

SUPREME COURT OF SEYCHELLES

Reportable

CO 41/2022

In the matter between:

THE REPUBLIC

(rep. by Hemanth Kumar)

Republic

and

HARRY BARRY FABIEN

(rep. by Khalyaan Karunakaran)

Accused

Neutral Citation: *Republic v Harry B Fabien* (CO41/2022) ()

Before: Burhan J

Heard: 07-03-23, 09-03-23, 22-03-23, 23-03-23, 26-06-23, 01-09-23, 06-11-23

Delivered: 31 May 2024

ORDER

The accused is acquitted on Count 1.

The accused is found guilty and convicted on Count 2.

JUDGMENT

BURHAN J

[1] The accused Harry Barry Fabien was charged with the following offences:

Count 1

Attempt to Murder contrary to and punishable under section 207(a) of the Penal Code

Harry Barry Fabien of La Gogue, Mahe on 11th September 2022 at Lo Kan, La Gogue, Mahe attempted unlawfully to cause the death of Mr. Tyrell Robin Hoareau of 18 years old of La Gogue, by an act of stabbing using a knife.

Count 2

Acts intended to cause grievous harm contrary to and punishable under section 219(a) of the Penal Code.

Harry Barry Fabien of La Gogue, Mahe on 11th September 2022 at Lo Kan, La Gogue, Mahe, unlawfully did Grievous Harm on the person namely Tyrell Robin Hoareau of 18 years old of La Gogue, causing deep lacerations on his back side of the body which caused an internal bleeding and damage to his lungs, by an act of stabbing using a knife.

Case for the Prosecution

- [2] The accused denied the charges and the prosecution called as its first witness Natalie De Letourdie, a police officer, attached to the Central Police who stated that she had photographed the crime scene on the 12th September 2022. She had photographed a supermarket in La Gogue named Sivasangary. She produced the photographs taken by her as exhibit P1. She described photograph 1 stating that it shows the main entrance and front part of the Sivasangary Supermarket. Photograph 2 showed some red dry substance on the wall of the shop whilst photograph 3 was a closer view of photograph no.2. Under cross examination, she stated it was Corporal Lafleur who instructed her to take the photographs and the main purpose in taking the photographs was to show the name of the shop and its entrance. Witness stated that she was not instructed to take photographs of the sign board above the supermarket, but she did it on her own. Photographs 2 and 3 were taken because there was an incident that happened as a result of a stab injury. Witness admitted, she herself was not aware of the details of the incident. The next witness, Tyrel Hoareau the victim in this case, stated he resides in La Gogue with his mother and stepfather and was unemployed at the time of giving evidence. He admitted giving a statement to the police in connection with this case on Sunday 11th September 2022. Witness stated on that day, he was at his friend Pti Sam's place at La Gogue at a place

called 'Lo Kan' around 10.30 p.m. with a friend named Eid. The accused (nicknamed Fore) had accused him of taking his things. The accused had then wanted to fight with them. The accused had run after Eid with a small knife and witness told him not to do these things. Witness had moved from there but at the place called 'Lo Kan' a fight occurred. Witness had tried to defend his friend Eid during the altercation and had hit the accused because he was going to stab Eid with the knife and it was then that the accused stabbed witness with the knife. Witness Tyrel further stated that when he hit the accused he had stepped back and slipped and fallen. The accused had then stabbed him three times on his back. It was noted in open court that the scars shown were situated in the centre region of the back of the witness more towards his spine. After he had got stabbed, one of his friends named Ronbert took him to the shop shown in photograph 1. He had felt like he was fainting and witness stated that the distance from the shop to the place where he was stabbed was about 8 meters. Witness Tyrel further testified that after the accused stabbed him, his friends had fought him and the accused had run away. Witness was asked to identify the accused and pointed to the accused in the dock. He testified that after he was stabbed and brought to the shop, he was taken to Mont Fleuri hospital in an ambulance and received treatment from the hospital in respect of the stab wounds. He was admitted at the hospital for one month. He further stated that he knew the accused before the incident and that prior to the stabbing the accused had been accusing the witness and his friends of taking his things because they had been sitting next to the accused.

- [3] Under cross examination, witness Tyrel stated he would go to Pti Sam's place for haircuts. There was a lady by the name of Beaurtrice (Ser) also present. Eid's friend Zonyon (Onion) was also present. He admitted he knew the accused and the friends since school days and that they would often hang out at Beaurtrice's place. He denied that he was waiting to smoke Cannabis with Eid and the accused. He further denied that they had pursued the accused but admitted that he had picked up a piece of wood and hit the accused when Eid fell down when he went to fight the accused. He admitted that Eid too had picked up a piece of wood to defend himself, when the accused was looking for trouble with him. He further stated that Ronbert had come down as they were to all meet that day at Sam's place. Witness Tyrel admitted that it was Eid who hit the accused first. He too admits it was he who hit the accused first with a piece of wood but he was doing so to defend Eid.

- [4] Eid Florine in his evidence stated he was 19 years old and worked as yacht technician at Eden Island and lived at La Gogue. Witness corroborated the evidence of witness Tyrel that the accused had come while they were sitting at Beautrice's place and accused Tyrel of taking something of his. They had ignored him at first as the accused had been angry and drunk. They had argued with him for 30 minutes. Tyrel had stated that he had not taken anything. After the argument witness had gone to tell the accused's father to tell his son to stop accusing them but his father had not done anything about it. When witness returned back the accused had asked him why he told his mum and dad about these things, as these did not concern his parents and it was between the three of them. The accused had threatened to stick a knife in their necks. Witness stated that even after he had come back, the accused was complaining and witness had told him to give it a rest but he did not stop and the accused swore at witness saying *bous liki mon manman* (go fuck your mother). Witness did not want to fight and told the accused to leave them alone because he and the accused were related. The accused had wanted to fight but they had left him. They had gone to Pti Sam's place and the accused had come there too. They had ignored the accused who was still threatening and complaining.
- [5] Witness Eid explained that Sam's place is at La Gogue and from 'Ser' (Beatrice's) place to Sam's place is approximately 5 minutes of walking time. Witness told the accused to stop and give it a rest and that nothing was stolen from him. The accused told witness to shut his fucking mouth and witness told him to stop swearing at him. Witness stated that the accused threatened him with a knife so he had picked a piece of wood to defend himself. The accused was "*swaying his knife in a disorderly manner*" and witness Eid stepped back and when doing so had fallen on his back. Witness Eid further stated at that moment, the accused was coming to stab him with the knife on his neck when Tyrel had come and taken the piece of wood and hit the accused and thereafter a fight broke out between the accused and Tyrel. They were fighting for some time, and then Tyrel had fallen down and witness Eid had seen the accused getting on Tyrel and stabbing Tyrel on his back. Witness Eid had taken a piece of wood to try to hit the accused to separate him from Tyrel but still he kept stabbing Tyrel. Witness Eid then saw the accused get up and run away. Witness stated he saw the accused stab Tyrel three times. When the accused ran away witness Eid stated that they tried to save Tyrel as he had lots of blood on him and had taken him on Ronbert's

scooter to the shop. The ambulance and police arrived and they had taken Tyrel to hospital. Witness Eid identified the shop where they had taken Tyrel to while waiting for the ambulance in photograph 1. Witness further testified it took them one minute on the scooter to reach the shop. Witness identified the accused from the accused dock. Witness testified that he does not know for how long Tyrel was in the hospital but he went to visit him a few times. Under cross examination, he stated he had met his friends around 10.30 and 11.00.pm. He admitted another friend Zonyon was present. He stated that the stuff the accused stated he lost was Cannabis. He stated the accused was drunk and staggering and wanted to fight them in the dark. He admitted he wanted to fight the accused if he wanted a fight and further stated that the accused had a knife and he did not. Witness Eid admitted they had gone back to Sam's place to hang out and smoke Cannabis with Sam. Witness stated that it was Zonyon who was the one who had picked up the accused's belongings and they had told Zonyon that the items belonged to the accused. He stated at that time the accused was not there with them and when the accused came, Zonyon had left. Witness Eid stated he did not tell the accused that Zonyon had taken the things because the accused kept insisting it was them who had done so.

- [6] Witness Eid admitted that when the accused brandished his knife at the witness he had picked up the piece of wood and hit the accused with it. He stated the accused had earlier stated he was going to stab them in their necks. Witness testified that he had been in a couple of fights before but not too many and stated he made his defence to push the accused as the accused had told them he would stab them in their necks. He stated Ronbert did not get involved in the fight but watched with crossed hands. In his statement he mentioned that the accused had threatened to stick his knife into witness' neck or anybody else's neck. Witness stated that he mentioned it. He was shown his statement and was asked to confirm if the statement is his. Witness confirmed his statement. The highlighted parts of the statement were marked as contradictions (proceeding 09.03.23 a.m. page 25 onwards).

- **D1:** *"When I arrived at Ser's (Beatrice's) house, Fore (the accused) had asked me if I also wanted to get involved and if I am tolerating my friend and what will he do. Then Fore took the knife out of his side and turn towards me then I ran and I went home and I took a piece of wood."* Witness was asked if he said that. Witness responded that he did say that but in court he did not say that in order to cut things short.

- **D2:** *"my smaller cousin when Florine came and Fore asked me if I went to call Wayne to fight and he told me that if us three were going to fight with him he will also fight with us."* Witness confirmed his statement.
- **D3:** *"So I told Fore if he wants to fight put the knife down and I will also put the piece of wood down and we will fight face to face."* Witness confirmed his statement and stated that if the accused wanted to fight he would have fought him because the accused was insisting that they took his stuff.
- **D4:** *"Harry had a knife in his hand and he turned to us and told us that if we want to fight with him he will stab one of us with the knife."* Witness confirmed his statement and said that there is a part he mentioned that the accused will stick the knife into their necks but the person taking his statement did not write it down.
- **D5:** *"Then I saw Fore was going to stab Tyrel with the knife that was with him. So I quickly got up and ran and I saw a piece of wood. So I took the piece of wood to hit Fore with it because he had presented himself to stab Tyrel. I hit him two times with the piece of wood on both his sides for him to let go of the knife but he stabbed Tyrel with it and did not let go of the knife. I also hit Fore on his hand but he did not let go. Fore stabbed Tyrel on his back three times."* Witness confirmed his statement.

[7] The evidence of witness Ronbert corroborates the evidence of both Tyrel Hoareau and Eid Florine in that when he came to the scene, the accused was arguing with Tyrel and Eid and they were about to fight but Eid had stepped in between. He confirmed that the accused threatened Eid and Tyrel with a knife and it was Eid who hit the first blow on the accused with a piece of wood and ran away. The accused held Tyrel gave him a couple of face blows and when Tyrel fell he began to stab him. The accused was on top of Tyrel and Tyrel was on the ground. It is clear from his evidence it was Eid who had hit the accused the 1st blow. It is also clear that after that the accused attacked Tyrel with the knife and when Tyrel was on the ground, the accused had got on top of Tyrel and stabbed him three times resulting in the injuries as described by the doctor in the medical report. It is apparent that Ronbert also participated in shoving the accused away from Tyrel after he had stabbed him. Ronbert too corroborates the fact that Tyrel was taken to the shop in his scooter and then to hospital in the ambulance. Under cross examination, he stated the accused kept showing the knife whilst arguing with the others. Witness Ronbert admitted he had head butted the accused with the helmet he was wearing to get him off Tyrel.

[8] Dr Reydel Deles Perez confirmed the fact that the victim Tyrel Hoareau was treated by him in hospital and produced the medical certificate of the victim as P2. He described the three lacerations on the back of the victim which they identified as stab wounds. The victim had

a condition called Pneumothorax where air accumulates between the chest wall and lungs due to a penetrating wound in the thoracic cavity. He described in detail the procedure of draining the air to prevent the pressure in the pleural cavity from increasing and treating the patient with antibiotics and painkillers thereafter. The victim was undergoing treatment for three weeks until his lungs were fully expanded and was discharged thereafter. He stated if not treated it could have developed into a life threatening situation. Dr Perez in his evidence stated he could not say the lung was punctured but there was a probability, the air outside was coming through the open wound causing this issue. The patient was advised after treatment to stay away from scuba diving. He confirmed that the injuries sustained by the victim were grievous injuries.

- [9] Under cross examination, Dr Perez stated after this injury and episode there was a risk of the patient developing a second or a third episode and in that case they will need to consider doing a colectomy or thoracoscopy which is another minimal and basic procedure for definitive treatment for this condition. In the case of this victim, it was not necessary to go for a major surgical procedure but in the event that the patient may develop this pneumothorax again it could be a possibility. Witness testified that for this patient there were two wounds on the left side and one on the right side on the back. The wounds on both sides had penetrated to the pleural cavity because it was found that the pneumothorax was present on the left and in the right pleural cavity. It was on both lungs, both pleural cavity. Dr Perez stated that the injuries were caused by stab injuries from a knife. Witness confirmed that the surgical procedure was not a major surgical procedure. Witness stated that there are no lasting effects on the patient's breathing or lung capacity or his ability to function normal day to day.
- [10] The prosecution next called Wayne Florine a 17 years of age student. He corroborated the fact that Eid had come and told the father of the accused Danny that his son wanted to fight them. Thereafter, he had seen Eid take a piece of an iron bar a piece of iron bar and hit the accused with it on his neck. The accused had a small knife in his hands and Eid ran to the back of the house. The accused went in front of the house and went on the road. They continue to quarrel with each other and he had seen Tyrel also quarrelling with them. He had heard the accused say if "somebody hits him he will kill them all". It appears after the

1st altercation this witness had left and when he came back he had seen Tyrel injured. Tyrel had told him to press the wound to stop the bleeding. Under cross examination he stated he had seen a small knife in the hand of the accused. After Eid hit the accused, he had run away. He admitted he saw a stick in the hand of Tyrel and that all were holding what they had in their hands down and arguing. He stated he did not know what the fight was about.

- [11] WPC Vanessa Dick stated on the 11th September night, she had received a call and gone to the scene where a person had been stabbed and was seeking assistance. They had reached the scene around 11:08 p.m. At the beginning the persons present had denied calling the police or there being an incident. When the ambulance arrived, a man amongst the three persons present stated he was Tyrel Hoareau and told the officers that he had been stabbed. The police officers asked him who had stabbed him. He had not answered but one of this friends called Eid had told him to speak up. It is then that Tyrel said, it was 'Fore' (the accused). The officers asked him who is 'Fore' and he told them the full name is, Harry Fabien and it was he who had stabbed him. Witness Vanessa Dick had personally asked him how and where the incident occurred and for what reason it happened, he never replied.
- [12] Under cross examination, she stated that when the injured person lifted his shirt, she had seen the injuries. She stated it was Eid who had told Tyrel to tell the police what happened and they were able to get the name of the accused Harry Fabien also known as Fore. Witness Corporal Maria Woodcock produced the burgundy coloured T shirt worn by Tyrel at the time of the incident as Exhibit P3. Constable Andrew Mangroo stated that he had arrested the accused near the English River hospital, He had mentioned the charge at the time of arrest and cautioned him. Witness knew the accused as he had previous interactions with him in cases and stated the accused had a bandage on his arm at the time of arrest.
- [13] Thereafter the prosecution closed its case and the rights of defence were read to the accused in open court. The accused chose to give evidence under oath.

The Defence

- [14] The accused gave evidence under oath and stated that he lives in La Gogue and works on boats, earlier in a tuna fishing vessel for five years and thereafter at Anse Etoile on smaller boats. At the time of the incident, he lived with his mother and father in the same household. He admitted he knew Eid Florine who is his cousin and knew Tyrel Hoareau as he had come to live at La Gogue in the new flats one or two years ago. The accused stated that on Sunday 11 September 2022 in the morning, he went for his medicine and then went to the market place to chat with his friends and have some alcohol. Later on at night when he was heading home, he had met Tyrel and Eid who were there at a shop called 'Kot Bobi'. They were there just sitting and "doing their thing". He had gone home for dinner and after finishing dinner he had smoked a marijuana cigarette and Eid had passed by with Tyrel and asked him for a cigarette. They then went to sit down and smoke. He had taken alcohol and as he was taking medicine, it had an effect him and when he awoke he checked his pocket for the 5 grams of hashish he had and it was missing. He had not realised that it had fallen out of his pocket and had asked Eid and Tyrell where his hashish was. They had said that they do not know but the accused insisted they give it back. This eventually led to a fight with them shoving each other. He stated Eid was the one who started shoving. Tyrel intervened and then Eid had said, "*you hit me, now see what I will do*" and had gone to his house. This was around 09:45 to 09:50pm. Eid came back with a piece of wood and had hit accused on his neck with it. Eid had also hit him with a metal object and the accused had taken his penknife out and run after him.
- [15] The accused further stated that later when he was hanging out at Sam's place, he saw three persons coming down. The accused further testified that when they were approaching, he saw one with a helmet on his head. They approached Sam's veranda. The accused had asked them, "*have you come to look for trouble with me*". From the three the accused could identify Eid and Tyrel but he could not make out the person in the helmet. Eid had told the accused, "*Here I am. I did not take anything of yours. Come at me again.*" Sam's mother had woken up and asked them what was happening at her place as they were all speaking loudly. Sam told them all not to come do these 'dramas' in his place.

- [16] The accused stated that Sam was somebody who sells drugs and when he told the accused to behave, the accused had gone away heading to his home. The three followed him when he was going away and the accused had told them that he would beat them up. The quarrelling and swearing continued. The accused stated on higher ground they had encircled him and Eid had hit him with a piece of wood on his face. After Eid hit him with the piece of wood, Tyrel tried to hit him with a piece of wood but the accused blocked him and grabbed the piece of wood that was with him. Eid had come from the back to hit accused with the piece of wood again. The accused stated that when he grabbed the piece of wood that was with Tyrel, Tyrel got pulled with it and fell at the foot of the accused because Tyrel was a bit thinner. Eid had continued to hit accused from the back and when Tyrel got up, he admits he took his penknife and stabbed Tyrel. When Tyrel got stabbed, then the person in the helmet interfered. He too was also high. He stated that the others did not stop hitting him so he ran away. He stated in his evidence, he too was bleeding and fell near a Bilenbi tree and was unconscious for a few minutes. He thereafter went to sleep and woke up at around 4:00 am in the morning still at the Bilenbi tree and then had gone and hidden in a rock near his home as he was afraid to go home as he was scared that the persons he fought might come. Later on that day, he had gone to his mother's place and changed his clothes and gone with her to hospital at English River. He had gone to a shop to get some cigarettes when he was arrested by the police. The police had taken him to the hospital and the surgeon had said that there was a fracture on his nose. There was no medicine at Mont Fleuri so the police took him to English River to get prescription and then they brought him to the Central Police Station.
- [17] Under cross examination, he admitted when he met his cousin Eid and Tyrel at his place, he had already had alcohol and consumed hashish. He admitted all the problems started because he blamed Eid and Tyrel for taking his 5 grams of hashish. He admitted he had gone to Sam's place for drugs and admitted that he still smokes even if he is on overdose and sleeps a bit when he has an overdose and gets up. The accused further stated it was not he who started the fight. He denied the suggestion that as he was already high he did not know what he was doing and out of anger started to attack Eid and Tyrel. The accused admitted that he smokes every day and is used to the high he gets when he smokes. He further stated it was three against one and they had a major advantage on him. His only

witness Bernard Alcindor stated that he knew the accused for about 25 years and his family. On the said date when he was in the bathroom in the night around 10 or 11.00 p.m. he heard the accused saying, *"Come all of you I will fuck you up!"*

- [18] Thereafter the defence closed and both parties made submissions in writing.

Analysis and Verdict.

- [19] It is clear when one takes the evidence as a whole including the evidence of the accused that there were two separate altercations between the accused and the victim and his friends. The 1st altercation according to the accused started with shoving and with him being hit by a piece of wood and metal object by the victim's friend Eid and him chasing them brandishing his knife. Thereafter, even according to the accused's version they had again met at Sam's place where he was too. Due to the commotion, Sam had chased them away telling them not to do "dramas" at his place. Thereafter, both parties had left Sam's place and the stabbing incident had occurred not too far from his place when both parties once again got into a confrontation.
- [20] The accused version is that he was hit with a piece of wood first by Eid and when Tyrel tried to hit him with a wood, he held the piece of wood and Tyrel fell down and then he admits stabbing him when he got up. Even though it was Eid who hit the first blow, it is to be borne in mind that the accused had used a knife against Tyrel not once but repeatedly three times, causing grievous and penetrating injuries in close proximity to the victim's lung and spine. The injuries are on the victim's back region giving credence to the version of the prosecution and not the defence version. The use of the knife in such a manner is excessive and out of proportion in my view and therefore the accused cannot say he was defending himself. Had he merely inflicted cut injuries on the hands of the victim, one could argue he was exercising his right of self-defence as he claims the victim too was having a piece of wood and hit him with it and he felt he was out numbered. But to inflict three penetrating stab injuries as described in the medical evidence is serious and in my view excessive in nature and not reasonably necessary considering the circumstances of this case.

- [21] 2008 Archbold Criminal Pleading Evidence and Practice at [19-41] states the classic pronouncement relating to self- defence is set out in the case Palmer v R [1971] AC 814, (which is also referred to in our law in the cases of Barra v R (SCA 21 of 2012) [2014] SCCA 36 (12 December 2014) and Sidonie v R (SCA 14 of 2010) [2010] SCCA 16 (10 December 2010)).

“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 as a defence it is rejected.” (Emphasis added).

- [22] Giving due consideration to the facts as set out by the accused in his version of this case, I am of the considered view the injuries sustained by the victim are out of proportion to the

necessities of the situation. I therefore come to the conclusion that the accused defence of self-defence fails. When one considers the prosecution evidence, it is clear that if any one posed a threat to the accused it was Eid and it is evident that the initial scuffle broke out between Eid and the accused. According to the prosecution evidence Tyrel sustained injuries when he tried to intervene to prevent his friend Eid who had fallen during the scuffle from getting stabbed by the accused who was brandishing a knife having already threatened them earlier he was going to kill them. Therefore, the accused claim that he acted in self-defence against Tyrel cannot be accepted.

[23] In regard to the different versions of the incident given by the prosecution witnesses and the accused version, I am of the view that considering the state and condition the accused was on the date of the incident, it would be impossible for him to recollect properly the details of the incident. The accused admits in his own evidence under oath he drinks and is used to the high when smoking hashish and overdoses himself. On the day of the incident too, he had been drinking heavily and smoking hashish and admits he passed out on two occasions once just before the incident (after which he accused the victim of taking his hashish which was in his pocket) and soon after running away from the scene of the crime (under a Bilenbi tree). The fact the accused was aggressive is clearly borne out by the evidence of the prosecution witnesses and his own witness Bernard Alcindor who just before the incident heard the accused saying, "*Come all of you I will fuck you up!*" The defence written submissions acknowledges and admits that prior to the stabbing there was a threat to kill made by the accused but it was conditional in that he had stated if anyone hits him he would kill them all. This defence is not acceptable and does not give him a license to stab the victim in the brutal manner depicted in the evidence.

[24] It appears after listening to the evidence in Court, the accused has cleverly decided to recall and modify the events of that day to suit his defence. In comparison to his evidence, I find that the evidence of the prosecution witnesses is corroborative in nature and independently corroborated by the medical evidence. The contradictions, omission and admissions marked D1 to D5 are not serious in nature and do not show that witness Eid was lying. Although the accused states that his nose was fractured and he was bloody, he has not sought to produce any medical evidence to corroborate same, even though he states he went

to English River hospital for treatment. For all the aforementioned reasons, I will proceed to accept the evidence of the prosecution and reject the evidence of the accused.

[25] In regard to the medical evidence before Court, Dr Perez in his evidence stated he could not say the lung was punctured and there was a probability, the air in the thoracic cavity was coming from outside through the open wound and that could also have created this issue. Dr Perez further confirmed that the surgical procedure was not a major surgical procedure. He further stated that there are no lasting effects on the patient's breathing or lung capacity or his ability to function normal day to day. Therefore, I cannot come to a conclusion that the prosecution has established that the injuries endangered the life of the victim. It is not stated so even in the report P2. I am of the view that the medical evidence does not support the charge of attempted murder Count 1. I proceed to acquit the accused on Count 1.

[26] However, on consideration of Dr Perez evidence that the injuries were grievous injuries and the medical report together with the entirety of the evidence of the prosecution which I accept, I am satisfied beyond reasonable doubt that the injuries sustained by Tyrel Hoareau were caused by the accused Harry Fabien and were of grievous nature and further that the accused had the intent to maim and disable the victim at the time of repeatedly stabbing him.

[27] For all the aforementioned reasons, I am satisfied that the prosecution has proved all the elements of the charge in Count 2 beyond reasonable doubt. I proceed to find the accused Harry Fabien guilty of the charge contained in Count 2 and proceed to convict him of same.

Signed, dated and delivered at Ile du Port on 31 May 2024


M Burhan J

31 May 2024