

**Republic v Simeon
(2003) SLR 158**

Anthony FERNANDO together with Laura VALABHJI for the Republic
Annette GEORGES together with Conrad LABLACHE for the Accused

Judgment delivered on 10 November 2003 by:

JUDDOO J: The accused stands charged with two counts of manslaughter contrary to Section 192 of the Penal Code (Cap 158). He has denied the charges and is represented by Counsel.

The particulars of the offences are that on 9 October 2000 the accused unlawfully killed Marie Celine Jacqueline Pamela Pouponneau (Pamela Pouponneau) and in the course of the same transaction unlawfully killed Greta Simeon (Greta). The accused is a duly qualified Attorney at law and the two victims were his partner, with whom he had been cohabiting, and his mother.

Under Section 192 of the Penal Code, “any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed “manslaughter”.” In general terms, manslaughter is the unlawful killing without intent to kill or cause grievous bodily harm: *R v Taylor* (1834) 2 Law 215. The killing is manslaughter if it is the result of the accused's unlawful act or omission which all sober and reasonable person would inevitably realise must subject the victim to the risk of some degree of harm resulting therefrom) albeit not serious harm, whether the accused realised this or not: *R v Quatre* Criminal Side No. 11 of 1992 - unreported Judgment 25/01/93.

In *Archbold* (2002 ed) at para 19-99, the author summarises the law pertaining to an “unlawful act” manslaughter as follows:

In respect of manslaughter arising from the unlawful act of the accused, the following propositions appear to be established:

- (a) the killing must be the result of the accused unlawful act;
- (b) the unlawful act must be one, such as an assault, which all sober and reasonable person would inevitably realise must subject the victim to, at least, the risk of some harm resulting therefrom, albeit not serious harm;
- (c) harm means physical harm.

Pertaining to the mens rea, the author further states at paragraph 19-105:

Mens rea is essential to manslaughter, but it is limited to the mens rea

appropriate to the unlawful act: *R v Lamb* (1967) 2 QB 981 ... *R v Lowe* (1973) QB 702 ... Accordingly, it is unnecessary to prove that the accused knew that the act was unlawful or dangerous: *DPP v Newbury* (1977) AC 500 H.

The test to be applied was stated in *R v Church* (1966) 1 QB 59... (CA approved in *DPP v Newbury*, at p510):

... an unlawful act causing the death of another cannot, simply because it is an unlawful act, render a manslaughter verdict inevitable. For such a verdict inexorably to follow, the unlawful act must be such as all sober and reasonable people would inevitably recognise must subject the other person to, at least, the risk of some harm, albeit not serious harm."

In the present case, the prosecution relies upon the "intentional and wilful acts" of stabbing committed by the accused and resulting in the death of the two victims. The burden is on the prosecution to satisfy the Court, beyond reasonable doubt that the accused committed the said acts of stabbing and that the accused "intentionally and "wilfully" committed the said acts.

The following facts are not in dispute. On 9 October 2000, at about 9.45 pm, the dead bodies of the two victims were brought to the Casualty Department at Victoria Hospital and examined by Dr Commettant, Senior Medical Officer. In his report pertaining to Pamela Pouponneau, exhibit P, it is observed that there was a:

large laceration about 8-10 cms on the left side precordial area part of ribs and sternum transected. Absent cardiovascular activities (zero pulse and blood pressure).

Other lacerations on her body included:

laceration left arm - 3 cms long, 10 cms laceration medical aspect left elbow, 4 cms laceration inferior to the left breast, left posterior chest wall - 12 cms laceration, middle thoracic area posteriorly - 6 cms laceration. There was also a kitchen knife embedded medical aspect (upper) right thigh lateral to the labia majora.

The person was certified dead. In his testimony Dr Commettant confirmed that the victim Pamela Pouponneau, was about 30 -35 years old, had received seven blows with a knife with extensive force of which the laceration to the heart was fatal.

In his report pertaining to Greta Simeon, exhibit PI 3, Dr Commettant observed that there was "a 8 cms 'V' shaped laceration over the right frontal skull area with exposure of bone. A deep 8 cms laceration on the left side of the neck in the supraclavicular

area” and the person was certified dead. In his testimony Dr Commettant confirmed that the cause of death of Greta Simeon was the fatal injury inflicted to her neck.

What happened on the fateful day of 9th October 2000 was related to Court by two eye witnesses, Gisele Charlotte (formely Sinon) and Trevor Pouponneau. Gisele Charlotte gave evidence that she was living at the material time at Bassin Bleu, Mahe, in the house of Greta Simeon, mother of the accused. The accused was at times living with her mother in Mahe, or else, he also lived in a house on Praslin. The accused was cohabiting with Pamela Pouponneau for some years and they had two children: Tania, a daughter and Kurt, a son. Pamela Pouponneau had children of her own including a son Trevor and a daughter Tracy.

On 9 October 2000, Gisele Charlotte left the house at Basin Bleu to go to work. Returning home, at about 4.00 p.m. she noticed several persons at the house including "Pamela, Kurt, Trevor, Tania, Patrick, Carlos, Annette, Franky, Christopher”.

In her own words:

What I recall is that when I arrived there everybody was there. Franky was sitting down. He was completely different. We all sit down and we all tried to help him in the way that we could and he was not well. He said himself he was not well and he asked us to pray for him. I was outside and Tania was in my arms when I heard him call Pamela for the first time. I heard a cry. For the first time I hesitated but then I ran inside. I do not remember with whom I left Tania. When I went inside, I saw them trying to pin Franky down and I saw Pamela running in the bedroom. There was a knife in her back and I removed the knife. After I remove the knife from her back, she turned towards me and she looked in my face and I could see the look of fright in her face. I told her to run away. I ran after her and when I got to the veranda I fell down. The accused jumped over me and ran after her and I cried out. I got up and ran after them and I saw the accused stabbing Pamela and Pamela fell down. When Pamela fell down the accused was a bit fainted or weak. I took the opportunity and shake him. I said "Franky, you are my brother and I love you". After I told him that, he stabbed me on the forehead. After that my aunty crossed before me and took hold of Franky. And the last thing I recall her saying "what have you done to my son". After that I ran away. When I turned back I saw the accused stabbing Pamela.

Under cross-examination, the witness agreed that the accused “was not himself that day. He was asking the whole family to pray for him." He had also asked that they all remove their jewellery and do not wear the colour red (except for her mother). The witness explained that when she came home that evening all the mirrors and the television set had been covered. Her aunty Greta Simeon, had placed two knives criss-cross on the floor and the accused had been given a herbal bath. The witness added that at the time she had approached the accused and talked to him, the latter was not

"registering (what she was telling him)". In her own words "because after Pamela had fell down, Franky was dazed. He was weak and I seized this opportunity and shook him up and I repeated those words (Franky do not do this my brother I love you). I do not think he registered because it was at that time that he stabbed me. The witness agreed that at a party, earlier to the 9 October 2000, the accused had made a speech that he was giving up his own practice and was supported by Raymond. Both Pamela Pouponneau and Greta Simeon were against such a prospect.

Trevor Pouponneau gave evidence that on 9 October 2000, he came over to Mahe from Praslin together with his mother Pamela Pouponneau and the children: Tracey, Tania and Kurt. They had travelled by boat and reached Mahe at about 11.00 a.m. Reaching Mahe, they proceeded to the house of Greta Simeon at Bassin Bleu. There, they met with Greta Simeon, Gisele Charlotte and the accused. Later, in the evening whilst Trevor Pouponneau was outside the house in the yard, he heard the accused calling his mother. In his own words:

- Q. When you were outside did anything happen? Where was your mother at the time?
- A. Somewhere in the kitchen and I heard Franky calling my mother.
- Q. You heard Franky calling your mother, then what happened, did your mother go to Franky?
- A. The first time he called her, she did not go.
- Q. Thereafter, what happened?
- A. He called her again, still she did not go.
- Q. He called a second time your mother did not go, then what happened?
- A. Franky told her if she was running to Tony.
- Q. Was it the first time you heard Franky mention the name of Tony?
- A. No.
- Q. He had mentioned about one Tony on any occasion?
- A. When we were on Praslin the day before.
- Q. Did your mother reply him?
- A. I do not know.
- Q. So on the day, the evening of the incident when Franky told your mother if she was running to Tony what happened thereafter?
- A. Franky came and dragged my mother, he was naked. He pulled her into the room and I saw my mother coming out of the room.
- Q. Where did she come to?
- A. Near the kitchen.
- Q. When you say Franky pulled her into the room, which room are you referring to?
- A. To his room.
- Q. She came out then what happened?
- A. Franky came again and grabbed her and take her to his room.
- Q. What happened thereafter?
- A. I went to Franky's room.
- Q. Did you go inside the room?

- A. Near the door.
- Q. What did you see?
- A. I saw Franky taking my mother's clothes off and forcing himself to my mother, trying to have sex with her.
- Q. What happened thereafter?
- A. I remember my mother coming out of the backdoor of the room and to the yard.
- Q. Where was Franky?
- A. I cannot remember where he was but when I followed my mother he was there with my mother.
- Q. What did you see what happened?
- A. I saw my mother lying on the ground and Franky was on top of her and I remember I pushed Franky on the ground.
- Q. Why did you push Franky to the ground?
- A. He was holding my mother down and then I see his hand doing like this for about three times (witness demonstrates with his hand up and down) and this is why I pushed Franky on the ground then he turned against me and I ran down some steps.
- Q. Where did you go to?
- A. I ran, I followed the road I did not know where I was going, I continued following the road and I met Christophe, Gisele and my sister then we ran until we reached near a house.....
- Q. When you saw your other running out of that room was she wearing anything?
- A. No, she was naked....."

Under cross-examination, Trevor Pouponneau agreed that on or about 4 October 2000, the accused with one Raymond De Silva came to Praslin where the witness and her mother were staying. The next day, 5 October 2000, the accused and Raymond left Praslin for La Digue. On Friday 6 October 2000, the witness accompanied by Pamela Pouponneau, Tania, Kurt and Tracy joined them at La Digue. The accused spend time with Raymond. In the afternoon of Saturday 7 October they all went to watch a football match.

During the football match, the accused was reading a children's book. After the football match, the accused was not acting "normally" and had requested that others join him in picking up trash from the football pitch. Later in the evening, the accused returned to the residence in La Digue. He had a small prayer book, had gone into a bedroom, locked himself inside, and did not talk to anyone. Raymond De Silva came back and helped to prepare the dinner. After the dinner, the accused came out, sat in an armchair with his prayer book and started crying. Pamela Pouponneau asked from Raymond De Silva what was happening to the accused to which the latter replied "do not ask me anything what is happening to Franky".

The next day, Sunday 8th October 2000, they all returned to Praslin. However, the accused and Raymond travelled separately from the rest. In the afternoon, when the

witness reached Praslin he met the accused and Raymond De Silva walking on the road going towards their house. When the witness reached their residence, he noticed other persons present including "Dave Appasamy, Patrick Henriette, Champa....." At about 6.00 p.m, Raymond had left after handing over a shirt to the accused. That evening, the accused started to act strangely and, at a certain moment, the witness found him naked in the yard. Pamela Pouponneau asked that "Dave" fetched Raymond De Silva. The latter came, fetched a white book from a neighbouring house under construction, and went towards the beach. He removed his shirt and then went off.

The accused was brought to his bed and later in the night he woke up and wanted to know what had happened to him. In the early hours of the next morning, Raymond De Silva returned back with a white book in his hand and the accused told him "to go away from my place you know what you have done with me and I do not want to see you again". Thereupon, Raymond De Silva turned his back and went away with the white book in his hand. Trevor Pouponneau also agreed towards the end of September 2000 there was a party held at Bassin Bleu and attended by Raymond De Silva amongst others. At the party the accused had made known his intention of giving up his law practice.

Returning to the 9 October 2000, Trevor Pouponneau explained that the accused was not the "normal Franky". He had requested that people not to wear clothes that have designs, to cover objects that made reflections (mirrors, television set, clocks etc), and to remove all items of jewellery. The accused was given an infusion to drink as well as a herbal bath. The witness agreed that two knives were placed criss-cross on the floor leading to the kitchen. Lastly, the witness maintained that he saw the accused forcing Pamela Pouponneau to have sex with him.

Detective Inspector Sylvia Chetty, Scientific Support Unit Officer, gave evidence that on 9 October 2000 at 9.50 pm., she reported to the locus at Bassin Bleu. She picked up a stainless steel knife, which had a blade of about 7 inches long (exhibit P2), outside the house near a bedroom. She took photographs outside of the house (exhibit P8) and sealed the house before leaving. The next morning the witness returned to the site to take further photographs outside and inside the house. She picked up a light green blouse (exhibit P3a), a light green skirt (exhibit P3b), a belt (exhibit P3c), a sanitary pad (exhibit P4) and a torn knickers' (exhibit P6). She also recovered a pink coloured bra with lace on the iron board in the bedroom (exhibit P7). She went to the mortuary and took the photographs of the two victims. She had also been handed a second knife removed from the body of Pamela Pouponneau (exhibit P9). Under cross-examination, the witness agreed that when she first arrived at the house of Greta Simeon, there were no lights shining inside or outside the house. On the next morning when she had entered the house, she noticed torn electrical wiring in the ceiling of the bedroom and the dining room and there was a broken bulb lying in the premises.

It is the premise of the defence that the accused, at the material time, had acted in a state of automatism. In that respect, it is submitted that the accused has no recollection of the alleged acts and the said acts occurred independently of the will of the accused

as a result of "manipulation by a 3rd party", namely Raymond De Silva.

The accused elected to make an unsworn statement from the dock, as was his right. On behalf of the defence no further evidence was adduced. It is on record that one "Fr. Gerald 'O' Shaw Tssf", whom the Defendant intended to call as his expert witness, informed Learned Counsel for the defence, by a message dated 29 September 2003, that "I am sorry but, as much as I wish to be present to testify on behalf of Franky, the pressures of my diary and various personal matters will not allow me to participate at his forthcoming trial. If I can be of help at distance please make contact". Learned Counsel for the accused states that her unequivocal interpretation to the message received is that the said witness who resides overseas "cannot come, will not come and will never come to attend Court in the present case". No postponement of the hearing was sought on behalf of the defence for the purpose of attempting to convince the witness to attend Court when the "pressures of his diary" and his "personal matters" would have been more accommodating nor any postponement sought to adduce other evidence. It is also on record that no postponement had been sought for the purpose of calling D/ASP Banane as a defence witness. It is conceded by the defence that "given that we have been informed of how sick Inspector Banane is, I think and I believe and my client has confirmed that it would not be human to even force him to come to Court to depone....."

The right of the accused to make an unsworn statement from the dock is preserved by section 251 of the Criminal Procedure Code. The evidential value of an unsworn statement by the accused is as follows (vide: *Archbold* (41 ed) para 4-400:

Where a Defendant makes an unsworn statement from the dock, the Judge need not read out the statement to the jury, but he should remind them of it and tell them that though it is not sworn evidence which can be the subject matter of cross examination, nevertheless they can attach to it such weight as they think fit and should take it into consideration in deciding whether the prosecution has proved their case. Such a statement is certainly, more than mere comment, and in so far as it is stating facts, it is clearly something more and different from comments in Counsel's speeches: *R v Frost and Hale* (1964) 48 Cr. App. R. 284.

What is said in such a statement is not to be altogether brushed aside, but its potential effect is persuasive rather than evidential. It cannot prove facts not otherwise proved by the evidence but it might show the evidence in a different light. The jury should be invited to consider the statement in relation to the evidence as a whole. It perhaps is unnecessary to tell them whether it is evidence in the strict sense but it is right to tell them that a statement not sworn to, and not tested by cross-examination, has less cogency than sworn evidence *R v Coughan (Joseph)* (1977) 64 Cr. App. R 11 at..."

The first determination is whether the accused committed the alleged acts of assault

and battery which led to the death of each of the victim. There is no challenge to the testimony of Dr Commettant to the effect that Pamela Pouponneau died as a result of receiving blows with a knife with extensive force as a result of which the laceration to the heart proved to be fatal. There is equally no challenge to the testimony of the said witness that Greta Simeon died as a result of a deep "V" shape laceration of 8 cms on the left side of her neck which was fatal. The testimony from Gisele Sinon and Trevor Pouponneau establishes that the accused dealt several blows to Pamela Pouponneau with a knife and that Gisele had removed a knife from the back of the said Pamela during the struggle. Accordingly, the evidence sufficiently established that Pamela Pouponneau died as a result of injuries inflicted by the accused with two knives.

The circumstantial evidence, namely the fact that the accused was acting violently with the knives in his possession, chased Pamela Pouponneau with the knife, struck Pamela several times with the knife, and that Greta Charlotte, as did Trevor Pouponneau, attempted to interfere, inevitably, point to the fact that Greta Simeon had attempted to stop the accused and was dealt the fatal blow by the accused in the process. It is also disclosed, by photographs 60, 61, and 62, that the Greta Simeon had cut injuries to the palm other hand and laceration to her finger which indicates that she had attempted either to protect Pamela Pouponneau or received those injuries whilst attempting to protect herself from the accused. Lastly, the nature and extent of the injury received by Greta Simeon to her neck, as disclosed in the medical report and the photographs 57 and 58, excludes the possibility that the injury could have been self-inflicted. Taken as a whole, the circumstantial evidence firmly establishes, beyond a reasonable doubt, that the death of Greta Simeon resulted from injuries received as a result of a fatal blow from a knife dealt to her by the accused.

The second determination is whether, at the material time he committed the acts the accused had acted "intentionally and wilfully".

Learned Counsel, for the accused, drew attention to the following:

- (i) The testimony of Gisele Charlette that on the evening of 9 October 2000 before the incident, the accused was seen not to be himself, had said that he was not well and asked persons around to pray for him, was "completely different, after having stabbed Pamela was "a bit fainted or weak", did not "register" what the Gisele Sinon told him when the accused dealt her a strike with the knife and injured her at the forehead.
- (ii) The testimony of Trevor Pouponneau that on 9 October 2000 the accused was not "the normal Franky", the prior behaviour of the accused on Saturday 7 October 2000 when he had carried a children book to read at the football match, had called upon all of them to pick up trash from the field, had closed himself into one room, thereafter sat in an armchair and started crying, the prior behavior of the accused on the 8 October 2000 when he was handed a shirt by

Raymond De Silva and the accused started to act strangely and was later found naked in the yard and wanted to know what had happened to him.

- (iii) The version of both Gisele Sinon and Trevor Pouponneau as to the friendship between the accused and Raymond De Silva, that the accused had stated he wanted to abandon law practice at a birthday party at the end of September, that on the fateful day the accused had requested that red clothing, design and jewellery be removed and the reflective objects be covered; he had a herbal bath and wore a white shirt.
- (iv) The presumed behaviour of the accused in pulling down the electrical wires and remaining 'naked' until the arrival of the police.
- (v) The unsworn version of the dock statement made by the accused

Taking all the above into account, it is submitted that there is sufficient evidence to raise a reasonable doubt as to the “wilfulness” of the alleged acts and as to whether the accused had the necessary mens rea. The submission is premised on the defence of automatism raised. There is academic dispute as to whether “willfulness” forms part of the actus reus or the mens rea (vide *Smith & Hogan*, 9th ed, 37). Suffice it is to state that where the issue of automatism is raised, it brings forth the “mental irresponsibility” of the accused for the alleged acts. Quoting from Devlin J in *Hill v Baxter* [1958] 1 QB 277 at 285:

For the purposes of criminal law there are two categories of mental irresponsibility, one where the disorder is due to disease and the other where it is not. The distinction is not an arbitrary one. If the disease is not the cause, if there is some temporary loss of consciousness arising accidentally, it is reasonable to hope that it will not be repeated again and that it is safe to let an acquitted man go entirely free. But if disease is present, the same thing may happen again, and therefore, since 1800, the law has provided that persons acquitted on this ground should be subject to restraint.

In the present case, there is no challenge to the legal presumption of sanity arising under Section 12 of the Penal Code. The issue is as to whether the accused, being of sound mind, was nevertheless “mentally irresponsible” for the acts committed. This is commonly referred to as the defence of “non-insane automatism”.

In *Archbold* (2002 ed) para 17-5 and 17-6 the author states:

The so-called defences of insanity, automatism, drunkenness and duress... are developments of the doctrine of mens rea as applied to particular situations ... The act which the mens rea must accompany must

be voluntary in the sense that it is the produce of the will of the Defendant.

Moreover, in *R v Sheppard* [1981] AC 394 HL, Lord Diplock giving explanation to the legal term “wilful” stated that:

the physical act relied upon as constituting the offence must be wilful, for which the synonym in the field of criminal liability that has now become the common term of legal art is “voluntary”.

In *F Simeon v R* CA 7 of 2001, the Seychelles Court of Appeal identified the basis and approach to be followed when a defence of non-insane automatism is raised, summarised as follows:

1. As a legal defence non-insane automatism flows directly from section 10 of our Penal Code which is couched in these terms:
 10. Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident (at 11).
2. For the defence to arise, it is cardinal that an act or omission occurs independently of the exercise of one’s will, that is, where such act or omission is ‘unwilled’ or ‘involuntary’ (at 12).
3. The basis for the inference that an act done by an apparently conscious actor is willed or voluntary can be removed by evidence that the actor was not of sound mind, or was insane or was of sane mind but his act was unwilled when it was done ... this is in keeping with the basic notion of criminal law namely: that a person is responsible only for his conscious, voluntary and deliberate (or negligent) acts of omissions (at 13).
4. When an act is done by an apparently conscious actor, an inference that the act is willed must be drawn - not as a matter of law, but as a matter of fact - unless it can be shown that the actor, being of sound mind, has been deprived of the capacity to control his actions by some extraordinary event (at 14).
5. Where the defence of automatism is raised, premised on a malfunctioning of the mind of a transitory nature caused by the application to the body of some external factor, the use of descriptions such as psychological manipulation, brainwashing, sleepwalking, personality disorder, dissociative state, hypoglycemia, physical trauma, et cetera, should not be allowed to obscure the

fact that, in terms of section 10 of the Penal Code, the fundamental question is whether the act or omission in respect of which the accused has been charged occurred independently of the exercise of his will (ibid).

6. The issue for the Jury is one of fact: did the accused suffer from or experience the alleged condition at the material time. As the prosecution must always prove that an accused acted voluntarily, the onus rests upon it at this stage to prove the absence of automatism beyond a reasonable doubt (at 16).
7. A useful warning was sounded by Dickson J, in *Rabey* at 546: "There are undoubtedly policy considerations to be considered. Automatism as a defence is easily feigned. It is said that the credibility of our criminal justice system will be severely strained if a person who has committed a violent act is allowed an absolute acquittal on a plea of automatism arising from psychological blow."

And at 552:

In principle the defence of automatism should be available where there is evidence of unconsciousness throughout the commission of the crime that cannot be attributed to fault or negligence on his part. Such evidence should be interpreted by expert medical opinion that the accused did not feign memory loss and that there is no underlying pathological condition which points to disease requiring detention and treatment (emphasis furnished)" (at 17).

In the light of the above, the burden remains on the prosecution to satisfy the Court, beyond a reasonable doubt, that at the time he committed the alleged acts charged, the accused was in a conscious state, had acted voluntarily and deliberately.

Before proceeding further, I find it useful to refer to two following English cases. In *Bratty v A- G for Northern Ireland* (1961) 46 Cr App Rep 1, the appellant was travelling with a girl in a car. At a certain moment he broke a small bone in her neck and caused her death by taking one of her stockings and tying it tightly round her neck. The appellant was charged with murder. He attempted to plead the defence of automatism. No medical evidence was adduced which was at all directed to the question whether on the assumption that the appellant was sane he might yet for some reason have acted unconsciously. The non-medical evidence which was relied upon was the sworn testimony of the appellant himself and all the evidence as to his general behaviour and backwardness and his characteristics and all the evidence relating to the circumstances attending the death of the deceased. The House of Lords found that no proper foundation has been laid for the defence of automatism to have been said to arise.

In his speech, Lord Denning said at pages 16, 409, 413, respectively:

The requirement that it should be a voluntary act is essential, not only in a murder case, but also in every criminal case. No act is punishable if it is done involuntarily: and an involuntary act in this context - some people nowadays prefer to speak of it as automatism - means an act which is done by the muscles without any control of the mind, such as a spasm, a reflex action or a convulsion; or an act done by a person who is not conscious of what he is doing, such as an act done whilst suffering from concussion or whilst sleepwalking.

The term involuntary act is, however, capable of wider connotations: and to prevent confusion it is to be observed that in the criminal law an act is not to be regarded as an involuntary act simply because the doer does not remember it. When a man is charged with dangerous driving, it is no defence to him to say "I don't" know what happened. I cannot remember a thing, see *Hill v Baxter* (1958) 42 Cr. App. R51. Loss of memory afterwards is never a defence in itself, so long as he was conscious at the time, see *Russell v H. M. Advocate* (1946) SC (R 37, Padok (1859) 39 Cr. App. R. 220. Nor is an act to be regarded as an involuntary act simply because the doer could not control his impulse to do it... In order to displace the presumption of mental capacity, the defence must give sufficient evidence from which it may reasonably be inferred that the act was involuntary. The evidence of the man himself will rarely be sufficient unless it is supported by medical evidence which points to the cause of the mental incapacity. It is not sufficient for a man to say "I had a 'black-out'" for black-out as Stable J. said in *Copper v McKenna, ex p. Cooper* (1960)) Qd LR 406 "*is one of the first refuge of a guilty conscience and a popular excuse.*"

In the determination as to whether the act was voluntary, the Court is to look at all the circumstances including the act itself. The approach taken in *R v Charlson* (1955) 39 Crim App R 37 is of interest. The accused invited his son to look out of a window at a rat in the river below and for no apparent reason, injured his son by hitting him on the head with a mallet and throwing him into the river. The defence was automatism supported by medical evidence. Barry J directed the jury in these words:

The intention of the prisoner can, of course, only be inferred from the circumstances which have been proved before you. Neither you or I can ever look into the mind of an accused person and say, with positive certainty, what his intention was at any particular time. A jury is entitled to infer a man's intention from his acts ... in ordinary circumstances a man is presumed to intend the normal and usual consequences of his act. If a man consciously and deliberately strikes another person with a mallet of this kind, in ordinary circumstances any jury would feel entitled to say that it must have been intended to do some serious injury. You cannot hit a

person on the head with a mallet, or strike him on the chest with a knife without the extreme probability that serious injury will occur, and, therefore, other circumstances being equal a jury is perfectly entitled to infer the intention from the mere act himself.

However, that is not an inference which must always be drawn, and before it can be drawn, you should look at all the surrounding circumstances and ask yourselves whether that inference can be drawn in this particular case." (emphasis added).

In his unsworn version, the accused states that:

after she had given me one of those herbal baths, I recall stepping over two knives to get to my room. I also recall asking my mother for my Court shirt. It was a long white sleeve shirt. I recall shortly after, the same feeling of an incredible force taking hold of me and fighting me. The same feeling I had on Sunday on Praslin. But this time my lord it was more powerful. I recall my hands rubbing those two knives in a feeling of being threatened. From that moment on I had no recollection of what happened.

The extent to which a Court can rely on the unsworn statement of an accused, which has not been subjected to cross-examination, has been canvassed earlier.

Examining the facts and circumstances, I find the extent of the injuries inflicted upon Pamela Pouponneau as per the testimony of Dr Commettant includes:

on the chest there was a large laceration about 8 cms on the left heart area with part of the ribs and external transected ... other lacerations noted included a laceration on the left arm of the lateral side about 3 cms long. 10 cm laceration in the middle aspect of the left elbow, 4 cms laceration behind the chest wall and 6 cm laceration in the middle area on the back. There was a knife embedded in the middle aspect of the upper right thigh of the vagina.

Pertaining to the fatal blow, Dr Commettant added:

you can see from photograph 43, a deep laceration which has really cut the bone, the ribs and the middle bone. If we go to photograph 50 which shows the inside of the rib cage. If you put these two photographs 43 and 50 together you can see that the laceration in the photograph 43 and the injuries in photograph 50 which specifically shows the heart which has been transected.

The extensive nature of the fatal injury directed to the heart and the fact that the vagina area has been targeted do not support the basis for an automatic behaviour where the mind had no control over the limbs. The fatal wound to the heart had been inflicted with

more violent force than to the other areas of the body since it “has really cut the bone” of the chest area. The injury to the vaginal area and the knife left embedded in that position, inexorably, has a sexual connotation.

There is no challenge to the testimony of Trevor Pouponneau that at the material time he “heard Franky calling my mother. The first time he called her she did not go. He called her again, still she did not go. Franky told her if she was running to Tony ... Franky came and dragged my mother, he was naked. He pulled her into the room (his room) and I saw my mother coming out of the room. Franky came again and grabbed her to take her to his room.” This represents the sequence of events before the accused, as per his unsworn version, had caught hold of the two knives which had been laid down on the floor at the door leading to his room.

It is material that at this stage, the accused had already removed all his clothes. He was naked and called for Pamela Pouponneau to join him in his room. It is equally material that Pamela Pouponneau refused to join the accused in his room despite his call. The accused insisted once again and called her a second time. She still refused to join him to his room which prompted the remark as to whether she “was running to Tony”. Not satisfied with the said refusal, the accused came to Pamela Pouponneau and exercising his ‘natural’ physical force’ dragged her to his room. She still refused him, and came out of the room, to which the accused “grabbed” hold of her once again to bring her to his room.

Next to the clothes of Pamela Pouponneau lying in the bedroom was also found a pair of knickers (presumably belonging to her given that she was seen running naked shortly after). The pair of knickers was torn which indicates that some element of force was used to remove it. In his testimony, Trevor Poponneau states “I saw Franky taking my mother's clothes off and forcing himself to my mother trying to have sex with her”. Although the latter part of the said sentence was challenged under cross-examination, the earlier part was unchallenged (namely that “Franky had removed my mother's clothes.”). Accordingly, any element of force to remove the pair of knickers would emanate from the accused.

The testimony of Trevor Pouponneau that he had seen the accused “forcing himself to my mother to have sex” stands alone. The version was challenged under cross-examination. Reference is made to the fact that the witness had failed to make mention, thereof, in his statement given to the police days after the incident. In his sworn testimony, the witness maintained that he saw Franky “forcing” his mother to have sex with him. This is the second occasion that Trevor Poponneau is being called upon to stand in the witness box and relate to Court the events on the fateful evening leading to the death of her mother and Greta Simeon. It is by no doubt a painful and difficult experience for the witness. However, I have to admit that Trevor Pouponneau strikes me as a person of great courage and integrity. He is endowed with an unfettered sense of truth. I find, beyond reasonable doubt, that he speaks the truth when he gave material evidence in Court.

The above form the basis of events immediately before Pamela Poponneau would next be heard to utter a cry (no doubt a loud one as it was heard by Gisele Charlette who was outside the house) and she would be seen running in the bedroom, naked, with a knife struck 'planted' in her back and "the look affright in her face." At the time she entered the bedroom Gisele Charlette testified that she saw "them trying to pin Franky down". There is no evidence at this stage that the accused was not in a conscious state or acting like an 'automaton'. In actual fact, the accused was resisting every effort by others to interfere between himself and Pamela Pouponneau. He did not strike anyone that came before him haphazardly or 'mechanically' but was rather 'hot on the heels' giving the chase to Pamela Pouponneau. When the accused managed to liberate himself from others, attempting to pin him down, he ran after Pamela Pouponneau who had then gone outside the house. He 'jumped' over Gisele Charlette, who had fallen down, to catch up with his victim. He caught up with Pamela Pouponneau dealt her several blows with the knife. Trevor attempted to intervene and pushed the accused to which the latter '*turned against me*' and he had to fled. Gisele Charlette tried to talk to the accused but was dealt a blow to her forehead. Greta Simeon tried to stop the massacre and suffered 'defensive injuries' to her hand, a blow to her head and a fatal blow to her neck.

I have carefully examined the unsworn version of the accused, the last statement by Greta Simeon on the fateful evening (what have you done to my son), the events leading to the 9 October 2000, the testimony that the accused was 'not the normal Franky' weak, 'dazed' and 'not registering' and the submission made by learned Counsel for the defence (referred earlier). I find that the evidence adduced by the prosecution satisfies this Court, beyond a reasonable doubt, that at the time he committed the acts of assault and stabbing upon Pamela Poponneau and Greta Simeon, leading to their death, the accused acted consciously, voluntarily and deliberately. I do not find the behaviour of the accused, after the incident, that he pulled the electric wires and caused the house to fall into darkness to be indicative of an 'automatic behaviour'. It confirms that the accused continued on his violent course including at the moment of the arrest of the accused which occurred at a substantial time after the incident of stabbing of Pamela Pouponneau and Greta Simeon (past 6.00 pm until 1947 hours when Sergeant Bell arrives). That the accused had remained naked until then is explained by the fact that there were no light which enabled him to search for his clothes inside the house.

In the end result, taking into account all the facts and circumstances, I find the accused guilty of the crime of manslaughter under Section 192 of the Penal Code, for having, on 9 October 2000, unlawfully killed Marie Celine Jacqueline Pamela Pouponneau and I convict him of the charge under Count 1.

I further find the accused guilty of the crime of manslaughter under section 192 of the Penal Code for having, on the 9th October 2000, in the course of the same transaction unlawfully killed Greta Simeon and I convict him of the charge under Count 2.

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