

Republic v Barbe

(2009) SLR 39

Krishnan LABONTE for the Republic
John RENAUD for the 1st defendant
Charles LUCAS for the 2nd defendant

Summing-up to the Jury delivered on 4 August 2009 by:

KARUNAKARAN J:

PART I

Ladies and gentlemen of the Jury, we have now reached the concluding stage of the trial. Soon you will be called upon to decide on the guilt or innocence of these two gentlemen in the dock, Mr Stanley Barbe and Mr William Renaud, who are accused of (i) murder and (2) procuring another person to commit murder, respectively. Throughout your deliberations you will have access to all exhibits admitted in evidence. If you want to see the photographs, the clothes or the statement of the defendant to the police, medical and post mortem reports or depositions etc at any time, you may ask the orderly in charge and she will assist you. Amongst those exhibits, there are some important documents like the post mortem report, photographs retracted statements of the defendant and the like. For obvious reasons, you may need them for your perusal and examination. You may do so at any time if you wish. At the same time, I will rehearse the facts to refresh your memory in the second part of my summing-up. You may also refer to the notes you were taking during the trial.

First of all, I wish to offer you a clear guidance on the law and then, I will proceed to summarize the evidence in the second part of my summing-up. I will give only my views and opinion on the facts in issue; but, the ultimate determination is yours. You are not bound by my opinion or by the opinion of any counsel or that of others expressed on any of those factual issues. You are the sole judges of those facts. You should determine those issues accordingly. However, as regards the questions of law, you must take my directions against the background of counsels' addresses, arguments and in the light of the evidence on record. Obviously, the case is important to the accused persons because your verdict is going to determine their future. They should not be convicted if the evidence is found to be doubtful, unsafe, weak or unsatisfactory. It is also equally important for you to truthfully discharge the duty you owe to the community as jurors and deliver justice. If the evidential proof is there according to my directions in law, and you have no reasonable doubt about it, then, however unpleasant the duty may be, your duty would be to say that the case is proved and give your verdict accordingly. You should therefore, discharge your duty impartially and honourably,

without fear or favour, affection or ill-will for the proper administration of justice in the country.

As you know, the charge against Mr Stanley Maxwell Barbe (hereinafter called A1) is one of murder. The particulars of the offence state that on 14 March 2006 at Baie Lazare, Mahé A1 murdered Mrs Lynne Renaud. What has to be determined here in respect of A1 is whether it has been proved beyond reasonable doubt that it was A1, who murdered Mrs Lynne Renaud.

The charge against Mr William Renaud (hereinafter called A2) is one of "Procuring another person to commit murder". The particulars of the offence state that on 14 March 2006 at Baie Lazare, Mahé A2 procured A1 to commit the murder of Mrs Lynne Renaud.

What has to be determined here in respect of A2 is whether it has been proved beyond reasonable doubt that A2 procured A1 to commit the murder of Mrs Lynne Renaud.

In the consideration of the case as a whole, to begin with I will give you a practical guidance. As you start considering the evidence, it is always better to start from the facts, which are not in dispute. From there, if practicable, you would collect, for your consideration all the facts that you might accept with confidence. Then you would move on to other matters which are in dispute and more under challenge. At the outset, considering the entire case of the prosecution and the defence, there arise five fundamental questions, for your determination, namely -

- (1) Was Mrs Lynne Renaud (hereinafter called the deceased or Lynn) murdered by someone?
- (2) If so, is it Stanley Barbe (A1) who committed that murder?
- (3) If yes, has it been proved beyond reasonable doubt?
- (4) Did Mr William Renaud (A2) procure or engage A1 to commit that murder?
- (5) If yes, has it been proved beyond reasonable doubt?

What is "murder" in the eye of law?

Murder, as a matter of law, is simple enough. A man commits murder if he -

- (i) causes the death of another person,
- (ii) by committing an unlawful act, and

(iii) at the same time does so with malice aforethought which shall be deemed to be established by evidence proving any one or more of the following circumstances -

- (a) an intention to cause the death or to do grievous harm to any person, whether such person is the person actually killed or not;
- (b) knowledge that the act causing death will probably cause the death or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.

Therefore, the three elements defined above, are absolutely necessary to constitute and complete the offence of murder.

With this background in mind, now ask yourselves: Can you have any doubt that Mrs. Lynne Renaud was murdered by someone? If so, was it A1 who committed the murder? Are you sure of it? Obviously, there has been no suggestion of any lawful excuse on the part of anyone for it. Any murder for that matter has to be unlawful. None of the other things that sometimes arise in a murder case, such as self-defence or provocation or even insanity - things of that kind, has been raised in the instant case. At any rate, none has been debated but, of course, you still have to be satisfied beyond reasonable doubt that not only Lynn Renaud was murdered but also more importantly it was A1 Stanley Barbe, who committed it. Theoretically, you can bring in, if you wish, a verdict of manslaughter, provided there is some basis for that. I say "theoretically" because there has to be some evidential basis for that. However, in the instant case, neither counsel has suggested the slightest basis for manslaughter as opposed to murder. There is no evidence at all to suggest self-defence or provocation or even insanity and the like. The whole case as to murder revolves around the issue "who is responsible?" Therefore, for all practical purposes the verdicts open to you are simply as follows:

- (i) Mr Stanley Barbe (A1) is "not guilty" or "guilty" of the offence of murder as he stands charged in count 1; and
- (ii) Mr William Renaud is "not guilty" or "guilty" of the offence of procuring A1 to commit murder as he stands charged in count 2.

Nothing more and nothing less is open to you.

The burden of proof

Ladies and gentlemen of the Jury, I will now turn to something which you are all well aware of. That is, the burden of proof. In all criminal cases, it is a fundamental rule of law that the prosecution bears the entire burden of proving the guilt of the accused by adducing evidence. In almost all cases, this means that the burden of proving all

essential elements of the offence always lies on the prosecution. The accused does not have to prove his innocence; his guilt must be proved by the Republic. What the Republic has put before you is the submission that A1 committed the crime of murder and A2 procured or engaged A1 to commit that murder. To put the matter bluntly, was it Stanley Barbe, who stabbed Lynne with a sharp-edged weapon or a knife with the necessary intention either to kill or cause grievous harm, and caused her death? Or at the least, whether he had the knowledge that the act he committed would probably cause the death or grievous harm to Lynn. It doesn't matter, even if such knowledge was accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.

The thrust of the prosecution case has thus really been to place before you a submission that A1 with malice aforethought actually stabbed Lynne in her chest, stomach, sternum, scalp, back and in her neck using a sharp-edged weapon or a knife and caused her death. At the end and on the whole of the case, members of the Jury, you should be satisfied that the prosecution has discharged the evidential burden of proof as to whether the accused killed the deceased with a malicious intention and as to whether A2 procured or engaged A1 to commit that murder.

The standard of proof

The standard of proof defines the degree of persuasiveness which a case must attain before a Court may convict an accused person. Especially, in criminal cases, the law imposes a higher standard on the prosecution with respect to the issue of guilt. Here, the invariable rule is that the prosecution must prove the guilt of the accused beyond reasonable doubt or to put the same concept in another way, so that the Court is sure of guilt. As Mr Labonte, State counsel rightly pointed out in his opening address that the expression proof beyond "reasonable doubt" does not mean proof beyond any "shadow doubt". You should also remember, these formulations are merely expressions of the higher standard required, which was defined by Lord Denning in *Miller v Minister of Pensions* [1947] 2 All ER 372,373 as follows:

It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt... If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.

The law, therefore, precludes a conviction based on suspicion or guesswork or mere satisfaction or even a feeling of being 'fairly sure'. Hence, the standard of proof, bearing in mind that the Republic must prove the charge, is, of course, proof beyond reasonable doubt. If you have a doubt as to proof of guilt that fairly arises out of the evidence and that, to your minds, exercising your consciences as jurors, appears to you to be a reasonable doubt, and if it relates to one of the essential elements of the charge, like the identity of the accused or the proof of murder, then the verdict "not guilty" must

follow. Is it reasonably possible that the accused is not guilty? Is there a reasonable explanation or theory consistent with innocence? And if any one of those things occurs to you as the result of your deliberations, and if you find answers to these questions in the affirmative, then they all mean the same thing, that there is a reasonable doubt. The accused should be acquitted. On the other hand, if you decide otherwise, I have to caution you that you must find before deciding upon such conviction, that the inculpatory facts either revealed from direct evidence or inferred from circumstantial evidence are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than guilt.

The question of motive

It is necessary, I think, that I should say a word about the question of motive. As a result of various exposé by story-writers, play-writers, novelists, movie makers of Hollywood or Bollywood and the people of that kind, it is very easy for a common man to get wrong ideas about motive, which is different from malice aforethought. Although Mr J Renaud, counsel for A1 in his opening address touched on the issue of motive, he did not elaborate on it. I will do it now for you to avoid any confusion between these two. Your first enquiry would be to consider whether a murder was committed at all by someone. The motive for the crime, subject to your better judgment, would eventually, appear to be immaterial. Because, whoever committed the crime, assuming you find, it was murder, that person did it for some motive and some adequate motive - whether it was a concealed motive, or whether it is now undiscovered and is undiscoverable, or whether it was at some time apparent. All these are immaterial. In connection with this enquiry, it is not legally necessary for you to look for a motive. It is not necessary, in your minds or in your discussions, that you should reproduce or recreate the precise scene which culminated in Lynn's death; because whatever the motive was, do you have any doubt that she was in fact murdered by someone? If yes, then you may safely forget about motive and you may proceed to examine the evidence.

The question of premeditation

Again, premeditation is to be distinguished from malice aforethought, defined supra. As a matter of law, no premeditation needs to be proved under our law. There are some countries in the world where they have two kinds of murder, a clearly premeditated one, and one that is not premeditated. As far as we are concerned, from the point of view of our law, no premeditation needs to be proved. Whether the killing was the climax of some deep laid plan of long-standing, or whether the resolution to kill and the deed itself arose on a sudden, from a quarrel or from some other promptings of the moment, or whether it was something in between, that does not matter. It is legally nothing to the point, if you are satisfied -

- (i) that Lynne was stabbed by someone other than herself;
- (ii) that it was not an accidental stabbing; and

(iii) that the person who stabbed her did so, unlawfully and deliberately with the intention of either of killing her or of causing her serious bodily harm.

If you are satisfied of those three things then murder was done by someone.

Well, you have got the entire picture from the evidence and I will say no more about that. You have, on the one hand, the legal situation that neither motive nor premeditation required to be proved by the prosecution.

Intention

Members of the jury, I spoke about the element of "malice aforethought" before. I spoke about the circumstances that establish inter alia, an intention to cause the death or to do grievous harm to any person. As far as the present case is concerned, I would advise the members of the jury to concentrate on the intent to kill rather than the intent to do serious bodily harm. I say so because of the following reason.

Since, whoever the assailant was, the fact remains that person had stabbed the deceased more than 8 times repeatedly and continuously causing deep injuries around her neck, around her heart, stomach and on her back. From the number of stabbings, the nature and the extent of the wounds and the vital location of those injuries on the body and from the amount of force that could have been applied by the assailant to cause those injuries penetrating to the internal organs, what would be the inference a reasonable person can draw as to the intent of that assailant? Do you think, the only logical and irresistible inference is that the intent of the assailant could have been to kill? Or simply to do a grievous harm? Or simply to threaten her in order to steal the valuables from the shop or for any reason, whatsoever?

Now, members of the Jury, some of you may wonder what "grievous harm" means in law. It means any harm which amounts to a maiming 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.

Be that as it may. You members of the jury, in the case on hand, if you are satisfied on evidence that the assailant had stabbed Lynn having known that it was highly probable that those stab injuries would cause death or serious bodily harm to her, then the prosecution had proved the necessary intent and that it does not matter, even if the defendant's motive had been simply to do serious bodily harm to the deceased and to steal any valuable thing from her or from the souvenir shop at the material time. This aspect of the intent, you may consider, later when you revert to the evidence that I will discuss in the second part of my summing up. If the assailant, even without intending to endanger the life of Lynn, had simply stabbed her knowing that it was probable that grievous bodily harm would result to Lynn, then he would be guilty of murder since death resulted.

I believe, the following case that was decided by the House of Lords in the UK would assist the members of the jury to understand the point in this respect as to intent. On appeal from *R v Hyam* [1975] AC 55 - 99, the House of Lords held - in dismissing an appeal against conviction of murder - that a person who, without intending to endanger life, did an act knowing that it was probable that grievous bodily harm would result was guilty of murder if death resulted. [See also, *Director of Public Prosecutions v Smith* [1961] AC 290].

For the benefit of the members of the jury, I would like to state briefly the facts of that case (*Hyam supra*), which are as follows.

The appellant, a lady had a relationship with a man, who became engaged to be married to B. In the early hours of July 15, 1972, that lady went to B's house and poured petrol through the letter box, stuffed newspaper through and lit it. She gave B no warning but went home leaving the house burning. B escaped from the house but her two daughters were suffocated by the fumes of the fire and died. The appellant was charged with murder. Her defence was that she had set fire to the house only to frighten B so that she would leave the neighbourhood and that lady could continue her relationship with that man.

Ackner J (the trial judge) directed the jury that the prosecution had to prove beyond reasonable doubt that the appellant had intended to kill or do serious bodily harm to B. If they were satisfied that when she had set fire to the house, she had known that it was highly probable that the fire would cause death or serious bodily harm, then the prosecution had proved the necessary intent and that it mattered not, if her motive had been to frighten B. He advised the jury to concentrate on the intent to do serious bodily harm rather than the intent to kill. The appellant was convicted of murder, even though there was no direct intent to kill. Her appeal against conviction was dismissed by the Court of Appeal confirming the direction was proper.

Coming back to the present case, even if one assumes for a moment that the intent of the assailant in causing those injuries to Lynn was simply to cause grievous harm or even to threaten, such intent is sufficient to constitute and complete the offence of murder. This is what I too, advise you in this case as well, on the point of law as to intent.

Now, I will move on to the charge under count 2 against A2, which states that A2 procured A1 to commit offence of murder. In fact, section 22 (d) of the Penal Code reads thus:

When an offence is committed, each of the following person is deemed to have taken part in committing the offence and be guilty of the offence, and may be charged with actually committing it, that is to say -

(a) every person who actually does the act or makes the omission which

constitutes the offence;

- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (a) every person who aids or abets another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence.

In the fourth case ie (d) he may be charged with himself committing the offence or with counselling or procuring its commission.

In the present case, A2 William Renaud is charged in count 2 with the offence of procuring its commission under category (d) above. What is procuring? To procure means to produce by endeavour. You procure a thing by setting out to see that it happens and taking the appropriate steps to produce that happening. We think that there are plenty of instances in which a person may be said to procure the commission of a crime by another, even though there is no sort of conspiracy between the two, even though there is no attempt at agreement or discussion as to the form, which the offence should take or where, when and how it should be executed. In my opinion, the offence alleged against A2 in this reference is such a case, though I remind you that it is only my opinion on a point of law.

In law, a conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence. A person who procures another to do any act of such nature that, if he had himself done the act that would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act.

Witnesses and their testimonies

Very many witnesses have been called. In fact, 25 witnesses have testified for the prosecution and 7 witnesses for the defence including the accused persons. Many hundreds of pages have been recorded. In the nature of things, I must refer to much of that evidence and to many of the witnesses. However, in performing your duties to determine on the facts, you are also judges of the witnesses and you should assess each one carefully. You will remember that both counsel made submissions to you about witnesses and about what reliance you should place upon them. And, naturally, included in the list of persons that you are to assess, are also the accused persons, as they have also given their sworn evidence. Now you may reject everything a witness says; you may accept everything a witness says; you may accept part of what a witness says, and reject the rest but for valid reasons. That is all within your function and responsibility. You may either believe or disbelieve a witness. You might have also observed the demeanour and deportment of the witnesses whilst in the witness box. So

you can make your own assessment on the veracity of his or her testimony. You may also use your notes in this regard, as I mentioned to you earlier during the trial.

Having said that, it is pertinent to note that human memory is not infallible. We all tend to forget things at times. Individuals differ in their ability to observe events and remember. Who is the more credible – the witness who recalls in tremendous detail every bit of what went on when he involved in or observed some incident, or the one who says honestly that he cannot exactly remember every minute details? I am not here referring to a dishonest witness, who so often seems to suffer from selective amnesia. Obviously, it is task for you to try and distinguish the honestly forgetful witnesses from the ones who choose not to remember. You should separate the wheat from the chaff. Hence, please, remember forgetful witnesses need not necessarily be dishonest in all cases.

As a practical matter, it is important to bear in mind what parts of the witness's testimony have been challenged, and what have not. For example, on one hand, the defence did not challenge, to any noticeable extent, the evidence of the Pathologist Dr Brewer on the cause of death, nor did they challenge to any noticeable extent the identification evidence given by some of the prosecution witnesses nor did they challenge to any noticeable extent the first and the second statements given by the defendant to police under caution. The defence did not challenge the substance of the confession of the accused Stanley Barbe made to the father of Lynne at the Central Police in the presence and hearing of Lynne's relatives and other police officers, although A1 denied his act of giving such confession. It involves only the credibility of A1. If you believe A1 that he did not give that confession, you have to completely reject that part of the evidence against him. Mr Mathurin, father of Lynne, who testified categorically that he accurately and clearly heard that statement from the mouth of A1 and repeated the contents. It is for you to decide on his credibility. Now A1, for example, gave the explanation under oath as to what happened on 14 March 2006 at the souvenir shop, what he saw and what he did. He has also narrated that episode in his statement to the police. In it, he narrated his alleged role as an innocent visitor to the scene of crime when Lynne was struggling for life in a pool of blood. According to A1, he happened to see another man in an orange t-shirt coming out of the shop presumably after attacking Lynn at the relevant time, place and circumstances. He also narrated his own version as to the sequence of events following his visit to the shop including the scene of dying Lynn in a pool of blood, the shock he suffered, his stepping on the blood-spattered floor, going near the table in the corner and then going to the sea for washing his face, hands and his sunglasses. He gave the description of the possible assailant and the reasons for not attempting to help Lynn at the critical moment. You members of the Jury, you are the judges of facts. You may decide on the credibility and the weight you may attach to the evidence of any witness for that matter. I would like to remind you that evidence will succeed in persuading a Court only if that evidence appears as truthful, reliable, cogent, consistent, and not contradicting with the rest of the proven facts and circumstances.

I want you to understand, and to remember throughout this summing-up, that when I refer to a fact, or to what a witness has said, my reference is always subject to your assessment. It is as if every time I speak of an act or an event or a circumstance or an opinion, described or expressed by a witness, I am also saying, "If you the jury, accept that evidence", or, "To the extent that you accept this or that witness", or, "If you accept this or that opinion or judgment". I do not propose to say that every time, because it would be an insult to your intelligence and secondly it would become intolerably wearisome to you. You know quite well, you have the responsibility for judging the facts and the witnesses and that responsibility never departs from you.

Sometimes, I may express, or you may think I am expressing, some view about the evidence. But if I do express a view or if you think I am expressing one, that is simply and solely for your consideration, because I am not the judge of the facts, but you are. I now refer to what I might term slips, errors or omissions - the sort of human mistakes that men and women may make, while giving evidence in Court. As to the men and women who have figured in this trial, let me say a word of general application. This Court is after all a human court dealing with human beings and working to make judgments on men and matters. Obviously some works for example, work by accountants, or doctors, or scientists - must be done with accuracy and precision. Any assessment or criticism of their works is entitled to be put on that basis. However, the Court work is concerned, no-one would suggest that allowance should not be made for slips or errors or omissions committed by men and women, who testify as witnesses in any proceeding before the Court. In short, we obviously, acknowledge human infallibility. But, ladies and gentlemen, the distinction is both wide and clear between mistakes of that kind namely, forgivable human errors and omissions vis-à-vis falsehoods that are produced deliberately with intent to deceive. An important part of your duties is to detect the difference, whenever "errors", or "omissions", or "slips" have occurred, and to act accordingly.

Cell confession or confession to an inmate

An Indian soldier was charged with murder of his officer. While in custody, his commander said to him "Why have you done such a senseless act?" to which "A" replied "some three or four days the officer has been abusing me and without doubt I killed him". This is what happened in the case of *Ibrahim v R* [1914] AC 599 - in which the Privy Council held that -

- (i) The soldier's confession, not being induced by hope or fear as admissible in evidence;
- (ii) His confession cannot be rendered inadmissible just because elicited by a person in authority and whilst the prisoner was in custody.

In the present case, if you come across any evidence of confession by any of the accused persons, you may consider the legal effect of such confession in the light of the case law set by the Privy Council in this respect.

The evidence of a witness about the confession made by the accused to another while he was in prison or police custody is sufficient to warrant a conviction without any corroboration provided it is a voluntary confession of guilt vide *R v. Sykes* (1913) 8 Cr App R 233. In this situation the case for the prosecution depends on the credibility and reliability of that witness's evidence. See, *Benedetto and Labrador v R* [2003] UKPC 27. A confession is not necessarily inadmissible on the ground that the exact words were not repeated by the witness. vide *R v Godinho* (1912) 7 Cr App R 12.

Circumstantial evidence

Generally, the prosecution would produce either direct or circumstantial evidence to prove their case. In this matter, the prosecution is obviously, attempting to prove their case mainly by adducing confession of the accused persons and circumstantial evidence as well. Hence, I have to guide you, members of the Jury, on circumstantial evidence and how it should be evaluated, so that you will be able to examine the evidence properly without danger, and come to the right conclusion.

What does circumstantial evidence mean? For instance, an eye-witness who testifies that he saw the defendant while shooting the victim, gives direct evidence. On the other hand, a forensics expert who says that the bullets or the finger-prints found on the trigger proves the defendant's gun has killed the victim, gives circumstantial evidence, from which the defendant's guilt may be inferred. Similarly, if a witness testifies that he watched the defendant while stabbing the victim with a knife, gives direct evidence. On the other hand, if a witness says that he saw the defendant enter a house, that he heard screaming, and that he saw the defendant leave that house with a bloody knife in his hand, gives circumstantial evidence.

Circumstantial evidence usually accumulates into a collection, so that each piece corroborates the other pieces like jigsaw puzzle and gives a clear picture of the unseen. These pieces then become corroborative evidence. Together they support more strongly the inference that the assertion is true. Circumstantial evidence is usually given by an expert witness who provides forensic evidence like finger-print, DNA etc.

When and why should you look for circumstantial evidence? Needless to say, no defendant would risk committing a crime in the presence of an eye-witness, who may give direct evidence against him, unless it so happens without defendant's control and knowledge. The circumstantial evidence is therefore, very important especially in criminal cases, where direct evidence is lacking or not available. Any inference which you may draw from the circumstantial evidence should be logical, irresistible and should lead to the only conclusion that the crime alleged should have been committed by the defendant. It is wrong to assume that circumstantial evidence is weaker than direct evidence. In fact, witnesses are human beings. Therefore, there is a possibility, they may lie or manipulate at times but the circumstances do not. Ladies and gentlemen of the Jury, however, I have to warn you, if you rely and act upon only circumstantial evidence to condemn a person, before reaching a verdict of guilt if any, you have to

make sure that the inculpatory facts, which you draw from the circumstances, are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than guilt. I believe, the warning and the guidance I have given you herein would be sufficient for you to make proper evaluation of the circumstantial evidence in this matter.

Identification evidence

Although most of the identification evidence is not in issue and the prosecution rely substantially on the correctness of one or more identifications of the defendant in this matter, I would like to give you, members of the jury some important direction hereinafter called the Turnbull guidelines, which you should apply when you consider the identification evidence that I will refer to you in the second part of my submission. The Turnbull guidelines are these:

1. First, I should warn you of the special need for caution before judging the accused in reliance on the correctness of the identification made by the witnesses. There is a possibility that witnesses may have mistaken the defendant for someone else, his brother or relative etc. In addition, the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. This is called "Mistaken Identity".
2. Members of the jury I direct you, to examine closely the circumstances in which the identification by each witness came to be made and remind of any specific weaknesses in the identification evidence. I should remind you that mistakes even in the recognition of relatives or close friends are sometimes made. Hence, you should be sure that there has been no mistaken identity, when the witnesses identify the defendant in Court or Identification Parade conducted by the police.

You have to enquire whether the witnesses had sufficient light, time, opportunity and circumstances to properly recognize the defendant during the whole episode of their observation of the defendant; whether you find any reason to disbelieve those witnesses in any aspect of their testimony. Although identification evidence is not much in dispute in this matter, you have to carefully examine this aspect in the light of the Turnbull guidelines vide *R v Turnbull* 1976, giving necessary warning and due consideration to the relevant factors, which, may collectively be called - for your ease of remembrance - the Rule of "**ADVOKATE**", if I may use this acronym to represent the following factors -

A - Amount of time the suspect was under observation by the witness;

D - Distance between suspect and witness;

V - Visibility at the time the witness saw the suspect;

O - Obstructions between suspect and witness;

K - Knows suspect or has seen him/her before;

A - Any particular reason for the witness to remember the suspect;

T - Time lapse since witness saw suspect and subsequent identification;
and

E - Error or any material discrepancy in the description given by
witness.

Retracted confession and corroboration

You all know that a confession is the name given to an adverse admission made by the accused in a criminal case, which suggests or confirms his guilt of the offence charged. A voluntary confession is sufficient to warrant a conviction without any corroborative evidence. In the instant case, having held a trial within a trial, this Court ruled on law that the statement, which the accused A1 gave on 30 May 2008, to the police under caution was admissible in evidence. Obviously, this statement exhibit P20 is a confessional statement. However, in Court the accused retracted that statement alleging that it was not made voluntarily. According to the defence, the police obtained this confession by oppression, force, promise and other inducement and in breach of the Judge's Rules.

Members of the jury, it may be taken as a rule of universal jurisprudence that an unequivocal confession of guilt made by an accused person freely and voluntarily to a judicial tribunal is sufficient to base a conviction. However, in the case of a confession made to police though the Court found it a free and voluntary statement and though admitted in evidence, subsequently if retracted by the accused, as a rule of law, the Court can rely and act upon that confession and safely base a conviction, if and only if, there is independent evidence corroborating the statement in material particulars. To corroborate a retracted confession all that is required is some evidence from other sources, which implicates the accused in some material particular and which tends to show that what is said in the confession is probably true. See, *R v. M* (1966) SLR 218. It is to be noted that in the case of *R v. Marie* (1973) SLR 237, the Court after declaring admissible a voluntary statement given by an accused person to the police, is not bound to accept or reject its contents in toto. Although the whole of the confession is received in evidence, the trial Court is entitled to form an opinion as to the credit to be given to the different parts of the statement and to believe only such parts found to be true. As a rule, evidence which itself requires corroboration cannot provide corroboration for other evidence which also requires corroboration. However, for instance, if there is some other evidence coming from independent source like finger-prints or confession made

to another person apart from police, then such evidence if found to be credible that can be used as corroborative evidence in this respect.

It is also pertinent to mention that once the evidence is admitted, the only question for you members of the Jury, is to consider its probative value and effect. However, in the case of a confession, which in your view, was not made freely and voluntarily by the accused, then you should disregard it. In any event, admissibility of any statement is not an absolute test of the truth of its contents. See, *R v. Base* (1953) 37 Cr App R 51, 57. Members of the Jury, bearing these principles in mind, I should caution you, if you decide to rely and act upon a retracted confession, you must look for independent evidence to corroborate the confession on material particulars. I believe, the matters so far I have summed up on points of law, would suffice to meet your requirement in this case.

Summing-up to the Jury - PART II

Members of the Jury, in the first part of my summing-up I told you that I would direct you as to the law and then remind you of the evidence. I dealt with the law in the first hour or so. I noticed that you were paying very close attention to it, as you did throughout this trial. Therefore, I do not intend at this stage, to repeat my earlier directions as to the law. You must apply those directions to the facts revealed from the evidence, which you have heard in this trial. I will now proceed to summarize the evidence in this second part of my summing up.

If I say something about the facts with which you do not agree, you should ignore entirely what I say. You may act upon your own views of the matter. The facts and the way the facts are to be interpreted are your responsibility. Neither the judge nor the counsel can exercise that responsibility for you.

The facts of this case as transpire from the evidence on record can be stated briefly, as follows.

It is not in dispute that the deceased Mrs Lynne Renaud, a young lady, 24 years of age, hereinafter called "Lynne" or "deceased", was at all material times, a resident of Val D'andor, South Mahé. She was married to one William Renaud, who is none other than the second accused in this case. Lynne was living with her husband sharing the same household of her parents namely, Mrs & Mr Mathurin (PW12) at Val D'andor. Lynne had no children. According to her friends Vivienne (PW11) and Marie Legaie (PW22), Lynne was a very good person, a lovable and quiet personality but reserved. She would not give problems to others either. She was employed. In fact, she was managing a souvenir shop known as "Variety Souvenir Shop" owned by her aunty Mrs Gaetanne Payet (PW9). Lynne had taken a life insurance policy in her name, having nominated her husband (A2) and her parents Mathurins as beneficiaries in case of any eventuality that may happen to her life. According to Mrs Anna Payet (PW5), Manageress of SACOS, Lynne was paying her monthly premiums through a standing order from her personal account with Seychelles Savings Bank. Be that as it may, the said souvenir shop is situated at Anse Goulette, Baie Lazare, Mahé on the mountain

side of the Belazare Main Road opposite to a beach stretching along the seaside of the road. At a distance of about 10 feet adjoining that shop, there are two small chalets, which belong to a hotel known as (La Sa Picco) "Lazare Picault" situated at a distance of about 75 metres from that souvenir shop. In 2006, one Ms Vivienne Sanguignon (PW11) was working as a Chambermaid at "Lazare Picault". It was part her regular work that in the mornings at around 10 am, she used to clean the said two chalets adjacent to that shop. Lynne and Vivienne being workers in the neighbouring premises and having known each other for over four years, they became good friends. In the mornings, whenever Vivienne came to clean those chalets, she always used to meet her friend Lynn next-door and have a friendly conversation with her. According to Vivienne, such meetings took place almost every day, as Lynne was a very close friend of hers.

Vivienne (PW11) testified that on 14 March 2006 at around 10.30 am, as usual, she went to clean those chalets. Reaching the chalets, she met her friend Lynne, who was that time sweeping outside the souvenir shop. Both exchanged greetings and had their usual friendly conversation. After sometime, Vivienne saw the owner of the shop Mrs Gaetanne Payet (PW9), who came to the shop and gave a basket of clothes to Lynne for ironing. After a couple of minutes she left. Thereafter, Lynne had been presumably, alone in the shop. Vivienne was still around in that area and continued cleaning the chalets. A few minutes later, she saw a tall man in black t-shirt and trousers with a plastic bag in his hand coming from the direction of Anse Goulette towards the shop. He was walking along the seaside lane of the road. As Vivienne was looking at that man, he also looked back at her and thereafter turned towards the seaside and appeared to be urinating. Vivienne had a good look at his back and then, continued her work. After a short while she heard the howling noise of the dog, which used to sleep normally at the door step of the said souvenir shop. As she was looking outside towards the shop, she saw the same man, whom she had seen earlier. That time he was coming out of that shop. He crossed the road and went to the seaside and disappeared. After she finished cleaning the chalets, Vivienne went back to the hotel. There she met some tourists, who alerted her to some incident at the souvenir shop. As a result she rushed to the souvenir shop and saw Lynne lying down on the floor facing up in a pool of blood. In no time, the matter was reported to the police, who rushed to the scene. They noticed, Lynne had sustained a number of stab wounds with profuse bleeding. She was lying motionless. She was not breathing. No heartbeat. Police immediately transported her to the Baie Lazare Clinic for emergency medical attention. At the same time, they also cordoned off and secured the scene of crime for investigation.

The doctor in charge of that clinic Dr Dora Romo upon examining the body of Lynne declared that she was brought dead with multiple stab injuries on her neck, chest, back, chin, abdomen, scalp and other parts of her body vide medical report exhibit P17. Subsequently, a pathologist conducted a post mortem examination on the body of the deceased. The pathologist Dr Ruben Brewer (PW14) testified that the cause of death was "Excess-bleeding" and "Post haemorrhagic Shock", due to multiple stab injuries she had sustained all over her trunk and head particularly, on her chest, stomach, back,

scalp and neck. Because of the deep stab injuries, some of her internal organs like liver, lungs had also been ruptured. Especially, the stab wound on the neck had pierced through the right-internal-carotid artery that carries the oxygenated blood to the brain. According to Dr Brewer, this was the immediate cause of death as such injury should have affected her brain function. He also produced the post mortem report, exhibit P13 in evidence.

Be that as it may, soon after the occurrence, the same afternoon at around 1.30 pm a police team consisting of forensic experts inspected the scene of crime and carried out an investigation. They photographed the scene of crime and all parts of the shop. They also photographed some fresh shoe-prints found on the beach close to the sea opposite to the souvenir shop. They also photographed the body of the deceased, as it was lying at the scene of crime and later while kept in the mortuary of Victoria Hospital. All 46 photographs contained in an album was produced in evidence and marked as exhibit P3. According to Forensic Expert ASP Leon (PW2), after a meticulous search for a clue, he discovered a piece of paper from a partly opened drawer of a table, situated in one of the corners of the shop. This paper had some finger-prints on it. The print was wet and soaked in blood. ASP Leon seized that paper - exhibit P4 - and kept the same in his safe custody for further processing and examination. Later, ASP Leon photographed and processed the print found on that paper and made an enlarged print of it. More than two years after the occurrence of the crime, in 2008, A1 was arrested by the police as a suspect in this crime. Soon after the arrest, the police took a set of his finger-prints on a form. The finger -prints of A1 taken on the said form were also photographed, processed, enlarged and finally compared with the finger print of the suspect found on the paper recovered from the scene of crime. The finger-print expert SP Reginald Elizabeth (PW3), after carrying out a comparative examination of both prints, gave his expert opinion to the Court stating that the left thumb impression of A1 (Stanley Barbe) was identical to the one found at the scene of crime, namely the finger-print of the suspect. Having identified 10 points of similarities in ridge characteristics between the finger print of the suspect and that of A1, SP Elizabeth categorically concluded that both prints should have been made by one and the same person that is A1, namely, Stanley Barbe.

Mrs Gaetanne Payet (PW9) the owner of the shop also testified corroborating the evidence of Vivienne in that on the alleged date at around 10. 30 am, presumably, a few minutes before the alleged incident, she also went to the shop and met Lynne while she was talking to Vivienne and then she returned home. Moreover, Mrs Payet stated that on 3 June 2008, as a result of a phone call received from the police, she and her relatives including the father of Lynne Mr Guy Mathurin (PW12), her sister Merlin, one Merna, her husband, Mr Hardy Lucas all went to the Central Police Station, where they met A1 sitting in an office. There were also police officers including SI Dogley, PC Bell in the surroundings. A1 in the presence and the hearing of all relatives and Father Lionet confessed that he did kill Lynne and asked for forgiveness. Lynne's father Mr Mathurin (PW12) also testified in corroboration stating thus:

A1 said 'Are you the father of Lynne? My conscience is heavy. I wanted to

see and talk to you. I am the one, who killed Lynne'.

One Ms Marie Jacqueline Legaie (PW22), a resident of Anse Goulette, who lives in the vicinity of the souvenir shop, testified that she was a close friend of Lynne. On two occasions prior to the alleged incident of crime, she happened to notice the unusual movement of a tall man, a stranger in that area. That stranger was wearing a black t-shirt and black trousers and always seen with a black bag in his hand. On the first occasion that was three days prior to the incident, she saw that stranger going towards the souvenir shop and was standing outside. On the second occasion that happened on the day before the incident, she again saw the same stranger in the same clothes standing outside the souvenir shop. On both occasions, she observed his face clearly and stared at him wondering what that stranger had to do in that area. She even asked her boyfriend Ralph Paul about that stranger's movement in that area. Ralph also told her that he too saw that stranger standing near the souvenir shop, but he did not know who he was. After the occurrence of the crime, she in hindsight concluded that the stranger whom she saw on both occasions could have been the killer of her friend Lynne. Although she could recognize and remember the face of that stranger, she could not do anything nor could she help the police in the investigation. She remained passive as that stranger was nowhere to be seen again. However, about two years after the occurrence of the crime, a fateful coincidence happened. That was on 28 May 2008. Ms Legaie (PW22) was on that day going to Social Centre at Baie Lazare travelling in a bus coming from Takamaka. As she disembarked from the bus, she had a shock of her life. She saw the same stranger in the same black t-shirt and trousers with a black bag in his hand. She could clearly recall and recognize that face. He was standing at the bus stop in Takamaka, called "Cable" stop. He was leaning on a wall. Ms Legaie along with one of her friend "Gulda" approached that man and developed some conversation with him. Having recognized the stranger, with her photographic memory, Ms Legaie immediately gave a tip-off to the police. In fact, while she testified in Court, she also made a dock-identification of the accused Stanley Barbe stating that he was that stranger whom she had repeatedly observed at the material time and place. Following the tip-off, the police arrested that man A1 as suspect and took him to the Central Police Station. Upon searching his bag, the police found among other thing, a copy of a "Nation" newspaper - exhibit P15 - dated 14 March 2008, which carried an advertisement with a picture of Lynne with homage being paid by her parents in memory of her death anniversary.

One Mrs Franklin Souzier (PW13), a resident of Baie Lazare, working as a beach cleaner testified that on the fateful day ie 14 March 2006, at around 11.15 am she and her co-worker one Genette during their break time, were seated on the beach opposite the "Souvenir Shop" near "Lazare Picault" facing the sea. That time a man dressed in black clothes with a black bag in his hand went to sea, bent over, washed his hands and shoes and then proceeded in the direction of Takamaka. She could see that man's face clearly as he was passing very close to them at a distance of about 2 feet from them. When she testified in Court, she also made dock-identification of A1 as the man whom she saw that day. Further she confirmed the evidence of SI Jean-Paul Ernesta (PW7) in that, on 30 May 2008 she positively identified A1 in an identification parade properly,

mounted by police at the Central Police Station. Further SI Ernesta (PW7) testified that Vivienne (PW11) also positively identified A1 in the same identification parade mounted by police at the Central Police Station. A1's brother-in-law Mr Michel Albest (PW10) also testified that in 2006, A1 admitted to him that it was him, who was seen washing hands in sea, near the scene of crime as was broadcast in the media.

Following his arrest and detention, A1 gave four different statements to the police on different dates concerning his alleged involvement in the crime. In his first statement to the police under caution dated 28 May 2008, in exhibit P18, A1 admittedly, stated inter alia, thus -

..... I know that at Anse Goulette, Baie Lazare has a souvenir shop and at the shop I know a woman namely Lynn, who once worked there... Lyn and I knew each other. it might be during the month of February or March I went to the same Souvenir shop at Anse Goulette to seek for answer with Lyn regarding the candles product. On that day, I took a bus at the Bus terminal in town, it was a Baie Lazare via Takamaka bus, and I boarded that bus around 10am. On that day, I was dressed in black wearing a black jeans trousers and black short sleeves T-shirt. I was wearing blue shoes, which I have bought in Mauritius. I had also with me a black plastic bag I walked out and went towards the Souvenir shop, where Lyn was working. When I arrived opposite where some boats moored at the beach, I saw a white hired car, but I did not take a look of the registration number. The car was parked in the entrance of that Souvenir shop and it was facing towards Takamaka. In the car, I recognized someone's elbow at the driver's seat but I did not remember the colour of that person. I kept walking, when I reached about 50 meters from the car, I saw a black man in a three quarter trousers and an orange T-shirt and the man came from the Souvenir shop and got in the car that was parked there and the car left towards Takamaka. Therefore, I approached and I went to the Souvenir shop and as soon as I got in the shop, I saw blood on the floor and saw Lynn on the floor lying facing upwards in a pool of blood and she was breathing. I was wearing a sunglass and I removed the sunglass and tried to call Lyn but she did not respond. In the shop, there was a small step, which is near a glass table and Lyn was there near the steps. My sunglass fell down near the glass window and I moved around to pick up my sunglass and in doing so I walked in the blood and my sunglass had blood also on it. Lynn was wearing a skirt and a blouse but I did not know the colour. Her blouse was lifted a bit up and I saw blood near her belly. I also leaned on the window of the shop with my hand especially when my sunglass had fall down. At that, time there was nobody else apart from Lynn. At that time, it was around noon, and I've been in the shop for about a minute and some seconds. Then I went out and went towards the beach and I washed my face with the seawater, because I was shocked and I washed the blood that was on my sunglass. When I finished washing my face, I returned on

the road. I saw two women sitting on trunk at the beach. They are the Beach cleaners. I passed close to them but I did not talk with them..... I did not go there to wait for the bus at the bus stop because I was in a shock. I rather decided to walk to go to another bus stop. However, on the second occasion when I went there and saw the incident in the shop, I was scared to wait for the bus stop in public view in case people will think that I was the one who has committed this incident and therefore I preferred to walk towards Takamaka direction to stop a bus where no one will see me. Apart from Michel, I did not tell anyone regarding the incident.

In his second statement to the police under caution, dated 29 May 2008, in exhibit P19, A1 admittedly, stated thus -

In reference to the first evidence I have given to the Police today I wish to certify that I am married to a Mauritian woman namely Marie-Lise Barbe and her maiden name is Battour and we have two children together namely Stephano Barbe aged 16 years and Juliette Barbe aged 12 years. Most of the time I was in Mauritius and the last time I was in Mauritius was in 2005. Since then I have not been in Mauritius or any other country. I have been here in Seychelles. I wish to state that even if I go to Baie Lazare, I do not know anyone there and I do not have any friends there.

As regards the alleged killing of Lynne, the accused A1 himself gives a clear picture as to what really happened in his third statement to the police under caution, dated 30 May 2008, in exhibit P20. The said statement obviously amounts to a confession though retracted by him, which reads thus -

In reference to the first evidence that I gave to the Police on the 28th of May 2008, regarding the incident of Lyn's death I wish today to tell the truth. Firstly I wish to state that I was the one who killed Lynn and now I will state why and how I killed her. On that day of the incident, I took a bus at around 10 am to come to Baie Lazare. I state also that before the incident, I have been at Baie Lazare at least on three occasions and I have been hanging around in the area at the Souvenir's Boutique where Lyn was working. The day before the incident, I was there also, I even came in the Boutique and talked with Lynn, and at that time, I had already *intent to come to steal and kill* Lynn. I do not know why I had that temptation but ever since I have known Lyn I just wanted to kill her. So the day of the incident as I have mentioned, I came at the bus terminal in town. I got a bus around 10 am, and that was the bus Baie Lazare via Takamaka. And in my possession there was a black plastic bag. Inside there was a knife measuring around 50cm and it was a knife with black plastic handle and that knife I had picked up previously and have always kept it in my workshop. In the said bag, there were also some Artisanal candles that I was trying to sell with the Curio's sellers. On that day, I was dressed in a

black jeans and it is the same jeans that I am wearing today. I was also wearing a black T-Shirt with short sleeves and the said T-shirt is at home. I was in blue shoes and that shoes I had already thrown it away because it had been torn. *So I went to Baie Lazare with intention to steal and kill Lynn* but on the way sometimes I got the idea to return and not to do what I had intended to do; but the temptation remains and therefore I continued on my way in the bus. When I passed opposite the Souvenir boutique where Lyn worked, the Boutique was opened. I saw Lyn drinking a glass of water inside. I alighted near a Chinese shop and went in the said shop to get a cigarette. After I got the cigarette, I started to walk towards the Souvenir Boutique direction where Lyn was working. When I was approaching the said boutique I noticed a car which was parked opposite the Boutique like I have mentioned in my first statement and the said car then went away before I reached the said Boutique. Before I reached the said Boutique, I went on the beach, removed the knife from the bag, and placed under my T-shirt, then I went towards the Boutique, and at that time, I did not see anyone in that area. I entered the Boutique and said hello to Lyn and she answered, and she asked me if I had brought the candles as we had talked about before. When Lyn asked me that I did not answer and I came out from the shop to make sure that there was nobody in the area. I then entered the Boutique again and told Lyn that I have come to buy some necklaces and Lyn went where the necklaces were in order to show me and she bent down with her back facing me. I removed the knife under my T shirt and stabbed Lyn on her back. When I stabbed her, Lyn got up and screamed and she was also going towards the Boutique door and there I dragged her inside and she struggled with me and she slapped the knife from my hand and the knife fell. I picked up the knife but I do not know if I stabbed her again with the said knife, I may have stabbed her again but I can't recall. Lyn fell down and she was bleeding I tried to pull her towards the toilet but she was too heavy and so I left her next to a step. Right away, I took some necklaces from the Boutique and put them in my bag. I also searched in a drawer but I did not take anything in it. I went outside and went directly to the beach and there were blood on my hand, on my shoes and also on the knife. I washed myself with seawater to remove the blood and at that time, I saw two women who clean the beach sitting on a tree trunk. I passed next to them but I did not speak with them. I walked towards Takamaka direction to get a lift and I was walking on the right side of the road-facing seaside. On the way but I can't remember the exact place I took the knife and threw it away towards seaside. After having thrown the said knife, a bus came going towards Takamaka direction and I crossed the road and stopped the bus and got inside. When I was in the bus, I took the necklaces that I have taken from the Boutique and threw them on a seat behind me. I disembarked at Anse Aux pins.. I want to state after I had killed Lyn I had a dream of her and I had the intention to surrender myself to the police; but I was scared to do so. About one year after the incident, I returned to the

said Boutique where I killed Lyn and I saw another person in the said Boutique. I was in a bus one day going home. I saw a Nation on a seat in the bus, and I picked up the said nation. When I was at home later I was looking at the Nation and I saw Lyn's photo in the Nation and the Nation was dated 14th of March 2007 and that day was the first anniversary of Lyn's death. When I looked at her photo I was upset. This year again on the 14th of March I bought a Nation again I saw Lyn's photo in the Nation and I have always kept this Nation with me and goes everywhere with it until I was arrested with the Police on the 28th of May 2008. I regret of what I have done. I do not wish to get a service of a lawyer to come, to deny that I have not committed this murder. Instead I wished to see father LONNIE to talk with him to explain to him and asked for forgiveness for what I have done. I wish to add that I picked up the knife after I had tried to pull Lyn towards the toilet what I did not succeed to do. On the day of the incident, I was also wearing a sunglass and it fell in the blood. When I left, Lyn was still breathing. I also wish to add that I am a left-handed person and I had used my left hand to stab Lyn. The whole incident happened in about five (5) minutes. I did the action quickly in case people came in the Boutique and saw me.

On 3 June 2008, when A1 was in police custody at the Central Police Station, he told Inspector Dogley (PW24) that he wanted to see Father Lonnie to confess to him. Inspector Dogley made the necessary arrangements and took him to the Point Larue parish church. After his return from church, A1 confessed his guilt to Lynne's father as stated supra. Following this confession, A1 again wanted to give a free and voluntary statement to Inspector Dogley, that was for the fourth time concerning the alleged involvement of A2 in the crime. The fourth statement of A1 dated 3 June 2008 in exhibit P21 reads thus -

In reference to the case of murder of Lyn Renaud which I am involved in, I wish to add today that I did not tell the whole truth in my other previous evidence, as I was scared. Today after I have made some reflection, I have decided to tell the whole truth in this murder case. The truth is that I killed Lynne Renaud but I was paid to commit that murder. I recalled on the second occasion that I went to Baie Lazare and it was about February 2006. I came to that Souvenir's Boutique where Lyn worked and I saw Lyn in the shop. and she was arguing with a man of light complexion ... that man was swearing at Lyn. Since I had come to see Lynn regarding the candles that I spoke to her about in December as I mentioned in my other previous evidence, I went outside to wait for the man who was arguing with Lyn to leave for me to be able to talk to Lyn regarding the candles. I stood outside by the roadside and then the man came out and he was still swearing. He came to where I was and he started to talk to me. He asked me where I live and I told him at Mont Buxton. He asked me my name and I told him. Then that man told me to come next to a white pick-up that was parked by the roadside. There was nobody at the pick-up and it seems

that he was the driver of that pick-up. So we went to that pickup and that man told me that his name is William but he did not tell me his surname. He asked me if I wanted money and I told him yes. He told me that he will make me do a mission for him and if I agree, he will pay me an advance of R25,000.00 today. I asked him what mission he had and William told me *that he will hire me to kill Lyn*. William also told me that altogether he will give me R100,000.00. He also told me that in two weeks time he will give me another R25,000.00 and that will be on the 13th of March 2006 and he told me that he will give the remaining R50,000.00 after the mission. When William mentioned all this money to me, I was tempted. I told him that I accept to do that mission. William told me to wait for him there, he embarked in that white pick-up, and he went towards the direction of Anse Gaulette market. About five minutes later William came back in that pick-up and he gave me R25,000.00 in notes of R100.00 in a brown envelope. William then told me to come again in two weeks in the afternoon here next to the shop and he will give me another R25,000.00. So I left and went home. Two weeks after that, being the 13th of March 2006 as William has told me I went to Baie Lazare to meet him for him to give me my money again. So that day I arrived there around 10.30 am to 11am and when I arrived there, I did not see that white pick-up that William was in on the first day. So I hanged around in that area and several people saw me where I was hanging around waiting for William. I wish to add the first time, when William gave me the R25,000.00 before I left, he informed me that Lyn was his wife. So on the 13th of March 2006 when I waited for him, around 3.00 pm William had not yet arrived; I went inside the shop to see Lyn and asked her to phone William and told him that there is someone waiting for him at the shop. Lyn told me that there was no money on her phone card but anyway William will call her later and at that time Lyn was ironing in the shop. So I walked around in the shop and looked at the products. Then Lyn's phone rang and Lyn answered the phone and I heard Lyn telling to the person on the phone that there is a man waiting for you and I suspected that it was William who was talking to Lyn on her mobile phone. Lyn asked him if he will come to see her and also told him to bring fish when he comes. When Lyn had finished talking on the mobile phone, she told me that William was coming. So I went outside to wait for William. About fifteen minutes later William came in his pick-up coming from Takamaka direction and he parked the pick-up next to me. He disembarked and came up to me and he gave me R25,000.00 in notes of R 100 and William told me sorry, that day he did not have any envelope and he gave the money in my bare hand. He counted the money before he gave me. Then William told me to do the mission on the following day meaning the 14th of March 2006. He told me to choose the time of the mission myself and William also told me that in a week after the mission he will give me the other R50,000.00 and he told me to come and collect the money at the bus stop opposite Baie Lazare Police station and that will fall on the following Tuesday. After William had given me the

other R25,000 I left. So the following day the 14th of March 2006 I went there and killed Lyn as I've mentioned in my other evidence. William did not give me his mobile phone. After Lynne's death on the following Tuesday I went to Bale Lazare to meet William to get the rest of my money as we had spoken but I did not see William at all and during all this time I have not seen William again until yesterday Monday the 2nd of June 2008, I saw him at the Court house.

Subsequently, William Renaud (A2) was arrested as a suspect in this case. Following investigation, he was charged with offence first-above mentioned and remanded in custody pending trial. In November 2008, he was on extension of remand and had been kept in a cell at the Central Police Station. He was in fact, sharing cell No 4 with another prisoner one Mr Murali Vallipuram (PW20), a Sri Lankan national, who had also been in custody during that time as an under trial prisoner. Admittedly, Murali had a bad record and was an accused person as well as a convict in a number of criminal cases involving a series of "White-Collar" crimes such as fraud, misappropriation of funds, money laundering, bribery etc. In some of those cases, he had already been convicted and sentenced. In some he was awaiting trial and some had been withdrawn by the Attorney-General. Be that as it may. Murali and A2 were admittedly, staying together in the same cell for about three nights. According to Mr Murali, during their stay as inmates of the same cell, he and A2 became friendly. They had been talking to each other about their personal life and their pending criminal cases. Mr Murali (PW20) testified in essence, that on 7 November 2008, during the course of their casual conversation in the cell, A2 confessed to him that he had engaged a man by name "Rabi" to kill his wife Lynne and Rabi asked him to pay R 100,000 to do that job. Police arrested A2 because "Rabi" had disclosed A2's name to the police. When Murali asked A2 why he had to kill his wife, A2 told him that he had an extramarital relationship with another lady and his wife was creating problems with him. When Murali asked A2 why he could not leave his wife and go to live with that other lady, A2 replied that he could not do that since his wife had insurance money, bank accounts and a house from which he would not get anything if he leaves her. Therefore, A2 stated that he had no other option than eliminating her. Then Murali asked A2 "Why did you do such a serious thing?" For which A2 said "I cannot leave the lady with whom I have an affair. At the same time, I need to start my life. So I decided to find the way to keep her out of my life". Then Murali asked him how and what happened? A2 replied "I was looking for somebody to kill her for some time. Then I met this Rabi in Victoria. He came looking for a job. He came from Mauritius. I found him to be a suitable person to do this job. If other people do it I will get into problem... I gave Rabi the details of my wife... It all happened 2-2½ years ago". Thus, A2 narrated to Murali of all details regarding the job he had assigned to Rabi, who eventually killed Lynne. At this juncture, I wish to remind you that Mr Labonte, State counsel has rightly, brought to your consideration certain evidential indicators, to infer the fact that Rabi and A1 should be one and the same person. Having heard the whole story of A2 about murdering his own wife, Murali got scared to stay with A2 in the same cell. According to Murali, if a man is capable of killing his own wife, for his personal benefit, he would go to any extreme even to the level of killing his own inmate in the cell. Therefore, Murali requested the police not to

put him in the same cell with A2. As police asked him for the reasons, Murali had to give them the reason for his fear. Subsequently, police acceded to Murali's request and moved him to another cell. In view of this incident, Murali was asked to give a statement to the police and he did. Murali was therefore called as a witness to testify for the prosecution in order to establish the role of A2 in the murder of his wife. This is the evidence the prosecution has adduced and relied upon to prove the case against both defendants in this matter.

After the close of the case for the prosecution, A1 testified in defence. According to A1, he did not kill Lynne, but he was in the scene of crime and saw the assailant in an orange t-shirt presumably escaping from the scene. He also repeated under oath what he had already stated in his first and the second statement - exhibit P18 and 19 - he gave to police under caution as an innocent visitor to the scene of crime. However, he retracted under oath the third statement - exhibit P20 - which he allegedly gave to the police confessing his guilt. Moreover, he admitted the fact that he did go to the sea and washed his hand and blood-stained sunglasses soon after he left the scene of crime. Moreover, A1 retracted the fourth statement - exhibit P4 - that incriminated A2 with the offence alleged. He also denied the fact that there was a copy of the "Nation" newspaper in his bag on the day he was arrested while travelling in the public transport. He also testified that A2's role in the crime was a simply a fabrication by the police and he was forced to sign that statement exhibit P4. As regards his alleged confession to the father and relatives of Lynne, A1 testified they were not true. Thus, he denied any of his or A2's involvement in the murder of Lynne as alleged by the prosecution. A1 also called a witness a young man Pascal Bastille (DW2) who testified that he met A1 in Praslin the day before the alleged murder of Lynne. This witness obviously, was of no assistance to A1 in any aspect of his defence.

A2 also testified in defence denying his involvement in the murder of his wife. He also stated in essence, that he never engaged A1 or anyone for that matter to kill his wife. Besides, he testified that he never made any confession to Murali nor had any conversation with him regarding his involvement in the murder of his wife. According to him, he loved his wife Lynne and his married life with her was smooth and cordial. He had no problem with her. As regards his financial status he testified that he was earning only around R 2,500 per month and out of which sum he was paying a sum of R 900 as alimony for his children outside the marriage. In the weekends he was only assisting his father-in-law Mr Mathurin in his vegetable farm but had no revenue therefrom. He had no other source of revenue at the material time to pay any large sum such as R 25,000 or so to A1 or any other person. He also called two bank officials (DW6 & DW7) from two commercial banks to give evidence for the defence. Both of them testified as to his financial means to the effect that A2 had no funds in his bank accounts during the period in question, namely March 2006. Ms Edwina Essack (DW4), a former concubine of A2 also testified that A2 was paying alimony in the sum of R 600 for two of her children during the relevant period. She also testified having known him and lived with him for about 8 years in concubinage, she never found A2 a man of violent disposition. Mrs Dolores Robinson (DW5), Assistant Administrative Officer from Transec (ex-employer of A2) also testified that on the alleged date of Lynne's murder A2 told her that

he received a call from Mr Booster stating that his wife Lynne had an accident. As a result A2 wanted to go to Baie Lazare Clinic using his employer's transport, a white pickup. Mrs Robinson gave permission for his private use. Later A2 phoned her and stated in sobbing voice that he could not see his wife's body there at the Baie Lazare clinic. These are the essential parts of the evidence adduced by the defence in this matter.

Ladies and gentleman of the Jury, I have already explained to you the position of relevant laws, case laws and the principles applicable to the evidence in this case. You may proceed to examine the evidence and determine the issues applying those laws and the principles accordingly. In my view, the following questions may arise in the mind of any common- man, as one analyzes the evidence:

- (a) Is it possible for anyone to invent a story with remarkable imagination and give a false confession to police, narrating every minute details with so much of factual accuracy and correctness as to how, when, where Lynne was murdered unless that person himself had really involved in the murder?
- (b) Do you think any reasonable person like A1, who claims to have witnessed the scene as soon as the crime had allegedly been committed by someone else and especially while Lynne was still dying in a pool of blood, would simply leave the scene and go to wash his hands in the sea water? Had he been innocent, what prevented him from reporting the incident to police immediately or alerting the neighbours?
- (c) Do you think Lynne's father, her aunty Mrs Payet could have lied in their testimony that A1 confessed to them that he killed Lynne and asked for forgiveness?
- (d) Do you think, prosecution witnesses, who gave identification evidence could all have misidentified A1 for someone else in all incidents of recognition and identification?
- (e) When fresh blood is splashed on the black clothes of a person, will it be visible to others, in the normal course of events? Is it possible to trace shoe-prints on the tarmac of the public road?
- (f) Are these accused persons put on trial before you or the investigating officers for omission or commission in their investigation?
- (g) Is it relevant at this stage, for you to make an assessment on the standard or quality of investigation or to make an assessment on the quality of evidence on record?

As people of the world, members of the Jury you will surely, find answers to those

questions. You may also estimate the duration as to how long the witnesses would have taken to clearly recognize the face of A1 in each incident. Could witnesses have had sufficient time and opportunity to identify the face of A1? Do you believe the testimony of Murali, in that, A2 had confessed his involvement and told the truth to Murali? Do you see Murali as a credible witness? Do you believe A2, when he testified that he did not discuss those matters with Murali? Who is lying between these two? You are the judges of facts and you may decide accordingly. If you are satisfied on evidence that all ID witnesses did properly and correctly recognize A1, and they are all truthful, then you may safely rely and act upon their ID evidence.

A1 claimed in his statement that he saw someone coming out of the shop in orange t-shirt going towards a car at the material time and place. Soon after that incident he went inside the shop and saw Lynne breathing in a cold blood state. But he never approached Lynne in order to render any help rather he chose to go to the table kept in a corner. According to him, he was shocked by the gruesome sight but still he could walk in the blood and went to the table in the corner. Could this be true? A1 in his confessional statement exhibit P4 has given very minute details of the episode of stabbing. If it is not true, then the accused should have been very imaginative to foresee and invent such a story in his statement given to the police (exhibit P20). His version in this respect is so cogent, consistent and tallied with other evidence, which were subsequently, came to light during the police investigation. Then, ask yourself, whether the accused had the foresight of a prophet or whether the police had such ability to write stories covering all minute details of the incident. Is it a coincidence that the story of fantasy A1 narrated in his statement and the evidence from other sources tally each other revealing one and the same version on material particulars? You may find answers to these questions, along with other questions that might arise in your mind, while you examine the evidence in its entirety.

Now, let us move on to the evidence if any, to corroborate the retracted confession. If you look for evidence to corroborate the confession given to police under caution, first of all, you should ask yourself ladies and gentlemen the following question -

Is there any independent evidence, other than the retracted confession of the accused to implicate him in some material particulars and tend to show that what is said in the confession is probably true?

In this respect, you may consider the following. Apart from the statements given to the police, A1 has confessed to a number of witnesses including Lynne's father stating that he was the one, who killed Lynne. There is also another independent source of evidence namely, "Finger-Print" to show that A1 has left his left thumb impression on the paper soaked in fresh blood in the scene of crime. Do you think, A1 could have innocently, gone near the table kept in a corner of the shop, opened the drawer and took out the paper, while Lynne was dying in a pool of blood all around? Could this be a coincidence that A1 had been preserving an old newspaper containing the said advertisement, in his bag for no reason? Are you satisfied that all prosecution witnesses are credible and spoke the truth? Did they identify A1 correctly and properly?

Are you sure that the cumulative effect of the entire circumstances lead to the only inference that the person, who killed Lynne could only be the accused Stanley Barbe, no one-else? Is this fact corroborated by other independent evidence? Does it implicate the accused (A1) in all material particulars? Does it tend to show that what is said in the confession is probably true? You should find answers to all these questions.

As regards A2, there is a free and voluntary cell-confession by himself to Murali, regarding his role behind the murder of Lynne. Murali was obviously, on even terms with A2 as an inmate that time. The question of promise, threat or any other inducement that would normally vitiate a confession is ruled out. If you believe Murali as a credible witness, despite his criminal record, and if you are satisfied as to the truth of the contents of their cell-conversation then you may safely rely and act upon that piece of evidence alone to base a conviction against A2. Having said that, if you think it is desirable, you may also look for corroboration from other relevant facts and circumstances in the whole of the case, leading to the only inference that A2 should have procured A1 to murder his wife. Such circumstances may include A2's conduct and behaviour subsequent to murder, insurance claims, the story of ambulance and Mr. Booster, repeated reference to a white pickup by A1, and A2's statement that he could not see his wife's body at the Baie Lazare Clinic soon after the alleged incident etc. It is for you to determine those factual issues. At the same time I should remind you that a confession is not necessarily inadmissible on the ground that the exact words could not be given by the witness, see, *R v. Godinho* (1912) 7 Cr App R 12. Equally, voluntariness is only a test of admissibility of the statement in question. It is not an absolute test of the truth of the contents in the statement. From observing his demeanour and deportment, in your assessment, if you find that Murali did not lie then you have sufficient evidence to consider and act upon in respect of A2'd guilt. In passing, I must remind you that witnesses may lie but not circumstances!

It is interesting and strange to note that A1, in his fourth statement to police has stated thus: "I have not seen William again until yesterday Monday the 2nd of June 2008, I saw him at the Court house." That was the day, when A1 was first brought to Court for remand proceedings. Indeed, A2 also corroborated this fact in his evidence under oath. If A1 and A2 had not known each other or to say the least, if A1 had not known and seen A2 before 2 June 2008, how come he could first time identify A2 (William) that day, amongst the crowd of public visitors in Court? Could A1 be a clairvoyant possessing the power to know matters beyond the range of normal human being? It should also be noted that A2 confirmed in re-examination that even Inspector Dogley was not there in Court that time. That rules out the remote possibility that Dogley might have falsely inserted that fact in that statement. I can only draw your attention to these facts, but it is for you to analyze the factual situation and determine accordingly.

You may also consider the following:

- (1) A1 was admittedly seen in or around the area of the souvenir shop on a couple occasions before the day of occurrence of the crime.

Particularly, on the day of occurrence, A1 was seen coming out of the shop, immediately after the alleged incident admittedly, when Lynne was breathing last in a pool of blood.

- (2) The confessional statement of A1 in exhibit P21 also corroborates the forensic evidence as to his finger-print found on a paper exhibit P4 in a partly opened drawer of the table kept in a corner of the shop, where no innocent customer could have had access in the normal course of events.
- (3) Before giving the confessional statement in exhibit P21, A1 had already made confession verbally to Lynne's father in the hearing and presence of her relatives and police officers. Both confessions in pith and substance corroborate each other on all material particulars of the offence of murder and sequence of events.
- (4) The accused claimed in his evidence that he saw another man in orange t-shirt leaving the shop at the material time, when Lynne was still breathing. He by necessary implication indicated that person could have been the assailant, who would have possibly murdered Lynne. Thus he introduced a story alleging the involvement of another "suspect", in the commission of the crime. Had this story been true, what prevented the accused from informing the police or others to assist in the investigation of the crime? What prevented him from helping Lynne in that critical moment, had he had good intention in his visit? As I see it, A1 is telling a cock and bull story in his statement and evidence. It is only my opinion. Members of the Jury, it is not binding upon you. You may make your assessment on the accuracy and correctness of my opinion. You may either differ or agree.
- (5) It is also interesting to note that A1 is admittedly, a left handed person as per his statement in exhibit 20. At the same time, the impressions found on the paper in exhibit P4 recovered from the scene of crime also indicates that the suspect, who had handled that paper should also have been a left handed person, as it had contained only left-thumb prints on it.
- (6) If a person has been an accused or been convicted of white-collar crimes, one should not always presume that person would be a liar throughout his life or would be telling lies in all matters unless he is a pathological liar or his lies are intended for personal gain or motivated to harm others for a reason.

- (7) You should be satisfied beyond reasonable doubt that not only the offence has been committed but also equally be satisfied that it was the accused, who committed it.

After giving careful thought to all what I have spoken so far, now you should find answers to the fundamental questions, which I have formulated for you in the first part of my submission. They are -

- (i) Was Mrs Lynne Renaud murdered by someone?
- (ii) If so, is it Mr Stanley Barbe, who committed that murder?
- (iii) If yes, has it been proved beyond reasonable doubt?
- (iv) Did Mr William Renaud procure or engage A1 to commit that murder?
- (v) If yes, has it been proved beyond reasonable doubt?

In your deliberation you should examine the entire evidence, applying the law, principles and the rules, which I have explained to you in the first part of my summing-up. In the circumstances, the verdicts now open to you are simply

- (a) the accused No: 1 Mr Stanley Barbe is “not guilty” or “guilty” of the offence of murder as charged under count 1; and
- (b) the accused No: 2: Mr William Renaud is “not guilty” or “guilty” of the offence of procuring another person to commit murder as charged under count 2.

As I have said earlier, it is clear to me that you have paid very careful attention throughout the whole of this case and throughout the whole of my summing up. I know that you have your own careful and detailed notes. However, it is very important that you should not feel that your deliberations will involve you in some sort of exacting memory test. Let me make it very clear to you that if you wish to hear any of my directions on the law repeated or if you have any query as to the evidence which you have heard, you simply send me a note through the orderly. I will give you appropriate further assistance.

Unless you have already done so, the first thing you should do once you have retired to consider your verdict is to elect from amongst your member a lady or a gentleman to act as your foreman, if you have not already selected one. He or she should organize and chair your deliberations and, in the fullness of time, deliver your verdict on this indictment.

Your verdict must be unanimous, that is to say your verdict must be one upon which you all have agreed. You may have heard that in certain circumstances, I am able to accept

the verdict of a majority of your number. The circumstances in which I am able to accept a majority verdict have not yet arisen in this case. If those circumstances do arise, then I will ask you to return to Court and I will give you further directions about that particular aspect of the matter.

I remind you, of course, that it is your function and your obligation to bring in a true verdict according to the evidence and that means only according to the evidence. You must decide this case only on the evidence which has been placed before you. There will be no more. You are entitled to draw inferences. That is, you may come to common sense conclusions based on the evidence which you accept, but you may not speculate about what evidence there might have been or allow yourselves to be drawn into speculation.

Finally, remember what I told you at the very outset of this trial and at the very beginning of this summing-up. You must have an open mind. No preconceived notions or ideas. Please, put out of your minds anything which you might have heard, read or seen about this case or its background outside this Courtroom or through media like SBC, newspapers etc. You must reach your verdict in this case only upon the evidence which you have heard, seen and read in this Courtroom.

Now, I believe I have completed my charge, ladies and gentlemen of the jury. You may if you all so desire, retire to consider your verdict. Thank you very much for your kind indulgence.

Record: Criminal Side No 2 of 2008