

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 05/2014

[2017] SCSC

THE REPUBLIC

versus

MARGARETTE SUZETTE

Accused

Heard: 20th March 2017, 06th April 2017 and 4th July 2017
Counsel: Mr. Hemanth Kumar, Assistant Principal State Counsel for the Republic
Mr. Nichol Gabriel Attorney at Law for the accused
Delivered: 10 October 2017

JUDGMENT

Burhan J

[1] The accused Margarete Suzette stands charged as follows:

Count 1

Manslaughter contrary to Section 192 of the Penal Code and punishable under Section 195 of the Penal Code

Particulars of offence are that, Margaret Suzette of La Batie, Beau Vallon, Mahe on the 07th January 2014 at La Batie, Beau Vallon, Mahe unlawfully stabbed and killed another person namely Elvis Suzette.

- [2] The prosecution opened their case by calling witness Steven Elizabeth who stated, he was a detective attached to the Scientific Support and Crimes Record Bureau (SCCRB). On the 8th of January 2014, he had photographed a scene of an incident at La Batie on the instructions of Corporal Mathiot. He had arrived on the scene around 1.00 a.m. On the next day, he had photographed the injuries on the accused Margarett Suzette and also the body of the deceased in the mortuary. Thereafter he had placed the photographs in an album after having them printed. He produced the album containing 26 photographs and described each and every photograph in open Court. He stated photo 5 showed a knife with a black handle which was on the sink. He stated further under cross examination that the accused had a bruise at the back of her right ear and on her upper right arm which he had photographed and identified the photos 14 and 15.
- [3] The next witness Corporal Pascalina Mathiot state that on the 7th of January 2014, she was working at the Beau Vallon police station around 9.00 p.m. when Mr. Elvis Suzette had walked into the police station seeking assistance from the police, to speak to his wife as he had pushed her over an argument and she had fallen into the sink. Witness Corporal Mathiot had spoken to his wife Margarett Suzette, the accused in the case and had told her what her husband had stated and she had replied arrogantly stating, if she needed assistance she would go to the Family Tribunal and did not need police help. Thereafter witness had spoken to Elvis Suzette and asked him if he wished to, he could stay the night as he had said he did not feel secure going back as the accused had cut his arm earlier. She had offered to remove Margarett from the house for the night and put her somewhere else but he had refused all suggestions and gone home saying he would be okay in the morning. Around 11.p.m she had received a call from one Sergeant Leggaie from the command centre who stated that they had received information from the casualty that a man named Elvis Suzette was stabbed and was in critical condition. According to their information he had been stabbed on the way home.

- [4] Witness and PC Bistoquet had thereafter gone towards the home of Mr. Elvis Suzette looking for traces of blood on the road but had not seen any. Later they received information that the wife of Elvis the accused was at home they had gone back. She had shown the place where the incident took place and had handed over to them an orange towel used to wipe the blood, a bluish t shirt and a knife that was used to stab. All these items were taken into custody and stored as exhibits in the case. Witness identified the accused as Margarete Suzette the wife of the deceased. Witness produced the orange towel P2.
- [5] Under cross examination Corporal Pascalina Mathiot admitted there was an earlier statement given by herself in 2013, where she had stated the accused had requested for police assistance as her spouse Elvis was causing trouble. In her statement witness had stated Elvis Suzette was drunk and under the influence of alcohol and he had stated he no longer needed his wife Margarete and he had removed all her items and placed them on the road for her to leave. As Margarete was willing to move out, she was assisted to Mont Fleuri police station and then conveyed to her home in Takamaka. The statement of Corporal Mathiot given in 2013 was produced as D1 by the defence.
- [6] Witness Mathiot further stated she received a call from the police around quarter to ten on the 8th of January, informing her that Elvis Suzette had passed away. Witness stated the knife recovered from the scene of the incident was handed over to Inspector Quatre. Witness stated under cross examination, they had gone to the house on receiving information that Elvis was in hospital and called out but the house was dark and no one had answered back. She further stated ‘there were people but nobody answered’. They had not wanted to disturb the crime scene and as it was pitch black, for their own safety they had gone back to the police station. Witness admitted that the accused at the time of the incident had a baby 9 months old and was breast feeding him.
- [7] Sergeant Brenda Finesse stated on the 8th of January 2014, she was working at the CID and she had cautioned the accused Margarete Suzette and explained her Constitutional rights and taken a statement from her. The statement under caution of the accused was produced as P3 and the translation as P3 (a). Officer Chantal Leon stated she had arrested the accused Margarete Suzette at the Victoria hospital around 15 minutes past midnight.

Witness was accompanied with Corporal Marcus Jean at the time and had noticed a lump on the forehead of the accused and some scratch marks on her. She also produced the medical report of the accused as D2.

[8] Dr. Paresh Bharia produced the post mortem report of the deceased Elvis Suzette prepared by Dr Marija Zlatovic as exhibit P4. Death was due hypovolemic shock, internal bleeding and dissection of the mesentery artery. He further stated that the mesentery artery was a major artery in the abdomen supplying blood to major organs and there would have been internal bleeding as a result of the cut from the stab injury which would have led to hypovolemic shock and death. There were also the examination report of Dr. Vivekananda which indicated the deceased was first admitted on the 10.50.p.m. on the 7th of January 2014. On admission he had a stab injury to upper abdomen, low blood pressure sweating and passing stools. The surgeon and anaesthetist were informed and a laparotomy was performed on him immediately in the theatre. The medical report was produced as P5. The patient had died the next day morning. He also stated there was a collection of blood, a hematoma near the left kidney. Thereafter the prosecution closed its case.

[9] The accused Margarett Suzette in defence gave evidence under oath. She stated she was 29 years old. She admitted she had been married to Elvis Jerry Suzette the deceased. She had lived with him at La Batie Beau Vallon for a period of 5 years. She stated she has 4 children one from the deceased Elvis. The father of Elvis who was blind, also lived with them. She stated it was she who was looking after him. She further stated that on the 8th of January 2014, she had woken up and there had been an argument with Elvis as he did not want to work. He had left after the argument had stopped. She had continued with her chores working with the father of Elvis and looking after her youngest child. That afternoon her other two children had been with her as well. They had gone to the seaside and from there, she had called Elvis to sort out the morning argument but that had failed and when he returned from work the argument continued around 7 or 8 p.m. Elvis had been drunk when he returned from work and the argument developed into a fight. This was around 7.00 pm. Elvis had gone to the police. When he arrived back she had gone to the house of a friend called Julietta. This was to ease her mind of the earlier problems.

[10] On returning around 10 or 11 in the night, she had knocked on the door Elvis had locked. She had cried out and his father had answered and then Elvis had come and opened the door and an argument had started and then a fight started again and she had used a small knife to defend herself. The knife had been by the sink and she had used it only once, on the left side of his stomach. She had thereafter removed the knife. When she saw blood on the knife she had washed it and left it on the sink. She had then seen him “just let go of himself next to the fridge” it appears he had fallen at label 1 near the fridge, shown in photo 1 and she had panicked and called for the ambulance. The ambulance came she had assisted the ambulance personnel to hold Elvis down while the drip was being put as he was fighting back so much. She had gone in the ambulance with him to hospital. She had been asked in hospital to sign a paper to consent for the operation and she had told the police officers it was she who had stabbed him. When he was bleeding she had used an orange towel to wrap him to try to stop the bleeding. Even at that stage he had been in good shape as he still had wanted to fight.

[11] Thereafter she was detained and taken to the CID office. They had wanted a statement from her. Later she was informed Elvis had passed away. Under cross examination she admitted she was the person who had stabbed her husband Elvis that day. She admitted that she was aware that stabbing a person was an unlawful act. She further stated in re-examination that the stabbing occurred when they were both fighting and this was the only way she could defend herself. She further stated that for the past 6 years she lived with Elvis she knew nothing but fights every day. Thereafter the defence closed their case. Both parties tendered submissions thereafter.

[12] On considering the evidence of the accused, it is apparent that the defence of the accused is one of self-defence. In this respect, I would refer to the classic case of **Palmer v R [1971] A.C. 814** where it was held:

[13] *“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 upon the particular facts and circumstances. Of these a jury can decide. 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 some 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. There are no prescribed words which must be employed or adopted in a summing up. All that is needed is a clear exposition, in relation to the particular facts of the case, of the concept of necessary self-defence. 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 honestly and instinctively thought necessary, that would be the most potent evidence that only reasonable defensive action had been taken, The defence of self-defence either succeeds so as to result in an acquittal or it is disproved, in which case a defence it is rejected.”

- [14] I have noted and observed that the facts in this instant case as set out above are very similar to the case of **Gonzaque Sidonie v The Republic SCA 14/10** where the Seychelles Court of Appeal acquitted the Appellant who was found guilty of manslaughter and sentenced to 7 years on the basis of self-defence. In the Gonzaque case the son of the Appellant Mr. Gonzaque Sidonie who had been under the influence of liquor had been aggressive towards his father Mr. Sidonie (the Appellant) and had sworn at him and pushed him against the wall of the house saying “I will fight with you today. If it is not me it will be you.” In the Sidonie case too, the only evidence in respect of the incident was that of the Appellant Sidonie who further stated that he had tried to move out when he was pushed against the wall but he was unable to and his son was about to jump him and he was afraid. The Appellant had further stated in his evidence as he thought the son would hit him with the Guinness bottle which was near the wall where the Appellant was, the Appellant had taken a knife that he was preparing food and

“pressed against his (son’s) stomach not too strongly.” This had resulted in fatal injuries to his son.

[15] In this instant case too, the only evidence in respect of the assault was from the accused Margarettte Suzette who like in the Sidonie case states, the aggressor her husband Elvis was drunk at the time of the incident and that he had actually begun to fight with her and hit her and she being a lady in the ensuing fight found that the only way to defend herself was to use the small knife in the kitchen, used to cut garlic and onions and stab the accused with it on his stomach resulting in fatal injuries. None of these facts were challenged by the prosecution. The knife was never produced in Court but the photograph 5 shows the handle of the knife being larger than the blade.

[16] In her statement under caution produced by the prosecution as exhibit P3, she stated in detail the assault and harassment she had undergone at the hands of her husband over the years who would consume alcohol on a daily basis and then would argue with her become aggressive and slap and assault her all over her body. In her statement referring to a particular incident, she stated that when she was 6 months pregnant, her husband Elvis had kicked her and she had bled and was admitted to hospital for a day and had a period which lasted unusually for a month. She stated earlier on the day of the incident, they had argued and Elvis had pushed her and she had struck her head against the sink and had a minor injury on her head. It appears from her statement that at the time of the incident in the evening, her husband Elvis had begun to hit her with slaps and fist blows, she had tried to fight back but he was stronger than her (photo 18 indicates his muscular stature) and he had also pulled her hair and then she had taken the knife on the sink near to where they were fighting and stabbed him in the front region of his body. She had not known where she had stabbed him exactly but seen blood on his stomach. None of these facts were challenged by the prosecution and it was the prosecution who had produced the statement as an exhibit in order to make Court aware of the entirety of the facts behind the incident. It could be gathered from this that the accused was living with her husband Elvis in constant fear of being assaulted and in the apprehension of grievous harm being caused to her, as one incident of kicking when she was 6 months pregnant had resulted in her bleeding and being admitted to hospital and she had continued to bleed for 1 month with an unusual period.

- [17] Whilst the Appellant in the Sidonie case suffered a minor injury to his wrist, in this case too the accused Margarete Suzette too received minor injuries from the assault of her husband at the back of her ear, on her arm and forehead as borne out by the evidence of the prosecution witnesses. In the Sidonie case there had been previous incidents of aggression and fights between the two parties. There is a history of assault and aggression between the parties in this case too which includes kicks and cuts and bruises between the parties and the accused being admitted to hospital on an occasion. In the Sidonie case the aggressor was much bigger and younger than the Appellant who acted in self-defence while in this instant case the aggressor was a muscular male and the accused who acted in self-defence a female who had been subject to several beatings throughout her married life and states in her statement under caution that she could not fight him back as Elvis was much stronger than her..
- [18] In acquitting the Appellant in the Sidonie case, the Seychelles Court of Appeal held what Court must consider is whether the Appellant was in imminent peril and as long as the evidence suggests that the Appellant had acted out of apprehension of grievous harm to himself, the Appellants conduct can be justified on the basis of self-defence. In this case too the evidence suggests that the accused had acted out of apprehension of grievous harm to herself as she was being beaten and in a fight with a man who was aggressive intoxicated and stronger than her and who had assaulted her over a long period of time resulting in her being admitted to hospital on one occasion.
- [19] Further the Seychelles Court of Appeal also referred to the case of **R v Oatridge (1992) Crim LR 205** where the Court of Appeal concluded that the defendant, who had been abused by her partner on previous occasions was entitled to have her mistaken view of the incident, which led her to fatally stabbing him. In this instant case the accused refers to several incidents of previous abuse by way of assaults from the deceased her husband.
- [20] It was held further in the case of **R v Oatridge** and followed in the Sidonie case, that what amount of force is reasonable in the circumstances in the exercise of the right of self-defence is 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 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.”

[21] In this case the accused a woman had to act on the spur of the moment with her emotions of anger and fear all mixed up when her husband Elvis was aggressively beating her and assaulting her for the second time that day and with the threat of being beaten repeatedly and considering the history of serious assault on her over the years, it would be reasonable to conclude that she was in apprehension of grievous harm being caused to her.

[22] In **R v Lobell [1957] 1 QB 547** another case referred to by the Seychelles Court of Appeal, it was held that if on consideration of the whole of the evidence , the jury are either convinced of the innocence of the prisoner or left in doubt whether he was acting in necessary self-defence they should acquit. The burden of negating self defence rests on the prosecution. In this instant case there was no attempt by the prosecution to negative self-defence. In fact the prosecution remained silent on this issue and did not challenge the evidence of the accused in any way. I note the initial affidavit filed by the prosecution by WPC Chantal Leon dated 30th January 2014, refers several times to the accused being brutally assaulted by her husband Elvis.

[23] For the aforementioned reasons I am satisfied that the accused defence of self-defence succeeds. I proceed to acquit the accused.

Signed, dated and delivered at Ile du Port on 10 October 2017

M Burhan
Judge of the Supreme Court