were some suggestions of violence being inflicted by the accused on the deceased during their relationship.
9. On the evidence before me it is apparent that the accused was a very possessive and jealous boyfriend. He was an introvert. Whilst the deceased on the other hand was a very beautiful young lady with very charming personality and with an outgoing character. She was a former Ms Nauru pageant.
10. The accused and the deceased broke up a day before her death and later that afternoon she had gone out for drinks with friends at the Reef Bar at Meneng. Whilst she was enjoying with her friends the accused approached her and assaulted her in the presence of many people.
11. The accused had no regard for her feelings or welfare. She was very embarrassed at his behavior. His actions show that he wanted her at any costs. In the second assault

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<sup>4</sup> S.34 of Criminal Justice Act 1999

on the deceased at the Reef Bar the accused got hold of her neck and refused to release it, despite interventions of the by standers. He only released her when he was poked in the eyes.

12. When the accused met the deceased the next day before her death she was in a very vulnerable position. She was intoxicated. When he caused those injuries that led to her death she was completely helpless. Once again, the accused did not have any regard for her welfare. She was in love with him a day before and instead of showing compassion he subjected her to violence, not only once but on three different occasions within a space of two days.
13. This death was totally unnecessary. The accused took the life of a young and bubbly person who had so much potential. Her family would have to live with her loss for the rest of lives.

#### ACCUSED'S BACKGROUND

14. The accused has just turned 20 years a few days ago. His date of birth is 30 April 1998. Like the deceased, he was also a student in Fiji pursuing further education.
15. He is a first offender.

#### MURDER IN NAURU

16. Both counsels in their sentencing submissions have made references to the cases in Fiji, where unfortunately there is a prevalence of murder. Fortunately for Nauru, the last known case of murder was in 2007, the case of *R v Roland* [2007 NRSC 5] in which Millhouse CJ imposed a life sentence.
17. So as case be seen the incidence of murder in Nauru is quite rare and we hope that it remains so.

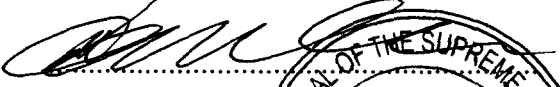
#### SECTION 282(2) OF THE ACT

18. I have been invited me to exercise the discretion in the accused's favour and I am bound to exercise those discretions judicially. Having exercised the discretion and I persuaded that I should exercise the discretion in his favour.
19. Having taken into consideration the seriousness of the offence, the personal circumstances of accused including his age I impose a sentence of 19 years imprisonment.
20. In imposing that sentence, I must emphasis that this case had all the semblance of domestic violence and unfortunately it ended in the tragic loss of the life of the deceased. This is a warning to people who are minded to act in similar manner as the accused, that if you do so, then you will be looking to serve a similar term of imprisonment as the accused, if not more.

TIME SPENT IN CUSTODY

21. The accused has been in custody since the 11 December 2016 and I order that period of time which I calculate it to be approximately 15 months is to deducted from his term of imprisonment.

Dated this 3 day of May 2018

  
Mohammed Shafiq Khan  
Judge

