

SUPREME COURT OF SEYCHELLES

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Reportable/  
[2023]  
CR 54/2017

In the matter between

**REPUBLIC**  
*(rep. by Ms C Rose)*

**Republic**

and

**JEAN PAUL BASTIENNE**  
*(rep. by C Andre )*

**Accused**

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**Neutral Citation:** *R v Bastienne* (CR 54/2017 ) [2024]  
**Before:** Govinden CJ  
**Summary:** Accused convicted as charged.  
**Heard:** 9;12;13 July 2018  
**Delivered:** 18 March 2024

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**ORDER**

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**JUDGMENT**

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**GOVINDEN CJ**

**The charges**

[1] The offences with which the accused has been charged and pleaded not guilty to is as follows;

[2] **Count 1**

**Statement of Offence**

House breaking with intent to commit a felony contrary to Section 289 of the Penal Code read with Section 236 of the Penal Code.

### **Particulars of Offence**

Jean-Paul Bastienne, aged 33 years, casual labour residing at Labatie, Mahe was on the 9<sup>th</sup> day of October 2017 at La Gogue, Glacis, Mahe did break and entered into the house at night at about 01:09 hrs with an intent to commit felony, namely the offences of assault causing actual bodily harm.

### **Count 2**

#### **Statement of Offence**

Act intended to cause grievous harm contrary to Section 219(a) of the Penal Code and punishable under the above said Act.

### **Particulars of Offence**

Jean-Paul Bastienne, aged 33 years, casual labour residing at Labatie, Mahe was on the 9<sup>th</sup> of October 2017 at La Gogue at night with intent to cause grievous harm to the person namely Karan Monthy caused grievous hurt to the said person by hitting the said person with a small wooden table and fist blow, as a result of which causes fracture to the right side eyelid of the said Kareen Monthy.

### **Count 3**

#### **Statement of Offence**

Assault to cause actual bodily harm contrary to Section 236 and punishable under the same Act.

### **Particulars of Offence**

Jean-Paul Bastienne, aged 33 years, casual labour residing at Labatie, Mahe was on the 9<sup>th</sup> day of October 2017 at La Gogue assaulted another person namely Antoinette Bastienne by means of fist blow where by causes actual bodily harm to the said Antoinette Bastienne.

## **Count 4**

### **Statement of Offence**

Abduction of a person in order that such person may be subjected to grievous harm or knowing it to be likely that such person will be so subjected contrary to Section 245 of the Penal Code and punishable under the same Act.

### **Particulars of Offence**

Jean-Paul Bastienne, aged 33 years, casual labour residing at Labatie, Mahe was on the 9<sup>th</sup> day of October 2017 forcibly abducted the person namely Antoinette Bastienne with her children and subjected her to grievous harm by driving the passenger side of his car into an electric pole thereby causing her injuries.

The accused pleaded not guilty to all the charges and the matter proceeded to trial, with the Prosecution calling the following evidence against the accused.

### **The Prosecution evidence**

- [3] Witness Antoinette Bastienne testified that is 30 years old and lives at Glacis La Gogue. She recounted what happened on the 8th day of October 2017. She went to a party at her sister's. When she was at the party she saw and asked her where Kieran is because she did not see Kieran at the party. Marie-Claude Monthy told witness that Kieran is at home with his girlfriend. Witness told her to tell Kieran to come to the party because he is used to coming to the party. Kieran came and witness continued enjoying the party. Witness then heard her older sister having an argument with the accused. She saw them in an argument she did not interfere she just went on about to enjoy the party and danced. Witness testified that when the party was over her brother in law brought her home. There was herself, her mother, her brother, her two kids and Kieran asked them for a lift. On the way home Kieran asked witness for a place to stay the night because his grandmother had locked him outside. Witness said "no problem". When she reached home she showered. Kieran was in the living room talking with her older brother. After showering witness went to the bedroom. Kieran came to her and told her that he wanted to throw up. Witness told him to go to the

bathroom then went on her bed. Then Kieran came and asked her where he was going to sleep there next to her on the bed. Witness slept and Kieran told her that he was going to throw up again. Witness stated that when he came back she did not even hear because she had already slept. As she was sleeping she heard someone forcing the door open. Witness stated that her room was locked and the accused entered through by breaking the bedroom door. It seemed like he had removed the window but she was not too sure about that. When she opened her eyes the lights were on, she saw the accused and then he punched her in the face. Her eyes were closed when she opened it she saw the accused. She does not know if he was throwing his first punch or the second one but he was hitting Kieran. The only thing that witness did was block Kieran. The accused hit her on her neck, in her back, everywhere. Then he dragged her into the living room. When she was in the living room her older brother said "*Jean-Paul you came here to beat women*" he was going to call the Police. Then the accused turned on him and started beating him. Witness stated that her mother and sister came and tried to break the fight. He continued fighting with Kieran.

- [4] She testified that after that the accused grabbed her by the waist and started dragging her. Her mother and sister held her hands. Witness told the accused she was not going with him. The accused took her and her two kids and they went on the road. The kids got in the car. Witness stated that the accused told her to get in the car and she refused. He swore at her and told her to get in the car. Witness then got in the car because she saw that he was getting more and more aggressive. When she got in the car he punched her and hit her with his elbow in her mouth, and then they left in the transport. When they reached at La Batie he drove into a pole, he said "*Look what you made me do*". Then he got out of the car and removed the kids from the car. Witness could not get out of the car because the car door was stuck. The accused opened the door for her he grabbed her by the hair and pull her outside. They went to his place. When they reached his place he started crying, he said that he was not supposed to be up there, what has he done. He turned on witness and he started strangling her on the bed. Witness told him to call the ambulance because she was not feeling well. He said "*no, not to call the Ambulance*", and then the phone rang and the Police called them. Witness testified that the accused did not speak, he gave witness the phone. He told witness to tell the Police that they were in the Gala at Le Niolle. Witness stated that she told the Police that and it seemed as if the Police knew because they were

asking her questions like *“If I was at La Batie?”*. All she said was *“Yes”* because if she had spoken to the Police she knew that the accused would beat her. Then her sister called her and said the same thing. All she said was *“Yes”*, then the Police came. The accused grab witness by the neck. He said *“make sure when you go outside you know what you say”*, and then they went outside to the Police Officers. Witness testified that she has no relation to the accused. Witness testified that she sustained injuries due to the act. Her eye was swollen and it was blue. Her lip was cut and there was a lump on her forehead. There was scratches on her arm.

- [5] When cross examined, witness testified that during the party she did not go outside, she did not ask the accused for cigarette, she did not talk to him in the party. She gave a statement to the police saying this *“I asked my sister Veronique Marengo if she has invited Jean-Paul and she said “no”, but I did not bother myself much because I do not have anything to do with him. I recalled a time that I wanted to smoke a cigarette and I went outside and I asked him for a cigarette which he gave me and I smoke it”*. Witness stated that she asked him for cigarette but she did not talk to him. Witness smoked the cigarette but not next to the accused. He was sitting on the steps she stood in the grass next to the flowers, next to the house around 4 meters. Witness testified that she has two children with the accused. The accused calls her to make arrangements to see the kids by picking them up next to the road but he does not come to the house. There is no time arrangement, when he is done with the kids he just bring the kids. This has been happening since they broke up for a year already. At the time 8 months, they have been communicating and he picks up the kids, the returns the kids at home no incident has happened. Witness was asked if the accused was drinking at the party. She testified that she would not know because she was in the party and saw him, she did not interact with him. Witness does not know when the party started but they went there at about noon to 1 pm. It started during the day it went in the night. There were a lot of drinks at the party. Everybody were enjoying themselves drinking, having food as is normal in a party. The accused came to the party even though he was not invited. Witness left the party early morning the next day on the 9<sup>th</sup> October. Witness stated that she had consumed a lot of alcohol at the party however she was neither tipsy nor drunk. She drank mostly whiskey red label around from noon to around 1 o'clock in the morning. When she went home she saw the accused at some point. She was asleep

and the lights were off. When she woke up the accused had switched the lights on. When they went to the car witness refused to go but then the accused insisted that she gets in the car. He did not push her in the car. Then the accused bumped in to the electric pole at La Batie. Witness sustained some injuries when this happened. She was not wearing seatbelt. When she was in the house of the accused she told him to call the ambulance because she was not feeling well. And she was not feeling well because she had sustained some injuries in the accident that had happened in the car.

- [6] Next witness Kieran Ryan Monthy aged 17 years' old testified that on the 9<sup>th</sup> October 2017 at about 0120 hours he got beaten up in a party. He was drunk then he went to the house of the father of his brother and slept. He woke up at the hospital in the morning. He was in the drip. He was sleeping he was drunk in the morning his family told him that he had got beaten up. Witness does not know who beat him because he was drunk. Witness sustained injuries on the right hand side of his forehead was broken. He was having problems with his eyes. His teeth were broken. He does not know how he sustained those injuries.
- [7] Next witness Sheila Pointe is a WPC, at the Beau Vallon Police Station. On the 9<sup>th</sup> October 2017 she was working form the 8th to the 9th 7 pm to 7 am the next day. She examined a girl that had gotten into a fight with her husband. Witness issued her with a Medical Form. When witness examined her on the left hand side of her eye was swollen. On the left hand side of her arm there were scratches, her forehead was swollen. She was complaining that her head was aching. Witness prepared the medical form using her own handwriting. Witness identified the medical form that usually the Officers issues to a person that has been in a fight. She stated that the date on the form is the 9<sup>th</sup> October 2017. The medical examination form issued by the witness was marked as an item P1.
- [8] Witness testified that she also prepared a medical form for a Kieran Monthy. Witness identified the form dated 9<sup>th</sup> October 2017. The form was written in her own handwriting. She did not examine this person but just gave him the form. It was the doctor that examined him. She prepared and testified that this is when someone gets into a fight at this document is brought to the Seychelles Hospital, so that the doctor can enter its injuries on it. Medical form issued by witness WPC Sheila Pointe to Kieran Monthy was marked as item P2.

- [9] Next witness Xavier Barra testified that he is attached to Beau Vallon Police Station in general duties and has been on the force for ten years. On the 9<sup>th</sup> October 2017 they got a call that a men had kidnapped a lady girlfriend, forced her get in the car with him with two kids. Witness was at Beau Vallon Police Station; the car was about Glacis La Gogue. He proceeded this way he did not find the car. He contacted his colleagues and they gave the number of complainant namely Joseph, saying that there is also a guy which has been beaten also up there so witness went there. Witness saw a young men laying on the bed with blood in his face, a mark on the right above his eyes. Witness contacted the ambulance and the SSCRB fingerprint. They all came to take photos. Later he got another call that there is an accident at La Batie. He proceeded there and saw a red car hit against an electric pole. A man called him saying that the driver is down at his house. Witness went there and found the accused. He was informed his right and he was detained at Central Police Station.
- [10] Next witness Constable Alexandro Bethew number 323 is attached with the Scientific Support and Crime Records Bureau and is in the force for 4 years. He is a Photography Officer, a Scene of Crime Officer and a Finger Print Officer and is on training at his office. Witness has testified in court before. On the 9<sup>th</sup> October 2017 at around 1:20am he attended an alert scene of kidnapping at La Gogue at the house of one Antoinette Bastienne. Corporal Barra from Beau Vallon Police Station informed his Supervisor which was Corporal Anette Melie and she informed witness. When arriving at La Gogue at Antoinette Bastienne's house witness met with Corporal Barra. He stated that one Kieran Monthly 17 years old was assaulted by one Jean-Paul Bastienne. Witness went on to examine the scene and notice three louver blade were remove from the house and place outside against the wall and red stain were found on the wall of the bedroom and on the floor. After the examination he labelled and photographed the place of the incident which were shown to him by Corporal Barra. Witness started taking photographs 10 minutes after arriving on the scene. He took the photographs with a digital camera mark Nikon DX30. Witness did not notice anything strange at the house, only in the bedroom everything was on the floor like pillows, some books. Witness testified that he then visited the place where vehicle S610442 where involve and took photographs of the vehicle. On the basis of the examination witness found that part of the car was damage. Corporal Barra identified the vehicle to him.

- [11] On Friday 13th October 2017 at about 9 hours' witness downloaded the photograph on a CD and took it to Photo Eden where he requested Mr. Henry Jean-Louis to print the photograph which he did and handed back to witness the CD. Witness collected the print out on the same day. He made three copies. The photographs were kept in his locker. Witness identified the photograph he took of the incident at around 1:20 hours and 2:40 hours. Album of photographs containing 22 photograph tendered by the witness to the Court and admitted in evidence without any objection to the defence marked as *exhibit P1*.
- [12] Photograph number 1 shows an overview of the house where the incident happened; Photo number 2 shows the house where the incident happen taken at different angle; Number 3 also shows the house when the incident happen taken at a different angle; Number 4 shows the louver blades against the wall outside where the incident happened at the house; Number 5 shows a closer view of the louver blades; Number 6 shows where the louver blades where removed and where the Accused gained access to the house shown to him by Corporal Barra; Number 7 shows a closer view of photo number 6; Number 8 shows a different angle taken of photo number 6; Number 9 shows number 2 label was, where Kieran Monthy was before the incident happened shown to witness by Corporal Barra; Number 10 shows the red stain on the pillow and other mess in the room; Number 11 shows the red stain on the wall in the bedroom; Number 12 shows the mess on the floor in the bedroom; Number 13 shows vehicle S16442 against an electrical pole; Number 14 shows vehicle S16442 the front part damage; Number 15 shows the said vehicle taken at a different angle; Number 16 shows photo number 15 taken at a different angle; Number 17 shows vehicle S442 to taken from the back. Photo number 18 shows the said vehicle taken at a different angle; Number 19 shows a closer view of the front part damage of the car vehicle S16442; Number 20 shows inside the vehicle; Number 20,21 and 22 shows inside of the vehicle.
- [13] In cross examination witness was shown photograph number 4 and testified that there is only two louver blade from the picture that is there. However, from his statement and the highlighted in blue witness agreed that there were three louver blades missing. From the statement there were three louver blades missing and in the photograph two louver blades. Witness testified that is because the way it was place. It was place on each other so there



were three louver blades there. In the photo there was two louver blades because of the angle the photo was taken. Witness admitted that there was an inconsistency between this statement and the photograph. He stated that in his statement he said three and apparently on the photograph only two can be seen. *Document admitted as exhibit D1.*

- [14] Witness also admitted an inconsistency in his statement where he stated that upon examination stain of blood where found in the bedroom where the incident took place shown to by Corporal Barra because in his court testimony he stated that he does not know if it blood. Witness could not confirm that the red stain in photograph 10 and 11 was blood.
- [15] Witness was referred to photograph number 6 and testified that he picked up the louver blades from outside and placed them inside the house. Witness was referred to photograph number 5, there is two tops- picture number 5 which is a close up. Witness testified that he found them outside like this. It was put to witness that there was a fabrication of evidence because picture number 4 shows that only two louver blades are missing and against the wall outside there is two louver blade which is shown up in photograph number 5, number 6 there is three louver blade missing that means one was removed by someone after witness came. Witness testified that he found them like this.
- [16] It was put to witness that as from photograph number 13 there is a clear indication that there was an impact on that electric pole by the car. Witness testified that he would not know if occupants of the car inside would have been shaken when the car would have hit. Witness was asked about photograph number 18, there is some damage on the left rear side of the car which he took pictures. Witness stated that he does not know as to how these damage with regards to the car. With regards to picture number 20, 21 and 22 there was nothing abnormal inside the car.
- [17] When re-examined, witness was asked to look at photograph number 6 and testified that he saw three louver blades. This could not be seen in photo number 5 because it was due to the angle the picture was taken. There is a possibility of placing one louver blade over the other in this photograph. Witness has experience in the field of forensic photography for 4 years. Witness testified that with regards to the accident he would not know how this accident happened. Witness first took photograph number 5, the one on the outside, then

number 6. Following taking number 5 witness took the same louver blade and place it inside the house so that he could work with it and do his other thing that he does with for the finger print. Witness stated that taking it inside does not temper with the evidence because he can work with that evidence that he needs. He needed the louver blades for evidence to work with it. He did take pictures of the scene where the incident happened as it is. Witness has not given fingerprint results to court because none were developed.

[18] Next witness Joseph Gilbert Margeurite lives at Glacis, La Gogue. He lives with his mother, sisters named Antoinette Bastienne, Raynette Arrisol, Julianne Bastienne, nieces and nephews. Witness pointed to the accused sitting in the accused dock and stated that this is Jean-Paul Bastienne who attacked him and his sister. Witness recounted what happened on the 8<sup>th</sup> October 2017. Witness testified that he locked every door in the house and closed all the windows. Everyone had gone to sleep. He was the last one that went to sleep. When he woke up he heard a sound. He looked and asked the accused “*what are you doing inside?*” Witness told accused he was going to call the police. Witness was calling the police when accused fought with him to get his phone so that he could smash it. As they were fighting the accused was not able to grab his phone. He grabbed witness in the middle of his head and pressed him downwards so that he could hit witness with his knees. Witness stated that he blocked his face so that the accused would not break his face. The accused was sitting on top of witness’ sister punching her. Witness saw blood everywhere. The accused hit Kieran with a small glass table. Then the accused took the witness’ sister and her two kids and left, then the police came they took pictures and did all the procedures. Witness stated that if he had not woken up the accused could have killed everyone there and left and no one would know.

[19] Witness recalls CID Officers were taking photographs. There was one inside. There were a lot of police officers from Beau-Vallon. Witness recalled that his house has two doors from the front where one can enter and then there are two bedroom doors at the back. The two bedroom doors at the back were locked so the accused could not get in. Witness locked them. Witness testified that the accused removed the louver blades that face the terrace. When witness came to the door, he pressed the door knob it was locked as he was the one that locked it. When he looked at the window the accused had remove three louver blades

and placed it outside. The police came to the house and photographed everything. Witness was then shown photograph number 1 and stated that this is in front, the two bedroom doors. He was shown photograph number 6 and stated that this is where the accused removed the three louver blades. The frame where the louver blade is placed is broken since that day. It cannot be fixed witness states that he needs to buy another one.

[20] The accused attacked his sister and also one Kieran Monthy. Witness saw blood everywhere on the bed, in the bed sheet and the clothes. When witness saw Kieran Monthy his condition was as if he was in a blood bath, he was vomiting blood. Witness stated that even though he was speaking to him he could not understand. He was not in a conscious mind. After that the police came and left. The ambulance came and placed Kieran in a stretcher they took him.

[21] The accused came in the party even though he was not invited. Witness states that he does not drink, he was serving the drinks on the bar. Witness stated that if they told him that the accused was not invited he would not have served him drinks. His sister played it cool and let him have a drink. When the accused came to him all he wanted was double whisky, tequila, raw shots and witness gave it to him. After that witness went home. At the party the accused was slapping the dip saying that if he does not have the witness' sister nobody will. These are all things that happened on 9<sup>th</sup> October 2017. The incident happened about 01:00 to 01:30am. Witness was shown photograph 17 and identified the car where his sister was taken by the accused person. The vehicle was a red car. Witness was shown photograph 18 and stated the car was not smashed like that. Photograph 10 showed the inside. There is a pillow with blood on it. There's a bottle with washing liquid. There is blood on the floor. There is a spoon on the floor, a box of Mahé king, there are slippers. There is blood on the pillow, there is blood on the paper as well.

[22] In cross examination witness testified that on the day of the incident he was the barman at the party at his sister's house. Witness did not look at the time to know what time the party ended. Witness does not know what time he closed the doors because he was very tired. Witness testified that in a house of seven bedrooms thirteen people who live in the house he would know who is in the house all the time because he did not drink, so he was not

drunk. He came from the party locked the door and went to sleep. When he woke up he saw the accused in the house. He heard a noise, got out and asked him *“what a doing in here. The door is locked how are you going to get in you need to go through the window.”* Witness testified that he did not see the accused come through the window. He cannot confirm if anyone let the accused inside the house but nobody would open the door because everybody was drunk, everybody was sleeping. And they even know that the accused has no right to come here because he has broken up with the witness’ sister. It was put to witness that the others could have fought with each other in the house. Witness replied in the negative. Then there was a fight between the witness and the accused to get to the phone. Before witness was going to call the police the accused launched at him. Then the accused went to the sister of the witness. When witness was calling the police he went to the door and checked the door, the door was locked. When he turned and looked at the window he saw that the louver blades were missing. The louver blades were at the back outside. When the police came along with the CID the louver blades were still outside. It was put to witness that because of the nature of the house and various items outside as seen from photograph number 2 the louver blades were already there. Witness testified that the louvers were removed as he was the one that close the windows. The officers that came here, there were fingerprints as the louver blades had dust on it coming from outside to inside. Witness stated that when you hold something that has dust on it your prints would be stuck on it. He would never lie to the court. It was put to witness that he was the one that removed the louver blades. Witness testified that this is his house and that he has a door, then why would he remove the louver blades. The prints on the louver blades are not his as he was asleep at the time. Witness was shown photograph number 4 and testified that the louver blades are placed on top of each other so you will not see if it’s one by one. Witness was shown where the louvers is placed on the window side. He testified that four louvers are missing. The third one going from bottom to top there is a louver. Witness could not identify the fourth one. Witness agreed that there’s one and two louver blade missing on picture number 4 from the frame. And these are the two louver blades that are against the wall. It was put to witness that he never saw the incident happen nor did he see Kieran being beaten. Witness testified that he lives here. The accused grabbed Kieran and

threw him on the bed. There was a glass table in his sister's bedroom and it got shattered. Kieran got hit with the table leg, a wooden table and the police officers took the table.

[23] The Accused took his sister and went away with her kids Julia and Julio. They are also the children of the accused. Witness stated that his sister was forced to enter the car. Witness stated that the accused pulled his sister from the inside so that she could go with him. Witness did not see where the car was parked but he knows where it was. He did not see whatever happened at the car.

[24] Witness was shown photograph 10 and was asked how does he know the red substance on the pillow was blood or tomato sauce, if he had it tested. Witness testified that he can see the colour and its wet, he sees that its blood. Who would take tomato sauce at night and put it on the pillow? Witness stated that he does not know whether it is his sister's blood or Kieran's blood but he knows that it was blood.

[25] Next witness Lena Anacoura testified that he is presently attached to Anse Aux Pins Police Station. She has been in the force for 31 years. She recalls what happened on the 9<sup>th</sup> October 2017 because she was conducting an investigation into a case. On that day she was attached to priority CID section based at Bois De Rose on duty. She was instructed by SP Dogley, the Deputy CID officer to take a case which was at Beau Vallon Police Station to conduct an investigation in that case. After that, she started the procedure regarding the case. She took an under caution statement after someone who was involved in that case was arrested. His name was Jean-Paul Bastienne. Witness identified accused in the accused box. Witness was shown the under caution statement and identified it together with her handwriting. The statement under caution of the Accused Mr. Jean Paul Jerry Bastienne taken on the 9<sup>th</sup> of October 2017 by the witness is marked as **exhibit P2** and the translated version attached as **P2 (A)**. Witness read the statement as follows: *"It reads as follows, states:-I do not have anything to state to the Police and all I have to say I will say in the Court."*

[26] Next witness Doctor Porfinio Perez works at the Casualty, Victoria hospital. He had been working in Seychelles for four years. Every time he is on duty he sees a lot of patients. If he sees a document, he can remember from it. Generally, he sees about 45 patients per duty in the casualty. Witness was shown a report and testified that he signed the medical

certificate. He identified his signature at the bottom right of the paper with his handwriting. He firstly treated Antoinette Bastienne. He saw the patient at 4:17 am. Witness read his report to the court. He saw in casualty Antoinette Bastienne, 30 years old in casualty 9th of October 2017 at 4:17 am. On the physical examination he found on the face left eye a swelling, pain on touch on left maxillary region. On left shoulder pain on touch and moving. On the mouth 0.5 centimetre laceration on upper lip and lower lip were swollen and bruised seen. The medical report of Doctor testifying is tendered and admitted without objection as *exhibit P3*.

- [27] Witness was asked on the same day if he treated another patient. He did not remember. Approximately on that day he saw about 40 patients. Witness was asked if he prepared a report on the 9/10/ 2017. Witness testified that he does not remember. Normally he issues medical certificate to patients who come to the Hospital. He signs it also. When he sees the patients he has to write reports. After preparing the report he signs it. He then gives the report to the patient who in turn gives it to the police. In this case the Police has requested to give a medical certificate. Witness was shown the report and identified his signature. The name of the patient is Kieran Monthy, 17 years. The observation of the witness was as follows. He found in the physical examination on the head a small haematoma on the right temple region 3 centimetre laceration on the right eye. In the right eye is swollen. Upper lip is swollen. Right side of the face swollen. A CT scan was done with fracture of right lateral 10.13.59 medial and inferior wall and right interior lateral maxillary wall and right psychomatic orbital complex and maxillary sinus. That is all in the CT scan report. Witness stated that he got the information from the Radiologist. On the basis of the information he prepared this report. As an experienced Doctor for a long time while seeing the Radiologist report he can assess the seriousness of the injury. On the basis of that he prepared this report. The injury was serious according to the physical examination, according with the CT scan report. Witness also did the physical examination of the patient. From the physical examination witness found laceration in the face, swollen in the face, left shoulder inflammation on the face. *The document was admitted as exhibit P4*.

- [28] When cross examined witness did not have any medical notes he took from casualty on that day with him in respect of Antoinette Bastienne so he could not tell the Court or

confirm to the Court what was said to him in respect of Antoinette Bastienne. He does not remember whether a police officer was present. Witness stated that he made reference to CT scan in his report, exhibit P4. In the CT scan report they found fracture of the right lateral eyelid. Witness report starts with respect to the CT scan report. Witness used a highlighter and stated where his report started and ended. Witness agreed that where he started the CT scan reporting is not his area of specialty. He cannot confirm what was given to him in the report whether it is true or not. He just placed it there. He made a report from a report. It is a standard procedure for him to make his medical report based on another Doctor's report. He does this in instances where in cases of such a nature where there is referral to Radiologist he has to ask in his work. He has to call the Radiologist and to request for CT scan report.

- [29] Next witness Wix Michel Andre Cupidon. He works at the Yellow Roof Dental Clinic since 1998. He has given evidence before court and his evidence was admitted. Witness made a report in respect of this case and signed it. Witness does not remember the year he prepared his report. After preparing the report he sent it to the Report Department, Medical Report. Witness was shown the report and stated that the report is dated the 30th October 2017. The name of the patient is Kieran Ryan Monthy. Witness pointed to the bottom right hand side of the report showing his signature. *The report was marked as exhibit P5.* Witness read the medical report. Medical report for Kieran Month, address Glacis, date of birth; 11/9/2000. The alive patient was seen at the accident and emergency unit on the 9th October 2017 after having allegedly being hit on the face with a piece of wood. Clinically examination showed laceration on the right side of the face approximately 3cm in length extended form the right temporal region on the right orbit. CT scan showed fracture of the right psychomatic orbital complex, the patient was admitted the same day for intravenous treatment with antibiotic and analgesic and anti-inflammatory medication. On the 30th October 2017 surgical reduction of the fracture was done using intraoral and mini plates. The patient was seen daily on the ward and was discharged on the 16<sup>th</sup> October 2017 and was given weekly appointment for check-up. Doctor Wix Cupidon oral and maxillo signed. Witness physically examined the patient. He conducted the surgical reduction together with one of his colleagues.

[30] The condition of the patient when he physically examined him was that he had laceration on the right side of his face like in his report and the laceration was sutured. The patient told witness that he had been hit with a piece of wood. Witness stated that it is possible that such an injury can be caused by a piece of wood. He testified that The injury can also be caused by a fist. He has seen patients which had fractured caused by a fist. Witness had a patient before who had a fracture with a fist. Witness examined the CT scan in this case. He prepared the report upon physical examination as well as the CT scan report. This is the way it is done. The way he prepares his report is after having all his facts after operating the patient and seeing the follow up the he does the final report.

[31] Thereafter the prosecution closed their case.

### **The case for the Defence**

[32] The accused decided to exercise his right to remain silent and not to call witnesses in his favour.

### **Submissions**

In his submissions Learned counsel for the accused argued that the prosecution has failed to established the intentional elements for all the offences charged , especially given the level of intoxication that he was in , with regards to count 2. Submissions is also made of the fact that the prosecution witnesses does not corroborate each other with regards as to how the injuries were caused to the victim. As a result he submitted that there are reasonable doubts in the Prosecution case and that it should be dismissed. On the other hand, the Prosecution submitted that it has proved its case on the required legal burden.

### **Analysis of the law**

#### **Count 1 – Housebreaking with intent to commit a felony.**

[33] The following elements have to be present before one could say that there was house breaking:

- I. The person breaks and enters any building, tent or vessel



- II. The building must be used as a human dwelling
- III. There must be intention to commit a felony

[34] House breaking with intent to commit a felony contrary to Section 289 of the Penal Code read with Section 236 of the Penal Code.

Any person who—

(a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; is guilty of a felony termed "housebreaking" and is liable to imprisonment for ten years.

[35] Having carefully considered the evidence, the evidence of Joseph Gilbert Margeurite clearly indicates that a person had entered their dwelling house on the 8th October 2017. The intruder had entered through the missing louver blades from the window as shown in Exhibit p1 photograph no. 6,7,8. The evidence of Joseph Margeurite is that he lives in a house with other family members. On the day of the incident when everyone had gone to sleep he came from the party locked the doors and windows and went to sleep. When he woke up he heard a sound and saw that the accused had gotten into the house. According to him all the access points were locked and secured and the only place of entry were the missing louver blades. Everybody else in the house was intoxicated and he was sober at the time of incident so no one else would have opened the door. He further testified that the accused and his sister were separated thus he had no right to come to the house. This was supported by the testimony of Antoinette Bastienne who testified that she and the accused had broken up for a year. Witness Joseph Margeurite identified the accused by pointing to the accused dock. In scrutinising the above evidence, this is circumstantial evidence. In the case of Labrosse v R (SCA 27 of 2013) [2016] SCCA 35 (9 December 2016) J. Msoffe (J.A) stated as follows:

[36] “[19] The law on circumstantial evidence is settled. In the often cited case of Guy Bristol v Republic [1980] SLR 38, it was stated: -The Magistrate took all the above evidence into account and said there was strong circumstantial evidence that the appellant took the money. However, he failed to direct himself specifically as is necessary in a case depending entirely on circumstantial evidence. In such a case, the trial Judge or Magistrate must direct

himself that before an accused person can be convicted he must first find that the inculpatory facts are inconsistent with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt ....

[37] [20] To add to the case of Bristol, there is also the persuasive case of David Zulu v The People [1977] ZR 151 (SC) that in order to feel safe to convict the court must be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only of an inference of guilt.”

[38] In this instant case the presence of the accused in the dwelling house, along with the missing louver blades and the testimony of two witnesses who saw him in the house when he had no right to be there, constitutes strong circumstantial evidence which can permit only of an inference of guilt.

**Count 2- Act intended to cause grievous harm contrary to Section 219(a) of the Penal Code.**

[39] Section 219 of the Penal Code states that:

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

(a) unlawfully wounds or does any grievous harm to any person by any mean whatever is guilty of a felony, and is liable to imprisonment for life.

[40] Witness Antoinette Bastienne testified that on the 8th day of October 2017 when the party was over she made her way home. After showering, she went to sleep. As she was sleeping she heard someone forcing the door open. When she opened her eyes the lights were on, she saw the accused and then he punched her in the face. She does not know if he was throwing his first punch or the second one but he was hitting Kieran. The only thing that she did was block Kieran. This is supported by the testimony of witness Joseph Gilbert Margeurite who testified that the accused was sitting on top of his sister punching her. Witness saw blood everywhere. The accused attacked his sister and also one Kieran Monthy. Joseph Margeurite further stated that Kieran Monthy was assaulted with a wooden

table. The extent of his injury is shown in Exhibit P4 and P5 upon physical examination by doctor Perez and Doctor Cupidon. Doctor Cupidon stated that it is possible that such an injury can be caused by a piece of wood. He testified that the injury can also be caused by a fist. Perera J stated in the case of R v Norah (6 of 2007) [2007] SCSC 43 (19 December 2007) that:

[41] “The term “grievous harm” is defined as “any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely to injure health, or which intends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense””.

[42] In the instant case Doctor Perez testified that the injuries Kieran Monthy sustain is serious. Serious enough that Dr Wix testified that the patient had undergone surgery.

**Count 3- Assault to cause actual bodily harm contrary to Section 236.**

[43] Section 236 of the Penal Code states that:

Any person who commits an assault occasioning actual bodily harm is guilty of a felony, and is liable to imprisonment for seven years.

[44] The prosecution brought this charge in respect of the assault of Antoinette Bastienne. She testified that the accused hit her on her neck, in her back, everywhere. The extent of her injury is shown in the medical report admitted as Exhibit P3 from the physical examination by Dr Porfinio Perez. He testified that upon physical examination the patient namely Antoinette Bastienne her left eye swelling, pain on touch on left maxillary region. On left shoulder pain on touch and moving. On the mouth 0.5 centimetre laceration on upper lip and lower lip were swollen and bruise seen. Joseph Gilbert Margeurite supports her evidence stating in his testimony that the accused was sitting on top of his sister punching her. In the case of Mathiot v The Republic SLR 1992 Perera J held in applying the case of (R v Savage (1992) 94 CR. Appeal: Rep 193) that:

[45] “The offence of assault occasioning actual bodily harm is established by mere proof of fact that actual bodily harm was occasioned by the assault.”

[46] Although in this instant case the accused did not admit to punching or hitting the victim, it is apparent by the evidence of her brother and that of the medical report certifies the injuries she received from the assault.

**Count 4- Kidnapping with intent to do harm, slavery, etc.**

[47] Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of felony, and is liable to imprisonment for fourteen years.

[48] In order to determine whether a kidnap has taken place, the necessary elements must be present. In D [1984] AC 778 at 800 The House of Lords held the offence contains four ingredients as follows:

(1) the taking or carrying away of one person by another;

(2) by force or by fraud;

(3) without the consent of the person so taken or carried away; and

(4) without lawful excuse.

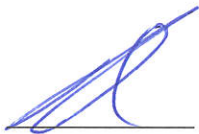
[49] Antoinette Bastienne testified that the accused grabbed her by the waist and started dragging her. Her mother and sister held her hands. Witness told the accused she was not going with him. The accused took her and her two kids and they went on the road. The kids got in the car. Witness stated that the accused told her to get in the car and she said "no". He swore at her and told her to get in the car. Witness got in the car because she saw that he was getting more and more aggressive. Joseph Gilbert Margeurite the brother of Antoinette stated in his evidence that the accused took his sister and her two kids and left. Antoinette Bastienne further testified that when she got in the car he punched her and hit her with his elbow in her mouth, and then they left in the transport. When they got to La Batie the accused grabbed her by the hair and pulled her inside. Police officer Xavier Barra testified that he proceeded to a scene after receiving a phone call at La Batie. Witness went

there and found the accused. He was informed his right and he was detained at Central Police Station. When scrutinising the evidence above it becomes clear to see that all elements of the offence is met. The victim was dragged away by force to another place without her consent and no reasons was given to her as to why she was being taken away.

**Final determination**

[50] For the aforementioned reasons, I am satisfied beyond reasonable doubt that when one considers the evidence led by the prosecution, all the elements of all four charges against the accused have been proved beyond reasonable doubt. I am further satisfied that the circumstantial evidence presented to the Court, together with other evidence, proves beyond reasonable doubt that the accused in this case committed the offences charged against him.

Signed, dated and delivered at Ile du Port on <sup>18<sup>th</sup></sup> of *March* 2024

A handwritten signature in blue ink, consisting of a stylized, cursive 'G' followed by a flourish, written over a horizontal line.

Govinden CJ