

**Republic v Anna
(2007) SLR 170**

Ronny GOVINDEN for the Republic
Basil HOAREAU for the defendant

[Appeal against the verdict of the jury by the appellant dismissed on 14 December 2007 in SCA 6/2007]

Summing-up to the jury delivered on 3 July 2007 by:

KARUNAKARAN J

[Part 1]

Ladies and gentlemen of the jury, throughout your deliberations you will have access to all of the exhibits admitted in evidence. If you want to see the photographs, the clothes, or the statement of the accused to the police, medical and postmortem reports or depositions etc at any time, the orderly in charge of you will assist you. Amongst those exhibits there are some important documents like the postmortem report, medical report, retracted-confessional statement of the accused and the like. You may for reasons that are obvious, need them for your examination and perusal. You may do so at any time if you wish. At the same time, I will also rehearse the facts of the case in order to refresh your memory in the second part of my summing up. You may also refer to the notes that you were taking during the proceedings.

First, I hope to offer you a clear guidance on the law and then I will proceed to summarise the evidence. I will give my opinion on the facts in issue, which you and only you should determine.

You are not bound either by my views or that of counsel on both sides on any of those factual issues. You are the sole judges of those facts and you should determine those issues accordingly. However, as regards the questions of law, you must take my directions against the background of counsels' addresses and arguments - of course - in the light of the evidence on record. Obviously, the case is important to the man in the dock, namely the accused. He should not be convicted if the evidence is found to be unsafe, unsatisfactory, or insufficient. The case is also equally important for you. Because you should truthfully discharge the duty, which you owe to the community as jurors. If the evidential proof is there according to my directions in law, and you have no reasonable doubt about it then, however unpleasant the duty may be, your duty would be to say that the case is proved. You should therefore, discharge your duty accordingly and honorably, without fear or favour, affection or ill-will for the proper administration of criminal justice in the country.

The charge herein, is one of murder and the particulars alleged are that on 12 August

2006 at Anse Aux Pins, Mahe the accused - Michael Johnny Anna - murdered Ms Wilette Figaro. What has to be determined here, in essence, is whether it has been proved beyond reasonable doubt that it was the accused who murdered Wilette Figaro.

It will probably be a useful practical advice for you to follow that as you start considering the evidence, it is always better to start from what the undisputed facts are. From there, if practicable, you would assemble for your consideration the facts that you might accept with confidence. Then, you should move on to other matters which are in dispute. At the outset, considering the entire case of the prosecution and the defence, three fundamental questions arise for your determination. They are:

- (1) Was Wilette (the deceased) murdered by someone?
- (2) If so, is that someone the accused, who committed the murder?
- (3) If yes, has this been proved beyond reasonable doubt?

What is "murder" in the eye of the law?

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

- (i) causes the death of another person,
- (ii) by committing an unlawful act, and at the same time does so,
- (iii) with malice aforethought, which shall be deemed to be established by evidence proving any one or more of the following circumstances -
 - (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;
 - (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.

Therefore, the three elements namely, death, unlawful act and malice aforethought, are, as rightly submitted by both counsel, necessary to constitute and complete the offence of murder. You may recall the defence counsel, Mr B Hoareau, in his final address, explained to you that if a man commits an act with the knowledge that such an act will cause the death of or grievous harm to some person, that knowledge would also be sufficient to constitute malice aforethought. In his explanation, however, he omitted the crucial word "probably" which is very important when one interprets the term "knowledge" in this context. In fact, there is a fine distinction in the meaning between the clauses "the act will cause the death" and "the act will probably cause death". I am sure that you will be able to differentiate the meaning between "certainty" and

"probability".

With this background in mind, now ask yourselves: Can you have any doubt that Wilette was murdered by someone? If so, was that someone the accused, who committed the murder? Are you sure of it? Obviously, there has been no suggestion of any lawful excuse on the part of anyone for it. Any murder for that matter has to be unlawful. None of the other things that sometimes arise in a murder case has been raised in the instant case, such as self-defence or provocation, or even insanity, diminished responsibility - things of that kind. At any rate, none has been debated but, of course, you still have to be satisfied beyond reasonable doubt that not only Wilette was murdered but also more importantly; it was the accused, who committed it. Theoretically, you can bring in, if you wish, a verdict of manslaughter, provided there is some basis for that. I say "theoretically" because, of course, there has to be some evidential basis for that. However, in the instant case, neither counsel has suggested the slightest basis for manslaughter as opposed to murder.

At any rate, there is no evidence at all to suggest self-defence or provocation or even insanity and the like. No one is therefore, allowed to conclude on mere guesswork that it was an accidental death or killing, in the absence of any evidence to substantiate that theory. The whole of the context in this case has been "who is responsible?" Therefore, for all practical purposes the verdicts open to you are simply, either the accused is "not guilty" or "guilty" of the offence charged, namely, murder. As I see it, that is all and nothing more and nothing less would suffice.

The burden of proof

Now I turn to something which you are all well aware of. That is, the onus or burden of proof. In all criminal cases, it is a fundamental rule of law that the prosecution bears the entire burden of proving the guilt of the accused. In almost all cases, this means that the burden of proving all essential elements of the offence charged always lies on the prosecution. The accused does not have to prove his innocence; his guilt must be proved by the Republic. What the Republic has put before you in this case is the submission that the accused committed the crime of murder.

To put the matter bluntly, according to the prosecution, it was the accused who stabbed Wilette with a sharp-edged weapon, with the necessary intent to either kill or cause grievous harm, and thus caused her death. At the least, the accused had the knowledge that the act he committed would probably cause the death or grievous harm to Wilette.

The thrust of the prosecution case has thus really been to place before you a submission that the accused with malice aforethought actually stabbed Wilette in her chest piercing her heart using a sharp-edged weapon and caused her death.

The standard of proof

Members of the jury, since the defence of the accused as submitted by the defence counsel is mainly grounded on the requirement as to the standard of proof, I think it is

most important for you to clearly understand the concept of "proof beyond reasonable doubt". The contention of the defence is that the prosecution has failed to prove the case to the required standard, that is, proof beyond reasonable doubt. Indeed, the standard of proof defines the degree of persuasiveness, which a case must attain before a Court may convict an accused. Especially, in criminal cases, the law imposes a higher standard on the prosecution with respect to the issue of guilt. Here, the invariable rule is that the prosecution must prove the guilt of the accused beyond reasonable doubt or to put the same concept in another way, so that the Court is sure of guilt. You should remember these formulations are merely expressions of the higher standard required, which was defined by Lord Denning J in *Miller v Minister of Pensions* [1947] 2 All ER 372 at 373 as follows -

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

The law, therefore, precludes a conviction based on suspicion or guesswork or mere satisfaction or even a feeling of being 'fairly sure' Hence, the standard of proof, bearing in mind that the Republic must prove the charge, is, of course, proof beyond reasonable doubt. If you have a doubt as to proof of guilt that fairly arises out of the evidence and that, to your minds, exercising your consciences as jurors, appears to you to be a reasonable doubt, and if it relates to one of the essential elements of the charge or as to the identity of the accused or the proof of murder, then the verdict "not guilty" must follow. Is it reasonably possible that the accused is not guilty? Is there a reasonable explanation or theory consistent with innocence? And if any one of those things occurs to you as the result of your deliberations, and if you find answers to these questions in the affirmative, then they all mean the same thing, that there is a reasonable doubt. The accused should be acquitted. On the other hand, if you decide otherwise, I have to caution you that you must be satisfied before deciding upon such conviction, that the inculpatory facts either revealed from direct evidence or inferred from circumstantial evidence are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than guilt.

The question of motive

It is necessary that I should also say a word about the question of motive. Because of your exposure to the ideas of modern storywriters, playwrights, novelists, film makers of Hollywood and Bollywood, you may very easily get wrong ideas about motive in matters of murder. Indeed, motive is different from malice aforethought. In considering whether a murder was committed at all by someone, which is your first enquiry, obviously, the motive for the crime, subject to your better judgment, would appear ultimately to be immaterial. Whoever committed the crime, assuming you find it was murder, that person did it for some motive and some adequate motive - whether it was a concealed motive, or whether it is now undiscovered and is undiscoverable, or whether it was at some time

apparent.

All these are immaterial. In connection with this enquiry, it is not legally necessary for you to fasten on a motive.

It is not necessary, in your minds or in your discussions, that you should reproduce or recreate the precise scene which culminated in Wilette's death; for, whatever the motive was, can you have any doubt that she was in fact murdered by someone?

The question of premeditation

Again, premeditation is to be distinguished from malice aforethought. As a matter of law, no premeditation need be proved under our law. There are some countries in the world where they have two kinds of murder, a clearly premeditated one, and one that is not premeditated. As far as we are concerned, from the point of view of our law, no premeditation need be proved. Whether the killing was the climax of some deep laid plan, or whether the resolution to kill and the act itself arose suddenly, from a quarrel or from some other promptings of the moment, or whether it was something in between, is legally nothing to the point, if you are satisfied (i) that Wilette was stabbed by someone other than herself, (ii) that it was not an accidental stabbing, and (iii) that the person who stabbed her did so unlawfully with the intention of either of killing her or causing her serious bodily harm that resulted in her death. If you are satisfied of those things then murder was done by someone.

Well, you have got the entire picture from the evidence. I will say no more about that. Both counsel have rightly explained to you at length the three elements required to constitute the offence of murder. I believe, I need not repeat them again to you. I have to add that the legal situation is that neither motive nor premeditation need be proved.

Intention

Members of the jury, when I spoke of "malice aforethought" at the outset, I mentioned the circumstances that establish inter alia, an intention to cause the death of or to do grievous harm to some person.

As far as the instant case is concerned, I would advise the members of the jury to concentrate on the intent to do serious bodily harm rather than the intent to kill. You, members of the jury, in the case on hand, if you are satisfied on evidence that the assailant had stabbed Wilette having known that it was highly probable that such a stab injury in the left side of her chest would cause death or serious bodily harm to her, then the prosecution had proved the necessary intent. It does not matter if the defendant's motive had been simply to frighten Wilette and to rob the mobile phone from her at the material time.

This aspect of the intent, you may consider, later when you revert to the evidence as I discuss in the second part of my summing up. Assuming for a moment that the assailant even without intending to endanger the life of Wilette, had simply stabbed her knowing that it was probable that grievous, in the sense of serious, bodily harm would result to

Wilette, then he would be guilty of murder since death has resulted.

The following case that was decided by the House of Lords in the UK would I believe, assist the members of the jury to understand the point in this respect as to Intent:- In a case that went on appeal from *R v Hyam* [1975] AC 55, the House of Lords held - in dismissing the appeal against conviction of murder - that a person who, without intending to endanger life, did an act knowing that it was probable that grievous, in the sense of serious, bodily harm would result was guilty of murder if death resulted. See also *Director of Public Prosecutions v Smith* [1961] AC 290. For the benefit of the members of the jury, I would like to state briefly the facts of that case, which runs thus -

The appellant (A) had had a relationship with a man who became engaged to be married to B. In the early hours of July 15 1972, she (A) went to B's house and poured petrol through the letter box, stuffed newspaper through and lit it.

She gave B no warning but went home leaving the house burning. B escaped from the house but her two daughters were suffocated by the fumes of the fire and died.

The appellant was charged with murder. Her defence was that she had set fire to the house only in order to frighten B so that she would leave the neighborhood. Ackner J (the trial judge) directed the jury that the prosecution had to prove beyond reasonable doubt that the appellant had intended to kill or do serious bodily harm to B, that if they were satisfied that when she had set fire to the house she had known that it was highly probable that the fire would cause death or serious bodily harm, then the prosecution had proved the necessary intent and that it mattered not if her motive had been to frighten B. He advised the jury to concentrate on the intent to do serious bodily harm rather than the intent to kill. The appellant was convicted of murder. Her appeal against conviction was dismissed by the Court of Appeal confirming the direction was proper.

This is what I too advise you in the instant case. Undoubtedly, the prosecution must prove beyond reasonable doubt that the accused had intended to kill or do serious bodily harm to Wilette. On the evidence, if you are satisfied that when the accused stabbed Wilette, he had known that it was highly probable that such an act of stabbing would cause death or serious bodily harm, then the prosecution had proved the necessary intent. It does not matter, even if his motive had been to frighten Wilette so as to take away the mobile phone from her.

Witnesses and their testimonies

Very many witnesses have been called. In fact, 30 witnesses have testified and many hundreds of pages of their evidence have been recorded. In the nature of things, I must refer to much of that evidence, and to many of the witnesses.

In performing your function of determining the facts, you are, of course, also judges of the witnesses. You should assess each one carefully. You will remember that both counsel made submissions to you about witnesses and about what reliance you should place upon them. And, naturally, included in the persons that you are to assess is also

the accused, as he has given his unsworn evidence from the dock. Now you may reject everything a witness says; you may accept everything a witness says; you may accept part of what a witness says, and reject the rest but for valid reasons. That is all within your function and responsibility. You may either believe or disbelieve a witness; you might have also observed the demeanor and deportment of the witnesses whilst in the witness box. Therefore, you can make your own assessment on the veracity of his or her testimony.

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

As a practical matter, it is important to bear in mind what parts of the witness' testimony have been challenged, and what have not. For example, on one hand, the defence did not challenge, to any noticeable extent, the evidence of the Pathologist Dr Maria Zladkovitch (PW24) on the cause of death, nor did they challenge to any noticeable extent the actual terms of the telephonic conversation between the accused and his girlfriend Ms Lucy Quatre (PW7), which took place at around 11 pm on 12 August 2006, soon after the alleged incident of stabbing, nor did they challenge to any noticeable extent the actual terms of the direct conversation, which took place between the accused and his sister Ms. Cindy Arrisol (PW28) at Corgate Estate in the morning following the fateful night, pertaining to an attempted sale of a mobile phone, which displayed the name "Wilette".

The defence did not challenge the substance of the statement, the "dying declaration", which Wilette made at the English River Clinic in front of a nurse, Ms Lydia Mondon (PW18), who testified categorically that she accurately and clearly heard that statement from the mouth of Wilette and repeated the contents in Court. It is for you to decide on her credibility. Now the accused, for example, gave the explanation - in the form of an unsworn and untested statement which is before you. In it, he narrated his alleged role as an innocent by-passer and gave a version that another man could have attacked Wilette at the relevant time, place and circumstances. He also narrated his own version as to the sequence of events surrounding the attack, the description of the possible assailant, his attempt to help Wilette as Good Samaritan and how he came to be in possession of Wilette's mobile phone etc.

Members of the jury, you are the judges of facts. You may decide on the credibility and the weight you can attach to the evidence of any witness for that matter, including the accused. I would like to remind you that evidence will succeed in persuading a Court

only if that evidence appears as truthful, reliable, cogent, consistent, and where it does not contradict the rest of the proven facts and circumstances. I want you to understand, and to remember throughout this summing-up, that when I refer to a fact, or to what a witness has said, my reference is always subject to your assessment.

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

I may express, or you may think I am expressing, some view about the evidence although, as I say, very largely I usually contain in my summing up a series of questions - but if I do express a view or if you think I am expressing one, that is simply and solely for your consideration, because I am not the judge of the facts, but you are.

I now refer to what I might term slips, errors or omissions - the sort of human mistakes that men and women may make while giving evidence in Court either as percipient witnesses or otherwise. And as to the men and women - and I use that general description intentionally and including the accused - who have figured in this trial, let me say a word of general application. This Court, the criminal Court, is, above all else, a human Court dealing with human beings and working to make judgments on men and matters. Obviously some things - for example, work by accountants, or doctors, or scientists - must be done with accuracy and precision, and any assessment or criticism of it is entitled to be put on that basis; but no-one would suggest that, in this Court, allowance cannot or would not or should not be made for slips or errors or omissions that are the sort of thing that could be made or committed by anybody. We obviously, in short, acknowledge human infallibility. But, ladies and gentlemen, the distinction is both wide and clear between mistakes of that kind namely, forgivable human error and omissions and falsehoods that are produced deliberately with intent to deceive. An important part of your duties is to detect the difference, whenever "errors", or "omissions", or "slips" have occurred, and to act resolutely.

Defence counsel, in his address, mentioned about some correction made by a police officer as to 3 to 4, when he was giving testimony in Court. You decide, whether such mistake is a forgivable human error or a deliberate falsehood.

Retracted Confession and Corroboration

You all know that a confession is the name given to an adverse admission made by the accused in a criminal case which suggests or confirms his guilt of the offence charged. A voluntary confession is sufficient to warrant a conviction without any corroborative evidence. In the instant case, having held a trial within a trial, this Court ruled on law that the statement, which the accused gave to the police on the 17 August 2006 in

exhibit P1, was admissible in evidence. Obviously, it is a confessional statement. However, in Court the accused retracted that statement alleging that it was not made voluntarily. According to the defence, the police obtained this confession by oppression, force, promise and other inducement and in breach of the Judges' Rules.

Members of the jury, it may be taken as a rule of universal jurisprudence that an unequivocal confession of guilt made by an accused person freely and voluntarily to a judicial tribunal is sufficient to base a conviction.. However, in the case of an extrajudicial confession, though made freely and voluntarily by the accused, though admitted in evidence, subsequently if retracted by him, as a rule of law, the Court can rely and act upon that statement/confession and safely base a conviction if, and only if, there is some independent evidence corroborating that confession in material particulars. To corroborate a retracted confession all that is required is some independent evidence which implicates the accused in some material particulars and which tends to show that what is said in the confession is probably true: see, *R v M* (1966) SLR 218.

You should also note here that in the case of *R v Marie* (1973) SLR 237, the Court held that, although it found a voluntary statement given by an accused person to the police admissible in evidence, the Court is not bound to accept or reject its contents in toto. Although the whole of the confession is received in evidence, the trial Court is entitled to form an opinion as to the credit to be given to the different parts of the statement and to believe only such parts found to be true.

Also it should be noted that as a rule, evidence which itself requires corroboration cannot provide corroboration for other evidence which also requires corroboration.

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

[Part 2]

Members of the jury, at the start of this summing-up I told you that I would direct you as to the law and then remind you of the evidence. I dealt with the law in the first hour or so. I noticed that you were paying very close attention, as you did throughout the entirety of this trial. I do not intend therefore, at this stage, to repeat my earlier directions as to the law. These, you must apply to the facts as you find those facts to be on the

evidence, which you have heard in this trial. I will now endeavor to summarise for you the evidence in the second part of this summing up.

If I say something about the facts with which you do not agree with, you should ignore entirely what I say and act upon your own views of the matter. The facts and the way the facts are to be interpreted are your responsibility and no-one else's, neither the judge nor counsel can exercise that responsibility for you.

The facts of this case as transpire from the evidence on record are as follows:

It is not in dispute that the deceased Ms Wilette Figaro, 43 years of age, hereinafter called "Wilette", was at all material times, a resident of Gaza Estate, Montagne Posee, Anse Aux Pins, South Mahe. During 2005, she was working in Italy. She returned to Seychelles in early 2006 and started working for Plantation Club. In August 2006, she was living with her son Mr Audrey Valentin (PW10) and his girlfriend Rita in the same household at Gaza Estate.

Wilette was a very happy, jovial, and at the same time, hard-working and outgoing person. She had a large circle of friends and one among them was Ms Myra Solin (PW7) of Anse La Mouche. Wilette liked cooking, singing and dancing. During weekends, she used to visit her friends and relatives living in her neighbourhood. At nights, sometimes, she and her friends used to go to "Katiolo", a discotheque situated at Anse Royale for entertainment. Whenever her friends had transport, they used to go to Wilette's house first, pick her up and then take her to Katiolo. Wilette had a personal mobile phone, make "Nokia", black in colour, subscribed to telephone no 586919 with Cable and Wireless (Sey) Ltd. She used to make calls using this particular phone and her friends also used call this number to talk to her.

Wilette's friend Ms Myra Solin (PW7) testified that even on Saturday 12 August 2006, in the night at 8.27 pm, as well as at 10.03 pm, she received telephone calls twice from Wilette. According to Myra, in the last call of 10.03 pm, Wilette asked her to come early and pick her up from her house to go to "Katiolo". Since Myra had no transport that night, she told Wilette to go to Katiolo on her own and then she would join her there. In passing, I should mention that these telephone calls remain recorded in the computer printouts, exhibit P15, produced by Mr Georges Doffay (PW25), showing the automated data entries retrieved from the telecommunication computers maintained by the Cable and Wireless (Sey) Ltd.

According to these records, Wilette used a mobile phone (telephone no 586919) with IMSI (International Mobile Subscriber Identity) no 633010100121009 - a unique 15 digit code used to identify an individual user on a GSM network. and with an IMEI (International Mobile Equipment Identity) number, which is also a unique 15 digit code used to identify an individual mobile station (equipment) to a GSM network. This is a built-in manufacture number unique to the equipment. Be that as it may.

Wilette's son Mr Audrey Valentine (PW10) testified that on 12 August 2006 at around 11

pm, Wilette was at home with him and asked him if he could accompany her to go to Katiolo that night. As he was tired he declined and did not go with her but gave her R100 and then he went to bed. It was then that Wilette left home and walked along the Anse Aux Pins main road on her way to Katiolo. When she was passing Reef Hotel, at Anse Aux Pins, admittedly the accused saw her. Then what happened? The accused himself gives a clear picture as to what really happened in his statement to the police exhibit P1. The said statement inter alia, reads thus:

When I was going home, upon arriving near Reef Hotel, I saw someone coming to my direction. When we were coming closer to each other with the light of the transport, I recognised that that person was Wilette but I do not know her surname. When I came close to her, I recognised that she had a phone in her hand. I tried to take that phone from her, which was in her left hand. Then she struggled for me not to take her phone. At the same time, she told me that she would stab me. I did not see any weapon in her hand. At that time, I have a nail file with me. It measured around 17cm and all that time I had it in my possession whenever I went to work. I threatened, her with it, for her to let go of the phone. While I was threatening her, the nail file stabbed her in her stomach. The nail file was in my right hand but I did not remember which side Wilette had been stabbed, but I know it was in her stomach region. While I was in struggle with Wilette, the nail file I felt was stuck in Wilette's body. The moment she was stabbed, Wilette told me "tou fason Jason mon konn ou, ou frer Josette Pauline". When I ran, I went to the Golf Club direction. I hid myself to see what she was going to do. I was there for about 1 minute, I saw a pick-up 1 1/2 ton but I do not remember the colour.

It came from the direction of Anse Royale and was going to the direction of town. I saw her stopping the pick-up. At that time Wilette was still standing. When the pick-up stopped near Wilette I continued running towards Green Estate. Then, I reached the main road to go home. When I arrived vis avis Jumaeau lane, I broke a sugar cane for me to eat. At that time, the telephone was with me. I called a woman at Les Cannelles whose name is Lucie. I do not know her surname. That was on number 371458. I called her few times. I told her, I was at Aux Cap and asked her what she was doing. I made a small conversation with her but I do not remember all that I told her. After I had broken that sugar cane, I broke a piece of it, I removed my shirt and wrapped it in it. I went to the staircase at Claire Robesrt; I sat for me to eat the piece of sugar cane. There Alex Moses who is Claire's child saw me sitting on the staircase and asked me what I am doing here. I asked him what he thought I was doing. I was just sitting there. We started to exchange words with each other. At a certain point Alex told me that he was going to get his weapon at his house. So I left. When I arrived near the house, I saw the police searching everywhere so I held my position until they left. After that, I went inside.

When I entered the house, Gilbert told me that the police were looking for me. I took a shower and changed my clothes. I was wearing black trousers and a white t-shirt and left. Since then, I did not go to the house again. The next day Sunday Wilette's child came running after me with a machete. The phone that was in my pocket fell but I continued running. When I attacked Wilette, there was no bag with her.

The next day Sunday 13 August 2006, around 1.30pm when I was at the shop at Mont Fleuri one of my sisters, on my father's side named Cindy Anna told me that Wilette had passed away and I told Cindy what had happened between me and Wilette. I called Gilbert to ask her if that was true. She told me that it was in message. I want to state that I did not expect that thing could happen that way. I want to state also that I do not know what had happened with that nail file that I have left with Wilette. My intension to do that with Wilette was just to take the phone from her. I am ready to show the police where the incident happened. I regretted that an action like this had happened; but it had already happened.

Today Thursday 17 August 2006, around 12.30 to 1pm I decided with my mother and my wife to handover my body to the police at Central Police Station.

Before, I proceed further it should be noted here that the term "stomach" , which appears in the above statement carries a special meaning in Creole, when used by a Seychellois as his or her idiomatic usage and context. To an ordinary Seychellois, this particular term refers to and means "heart" or "chest" that is, the thorax region, whereas for others in the rest of the English speaking world, it means "abdomen" or "belly", that is, the alimentary region of the body between thorax and pelvis. This statement almost amounts to a confession by the accused to the police stating that he was the one involved in the entire episode.

Coming back to the evidence, Ms Lydia Mondon (PW18), a nurse from English River Clinic, testified that on the alleged night at around 11.30 pm, Wilette was brought in a pick-up to the Clinic as a case of emergency, with a cut injury on her left breast with fresh bleeding.

She saw Wilette at the back of the pick-up, who was screaming and shouting "Sister, save, my life! Save my life!" The nurse with the assistance of the other staff and security guard (PW15) put Wilette in a couch and immediately shifted her to the emergency room. As she observed, Wilette was found to be struggling for life and she was almost dying. There was no blood pressure. Her pulse rate was very low. In that critical condition Wilette gave her name and address to the nurse and said the following words, "He fought with me, stabbed me and took away my mobile. He is the brother of Josette Pauline."

After a couple of minutes, according to Dr Vivekanandan (PW16), the duty medical

officer at English River Clinic, Wilette was immediately ambulated to the Victoria Hospital. However, she died there, despite all emergency medical treatment and measures including artificial respiration. This doctor also clinically examined Wilette when she was first rushed to English River Clinic.

That time, he also found that she had a cut injury about 1 cm long near the left nipple area, with blood oozing out.

Following the death of Wilette, the pathologist, Dr Maria Zladkovitch (PW24), conducted the postmortem examination on the body of the deceased. The pathologist testified that the cause of death was "internal bleeding", due to a "stab injury", which had "pierced through the heart". She also produced the postmortem report, exhibit P13 in evidence.

It is not in dispute that the accused has four brothers namely (i) Tony Mathew Pauline (PW12), (ii) Jimmy Pauline (PW14), (iii) Roy Andre Pauline (PW13), and (iv) Dean Pauline (PW31) and has two sisters namely, (i) Josette Pauline and (ii) Marie Clair Pauline. All the siblings had the same surname "Pauline" except the accused as he had a different father, but all were born of same mother. All the four brothers of "Josette Pauline" except the accused testified that they all were sleeping at their respective homes on the relevant night and at the time in question.

By the way, you would have noted their demeanour and deportment, when they all testified in Court. All of them or some of them or none of them might have appeared to be very truthful and reliable witnesses to you. It is for you to place and ascertain the degree of accuracy, credibility and reliability to their evidence.

Admittedly, the accused soon after the occurrence of the alleged incident used Wilette's mobile phone to call his girlfriend Ms Lucy Quatre (PW27), a resident of Les Cannelles. He made calls twice to her telephone number 371458. These two calls were made at 11.24pm and 11.32pm respectively, on the night in question, as evidenced by the documents in exhibit P15. The following questions of commonsense may arise in your mind, as you examine the evidence:

Do you think any reasonable "Good Samaritan" like the accused, who claimed to be one, having witnessed the crime being committed by another person, would simply take the mobile from the scene of occurrence and attempt to sell it the following morning?

Do you think that Wilette could have misidentified the assailant as the brother of Josette Pauline in the circumstances of having known each other, having observed, having had the exchange of greetings, having conversed, fought and struggled with him to secure her mobile phone in a close encounter at the material time? Or do you think that Wilette could have lied and falsely incriminated the accused for some reason?

As men of the world, you may estimate the duration as to how long the entire episode

would have taken place. The accused himself stated in his unsworn statement as well as in his confession to the police that Wilette immediately after the alleged attack, at the scene of occurrence said "tu fason mon konn ou, ou frer Josette Pauline". (In any case, I know you; you are the brother of Josette Pauline). Again, she repeated the same accusation against the accused in front of the driver of the white pickup, which transported her to the English River Clinic. On both occasions Wilette made this accusation in the presence and hearing of the accused at the scene. Again, she confirmed and repeated the substance of this accusation in front of the nurse Mrs Mondon at the English River Clinic. Remember, the light from the pick-up should have been sufficient to recognise the face of a person, since the accused himself admittedly identified Wilette at the scene. He could even notice a mobile phone in her hand. He could also admittedly, see a broken bag on the ground. Now ask yourself whether Wilette had sufficient time, light, opportunity and circumstances to identify the assailant or could this be a case of mistaken identity or Wilette falsely accusing him of the crime.

Kindly, bear in mind that Wilette and the accused were not strangers to each other. Certainly, it was not a fleeting glance between two strangers. At the least, admittedly, the accused could recognise her as Wilette, whom he had known before. You are the judges of fact and you may decide accordingly. If you are satisfied on evidence that Wilette did properly and correctly recognise her assailant as the accused, then you may safely rely and act upon the dying declaration of the deceased and base a conviction, provided you safely rule out the probability of the other brothers of the accused committing the crime.

The accused claimed in his unsworn statement that he helped Wilette after the attack as a by-passer at the scene of crime. Could this story of "Good Samaritan" put up by the accused be true? If so, could he foresee all possible pieces of evidence, imagine and build-up an inculpatory story, when he gave his statement to the police (exhibit PI), making it so cogent and consistent with the rest of the evidence that subsequently came to light during police investigation?

Do you think the accused had the foresight of a prophet and built up an imaginary story in his statement to the police? Or, do you think, he narrated in that statement what really happened? I am sure you will find answers to these questions, along with other questions that may arise in your mind, while you examine the evidence with diligence in its entirety.

Corroboration

Now, let us move on to the evidence if any, to corroborate the retracted confession of the accused. If you look for evidence to corroborate the confession in question, first of all, you should ask yourselves, ladies and gentlemen, the following question -

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

In this respect, you may consider the following:

The dying declaration made by Wilette at English River Clinic a few minutes before her death, in the presence and hearing of the nurse Ms Lydia Mondon (PW18), reveals that it was the brother of Josette Pauline, who fought with her, stabbed her and took away the mobile phone. All other four brothers of the said Josette Pauline, except the accused, testified that they were all at their respective homes sleeping or at their place of work at the material time on that particular night and were not in or around that area, where the incident occurred. If you do not believe all four or any one or more of them, you may reject their evidence accordingly. On the other hand, if you believe that all four brothers of the accused were credible witnesses and were telling the truth under oath, then the only inference you can draw is that the assailant described by Wilette could only be the accused, no one else.

Are you satisfied that all other four brothers spoke the truth to the Court? Does this come from independent evidence? Does it implicate the accused in some material particulars? Does it tend to show that what is said in the confession is probably true? You should find answers to these questions.

- The accused was in possession of Wilette's mobile phone immediately after the alleged incident and admittedly made telephone calls to his girlfriend Ms Lucy Quatre at Les Cannelles, which fact is evident from the testimony of the said Lucy Quatre (PW27).
- The documentary evidence exhibit P15 emanating from Cable and Wireless also corroborates the material fact that the accused made a few calls to telephone no 371458 soon after the alleged incident.
- After giving the confessional statement to the police, the accused has freely and voluntarily, shown a number of positions in the scene of occurrence to be photographed by SP Reginald Elizabeth (PW3), who testified that he took photographs of those points in exhibit P3, as indicated and described by the accused.
- The accused in his unsworn statement indicated the involvement of another person in the commission of the crime. Could this be true? Had this story been true, you may ask yourself, what could have prevented him from disclosing this fact during the police interview and when he gave the statement to the police? What could have prevented the accused from indicating those points to SP Elizabeth (PW3) to be photographed at the scene of occurrence? Is the accused telling a lie in his unsworn statement? Or telling the truth of the matter to the Court? Is the explanation, which the accused gave as to how he came in possession of the deceased's mobile phone immediately after the occurrence of the crime reliable? Could it be true? Members of the jury, you may make your own assessment on the credibility of the accused and on the veracity of his unsworn statement and the weight you may attach to his evidence.

Members of the jury, (i) do you think that the facts and circumstances discussed above, originate from independent sources of evidence, other than the retracted confession? If so, (ii) do they implicate the accused in some material particulars, which tend to show that what is said in the confession is probably true?

If you find the answer to both or either of these two questions to be in the negative, then you cannot use them for corroborative purposes. On the other hand, if you find answers to these two questions in the affirmative, then you can safely rely and act upon them being independent evidence to corroborate the retracted confessional statement of the accused. Ladies and gentlemen, find the answers from the facts and circumstances revealed by evidence, which you have heard, seen, read and examined in this matter and decide accordingly.

After giving a careful thought to all that I have said so far, now you may go back to find answers to the fundamental questions, which I have formulated for you in the first part of my submission. They are:-

- (i) Was Wilette (the deceased) murdered by someone?
- (ii) If yes, was that someone the accused, who committed that murder?
- (iii) Again, if yes, has this been proved beyond reasonable doubt?

Before I conclude I would like to remind you that as far as the first question is concerned, no one has ever disputed the fact that Wilette was indeed murdered by someone. Therefore, you may not find any serious facts in issue for your determination in this respect. However, your task and concentration should be more on questions (ii) and (iii), which require a careful determination. On the other hand, if you answer in the negative to any one or more of the said three questions, then you have to give the verdict of not guilty.

In the circumstances, the verdicts now open to you are simply-

Either the accused is "not guilty" or "guilty" of the offence charged namely, murder.

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

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

Your verdict must be unanimous, that background outside this Court room. You must reach your verdict in this case upon the evidence which you have heard, seen and read in this Court room.

Now the time is 7.05 pm. I believe I have completed my charge, ladies and gentlemen of the jury, you may if you all so desire, retire to consider your verdict. Thank you very much for your kind indulgence.

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