

SUPREME COURT OF SEYCHELLES

Reportable

CO52/2022

In the matter between:

The Republic

(Rep by Mr. Hermanth Kumar)

The Republic

and

Markus LOUISE

(Rep by Ms. Edith Wong)

Accused

Neutral Citation: *The Republic Vs Markus Louise (CO52/2022) (11 March 2024)*

Before: D. Esparon Judge

Summary: Judgement

Heard: 11 March 2024

Delivered: 11 March 2024

JUDGMENT

Esparon, J

Introduction

- [1] The accused Markus Louise is charged in Count 1 with the offence of Attempt to murder contrary to and punishable under section 207(a) of the Penal Code. The particulars of the offence read as follows 'Markus Louise, 30 years stevedore of North East Point (Night Shelter), Mahe, on the 28th October 2022 at North East Point, Mahe, attempted unlawfully to cause the death of Mr. Danny Jonas Pierre of 52 years old of Petit Paris, Mahe.
- [2] The accused is charged in count 2 with the offence of Acts intended to cause grievous harm contrary to and punishable under section 219(a) of the Penal Code. The particulars of the offence

read as follows; 'Markus Louise, 30 years old stevedore of North East Point (Night Shelter), Mahe, on the 28th October 2022 at North East Point, unlawfully did grievous harm on the person namely Mr. Danny Jonas Pierre of 52 years old of Petit Paris, causing multiple external and internal injuries into the body of the said Mr. Danny Jonas Pierre by an act of stabbing using a knife.

The Evidence

- [3] Miss Stephanie Agath gave evidence on Oath to the fact that she took photograph of the crime scene on the 28th October 2022 at North East Point, near Carana, near the night shelter around 8.35 am in the morning and present was sergeant Martina Dugasse, PC Harry Simeon and Corporal Amesbury. She gave evidence to the fact that corporal Amesbury showed her the exact position of where the knife was when he arrived at the scene and where the victim was and labelled it 1 to 6. On the same day at around 1pm she took photograph of the suspect. She then took photographs of the knife on the 31st October 2022 and on the 9th November she took pictures of the victim. She produced a batch of 45 photographs to the Court of which the Court admitted them as exhibit and marked them collectively as exhibit P1.
- [4] She showed the pictures of where the knives were found namely a machete with black handle, a knife with black handle, a knife with blue handle and a knife with brownish handle. She also gave evidence that of the 4 knives only the machete had no blood on it. She also explained photograph no 11 which showed an injury on the right side arm of Markus Louise and photograph 14 showing injuries on the right side foot of Markus Louise. She also showed in the photographs the injuries on the back, on the lower and upper right arm of the victim Danny Pierre.
- [5] Mr. Jude Bistoquet a sub-inspector in the Seychelles police force attached to the Scientific Support and Records Bureau gave evidence to the fact that he was the exhibit officer in the case of which he arrived on the scene with corporal Agath. He collected blood swabs of blood samples on the road and by the road side. At the Perseverance police station on that day he also took two sets of sample from the right and left hand of the suspect and then took his t-shirt and shorts as exhibit. He also gave evidence to the Court that Corporal Lucas handed over 4 exhibits to him at 11.10 hours at Bois de Rose namely one machete with black handle, one knife with black handle, a knife with blue handle and a knife with brownish handle of which he processed the knives and found that 3 of them having some red substances suspected to be blood and took

samples from the ones that had red substances and packed and sealed them in an evidence bag and kept them in his possession.

- [6] The witness produced the 4 knives as exhibit to the Court of which the Court marked the machete with black handle as exhibit P11 (b) the knife with black handle as exhibit P12 (b), the knife with blue handle as exhibit P13 (b) and the knife with wooden handle as exhibit P14 (b). During cross-examination, the witness stated that he did not do any fingerprint with the knives because there were red substances suspected to be blood on them so that if he had done fingerprint on them, it would have disrupted or altered whatever was on the knife.
- [7] Corporal Lucas gave evidence to the Court that he received the 4 knives from PC Harry Simeon namely one machete with black handle, one knife with black handle with red blood substance on it, one blue colored knife with red substances on it and a wooden brownish knife with red substances on it of which he handed them over to SI Bistoquet on the same day of which he identified the said knives in Court.
- [8] Mr. Roch Amesbury, a mechanic working for the Seychelles police force gave evidence on oath to the fact that he saw an incident opposite the night shelter of which a guy had been wounded and had blood on him. He blocked the area with his vehicle and went straight to the victim. He spoke to the victim and that the victim was a bit dizzy because of the injuries on him. According to him there were knives around and there were people tempering with it, so he had to remove them of which he found a machete on the road and there were two other in the sand one with black handle, a knife with blue handle and a knife with brownish wooden handle which was under his hand on the ground. He also identified the man that he had seen with injuries in photograph no16 of exhibit 1. He also gave evidence to the fact that he took the knives and put it at the back of his jeep then gave it to PC Simeon on the scene of which he identified the said knives in Court. He also testified that on the scene there were people with cloths trying to apply pressure on the wounds.
- [9] Corporal Simeon gave evidence on oath that he received a phone call from Perseverance police station that someone had been injured at North East Point and he went to the scene with an officer and saw a man sitting on the sand with blood coming out of him and identified the said man in photograph number 16 in exhibit P1 and met corporal Amesbury of which he handed over the machete and the 3 knives over to him of which he placed it in an evidence bag and handed them over to corporal Lucas at Bois de Rose of which he identified the machete and

the 3 knives in Court. He also stated that when he went to the English River Clinic he found the t-shirt of the victim and gave it to sergeant Martina Dugassee.

- [10] Mr. Leroy Marcel, a police officer gave evidence on oath that on the 28th October 2022 at 7.30 am. He was looking for a wanted person in the Machabee region and on the way back upon reaching near the night shelter he saw 2 persons on the ground fighting and quickly the driver of their vehicle stopped and they disembarked where the accused ran away of which the witness identified the accused as the person that ran away. He and constable Accouche ran after him and managed to secure him about 50 metres away. When he went back to the scene he saw a man on the ground, he was bleeding and when he checked his arm he saw a deep laceration. He then called the ambulance. He then arrested the accused for the offence of wounding. He waited for the ambulance to come then conveyed the accused to the Perseverance Police Station. Later on he brought him to the English River Hospital.
- [11] Inspector Ivan Esparon gave evidence on oath to the fact that he is a police officer presently attached to the digital forensic at the SSCRb of which his work there entails extracting digital data from mobile phones, computers, CCTV cameras, GPS devices and to provide data for investigation purposes and to make a report regarding the matter. He gave evidence to the fact that on 31st October 2022 he was requested by Martina Dugassee to extract 2 video recordings on a mobile phone namely a dark colored mobile phone, redmi. He testified to the fact that he was able to extract the 2 videos from the mobile phone and a report was made by himself of the process and also the video was provided on a DVD of which the said DVD was sealed in an evidence envelope. He produced a report containing 2 documents of which the Court admitted them as exhibit and marked them as exhibit P21 and P21(a) respectively. He also produced the DVD of the two videos he extracted from the said phone of which the Court admitted it as exhibit and marked it as exhibit P22 (a).
- [12] The Court viewed both video footages and Inspector Esparon's testimony is that one of the video showed someone on the ground and someone running away and also some unknown person in the area. The second video shows someone sitting down and also some injuries on his right arm and also suspected blood on the person sitting down and some unknown persons trying to help him of which the 2 video footages were admitted as exhibit and marked as exhibit 22(b) namely VID 20221028081857 mp4 and also marked as exhibit 22(c) namely vid20221028082042mp4.

- [13] Mr. Bishal Gurung gave evidence to the Court to the fact that he is a Nepali working in Seychelles for Grace company of which he was working at the Rehab centre on the 28th October 2022 and that a fight started around 8am. He identified the area where he saw the 2 persons fighting in picture no 2, exhibit P1 pointing at the bus stop.
- [14] According to the witness they were fighting and a guy fell down in the sand pointing in the picture on the left side of which he tried to intervene. He gave evidence to the fact that the accused stabbed. According to him the accused used the knife on the arm and on the back of the said person and he identified the accused as the person who stabbed the person on the ground. He stated that a lot of people came and were calling the police and the ambulance. He stated that he was around 1m 20cm to where the fighting was taking place and that there was a lot of bleeding.
- [15] The witness gave evidence to the fact that he handed his mobile phone to the police since there was a video that he took and identified the two video footages that he took in court after that he viewed the 2 video footages. During cross-examination, the witness stated that they were arguing and the guy went away and quickly after one minute he came back with a knife. According to the witness at the time the guy was waiting for the bus when the accused came back with a knife and used the knife of which the accused cut, cut, cut.
- [16] Dr. Barun Kumar a senior medical officer at the Ministry of Health gave evidence in Court and produced a medical report of the doctor who had first seen the patient Danny Pierre namely Doctor K. Veganamdan of which the report is dated the 28th October 2022 which was admitted as exhibit by this Court and marked as exhibit P23. According to the said medical report, the patient had received multiple stab wounds at the back of the chest and deep cut wound on the left arm, muscle and facia were exposed. On examination the patient was sweating with breathing difficulty with pain, the back of the chest had 6 lacerations of various lengths from 5 cm to 8cm and the wounds were bleeding profusely. The cut wounds on the arm and the forearm were not bleeding a lot. The wounds were soothed and dressed. All the vital signs were stable, the patient was conscious and stable and the pulse rate was 99 beat per minute. The patient was referred to the surgeon and orthopedic surgeon for further management. The size of the laceration of the left arm was 10 to 12cm and the left forearm was 10cm with muscle and fascia exposed.

- [17] Dr. Kumar opined that any stab injury on the chest can be very grievous and life threatening because it can puncture a lung or many vital organs in the chest. According to the doctor this could have been caused by a sharp object, knife or machete, very difficult to tell but according to what the doctor has written, there were lots of lacerations so most probably a knife or a dagger, something sharp had been used to harm him.
- [18] Dr. Brian Antoine gave evidence on oath before the Court and produced a medical report signed by him dated the 9/11/22 in relation to Danny Pierre of which the Court admitted the said document as exhibit and marked it as exhibit P24. According to the doctor on examination the doctor found a wound at radial aspect, moderate bleeding and difficulty for extension of right wrist. The X-ray of the right fore arm showed fracture of the distal right radius and chest x-ray revealed pneumothorax. The patient was then brought to the operating theater where tendon repair of the right extensor carpi radialis was repaired. Back slab applied to the right fore arm. IV antibiotics treatment with analgesics were prescribed to the patient. The diagnostic for the patient as shown on the medical report were right extensor Caerpi radialis tendon laceration, stab wound left hemithorax, Hemopneumothorax left side. The Doctor also gave evidence that normally when a patient comes with these types of injuries, they tend to focus straight on these like stab injuries in the abdomen, thorax and head. These are the main areas that if you don't treat the patient, serious complications can arise and patient may or may not lose his life.
- [19] Mr. Danny Pierre gave evidence on oath. He stated that he works at the night shelter at North Eat Point as a night attendant. He testified to the fact that he works from 6pm to 7am in the morning and does inspections around the compound making sure everyone has bathed and the shelter is clean and that there is no problem.
- [20] Mr. Danny Pierre gave evidence that on the morning of the 28th October 2022, he stayed to help that morning since a lady called him on the 27th stating that there will be a meeting and that there were some chairs to be cleaned. While cleaning the chairs, at around 7 to 7.15 am he heard a commotion inside and he heard Markus a client of the night shelter saying Allen of which he was arguing with Allen saying he was a spy. According to the witness when he intervened and asked what was happening, he turned against him and said that he was also involved and that he was also making problems. Markus was a client since he did not have a place to stay and so social services placed him at the night shelter.

- [21] The witness testified that when he was asking what was happening, Markus turned against him and said he will beat him up and all. The witness further stated that he approached him and told him that his time was up and he needs to leave. According to the witness he became very aggressive of which he called the lady in charge, Maria Doudee to inform her what was happening of which she told him to wait in order to give a statement and so he waited to give a statement.
- [22] Mr. Danny Pierre testified to the fact that thereafter he took his bag like he usually does to leave and that he noticed Markus running behind him with a knife. He stated that he turned back and saw that he was near him. Then the accused stabbed him with a knife. He ran across the road but he fell on the ground on the other side of the road and that the accused hand was still on his back and he was still stabbing him and according to the witness the accused stabbed him a lot on his back and when he fell on the ground he cut him on his right arm namely on his forearm and on his upper right arm. He also identified the place where he was attacked in picture number 2 and 3 of exhibit P1.
- [23] The witness testified that when the police arrived he was brought to the English River clinic where his injuries were sutured and he was losing a lot of blood and was out of breath. The witness stated thereafter he was brought to the casualty and admitted to the ward for 8 days. According to the witness he had to undergo surgery to fix his nerve. The witness gave evidence that up to now he is still having some pain in his fingers and cannot fully clench his hand. The witness also identified the accused in the dock as the person who stabbed him
- [24] The witness was also shown the video footages namely exhibit P22 (a) and exhibit 22(b) and identified him on the video footage and also identified the accused on the video footage as the person running away from the scene.
- [25] During cross-examination by counsel for the accused the witness stated that he saw 2 knives with the accused. The witness denied that he had any knife with him of which he further denied that he was removing his machete and that the accused only had to remove his knife to defend himself nor did he pull out any knife while on the ground of which he categorically denied both allegations. The witness also denied that he was aggressive with the accused while he was working at the night shelter.
- [26] Maria Doudee who was employed as an administrator at the night shelter gave evidence on oath corroborating the evidence of Danny Pierre of the conversation they had that morning on

the phone on the 28th October 2022. She further gave evidence to the fact that when she arrived at the gate someone told him it seems that Markus is going to fight with Danny and he brought Danny inside and had him explain everything to her and that on the previous day she reprimanded the accused and he told her that he did not like when there is a small problem that Danny comes and pulls his shirt.

[27] She further gave evidence that on that day Danny had told her that Markus told him that he is not afraid to go to Montagne Posee prison and she advised him to go and make a complaint to the police since the situation was aggravating and Danny agreed. She stated that Danny went away outside the gate at 8.15 am and while in her office through the window she could see people running and she heard shouting on the road. According to her when she came out of her office she saw Danny on the ground and Markus had raised his hand and he had a knife in his hand and she just shouted '*Markus don't do that*'. She then saw Danny raise his arm and that is when she saw blood and went back to her office and called the police and they forwarded her to the ambulance where she informed them that someone had been hurt. She testified to the fact that she went back to the gate and saw Markus run to go towards Glacis and she opened the gate and saw Danny seated by the beach and he was bleeding. She stated that the ambulance had then arrived and taken Danny. She also identified the accused in the dock in Court as the person he had seen with a knife on the 28th October 2022. She further gave evidence that Markus was a person that was not entirely on good terms with others.

[28] Seargent Martina Dugasse the investigating officer gave evidence on oath in Court and produced two t-shirts one which had holes in it belonging to the complainant and the other intact as it was used to bandage his hand with it of which both were admitted and marked as exhibit 25 and exhibit 26 respectively. She stated that she had received them from constable Harry Simeon.

[29] Thereafter in the matter the prosecution closed its case and the Court ruled that there is a case for the accused to answer the charge. After that the accused was put on his election, the accused elected to give evidence on oath. The accused Markus Louise gave evidence that he knows Mr. Pierre from the shelter and he has been very rough and aggressive and has never been on his side and he was discouraging him to stay there. He further gave evidence that on the 27th they had issues the three of them and not only him since they were losing their property i.e milk of which a few times this had happened and he was getting frustrated and they were getting angry

with him and according to the accused he advised Madame Doudee about it and nothing was done and even Mr. Pierre does not want to entertain these kinds of things.

- [30] The witness testified to the fact that the morning when they were arguing, he was hiding his stuffs, his milk before he goes and there was one guy that went everywhere he was going that is why he told him that he is a spy. According to the witness Mr. Pierre took it personal and jumped in the middle and they exchanged words of which he said he had a family of which according to the accused that is when he told Mr. Pierre that he doesn't have anything to lose even if he goes to prison since according to him he was pushing him to his limit.
- [31] He testified to the Court that he took 2 knives and put it inside his shirt and that he was coming to him since he had already passed by. He had the intention to call when he had reached him. He testified that he was coming behind him to approach him and was walking a bit fast to catch him when Bernard told him that he was coming. So he just turned back, he saw that he was coming and removed his machete from his bag and he removed his. According to the accused when he approached him and he aggressed him with his weapon and he did it three or four times meaning that he waived his hand in the air as if he was brandishing the machete towards him. That each time he throws his machete he got injured. Then his machete fell down and according to the witness he was going back towards it to pick it up and hence he injured him from his back so that he will not get it. He stated that he managed to get the machete and threw it far from him as he got rid of it. He stated that it would be either him or me.
- [32] The witness further gave evidence that his also drop out of his shirt and so now they were fighting hand to hand and that he was locking him and this was when they went on the floor. According to the accused he managed to lock him at his back and there was a weapon like Madame Doude said in his hand, so he heard Madame Doudee scream and he let loose of him. The red car was coming and at the time he didn't know if it was the police. He also stated that before he let him go, he was using something under him to try and get to him and that he doesn't know if he had a knife or something else. He was also struggling to get out of the lock and the moment he heard Madame Doudee he just let go of the weapon. He also stated that he had no intention to kill Mr. Pierre that day and that he had to avoid him, when he was with his machete so that he will not hurt him. He also stated when he was looking for his slippers to leave he heard someone saying in creole 'lapolis', so he turned back and he stayed when he saw that the person looked like the police and they put handcuffs on him of which after they put him on the floor.

- [33] The accused further testified to the Court that he was only injured on his feet but the injuries was not that deep. He further stated in Court that the weapons were mainly for his safety so that he can protect himself while he confronted him so he had prepared this with him just in case since he had told him he was prepared for him, he had something for him. Under cross-examination by counsel for the prosecution, the accused admitted that it was only when he dropped the machete and was running to get it again, it was now that he injured him on his back when he was running. He also admitted during cross-examination that he received the bruises on his feet when they were struggling maybe from macadam, the cement or coltar and the stabbing maybe something he had with him which he assumed it was a knife.
- [34] During re-examination the accused stated upon viewing the video footage that Mr. Pierre had a knife in his hand when he extended his arm.

Submissions of Counsels

- [35] Counsel for the prosecution relied on the evidence of the witnesses tendered by the prosecution he submitted to the court that if the incident happened the way the accused said in his evidence that victim had a machete in his hand he would have received and would have inflicted more injuries to the accused body of which it was the victim which was the stronger person amongst the two of them and had sustained multiple stab injuries from the accused. He further submitted that the evidence of the prosecution showed that a grudge or anger developed in the mind of accused against the victim, made the accused to attack the victim brutally on the 28th October by using a knife which clearly established his intention to harm the victim which may have ended up to cause the death of the victim if the victim was not treated at the hospital after this incident by the doctors. According to Counsel, the multiple injuries caused by the accused according to the medical evidence tendered by the prosecution were grievous injuries. He further submitted that the prosecution has proved the charges in Count 1 and 2 against the accused beyond a reasonable doubt.
- [36] On the other hand, Counsel for the accused submitted to the Court that the Court must consider whether the accused had the necessary mens rea to carry out either crimes. According to Counsel for the accused, the witnesses tendered by the prosecution especially the victim Danny Pierre was not a credible witness since he was not truthful when he stated that he had no weapon with him since he admitted during cross- examination that he had a small knife in his bag and at one point during the video footage according to Counsel it shows the victim Danny Pierre

with a knife. She further submitted that Mr Bishal Gurung's evidence should be taken with a pinch of salt since there was a language barrier and he did not witness the start of the fight and the entire incident.

[37] Counsel for the accused has submitted to the Court that the accused has raised the defense of self-defense in his testimony and that it is the duty of the prosecution to disprove this. Counsel relied on Archibold, Criminal Pleadings, Evidence and practice 2008 at paragraph 19-43 as regards to this issue. Counsel also relied on the case of Jeffrey Francis V/S the Republic Crim Appeal 7 of 1997 where the Court of Appeal cited the case of Palmer V R (1971 55 Cr. App.223 and R V/S McInnes Cr App 55, R 551, whereby the Court laid down the guiding principles relating to the law on the issue of self-defense. Counsel also relied on the case of Sidonie V R 2010.

[38] In applying the law, Counsel for the accused submitted to the Court that the wounds whilst indicating a stabbing do not necessarily indicate that Mr. Louise intended to kill, just that Mr. Louise intended to stop the victim who had a machete. Secondly the video footage showed the victim had a knife with him. Counsel also submitted that the accused feared for his life since he believed the victim was reaching for a weapon and that a reasonable person would fear for his life on seeing a person with a machete. She also submitted to the Court that Mr. Louise being a man of a smaller frame reacted in the same way he did towards the victim who had a larger frame. Furthermore, it is the submission of learned Counsel for the accused that the prosecution did not disprove that the accused acted in self-defense and at the moment the accused did not fear for his life.

Analysis and determination

[39] The first Count is one of Attempt to murder contrary to section 207 (a) of the Penal Code. This Court hereby reproduces the said section and it reads as follows;

'any person who attempts unlawfully to cause the death of another'.

[40] The word attempt is defined under section 377 of the Penal Code and it reads as follows;

'When a person, intending to commit an offence, begins to put his intention into execution by means adapted to fulfilment, and manifest his intention by son overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.'

It is immaterial, except so far as regards to punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfillment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from further prosecution of his intention.

It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence'.

[41] As regards to the above count, it is clear that an unlawful act was committed and could have very well caused the death of the victim Danny Pierre from the evidence of Danny Pierre himself, Maria Doude, and Bishal Gurung of which the act of stabbing victim may have not gone further as a result of an event independent of the will of the accused that is the intervention of the police and according to the testimony of the accused Markus Louise while he was holding the knife he heard the scream of Maria Doude saying Markus 'Pa fer' which is translated in English to mean Markus don't do it, and hence he dropped the knife.

[42] In the case of Barra V R SCA 4/2001, LC 21 the Court held the following;

'Mens rea or intention is required for an attempt to commit an offence. In attempted murder cases, the intention must be to cause the death of another.

[43] It follows that as regards to count 1, the prosecution must prove beyond a reasonable doubt that the accused had intended to cause the death of Danny Pierre. Mr. Danny Pierre gave evidence to the fact that Markus Louise told him during the time they were arguing when he intervened in the dispute between Markus and Allen that he is going to beat him up and all that. The accused in his evidence on oath stated that he felt threatened and all of a sudden there was a big issue about him going to the police. So he waited outside by the bus stop by the beach since he wanted to sort this out with him and to confront him. He also stated that he had no intention to kill Mr. Pierre that day and that he had to avoid him. It is also noted that the injuries on Danny Pierre according to the medical reports was on his back and on his arm and that surgery was only necessary to repair the nerves which were damaged in his hand not for the injuries on his back which was only sutured but was bleeding profusely before that.

[44] This Court is of the view that the above evidence as narrated above falls short of showing that the accused intended to cause the death of the victim Danny Pierre. Hence this Court holds that the prosecution has not proven beyond a reasonable doubt that the accused had the necessary mens rea to commit the offence namely that the accused intended to cause the death

of Danny Pierre when he did the said act. As a result, this Court accordingly acquits the accused as regards to count 1.

- [45] As regards to count 2 namely the accused being charged with the offence of Acts intended to cause grievous harm contrary to and punishable under section 219(a) of the Penal Code. Section 219(a) of the Penal Code reads as follows;

‘Any person who with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent lawful arrest or detention of any person-

(a) Unlawfully wounds or does any grievous harm to any person by any means whatsoever:

is guilty of a felony and is liable to imprisonment for life’.

- [46] The word grievous harm is defined under section 5 of the Penal Code and it reads as follows;

‘grievous harm means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely to injure health or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ. Membrane or sense;’

- [47] Applying the law to the facts of the case, the medical evidence as adduced by the prosecution being the medical report of the doctor who had first seen the patient Danny Pierre namely doctor K. Veganamdan of which the report is dated the 28th October 2022 which was admitted as exhibit by this Court and marked as exhibit P23. According to the said medical report the patient had received multiple stab wounds at the back of the chest and deep cut wound on the left arm, muscle and facia were exposed. According to the said doctor, the back of the chest has 6 lacerations of various lengths from 5 cm to 8cm and the wounds were bleeding profusely. Doctor Barun Kumar who produced the medical report on behalf of the doctor who first treated the said Danny Pierre opined that any stab injury on the chest can be very grievous and life threatening because it can puncture a lung or any vital organs in the chest.

- [48] According to doctor Brian Antoine, on examination the doctor found a wound at radial aspect, moderate bleeding and difficulty for extension of right wrist. The X-ray of the right fore arm showed fracture of the distal right radius and chest x-ray revealed pneumothorax. The patient

was then brought to the operating theater where tendon repair of the right extensor carpi radialis was repaired. The diagnostic for the patient as shown on the medical report were right extensor Carpi radialis tendon laceration, stab wound left hemithorax, Hemopneumothorax left side. The Doctor also gave evidence that normally when a patient comes with these types of injuries, they tend to focus straight on these like stab injuries in the abdomen, thorax and head, these are the main areas that if you don't treat the patient, serious complications can arise and the patient may or may not lose his life.

[49] Mr. Danny Pierre gave evidence that thereafter after he left the English River clinic he was brought to the casualty and admitted to the ward for 8 days. According to the witness he had to undergo surgery to fix his nerve. The witness gave evidence that up to now he is still having some pain in his fingers and cannot fully clench his hands.

[50] It is not in dispute that the accused stabbed the victim Mr Danny Pierre. This Court is of the view that the medical evidence as shown above at paragraph 47 and 48 of this ruling and the injuries suffered by the victim Danny Pierre as shown by the medical evidence falls within the definition of grievous harm as provided for under section 5 of the Penal Code to the extent that such injuries is considered to be dangerous harm, or seriously or permanent injuries to the health or which is likely to injure health or to any permanent or serious injury to any external or internal organ, membrane.

[51] In the case of Assary V/ R (1978) SLR 172, the Court held that;

'Under s 219 (a) of the Penal Code, the prosecution must prove intent to cause grievous bodily harm. Such an intent may be inferred from the facts of the case. Where the facts show intent to assault and not necessarily intent to cause grievous bodily harm, the charge should be reduced to one of Assault occasioning actual bodily harm under s 236 of the penal code'.

[52] Applying the facts of the case as born out in the evidence, Mr. Danny Pierre gave evidence to the fact that after that he took his bag like he usually does to leave and that he noticed Markus running behind him with a knife. He stated that he turned back and saw that he was near him. Then the accused stabbed him with a knife. He ran across the road and fell on the ground on the other side of the road and that the accused hand was still on his back and he was still stabbing him. According to the witness, the accused stabbed him a lot on his back and when he fell on the ground he cut him on his right arm namely on his forearm and on his upper right

arm. Maria Doudee, the administrator at the night shelter gave evidence to the fact that when she came out of her office she saw Danny on the ground and Markus had raised his hand and he had a knife in his hand and she just shouted '*Markus don't do that*'.

- [53] Mr. Barung kumar gave evidence to the fact that the accused stabbed. According to him the accused used the knife on the arm and on the back of the said person. During cross-examination, the witness stated that they were arguing and the guy went away and quickly after one minute he came back with a knife. According to the witness, at the time the guy was waiting for the bus when the accused came back with a knife and used the knife of which the accused cut, cut, cut.
- [54] The accused gave evidence that his intention was to confront him to sort things out and he took 2 knives and put it underneath his shirt and he further stated that the weapons were mainly for his safety so that he can protect himself while he confronted him so he had prepared this with him just in case.
- [55] The medical evidence showed that Danny Pierre received 6 stab wounds at the back of the chest and deep cut wound on the left arm, muscle and fascia were exposed. According to the said doctor, the back of the chest had 6 lacerations of various lengths from 5 cm to 8cm and the wounds were bleeding profusely. The X-ray of the right fore arm showed fracture of the distal right radius and chest x-ray revealed pneumothorax. The patient was then brought to the operating theatre where tendon of the right extensor carpi radialis was repaired.
- [56] This Court is of the view that the manner in which the accused committed the offence namely stabbing the victim with a sharp object namely a knife and the number of injuries he received from the accused from the stabbing namely 6 lacerations from the back of his chest and 2 injuries on his arm. Furthermore, from the accused own admission in his evidence namely that he intended to confront him since he felt threatened so he took 2 knives and placed it underneath his shirt shows that the accused had the necessary intent to cause the said grievous harm when he did the necessary act of stabbing causing grievous harm to the said Danny Pierre.
- [57] The accused has raised the defense of self-defense in his testimony. He gave evidence to the fact that he was coming behind him to approach him and was walking a bit fast to catch him when Bernard told him that he was coming. So he just turned back, he saw that he was coming and removed his machete from his bag and he remove his. According to the witness when he

approached him, he aggressed him with his weapon and he did it 3 or four times meaning he waived his hand in the air as if he was brandishing the machete towards him. That each time he throws his machete he got injured and then his machete fell down and according to the accused he was going back towards it to pick it up and hence he injured him from his back so that he will not get it. According to him he managed to get the machete and threw it far from him as he got rid of it. He stated that it would be either him or me. He also stated that he had no intention to kill Mr Pierre that day and that he had to avoid him when he was with his machete so that he will not hurt him. He further stated in Court that the weapons were mainly for his safety so that he can protect himself while he confronted him so he had prepared this with him just in case since he had told him he was prepared for him, he had something for him.

[58] In the case of Jeffrey Francis V /S The Republic Criminal Appeal no.7 of 1997, Silungwe J.A state the following at page 5 to 7 of the Judgment;

'Some guidance on the matter is to be found in para 19-39 of Archibold, 1992 edition, Vol 2 where reference is made to the classic pronouncement on the law of self-defence by the Privy Council in Palmer v R (1971) 55 Cr. App. R. 223, approved by the English Court of Appeal in R v McInnes (1971) 55 Cr. App. R. 551. From these authorities, the law on the matter may be paraphrased in these terms:

- 1) it is both good law and good sense that a person who is attacked may do whatever is reasonably necessary to defend himself;
- 2) however, everything will depend upon the particular facts and circumstances of the case;
- 3) if there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation;
- 4) if an attack is serious, so that it put an accused in immediate peril, then immediate defensive action may be necessary;
- 5) if the moment is one of crisis for someone in immediate danger, he may have to avert the danger by some instant reaction;
- 6) if the attack is over and no sort of peril remains, then the use of force may be by way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may be no longer any link with a necessity;
- 7) of all these matters, the good sense of the jury will be the arbiter;

- 8) if there has been an attack so that the defense is reasonably necessary, it is recognised that a person defending himself cannot weigh to a nicety the exact measure of his defensive action;
- 9) if the jury thought that in a moment of unexpected anguish, the person attacked had only done what he honestly thought necessary, that would be the most potent evidence that only reasonable defensive action had been taken;
- 10) if the prosecution has shown that what was done was not done in self-defence, then the issue is eliminated from the case;
- 11) if the jury consider that an accused acted in self-defence or if the jury are in doubt as to this, then they will acquit;
- 12) the defence of self-defence either succeeds so as to result in an acquittal or it is disapproved, in which case it is rejected as a defence;
- 13) in a homicide case, the circumstances may be such that it will become an issue as to whether there was provocation so that the verdict might be one of manslaughter. Any other issues will remain;
- 14) if in any case the view is possible that the intent necessary to constitute the crime of murder was lacking, then the matter would be left to the jury; and
- 15) there is no rule of law that a person must wait until he is struck before striking in self-defence. If another strikes at him, he is entitled to get his blow in first if it is reasonably necessary so to do in self-defence.,

[59] In the case of Sidonie V/S R, 2010, SLR 426, the Court of Appeal stated the following;

‘This case illustrates that in situations like the one the appellant was placed in, the court must focus attention on the appellant's normative position and whether he had sufficient reasons for his defensive actions, bearing in mind that he was not required to tolerate the deceased's behaviour towards him because he was his son.’

The classic pronouncement upon the law relating to self-defence is that of the Privy Council in Palmer v R [1971] AC 814, approved and followed by the Court of Appeal in R v McInnes (1971) 55 Cr App R 551:

It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but may only do, what is reasonably necessary. But everything will depend on the particular facts and circumstance... It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous. Others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is

serious so that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in immediate danger, he may have to avert the danger by instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be by way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may be no longer any link with a necessity of defence. Of all these matters the good sense of the jury will be the arbiter ... If there has been an attack so that defence is reasonably necessary, it will be recognized that a person defending himself cannot weigh to a nicety the exact measure of his defensive action. If the Jury thought that in a moment of unexpected anguish a person attacked had only done what he had honestly and instinctively thought necessary, that would be the most potent evidence that only reasonable defensive action had been taken ...

This approach in *Palmer* was described in Shannon (1980) 71 Cr App R 192 as:

a bridge between what is sometimes referred to as 'the objective test' that is what is reasonable from the viewpoint of an outsider looking at a situation quite dispassionately, and the 'subjective test' that is the viewpoint of the accused himself with the intellectual capabilities of which he may in fact be possessed and with all the emotional strains and stresses to which at the moment he may be subjected.

The Court of Appeal in *Shannon* quashed the conviction because the judge had ignored the subjective aspect of the question and put the question to the jury as: "Did the appellant use more force than was necessary in the circumstances?" Whereas the real question, according to Ormrod LJ was:

Was this stabbing within the conception of necessary self-defence judged by the standards of common sense, bearing in mind the position of the Appellant at the moment of the stabbing, or was it a case of angry retaliation or pure aggression on his part?

[I] *Archbold* 2009 at 19-42 states:

The old rule of law that a man attacked must retreat as far as he can has disappeared. Whether the accused did retreat is only one element for the jury to consider on the question of whether the force was reasonably necessary.

[II] It further states:

There is no rule of law that a man must wait until he is struck before striking in self-defence. If another strikes at him he is entitled to get his blow in first if it is reasonably necessary so to do in self-defence.

The trial Judge in this case has not taken into consideration the subjective element essentially interwoven into the objective test in determining whether the appellant had acted in self-defence, namely whether in the circumstances the appellant was placed in, the appellant had done what he honestly and instinctively thought what was necessary. The issue of possible retreat does not arise as the evidence indicates that the appellant had been pushed against the wall and the appellant was unable to move’.

[60] The Court of Appeal in the case of *Sidonie* (Supra) further stated;

‘As to what amount of force is ‘reasonable in the circumstances’ in the exercise of the right of self-defence is, in our view, always a question of fact and never a ‘point of law.’ A court has to necessarily consider the circumstances in which the appellant had to make the decision whether or not to use the knife and the shortness of the time available for reflection. The hypothesized balancing of risk against risk, harm against harm, by a person in immediate peril of danger is not undertaken in the calm analytical atmosphere of the courtroom after counsel with the benefit of retrospection have expounded at length the reasons for and against the kind of degree of force that was used by the appellant, but in the brief second or two which the appellant had to decide whether to use the knife or not under all the stresses to which he was exposed. This was a case where a 68-year-old man had to act on the spur of the moment with his emotions of anger and fear all mixed up and when his son who was much younger and stronger than him was aggressively and violently cornering him on to a wall with the threat of: “I will fight with you today. If it is not me, it will be you”.

[61] The prosecution has adduced evidence in Court by producing 3 witnesses namely Danny Pierre, Bishal Gurung and Maria Doudee which all of them corroborated each other’s evidence to the fact that the accused had a knife in his hand and at least 2 of them gave evidence of the accused stabbing the victim namely Danny Pierre and Bishal Gurung a fact

admitted by the accused in his evidence. None of the 3 witnesses testified to the fact that the victim Danny Pierre had a machete in his hand and was waiving the machete as if he was brandishing at him. The only person who gave evidence to the contrary was the accused himself who gave evidence to the fact that the victim Danny Pierre had taken out a machete and was brandishing at him with it.

[62] This Court finds that the witnesses which testified for the prosecution were cogent in their testimony and corroborated each other in material respect and were credible witnesses. On the other hand, I have observed the accused when he was giving evidence on oath and find that his demeanour is wanting and furthermore he has given evidence in Court to the fact that he wanted to confront the victim Danny Pierre to sort things out. He stated that he took two knives and put it under his shirt of which according to him the victim was walking towards the bus stop and he was following him of which the accused gave no evidence to the fact that before the victim saw him, the victim had a knife or machete in his hands.

[63] The question this Court should ask itself is as to whether taking into consideration the subjective element essentially interwoven into the objective test in determining whether the accused had acted in self-defence, namely whether in the circumstances the accused was placed in, the accused had done what he honestly and instinctively thought what was necessary. In this respect the fact that the accused wanted to confront the victim to sort out things and the fact the he took 2 knives and put it under his shirt and followed the victim instead of deciding to remain at the night shelter if at all he felt threatened since he stated in his evidence in Court that the victim was going to the police and was making a big issue. For the above reasons, this Court is of the view that the accused at the time has not done what he honestly and instinctively though is necessary in view of the circumstance the accused was placed in and this Court finds that he did the act out of grudge and anger against the accused rather than in self-defence. As such the matter that is before the Court should be distinguished from the case Sidonie V/S R 2010 SLR 426 in view that the facts of the present case differs from the case of Sidonie (Supra).

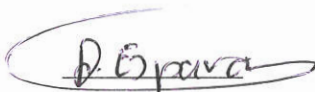
[64] Furthermore, the amount of stab injuries of which the victim sustained from the acts of the accused namely 6 stab wounds at his back and 2 injuries on his arms shows that any reaction would have been out of proportion to any attack in the event there was one which this Court find there was none since the one that was being attacked was the victim rather than the accused.

[65] As regards to the submissions of counsel for the accused that in the video footage the victim can be seen with a knife, this Court is of the view that the accused admitted in his evidence that when the attack was over after Madame Doude had called out to him that he had dropped his knife and it could have been very well that the victim in a state of confusion and shock after receiving injuries from such a violent attack could have very well picked up one of the knives of the accused which was lying on the ground after he had dropped it, the victim being in a state of panic and confusion.

[66] For the reasons mentioned above in this judgment, I accordingly reject the version of the accused and accept the evidence and version of the witnesses for the prosecution and find that the accused was not acting in self-defence when he stabbed the victim Danny Pierre 6 times on his back and injured him twice on his arm with a knife.

[67] As a result, I find that the prosecution has proved all the element of the offence as to count 2 beyond a reasonable doubt and I accordingly convict the accused on count 2 for the offence of acts intended to cause grievous harm as charged in count 2.

Signed, dated and delivered at Ile du Port on 11th March 2024.



Esparon, J

