

Republic v Payet

(2009) SLR 148

David ESPARON and Mr Durup for the Republic
Alexia AMESBURY for the 1st accused
Frank ELIZABETH for the 2nd accused
Both accused present
Nine (9) members of the jury present

Summing-up to the Jury delivered on 15 July 2009 by:

GASWAGA J: Ladies and gentlemen of the jury, you have been addressed by the counsel for the prosecution as well as both counsel for the accused persons on the law and the facts. During the trial you heard all the evidence that was adduced by all the prosecution witnesses and those for the defence. It is now my turn to address you and enlighten you on all the aspects of the relevant law as should be applied to the facts. You may excuse me if I go over some other aspects which you may now be very familiar with as both counsel have already expounded them.

Your indulgence, patience and maximum attention will be sought as I do the summing-up for you because this is the basis upon which you can come to a conclusion of 'guilty' or 'not guilty' verdict. This is the material that will be challenged before the appellate Court in case of any grievance. In addition, I have to explain to you in a very comprehensive and yet simple manner what I think is pertinent about the facts and the law of this case. This is because the law in our jurisdiction directs that a person charged with the offence of murder be tried by ordinary men and women belonging to and familiar with the day to day living conditions and behaviour of the accused's community who are not necessarily trained judges. These are therefore judges of facts who are however guided on matters of law by the professional Judge.

I wish to stress that only you, ladies and gentlemen, should reach the final determination of the facts in issue, as presented before Court and perceived by yourselves, and not the judge or the counsel although the latter categories may

express their opinion or view on those facts which you are not bound to follow. Your functions will also include a requirement to ascertain and consider all the facts carefully, then evaluate and examine the prosecution as well as the defence evidence in its entirety before making findings of fact in respect of each piece of evidence. With regard to those pieces of evidence so ascertained and believed, you are to accept them and act upon them. You are to marry this evidence so proved to your satisfaction with the law in order for you to reach a just conclusion in this case in accordance with the solemn oath taken by yourselves at the beginning of the proceedings without fear or favour, affection or ill-will or bias. As for the other pieces of evidence which you do not believe, you are entitled to disregard them.

Members of the jury, you may now be wondering and asking yourselves how reliable evidence is sieved from the rest of the evidence presented before the Court. All through the trial we have seen various types of evidence being tendered; ranging from documentary evidence in form of police statements and medical reports to photographs and household items and implements suspected to have been used in this horrendous murder of Mary Anne Hodoul. Most of the evidence however was oral – being adduced before the Court through testimonies of human witnesses. Human beings, you would readily agree, are susceptible to a myriad of weaknesses. You will have to bear in mind that human perception, power of observation, the power of mental retention will inevitably differ from one individual to another. For example, it is not surprising or uncommon to find in real life that two or more persons who have witnessed an incident may, if asked later to speak about it, relate the same incident differently! They may not use the same language to describe the incident. One may be struck by something which the other has completely missed. The fact that the story is being told in different ways does not mean that the witness is lying. They are all referring to the same incident which they witnessed at the same time and under same conditions.

To drive the point home, ladies and gentlemen, I shall give the following illustration. You have all been in Court right from the start of this trial up to this time. You have all heard the same versions of testimonies being given in Court. I have seen most

of you taking notes, but I am sure that if we were to compare all of your notes we will find that they are not identical. Some of you have included details or points that others have missed or thought unimportant to record, but all the notes taken down relate to the same incident. If they are different, that does not necessarily mean that you did not hear or witness what went on in Court.

Ladies and gentlemen of the jury, under the usual and normal flow of events you will find such variations in statements and testimonies of even truthful witnesses. I am sure you have seen people telling lies. But employing common sense, diligence and experience one would be in a position to identify a false witness. Observation of demeanour and manner in which questions are answered especially in cross-examination is crucial in pointing out a prevaricating witness. You all had opportunity to hear and observe the witnesses while in the box. Each one of the witnesses must be assessed individually to establish whether they were truthful and credible, mistaken, confused, of below average intelligence or simply telling lies.

Ladies and gentlemen of the jury, you are bound to take all directions I give you on all points of law in this case, that is, you should accept the explanations I give you on legal matters. In that respect you have no choice but to accept them. However, where I express my own opinion on the facts of the case you are not obliged to accept it and act upon it unless you are of the same opinion as I am. You are the sole judges of facts. Please do not do your own research on the internet or library, but rely only on the evidence you have heard. Whatever you may have heard, or read in the news media or heard from others about this case outside this Courtroom must be erased from your mind and should not be considered at all while discharging this honourable civic duty. Through the Court orderly in charge of you, you will be at liberty to access all the exhibits tendered in this case at any time for your examination and perusal.

Before proceeding to explain to you, in simple terms, some of the legal terms you may encounter as you evaluate the facts, I shall remind you of the charges before Court now. The men in the dock, the accused persons, stand charged with murder and the particulars allege that on 30 October 2007, at Anse à

la Mouche, Mahe, the accused persons, with common intention murdered one Mary Anne Houdoul.

I must warn you at this point that I know, as you do, that the loss of such an elderly, productive and useful member of our community is a tragedy and you are likely to have sympathy for her family. Be very careful, this sympathy must not sway you.

BURDEN OF PROOF

Ladies and gentlemen of the jury, it is a cardinal rule of law that the burden or onus of proving a criminal case solely rests on the shoulders of the Republic. The two men sitting in the dock have no duty at all to prove their innocence. They remain innocent until proved or plead guilty. The burden of proof therefore is the responsibility to prove guilt. This burden places the responsibility on the prosecution to adduce cogent and admissible evidence to establish every single ingredient of the offence, in this case, the crime of murder. The Constitution also allows the accused, if he so wishes, to remain silent and say nothing for his defence or make an unsworn statement, (like the accused have both done) whereby he is not cross-examined. In either case no adverse inference should be made against him. Even where the accused does not call witnesses, the burden to prove the charges still remains on the prosecution.

STANDARD OF PROOF

Ladies and gentlemen of the jury, again the prosecution is required to prove the case beyond a certain standard, so high so that no doubt should ever be entertained thereafter once a guilty verdict is entered. The standard of proof required is that falling beyond a reasonable doubt. A conviction cannot therefore be entered basing on a suspicion or guesswork or mere satisfaction or even a feeling of being 'fairly sure'. There is no yardstick or specific formula for measuring or calculating the standard of proof. What the Courts follow is the availability of evidence laid before it in support of the charge putting it beyond a reasonable doubt, that is, satisfying that the guilt of the accused is the only possible verdict. This standard of proof is applicable to all the evidence in respect of

each of the accused persons individually.

Ladies and Gentlemen, all the evidence in this case is right before you. After offering guidance on the law, it will be up to you to determine whether that evidence has proved all the ingredients of the charge of murder beyond a reasonable doubt.

REASONABLE DOUBT

Ladies and gentlemen of the jury, as you have been addressed by counsel for the prosecution and counsel for the defence, where you entertain a doubt in this case that doubt should be resolved in favour of the accused. But what do we understand by the term 'a reasonable doubt'. In simple terms, when one has a doubt about something, it means you are not sure about that thing, there is no certainty about it. A reasonable doubt is a doubt for which you can assign a reason. The doubt must be real as opposed to imaginary, vague or fanciful doubt. So before finding a guilty verdict the evidence must bring to your mind a degree of certainty leaving no room for doubt.

The Courts have attempted to offer a comprehensive definition of the term 'reasonable doubt'. Lord Denning judicially interpreted the term in the case of *Miller v. Minister of Pensions* [1947] 2 All ER 372, 373 as follows:

It need not reach certainty, but it must carry a high degree of probability. Proof beyond a 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.

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 reasonable doubt, and if it relates to one of the essential elements of the charge or as to the identity or participation of any or both of the accused, or the proof of murder, then the verdict "not guilty"

must follow. On the other hand, if you decide otherwise, I have to caution you that 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.

INGREDIENTS OR ELEMENTS OF MURDER

It is imperative at this point in time to explain to you the ingredients or the elements of the charge herein which is murder contrary to section 193 of the Criminal Procedure Code, Cap 158. These elements, like I have stated before, must all be proved by the prosecution beyond a reasonable doubt if a guilty verdict is to be returned. According to our law one commits murder if he –

- (i) with malice aforethought;
- (ii) causes the death of another;
- (iii) by means of an act or omission which is unlawful.

I shall first explain to you the meaning of these ingredients and how one can make logical findings on each in relation to the facts. Soon hereafter I will show you the application of the concepts defined herein above together with these three ingredients of murder in relation to the evidence that we already have on record.

MALICE AFORETHOUGHT

According to section 196 of the Penal Code malice aforethought is said to have been proved where the following circumstances exist, where there is evidence before the Court that the accused had intended to bring about the death of the deceased by his act or omission or had an intention to cause grievous harm to the deceased or where there is evidence that the accused had knowledge that his act, or omission causing death will probably cause death of or grievous harm to someone whether such person is the person actually killed or not, although such knowledge is accompanied by

indifference whether death or grievous harm is caused or not, or by a wish, that it may not be caused.

It therefore follows that the prosecution must adduce evidence to prove that the accused persons had intended or foreseen the death or grievous bodily harm as the possible or probable result of this act or omission or had the knowledge that the act or omission causing death would probably cause the death of or grievous harm of Mary Anne Hodoul even though such knowledge was accompanied by indifference whether the death or bodily harm was caused or by a wish that it may not be caused. It should be emphasized that the proof required herein is proof beyond a reasonable doubt.

Members of the jury, in real life there is always a reason for everything. The entire public would want to know the reason behind the murder of Mary Anne Hodoul. Even you may be wondering how you can establish the intention of the murderer at the material time of the commission of the offence. But I must inform you at this juncture that it is generally difficult to tell the intention of an accused to cause the death of or grievous harm to another. Most people do not voice their intentions when they set out to commit illegal acts. Sometimes the intention can be formed on the spur of the moment. In the latter situation one need not pre-meditate and plan death of another or cause grievous harm to the victim but the intention is formed spontaneously, and where there are numerous participants, at times tacitly. The accused's intention can therefore be gathered from the acts done at the material time and the surrounding circumstances. This is revealed by way of adducing relevant evidence of what the accused did at the material time, and not before or after. It is said that actions speak louder than words.

There is wide latitude of situations from which we can infer malice aforethought. For instance the manner in which the death or the injuries were caused. Another is by way of looking at the part of the body that sustained the said injuries and the force that may have been used while striking. We have been told by Dr Brewer the pathologist that Mary Anne Hodoul died of brain injuries resulting from injuries occasioned on her head, and strangulation. Ladies and gentlemen of the jury, we all know that the head is a very vital and delicate part

of the body containing and encasing the brain which coordinates all the activities of a human being. Had such injuries as reflected in the photographs (PE2) been occasioned on the deceased's legs, it is most likely and probable that we would have gotten different results in the medical report given that the legs are not as delicate as the head. As testified by Dr Brewer the force applied on and size as well as shape of the object used to hit the head of a victim has a direct bearing on the kind of injuries occasioned. The perpetrator of the crime must have known that gagging Mary-Anne Hodoul with a towel thereby preventing her from breathing and at the same time strangling her neck with force would lead to asphyxia (suffocation). A very small and light object for instance or, slight hitting of the head on the wall would not have occasioned such grave injuries on the deceased.

I will therefore remind you that for malice aforethought to be established any of these elements must be proved. When one strikes so hard or causes serious or grave injury to the vital or sensitive part of the body like the head, brain, skull of another with a heavy or sharp object he should have had the knowledge that it would probably cause the death of, or grievous harm to that person, although such knowledge is accompanied by indifference whether death or grievous harm would be caused or not or even by a wish that it may not be caused.

Ladies and gentlemen of the jury, you should also know that the law does not require that for one to be convicted of the offence of murder, he should have intended to kill his victim years, months, weeks, days or hours before the actual killing. As I have already said intention could be formed on the spur of the moment. Intention however, is not the same as pre-meditation. Pre-meditation is planning of an occurrence well in advance. According to our law one need not prove pre-meditation.

For example a man who keeps sharpening his knife before finally going with it to church on Christmas day and using it to stab and kill his neighbour with whom he has a land dispute could be said to have premeditated the crime well before executing it.

MOTIVE

Motive too cannot be assimilated to intention. Motive is the reason why someone kills. It is the feeling which prompts someone to do something. For instance whoever committed this crime, assuming you find that 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 undiscoverable, or whether it was at some time apparent.

I must emphasize that premeditation and motive are not necessary ingredients for the offence of murder to be proved. What is required of the prosecution according to our law is the proof beyond a reasonable doubt of the intention. Motive would only be relevant if there is evidence showing it otherwise it is not one of the ingredients of murder.

Before I move on to the next ingredient of causing death of another person I will explain to you what is meant by grievous harm. First of all 'grievous' is no more or no less than 'really serious'. The law defines grievous harm as any harm, which amounts to a maim or a dangerous harm, or seriously or permanently injures health which is likely so to injure health, or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense. One could also say that it simply means injury or injuries which are serious but not necessarily dangerous to life.

UNLAWFUL ACT

Another element yet to be proved by the prosecutor is that of an unlawful act. This means that the act committed by the accused was one which is unlawful without legal justification or excuse. The closest example allowed by the law is self-defence.

However, only situations where reasonable force, and not that out of proportion to the attackers, is applied is what is justified by law. The burden rests on the prosecution to negative self-defence.

Another instance is where a convicted prisoner sentenced to death by the Court of competent jurisdiction is executed by the hangman. That is lawful killing. But the intentional strangling or suffocation and or hitting or striking the head of another person with a hard object or against the wall or the hard floor cannot be said to be anything but unlawful.

I will go further, members of the jury and introduce yet another aspect that I find relevant and important for you to know. This is provocation. Our law does not recognize provocation or what is termed as accumulated provocation ie provocation over a period of time. In law when a person unlawfully kills under circumstances which would constitute murder but if the act which causes death was committed in the heat of passion caused by sudden provocation and before there is time for his passion to cool, he is guilty of manslaughter only. In other words the murder charge is reduced to manslaughter. But what is provocation? It is an unlawful act or insult of such a nature as to be likely, when done to an ordinary person deprives him the power of self-control and induces him to assault the person by whom the act or insult is done or offered. When such act or insult is done or offered by one person to another, the former is said to give the latter ground for provocation for the assault.

However, before you consider the issue of provocation in a murder charge you must be satisfied that the prosecution has proved beyond a reasonable doubt all the elements of murder, namely, (a) malice aforethought, (b) causing the death of another person and (c) by an unlawful act. From this point you proceed to consider whether there is evidence that the accused was provoked, whether by things done or things said or by both together to him was that he lost his self-control. Circumstances which induce the desire for revenge are inconsistent with provocation. The question whether provocation was enough to make a reasonable person do as he did shall be determined by the jury.

None of the counsel has suggested the slightest basis of manslaughter as opposed to murder, that is, evidence to suggest self-defence or provocation or even insanity. Moreover, looking at the evidence adduced before the Court, there is no disclosure of any aspect or issue of provocation.

Ladies and gentlemen of the jury you must not consider provocation at all.

CAUSING DEATH OF ANOTHER

Ladies and gentlemen of the jury, as I have already explained to you, the prosecution is to prove beyond a reasonable doubt that Mary Anne Hodoul's death was caused by the accused. Five separate situations are listed under section 199 of the Penal Code and any one of which, if proved will amount to causing death. Therefore one would be deemed to have caused the death of another person if by his unlawful act he brings about the death of that person. His unlawful act must be without legal justification or excuse as discussed before. The evidence of the pathologist is crucial for the determination whether these injuries were the direct cause of death. The injuries inflicted on the vital parts, the head (skull and brain) and neck, of Mary Anne Hodoul's body were sufficient to cause her death in the ordinary case. If the jury so finds then it must go beyond this and establish whether there is a concrete and impeccable nexus between this murder and the accused persons.

THE ELEMENT OF COMMON INTENTION

Ladies and gentlemen of the jury, there is yet another provision of the law under which the accused have been charged in conjunction with section 193. This is section 23 of the penal code which reads as follows:

When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, *each of them is deemed to have committed the offence.*

You will note that this section in itself does not create an offence but provides for the establishment of a common intention and lays down a principle of joint criminal liability, which is only a rule of evidence. The section is framed to meet a case in which, just like the one at hand, it may be difficult to distinguish between the acts of individual members

of a party or to prove exactly what part was taken by each of them. The reason why each of them are deemed guilty in such cases is that the presence of accomplice gives encouragement, support and protection to the person actually committing the act. Common intention does not necessarily, and in all cases, imply an express agreement and pre-arranged plan before the act. The act may be tacit and common design conceived immediately before it is executed on the spur of the moment. There need not be proof of direct meeting or combination nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of a common plan to carry out the unlawful design.

For example in a similar case of *R v Cliff Emmanuel* Cr No.85 of 2003 three men broke into a house at Port Larue, stole jewellery and money from a safe and before leaving tied the legs and hands of an old woman they found at the premises. She was also gagged with a piece of cloth and died of asphyxia (suffocation). Applying section 23 and rejecting the defence argument that there was no evidence pointing to a particular accused as the one who killed or dealt the fatal blow, I convicted them all including the one who claimed not to have entered the house but remained at the road keeping a lookout. The principles of common intention and joint liability were relied on.

THE RETRACTED CONFESSIONS

I shall now turn to the retracted confessions of both accused persons while in the hands of the police at the Central Police Station. You will remember that J P Kilindo gave one confessional statement while G Payet gave three confessional statements although the third one was not contested or retracted, meaning that it was given voluntarily. A confessional statement is actually evidence given by the accused himself and tending to show or prove that he committed the offence with which he is charged. A Court of law can safely enter a conviction basing on it without any corroborative evidence if it is given voluntarily. However, where the voluntariness of the statement is in issue, like it was in the instant case, the Court holds a trial within a trial and if it finally establishes that it was given voluntarily and is

admissible (PE 25, 27 and 28) then it will act upon it but only after providing some independent evidence to corroborate it in some material particular. Once in, the jury will be required to consider the probative value and effect of the evidence. You all heard allegations of oppression, breach of the Judge's Rules and constitutional rights during the recording of the confessional statements by the accused persons. The Court has already heard evidence in your absence and over-ruled these objections and admitted the statements. You are also at liberty to reject and disregard these confessional statements if in your view they were not made freely and voluntarily to the police. If not, and in your opinion you feel the allegations are baseless and untrue or just an afterthought when the accused started feeling the 'real pinch' of the confessions then you must act upon them.

It was stated in *R v M* (1966) SLR 218 that "to corroborate a retracted confession all that is required is some evidence *allund* which implicates the accused in some material particular and which tends to show that what is said in the confession is probably true". Ladies and gentlemen of the jury, this is exactly what I direct you to do with statements PE 25, 27 and 28 – look for independent corroborative evidence.

Further, as a general rule such evidence must be corroborated by evidence which itself does not require corroboration. See *R v Marie* (1973) SLR 237. This means that Kilindo's confessional statement cannot be used to offer corroboration to the first two statements of G Payet and vice versa.

Another rule you will be required to follow was clearly expounded in the case of *Pool v R* (1974) where the Court took the view that

there is no reason why a Court should not accept and act upon admission made by an accused as against himself, though rejecting as untrue the part of the statement sought to implicate other persons.

It is clear to you by now that the statements of Quilindo and Payet are both exculpatory and inculpatory whereby the respective authors mildly incriminate themselves and heavily

incriminate the co-accused. Therefore, G Payet's statements only incriminate himself and not Kilindo. Similarly, Kilindo's statement only incriminates himself and not G Payet. It is for you members of the jury to examine each statement and determine if there is any evidence incriminating its author.

EVIDENCE

Ladies and gentlemen of the jury, the facts leading to this charge of murder are as follows.

On 31 October 2007 Mary Anne Hodoul ,deceased, went to Anchor Café at Anse à la Mouche, for dinner with Maryvonne Burke, her first cousin. This is one place she used to frequent almost on daily basis. Mary-Anne Hodoul left Anchor Café for her home at about 9:45 pm. The next morning she was found dead in her house. Maryvonne's son climbed onto a pillar facing her bedroom window but could not see her on the bed. Maryvonne, her mother and daughter among others called out the deceased's name as they knocked on the windows and doors around the house but there was no response. However, one door facing the BaieLazare side was found locked but the upper part only closed and Maryvonne's son called Benjamin Burke (PW 21) got in through the window. Shortly thereafter Benjamin Burke informed the others that the whole house was in a mess and Mary-Anne was lying in the bathroom tied with ropes. Keith Michael Burke (PW 29) was called to the scene and found many people screaming. On reaching the body in the bathroom he untied one knot of a white towel that was around the neck and also covered the mouth. From the horrible smell that came out of the mouth Keith Michael realized that Mary Anne Hodoul was dead. The police were called in.

Inspector GraciaBethew (PW6) was the Regional Commander of the southwest District Mahe. She was based at the Anse Royale Police Station. At 8:45 hrs on 1 November 2007 she received a phone call from Lance Corporal Orphey from BaieLazare Police Station informing her that Ms Hodoul had been murdered and therefore requested her assistance at the scene. In the company of Sub-Inspector of Jean-Claude Kilindo and WPC WilnaMousbe, Inspector Bethew arrived at the said scene at 8:58 hrs and took charge of it.

Inspector Bethew had found Mrs Maryvonne Burke at the scene crying and she informed her that she was a relative of Mary-Anne Hodoul. There were four or five persons sitting on the stairs of the main door. Mrs Maryvonne led Inspector Bethew into the house and right into the small bathroom where the body of Mary-Anne Hodoul was lying. After a brief examination of the body and the scene generally the inspector safeguarded the scene until the arrival of ASP Leon, SI Tirant (PW2), SP Elizabeth (PW19) and others later at 10:35 hrs.

Sub-Inspector James Tirant (PW3) is a crime scene expert attached to the Scientific Support and Crimes Record Unit. On 1 November 2007 he attended the scene in question upon receiving instructions from his superior Mr Elizabeth. He took photographs of the body of Ms Mary-Anne Hodoul, the entire house and surroundings and part of the beach located about 100 metres away from the house and across the main road. After developing and printing the negatives thereof by Henry Jean Louis (PW 1) the said photographs were mounted in an album. At the beach he also recovered a number of items including pieces of black and red gunny-line, an empty cigarette box (PE6), an empty packet of strawberry flavoured biscuit (PE18) from which Garry Payet's finger prints were lifted (PE19 to 21 and PE24). Sub-Inspector Tirant and Inspector Reginald Elizabeth (PW19) opined that finger-prints on the biscuit's packet could be erased if it got in touch with water. From the house he recovered a broken piece of surgical glove (PE3), a piece of nylon string (PE5), from the bathroom a broken necklace and button (PE4) among others. He also removed a piece of white towel from the hands of the deceased. Despite dusting most of the conspicuous areas in the house no useful finger-prints were lifted from the scene. On 5 November at 10:30 hrs, the witness proceeded to the mortuary at Mont Fleuri where he collected from the body of the deceased a white bra (PE13), a brown pair of shoes (PE9), grey coloured pair of shorts (PE16) and two grey strings (PE12) which had been cut from the said shorts and used to tie the wrists together and the feet.

Inspector GraciaBethew (PW 6),(PW 29),(PW 21),(PW 3), as well as Dr Brewer (PW 2) described the inside of the house as one that had been ransacked. That things had been thrown

about in the bedrooms, clothes scattered on the beds and all over the wooden floor. Mary Anne Hodoul, aged 64, was lying down in a concrete bathtub. Apart from the hands and the legs being tied tightly together with black ropes and grey strings there were also white towels around the neck and covering the lower face. There were bruises on the left side of the body and defence wounds on the arms. See photographs No. 2 to 6. This evidence was also corroborated by Maryvonne Burke (PW 14) and Superintendent Reginald Elizabeth (PW 19). Police officer, Freddy Malbrook (PW 10) guarded the scene until the body was taken away to the mortuary.

Dr Rubel Brewer (PW2) is a pathologist of 37 years standing. On 1 November 2007 at 3:00 pm while on duty he was called to visit an alleged crime scene at Anse à la Mouche at the home of one Mary-Anne Hodoul. He went there with one Dr Xiang Lei also attached to Victoria Hospital. He observed the scene, the position of the body, touched it for death signs and presumed the victim dead. He then asked the police to transfer the body to the Victoria Hospital Mortuary. The body was still dressed and according to the oral temperature taken at the scene, the doctor opined that the victim had been dead for approximately ten to twelve hours, although he later stated that such temperature was not conclusive of actual time of death. On 5 November the body was removed from the refrigerator and a post mortem was performed by Doctor Xiang Lei in the presence of the mortuary attendant Mr Rabat and Detective Emile, and under the supervision of Dr Brewer. In his detailed post mortem report (PE 1) dated 5 November Dr Xiang Lei listed the following visible marks on the body as evidence of violence : (1) One abrasion on the back of the left thumb, 7 x 1 cm in size; (2) Some small abrasions on the region of left tibia; (3) One abrasion on the region of right tibia, 8 cm long; (4) One contusion on the right knee, 10 x 7 cm in size; (5) Hematoma of right eye; (6) Cyanosis found on the nails of both hands. The internal examination revealed sub-scalpular hematoma on the top of the skull, 17 x 14 cm and transverse fractures found on the middle cerebral fossa of basal skull. On the brain subdural hematoma was found, on the region of parietal and occipital bones and bilateral contusion and edema was also present. The examination of the lungs revealed bilateral terminal pulmonary edema and

congestion. There was also bleeding from the nose. The doctor concluded that the cause of death was (a) head injury; (b) multiple fractures of basal skull and subdural hematoma and (c) concomitant asphyxia due to smothering and strangulation. The head injury was the predominant cause of death in this case, while the others were facilitating causes. To arrive at this conclusion the doctor had first removed the skin above the skull and brain, opened the chest cavity and the abdominal cavity to expose all the organs, and removed the skull and brain. The heart, lungs, liver, spleen, and intestines had also been removed and examined one by one.

Dr Brewer stated that the brain is a very vital organ of the body. He also opined that the injuries on the head were caused with force. It was Dr Brewer's evidence that smothering is a type of suffocation where the mouth and the nose is covered by an object maybe a towel, cloth or something else which stops air from entering the nose and the mouth, and further, that the victim herein was dealing with both smothering and strangulation at the same time. That strangulation mounts pressure on the neck which will close the airways and stop the air from going into the brain thereby bringing about an embarrassment of the respiratory system as well as the circulatory system. This is asphyxia which causes death.

Dr Brewer observed that it was unlikely that the injuries on the head were by a fall on the floor by the victim. But, that a person whose head is hit repeatedly against a wall or on the floor could sustain a cracked skull.

Again on 8 November 2007 at 1:15 pm Sub-Inspector Tirant proceeded to Anse Aux Pins at the Chetty Flats with Assistant Superintendent Leon, Inspector JerrisDogley (PW24) and another man named William. Mr William led this group to a hill overlooking the Chetty Flats and in the bushes showed the team a location in between some rocks where a small brown and yellowish jewel bag (PE17) was recovered and photographed by ASP Leon. The bag contained two gold chains, one gold necklace, two notes of 50 Kenya shillings and two notes of 100 Kenya shillings.

(PW4) Patsy Figaro was on sentry at the mortuary on 2

November 2007 from 11:50 hrs to 23:25 hrs, having taken over from Police Officer Sidonie. She handed over the body to PC Victor. On 5 November 2007, WPC Patsy returned to the mortuary taking over from WPC Nicette. On that day at 10:35 hrs SP Elizabeth, ASP Leon and SI Tirant and Lance Corporal Omblime came to the mortuary to examine and photograph the body of Mary-Anne Hodoul in presence of WPC Patsy. They left and returned at 13:35 hrs this time in the company of Inspector Songoire and Police Officer Fred to attend the post mortem examination. I am satisfied that there was no interference with the body during that time.

Pursuant to information furnished by Garry Payet to Superintendent Philip Cecile (PW5) on 2 November 2007 while at the CID Headquarters, the said Superintendent together with other police officers accompanied Garry Payet to Caryole Estate, Anse Aux Pins where he (Garry Payet), reaching a banana plantation close to where he was residing at the time removed from under a heap of rubbish and handed over to Superintendent Cecile a black pouch (PE22) containing an assortment of jewellery. ASP Leon photographed it before it was handed over to Inspector Justin Dogley.

Inspector Francoise Freminot (PW7) recorded a statement from Cyril Lau Tee who also handed over 100 Euro (PE 23) to him on 9 November 2007. The said Cyril Lau Tee (PW 18) is the manager of 'Izup' bar and on 31 October 2007, he was serving behind the counter when two gentlemen, one dark-skinned and another of light complexion, came in at 11:30 pm. He identified both men as being the accused in the dock. The dark one, Kilindo purchased beers and cigarettes worth 50 Euro. He later made another purchase of similar amount. Cyril however refused to buy foreign currency from the two accused even when Kilindo called Garry and the later pulled out of his trouser a plastic bag containing Euros. He also stated that the two men were the last people to leave his bar at about 5:30 am on 1 November 2007. While at this bar Garry Payet also interacted with one Jean Dogley (PW 12) with whom they used to live in the same district.

Cecile Hodoul (PW 8) was a sister to the deceased. She identified some of the jewellery in the yellowish pouch (PE 17)

which had been brought to her by the police as being that of her sister. She further testified that some of that jewellery she had personally given to her sister, while some she used to see her wearing it. Cecile Hodoul also identified some of the jewellery which was in the black pouch (PE 22). Similarly one Nonna Papadakis (PW9) a teacher by profession and a friend to the deceased testified that she had been staying with Mary-Anne Hodoul for two weeks before the incident occurred. That on the night of 31 October 2007, Nonna had gone to attend some activity in Victoria leaving behind some of her belongings in her bedroom including an assortment of diamond and gold jewellery spread on the table and in the wardrobe. After the activity she spent the rest of the night with the deceased's mother at Mont Fleuri. Nonna too was called by the police and she identified some of the jewellery in the black pouch (PW 22) as being hers.

David Lai Moy (PW 11) is a marine engineer and stated that on 31 October 2007, at about 11:00 pm he gave a lift in his pickup truck to two men whom he later identified in Court as the two accused persons. He was returning from Baie Lazare after conveying one of his workers when he was stopped by the two men at the Baie Lazare and Les Cannelles road junction. David Lai Moy further testified that he had seen Garry Payet before but never talked to him. As for Kilindo the witness said that he had known him for about two years and used to see him on tuna vessels where he worked as a stevedore although they never had long conversations apart from just saying 'hello, how are you'. That both accused persons sat in front with David Lai Moy and alighted at the bus terminal of Anse Aux Pins. Later Kilindo offered David a beer.

Nigel Pillay (PW 13) is a farmer and resident of Chetty Flats, Anse Aux Pins. On 1 November 2007 while in the forest cutting grass for his goats, Nigel Pillay saw Kilindo seated on a rock, smoking and counting money. That as Kilindo left the rock where he had been sitting Nigel Pillay called him back and asked him about the small yellowish bag (pouch) which he had placed and left under the rock. The witness also stated that the said pouch (PE 17) contained a necklace, two bracelets and four notes of Kenya Shillings. It is also the evidence of Nigel Pillay that later he handed over the said bag when the police came and asked for it. Mr Nigel Pillay was

vigorously cross-examined by both defence counsel who also suggested to him that the said pouch of jewellery had been given to him in exchange for drugs. The Court takes the view that it is immaterial whether Kilindo had given Nigel Pillay the pouch of jewellery as a consideration for illicit drugs. What matters in this case is to establish the source of that pouch which contained jewellery that was removed from the house of the deceased.

STATEMENTS

You must consider all the evidence adduced in this case although reference has been made to the testimonies of only some witnesses who deponed during the trial. This does not however mean that the testimonies of other witnesses should not be considered or ought to be discarded. You must take into account the four statements given by the two accused persons which I shall now reproduce

The statement by Jean-Paul Kilindo (PE25):

STARTED AT 13:18 HRS

I am living alone at Anse Aux Pins, I know one Garry whom I do not know his surname and Garry is also living at Anse Aux Pins, Caryole Estate and he works with Beautification (lanbelir). I have known Garry during this year 2007, and he sometimes bring me to his place and I have even slept at his place. I recall one day while I was at Garry's place but I do not recall the day and date while talking Garry told me that he know a chalet at Anse à la Mouche where a lady lives alone and there is a safe over there and while he was in the prison someone gave him this plan and he informed me that Louis Hoareau who has given him this plan and therefore Garry suggested for us to plan to go there. I told him that I have never done that kind of action and Garry told me that I have nothing to worry about. Since that day, Garry has told that to me, then I tend to avoid him, since I was not in favour of his plan. On Monday the 29th day of October 2007, I met Garry at the Anse Aux Pins school in the afternoon but I do not recall the time, and Garry repeated the same topics to me and told me that tonight we shall go and do a check at the

said place at Anse à la Mouche. Therefore, in the evening at around 5:30 p.m., we left Anse Aux Pins in an SPTC bus BaieLazare via Les Cannelles and we alighted at the Anse à la Mouche junction. We then walked on the main road towards BaieLazare direction. Further, along the way we went towards the beach and walked until we reached opposite a house but I did not recognize the colour of the house and Garry informed me that it is the same house that we have to conduct the said mission inside. We sat on a wall and smoked a cigarette and at that time, the lights were on in the said house. We sat there on the wall and observed for a quite long time and I then saw a white car came towards the said house, coming from BaieLazare direction. The car went to the house but nobody alighted from it. It only turned and proceeded to another upper lane where Garry informed me that there are chalets. When the white car came Garry also informed me that this was the owner of the place. We continued to stay there on the wall, and the said car then returned down to the house and I saw a lady of fair complexion alight from the car and entered the house. At the same time Garry was explaining to me how the house is inside and it seems that Garry knew this house very well. After some time that the lady has entered the house the light was switched off, and there Garry told me that we are going to see Louis Hoareau who has given him the plan and Garry told me that Louis lived just a bit further up the road. I followed Garry and he went to a house with some steps leading to it and at that house we went to the kitchen which had some nets and it looks like a fisherman lives there, Garry told me to wait for him, that he would go round the house to call Louis Hoareau, then he came back and told me that he has not seen anyone. We remained at that house then we went to sleep under the verandah of the house which Garry told me, Louis Hoareau live in. In the early morning at around 5:30 a.m. Garry woke me and told me that we have to go, so we went and took a bus to Anse Aux Pins. On the same day in the afternoon, I met Garry again and there we made a plan to make the mission on Wednesday night, and Garry told me that we must go on Wednesday. So, on Wednesday the

31st day of October 2007, at around 6:30 p.m. when I was sitting down at Anse Aux Pins school, Garry came and we talked and at that time Garry had a black back pack with him and Garry told me that we have to make the mission today, so I agreed to go with him. We went to the bus stop to take a bus. Garry even gave SR5.00 and I only had SR1.00 with me I asked him how we will go back after that, he told me that one of his friend will come to fetch us later but he did not told me whom. We took a bus to BaieLazare via Les Cannelles, we did not sit next to each other, we took the bus at around 7:30 p.m., we disembarked at Anse à la Mouche farm, and at that time, it was already dark. We walked for a while on the main road and we were close to that house. We went to the beach and on the beach, we saw a few people fishing but they did not notice us. We went on the wall next to the beach where we were on Monday. We saw the house, but there were no lights and also the white car was not there, we remained there for a while until the people who were fishing left, and there Garry opened the bag that was with him and gave me a pair of gloves, similar to what they use in hospitals and he also wears one. Garry also put a tracksuit on him but the upper part was already on him and he also gave me a tracksuit but only the bottom part and I wore it. In the bag, Garry had a screwdriver, a pincer and tong and two kitchen knives. Garry told me to wait there at the wall, he will go and check the house before, and he went. I did not wait for Garry to come back; I also crossed the road and went to the house, upon arriving at the house I did not see Garry right away, I went to the garage where the lady parked her car on Monday and there Garry called me, so I went towards his direction. At that time, we were already wearing gloves. Garry told me to wait at the garage to see if anybody comes to signal him, he went round the house to check the windows but they were all locked. He came and told me that everywhere is locked. So we went to the back of the house, I watched out at the step if nobody is coming and Garry went to break a window at the side of the house facing BaieLazare, and the window separated in two, and there we went inside and started to search everywhere. I had matches with me I saw a

piece of candle inside and I light it for us to have some light. I told Garry that there could not be a safe in a place like this but Garry told me that we should keep searching. While we were searching I saw Garry taking things from the house and putting them in his jacket pocket, and I had not taken anything yet. Garry told me that I should stand in a corner if I was scared and checked if anyone comes, so I went next to the front door to check and at that time I was also using my match sticks that were with me to light and they had almost finished. Garry kept on searching and took things from the house and then he come back and told me that the candle has run out, so I told him that we should leave, but he told me no, we have to see the safe first to get the money. I told him that I was leaving and I was really getting ready to live, when I saw the lights of a vehicle coming and Garry told me that the lady is coming and we came to the front door. The lady disembarked from the car, she went to the back of the house and came inside. As soon as the lady entered the house she switched on the lights. Garry told me to remain quiet, Garry was in front of me, he told me to watch all her movements. The Garry told me that the lady has gone to the toilet, he will watch when she came out of the toilet and he will hold her for me to tie her. When the lady came out of the toilet Garry approached her from behind and held her in the neck, and then he told me to tie her. I asked him for ropes and Garry told me that there are some in his bag, remove them and at the same time the lady was calling a man's name but I do not recalled which name. The lady was wearing a long pale green trouser. I saw some ropes with the trouser, so I pulled the ropes but it did not came out. I had to cut them with the knife that was with Garry and I tied both her legs and her hands. I tied her at the bathroom. When I had tied her, Garry took a sock and out it in the lady's mouth to prevent her from screaming and we left her on the floor and Garry kept on searching but we did not see any safe in the house. I do not know if Garry took anything else from the house. The lady kept on screaming and I told Garry that we should leave and at that time I was at the front door watching. Garry told me to bring some more

ropes. I saw white gunny-line in a room, I pulled it, to where Garry was next to the lady, and we tied her some more, both legs, and hands, Garry took a towel and tied it on her mouth. The lady struggled with us, I did not hit her but there is a possibility that she has hit her head on the floor, when she was struggling. I then went to search in the rooms and I left Garry with the lady for a while. I did not have sex with the lady and I do not know if Garry had sex with her. When we arrived at Anse Aux Pins later Garry told me that he wanted to have sex with that lady. I also wish to state that when we were inside that lady's house we wore t-shirt on our faces and I got a t-shirt inside the lady's house. Garry also took the bag that was with the lady, and there were money and a mobile phone inside. Then we broke two wardrobes and there were foreign currencies inside and we took all and there I told Garry that we should go. I also told him that we should release the lady but he did not want to, so we went out to leave, when we left, the lady was still breathing. Garry also told me that his glove was torn when we held the lady in her neck and he had to use a sock to put in his hand. My glove was torn only when we were leaving. The t-shirt that I used to cover my face with, I took it and put in the toilet bowl when I was leaving. Upon leaving the house, we walked until to Anse à la Mouche junction and there we hitched a ride in a pick-up to Anse Aux Pins. Upon arriving at Anse Aux Pins we counted the Seychelles currencies that we took from the lady's bag and altogether there were SR585.00. We went 122-Up bar where we had some drinks but we did not consume in the bar, we bought our drinks and we went to drink at the "zanblon tree" next to the clinic. The same night I went to sleep at Garry's place and when we left Garry's place the following morning, Garry gave me R 500.00, and it was Thursday 1 November 2007. Garry told me to keep all the foreign currencies with him, as his wife is travelling in December and she will buy things for me. Garry also said that he would keep all the gold's with him. The same night on Thursday, Garry gave me R1,200.00. Until now, Garry has given me only R1,700.00, one mobile phone that Garry took from the lady's bag is a blue Nokia 3310. I also wish that on

Thursday night when I met Garry he told me that the lady had passed away. The pick-up that we got a lift in is white but I do not know that driver. I regret to what has happened, as I had already made up my mind to get a job, it was Garry who influenced me to do such act, and from the bottom of my heart, I regret it.

Ended at 16:10 hrs

Garry Payet gave three statements to the police. The first one PE27 follows hereunder:

On Wednesday the 31st October 2007 I left my place at Caryole Estate and went by the roadside to call my wife Jacqueline ROSE who is actually living with her mother Jovana SIMEON at Jerusalem Estate. I was going to make the call on the public phone in front of the bus stand in front of the Anse-Aux-Pins Police Station. This was at around 18:30 to 18:45hrs. There was a problem with the call box and so I was not able to make my call. So I went to a call box at the Community Centre and I went then going via the Anse Aux Pins clinic and the crèche. After making the phone call I came back through the same route. Arriving at the old Anse Aux Pins school I met a guy whom I know as 'Pti Paul' as well as 'Papa'. Pti Paul was sitting on the Court with some other guy whom I know by face. He called me by my name. When I reached him he asked me what's up and that I am not serious. (Ki deal? ou en donergrenn). Then he asked me if I will go at that place. I told him I do not know. 'Pti Paul opened a bag which is worn on the back and in the bag there was a machete, two pair of gloves, a black T-shirt and something which I did not recognized. There was also a black pair of socks going towards purple. The gloves look similar to those uses in the clinic. I went with 'Pti Paul' and we talk under a 'zonblon' near the clinic. Pti Paul told me that he heard that the woman who had the chalets at Anse à la Mouche had a safe at her house. I answered 'Pti Paul' and told him that if he knew that the woman had a safe to leave her alone and that the safe belongs to her. He swore at me saying cunt of my mother ('lanngetmonmanman') and told me that we have to go.

I agreed to go but told him that I will wait for him on the beach. 'Pti Paul' told me if the car is there it means that the woman is there but if it is not here it means she is absent from the house. He told me that we have to take the bus at 19:30hrs. I waited under the bus shelter and 'Pti Paul' hides behind the office of the bus inspectors. We took the Baie-Lazare bus which went via Les Cannelles. I sat at about the 32nd seat on the left. 'Pti Paul' sat nearly at the back close to the rear door as this was a long bus which had two doors. I alighted at the agricultural school at Anse à La Mouche and I use the public road but 'Pti Paul' went through the beach. Arriving at the bend near the road that lead to the chalets I took a small step that lead to the beach and went on the beach. Pti Paul hid behind a Takamaka tree and I sat on the wall and smoke a cigarette. Whilst I was smoking, 'Pti Paul' went to the direction of the house that faces mountain side. I have seen this house before when I was passing by in the bus but I always believe that no one lives in that house. During such time it was dark. However, when the vehicles pass by I could see the house. I saw a small white dog charging on him and barking and then it ran to the house. After that 'Pti Paul' came back and called me, I asked him what the matter is and he said it is ok let's go. I told him that I am not going anywhere and if he wants to do his deal he can do it alone as I do not want to get involve in Police matter as I already have two Police case. Whilst he was talking to me he was at the same time going to the house. During such time he had his machete at his waist as well as a small knife. He had tied the T-Shirt around his face as a mask and had already put on his gloves and the socks. He was wearing a flip-flop with the socks. He went towards the house but as for me I remained on the beach. I was not on the beach to watch but was there to look for an opportunity to escape. 'Pti Paul' went on the right side of the house and at around ten to fifteen minutes later I heard a noise but I did not know if it was a door or window. I kept on sitting on the beach and when I look at the house I could see the lights of a torch inside. A few moments later the torch in the house got out and some minutes later I saw a white car that came to the

direction of the house where 'Pti Paul' were. When the car went inside the garage I saw the small dog came down and went to the owner. At this time I stood up on the beach. When the person open the car door and got out it was then that I noticed that it was a rather old lady. I recalled that the upper part of her clothes was white but I do not recall the lower part. I saw the lady close the door of her car and it appears that she use a remote to lock her car because I heard the beeping of the signal. The woman went at the corner of the garage and behind the house. I do not know how she opens her house at the back of her house whether she uses the key or not. I saw the light of a tube light and that of a globe alighted. I do not know what the woman did once inside and I do not know where 'Pti Paul' was during that time but he was in the house. I just overheard the cried of the voice of a woman and she was mentioning the name of a man as if asking for help. I got out from where I was and ran until the junction road at Anse à la Mouche. I went through the beach. At around twenty to thirty minutes later I got a lift in a pick-up with a man. I do not know this man and he was alone and I sat at the back of the pick-up. The pick-up came from AnseBoileau direction and the driver appears to be young. He told me that he was going to town to collect his relatives. I alighted at Anse Aux Pins near the telephone cab in front of the Police station. I sat on the cab near the clinic and thought to myself. It was at around 23:30hrs, there were some people on the road as well as in the bar in front of the Police Station. I remain sitting there for a long time. At a certain time in the lights of the vehicles I saw 'Pti Paul' coming along from the bridge, so I got out from where I was sitting and sat under the bus shelter under the light. He came in my direction and asks me to come. We went to the 'zonblon' tree near the clinic. 'Pti Paul' at that time was wearing a black or brown trouser and it was a long one but it was folded upwards. He was barefoot and he was wearing a white T-Shirt with sleeves that reached until his elbow which is partly blue on both handle. This was not the clothes that were on him earlier. He asked me if I want a Guinness and I answered yes. He went away and when he came back

he came with three beers, three Guinness and a box of Mahe King cigarette. The bag was still on his back but appears to be empty. He uncorked a Guinness for me and a beer for him. During such time I was sitting on a block facing the public road but as for 'Pti Paul' he had his back turned away from the road. As we were drinking he was telling me that if he attacked the woman outside, he would not have got the money. He said the woman is very strong and strong in the wrist. I asked him what he had done with the woman. He answered and said that he got hold of the woman while she was urinating, he got hold of hair by the neck and cut the rope of her pants and tied her with and there was rope with him that he had tied the woman with. He also told me that he cut a towel and tied the woman on the face for her not to shout. After he had done his mission he came back and looks at the woman and felt her chest and her heart but they were not moving and he believes that the woman had passed away. So I said "Pti Paul, you killed the woman!" We drunk the drinks that he brought whilst we were talking and there was a Guinness left. 'Pti Paul' told me let's go and drink at the bar. I took the Guinness and went with it at the bar. I exchange it for a cold one. Whilst I was in the bar 'Pti Paul' called me and told me to go to the toilet and that he will show me something. Whilst we were in the toilet he put his hand in his trouser and removes a white plastic bag. In the bag there was foreign exchange which comprises of Euros. 'Pti Paul' removed two Euro Notes and went with it. I remain in the shop and urinate and soon after 'Pti Paul' came back in the toilet and there were a lot of hundred rupee notes in Seychelles rupees in his hand. He told me lets go to the bar. I told him that I am not drinking again but I told him to buy a Guinness for me. He bought a Guinness for me and also bought strong liquor for him because it was in a glass. He also placed two coins of Rs5/- on the billiard table and told me that one is for him and one for me. He played first and when I ended my turn I drunk the rest of the Guinness and without saying anything to him I left. When I left the bar he was still drinking with a few people male as well as female. There was one Dogley who is the brother of Francis

and Jerris Dogley who resides at Montagne Posee. I do not know any of those women. I would like to say that this is the first time I entered such bar. I went home by foot. Something which I noticed when I was in the toilet was that in the pocket of 'Pti Paul' there was a small black bag with a black rope. This was in his right back pocket. In his left back pocket there was also something but I do not know what it was. I believe I reached home at around 5:00hrs. I had a steam but I was not drunk. I slept and woke up at around ten to eleven in the morning. I clean the house and then went back to bed. On Thursday the 1st November I did not get out of the house. On Friday the 2nd November I went to work until close to noon. I went and met my wife at the school but I went to Maryanne to buy takeaway. From there I took a car driven by a guy by the surname of PAYET. I pick up my wife at the school and we went to the house. I noticed that the windows were open and two can of tuna file were also open which appears that someone had come at my place. Jacqueline remains at the house until about 17:00hrs. Later on her mother came to collect her in a car and when she left I was on the bed. . After that I went to sleep until Saturday morning. On Saturday the 3rd November I woke up at around 8:00hrs. I have a shower and then I went to meet Jacqueline at Anse Royale. Arriving half way I felt in my pocket and the mobile phone was not there so I got back to the house and entered through the kitchen door. I took my mobile in the kitchen and left. I did not leave the door open and I was not aware if there was anyone at my house. I took the public bus to go at Anse Royale and arriving at Anse Royale I called Jacqueline on my mobile phone. She told me that she is still at her place. At around 30-45 minutes later I call her again and this time she told me that she on the bus stop at Aux-Cap. When she came I was waiting for her at the hairdressing saloon where the bank was at Anse Royale. Since there were a lot of people at the hairdresser we went on the beach. We remain on the beach until at around 16:00hrs when the Police arrested me. I was on my way to get a transport for Jacqueline and I was going to take the bus. Three love bites that are under my neck,

Jacqueline put two on Friday and one on Saturday. All the time we have been on the beach. I would like to add that when I was drinking with Pti Paul he said that he had been foolish and that he should have set fire to the house and burn the woman.

This is Garry's second statement PE28:

Yesterday I gave an evidence to the police but not everything I said was the truth. Therefore today I decided to tell what happened. There is this man whom I know as "Pti Paul and also Papa" Wednesday night on the 31st of October 2007, I came from the public phone at the Social Centre at Anse Aux Pins. When I met Pti Paul at the school, at that time there were one or two children with him, whom I know only by appearance. Pti Paul called me and said: "Garry are we going over there?" I told him that I will see. At the same time, while talking we were walking. Arriving near the clinic we sat down and Pti Paul opened his bag with me. A black bag and it closes with a string. In the bag there was a big knife, a small knife, a torch and two pair of gloves. The gloves resemble those used in clinics. Then he closed his bag. Pti Paul forced me by saying that he has checked his deal and he has to go. He needs the money now as Christmas is approaching. Although I accepted to go, I did it reluctantly because it was not my idea. We took the 19:30 hrs bus at Anse Aux Pins, and this was the BaieLazare bus via Les Cannelles. I occupied the seat on the third row on the left but Pti Paul sat at the rear near the door. We alighted at the Farmer's Training Centre at Anse à la Mouche. We walked on the public road until the steps that leads to the beach. I was standing at the beach while Pti Paul went to the house to see if the woman is not there. At that time it was dark. I saw Pti Paul at the house and a small white dog chased him. I was able to see this when the lights from passing vehicles lit up the place. Then Pti Paul came back and during this time his bag was on his back. Now Pti Paul told me: "It's alright there is nobody." I told him that I was not going,

he forced me. After that I told him: "Let's go." We went towards the house. We both went to the right of the house. Pti Paul pulled a door to the right of the house. The door broke and opened. Pti Paul entered first and I followed suit. In the house, Pti Paul removed his torch, put on his gloves then tied a t-shirt around his face like a mask. I took a pair of socks from the house and put in my hands, I also took a t-shirt there and put around my face. When we entered the house, there were no light at all in the house. After wearing Pti Paul started search because he had a torch. Then I got an old torch near a bed. The torch was aluminum. Now I started search. After five minutes later, I heard the sound of a transport coming in. We switched off the torches. Pti Paul ran to the verandah and pulled the curtain aside. He told that a woman is coming. He is going to get hold of her. I was hiding. The woman got in through the back door which is leading at the kitchen. When the woman got inside, she switched on the light. A globe and a tube light went on. I saw her put her bag on the table. She swallowed a pill. She then went to the toilet. When she got in the toilet, Pti Paul went to the toilet too because he was closer. I saw Pti Paul grabbed the woman by the neck lifted her and pushed her down. He pulled down her short and had sex. At that time I was standing and could see what was going on. I did not say anything. When he finished Pti Paul asked me to hold the woman for him to tie her up. Frighten, I came and hold her. Pti Paul cut the string from that woman's short and tied her hands. When he finished, he cut the two other bits and tied her feet. There was a smaller knife on Pti Paul's waist which he took and rubbed it the woman's vagina. Then Pti Paul squeezed her neck and she called out the name of a man three times. I don't remember that name. The woman struggled with Pti Paul while he was trying to have sex with her. It was Pti Paul who put on her short again. Pti Paul gloves broke and he took a pair of socks there in the house and put it in his hands. He cut a towel and gagged her. She continued to shout but quietly. He took the other piece of the towel and tied it around her face and nose. I just saw a black piece of string in Pti Paul's hand and he tied her feet and hand

together. This time I did not hold the woman. Then we continued our search. Pti Paul got some money in a room in an envelope near the computer. But Pti Paul returned to where the woman was, grabbed her by the neck, he removed his knife and put it under neck and asked her where is the safe. She did not answer because she was gagged. Then we continued to search again. We went in another room where there is a wardrobe which has four drawers. Pti Paul broke it with the big knife. In the fourth drawer he got an envelope and in it there were a good amount of Euro. Pti Paul put it in a plastic and in his short, we went in another room, this time we got a packet such as necklaces, earrings, fashion which I kept with me and some Pti Paul kept with him. We came out to leave and Pti Paul went to feel the woman's chest. Pti Paul told me that the woman's chest and belly is not going up and down. I told him that he has killed that woman. Pti Paul said let it be "liki son manman in mor in fini". Whilst going I took the bag which was on the table, I also took a mobile phone and a car key. Pti Paul tried to make a call on the mobile but he was not able. I went with the mobile and key. I switched off the light and we left through the same way we came in, we went to the car. I opened the car and Pti Paul remained outside with his big knife. He said: "Fouyelikioumanman". I searched but I could not get anything. Whilst leaving, Pti Paul told me to take the car and leave in it. I told him no. Arriving on the main road Pti Paul told me that he should have set fire in the house. I told him not to do that. We removed all our things on the beach on the other side of the road. Then we walked along the beach until the junction at Anse à la Mouche where we came onto the public road. Around forty minutes later we got a ride in a pick-up which came from the direction of AnseBoileau. I sat near the window and Pti Paul in the middle. We alighted at Anse Aux Pins near the clinic. I was not under the influence during that time. We went to sit under a "zanblon tree" near the clinic. Pti Paul asked what I drink. I told him a guinness. He left and when he returned he brought three guinnesses, three beers and a box of Mahe King (cigarettes). While we were talking

he told me to give him the gold and perfumes which are with me and he will put it in a parking together with his bag. I did not see where he put the things. The third guinness was still there but Pti Paul had finished his beers. He forced me to go to the bar. We went to the bar and spent a good amount of time there. Pti Paul gave me forty (40) Euro. Later he gave me SR2000 on the balcony. I wish to add that Pti Paul gave me again in all ninety (90) Euro. It was two notes (2) of twenty (20) and one note (1) of fifty (50). Then I gave him the ninety (90) Euro to change. When he came back with it, I did not count, just put it my pocket. During that time I was wearing a black short and a black jacket with red stripes. I was wearing a black pair of boots. There was the brother of Francis and JerrisDogley whom I gave some drinks. Around 4:00 a.m. I told Pti Paul to give me my bag and perfumes because I am leaving. He gave it to me and he returned to the bar, me I went home. There could have been 4,500/- in my possession. I went on foot until home. Arriving home I hide the small bag containing the gold among some banana trees along with a perfume. I went in and slept. Thursday the 1st November 2007, which was a public holiday I woke up around 9:30 hrs and I went to Bibi's shop I saw a man near the shop whom I know his face, but I do not know his name. He has a car and he does some trips (pirate). His car is red. I asked him if he can drop me to Jerusalem. He accepted. I had already bought three (3) crates of beers, two (2) crates of Seybrew and one (1) Smirnoff. In the car I lent a mobile from the driver and called my girl friend Jacqueline Rose but he told me she is still at Le Niolo. So I asked the driver to drop me home at Caryol. In put the three (3) crates home then went out. I wish to make a correction that early morning Thursday 1st November 2007, when I got home, I brought the gold and perfumes into the house. After I had dropped the crates I took the small bag and also put the perfume among the banana trees. I went for a drive around. The remainder of the money with me was around 3000/-. I bought 6 packets of Mahe Kings, some beers, and 200/- for my father Philip Freminot who lives at La Retraite. Living La Retraite I called my girl friend and

that time she had arrived. I gave her the bag with the gold but she dropped it on the ground and told me she doesn't want police case. I left and then return to get the small bag and Jacqueline gave it to me. Then I went home at Caryol. Whilst alighting I took from my pocket some money and gave it to the driver. It could be around 17:00 hrs. I went to sleep at my place. Saturday the 3rd November 2007, I was arrested by the police, when I was at Anse Royale with my girl friend. Today Monday the 5th November 2007, I had accompanied the police to my place and showed them the bag which contained gold as well as perfumes. This I took in the woman's house at Anse à la Mouche. What happened was not intended neither my heart, I have been forced to do, therefore I am asking for an excuse for what had happened.

Garry Payet's third statement PE29 is hereby reproduced. It should be noted that this statement was neither retracted nor repudiated.

It was during the time I was remand at Long Island Prison but I don't remember the year I encountered a man whose name is Louis and don't remember his surname. Louis is a thin man Caucasian and he wears spectacles. We were talking some of us prisoners, until we reached a topic about stealing. There was a time when we were talking only Louis and me. Louis told me that he knows there is a safe at a woman's place at Anse à la Mouche. Louis explained where the house is situated to me but I did not understand where. He also told me that the woman lives alone and there are two small dogs there. After that we did not talk about this subject again. Sometime later after leaving the prison and it was the first time that I met Louis again. I was at my lawyer's office, Mr. Tony Juliette and it was there that I met Louis again. We were talking Louis and me when he asked me if I had gone there. 'I told him that he was asking me if I had gone to the woman's house at Anse à la Mouche.' I told him that I had not made up my mind if I will go or not. Before separating Louis gave his phone number but I've never call him. Twice I've been to Louis' residence at Anse Poule Bleus but

never met him. Sometime later, I met a man whom I know as Pti Paul. It was during the month of October, but I don't remember the date, it was coming to the end of the month, I met Pti Paul. As I had some money, I invited Pti Paul for a drink at my place. Truly he accepted and came. After we had taken some drinks, Pti Paul was drunk, therefore I told him to stay and sleep. And this was the first time that he slept at my place. During that time my girl friend Jacqueline Rose has moved with her mother because we've had a problem. On Monday the 29th October 2007, I met Pti Paul at Anse Aux Pins School and told him: "Let's go to Anse à la Mouche at that house" to see how the place is. Pti Paul accepted. Later around 18:00 hrs to 18:30 hrs, we took the public bus and we went to Anse à la Mouche. I know the bus driver as Joseph. We alighted at the Farmers Training Centre, then we came to the beach opposite to the house. Our aim to come here was to see how the house is. We spent about half an hour on observation. After that we slept a bit on the beach. Upon getting up, I told Pti Paul let's go and sleep at Louis' place. We slept under the verandah at Louis' house, but I don't know if he was there. There isn't any moment that I called Louis or knocked on his door. There were no light also. We got up at around half past five in the morning and returned to Anse Aux Pins in the public bus. Today Tuesday the 6th November 2007, I accompanied the police to my girl friend Jacqueline Rose at Jerusalem and I told her to return all the money, local and foreign which I have given her to the police. After that I brought the police to Anse à la Mouche and show them where we had hidden the tools. It was under some dry leaves near a bridge. The tools include knives, which were with Pti Paul; there was also an axe, a plier and a small cutter, which I took from the house. There was also a screw driver which I came with from home. Among the tools there were trousers, and a black t-shirt which belong to Pti Paul. There was a bottom tracksuit for me and a pair of socks for Pti Paul. The telephone I gave it to my girl friend to see if its work. After that my girl friend informed me that she threw away the phone because if doesn't work. I wish to add that when talking to Louis at

Tony Juliette's office, Louis told me if I got a good amount of money, not to forget him bring something for him.

DEFENCE

Ladies and gentlemen of the jury that was the prosecution's case. Now I will summarize for you the evidence constituting the accused's case.

As for the defence case the accused opted each to make a statement from the dock and as the law requires, they were not cross-examined. To their aid, Garry Payet called two witnesses while Kilindo called one witness. Garry Payet briefly stated that he was arrested at Anse Royale on 3 November 2007, by PC Raymond Dubel (PW23) and seven other officers. He further states that on his arrest nothing was said to him, not even his constitutional rights being read out to him. That upon reaching the police station he was oppressed, though not beaten, and thereby induced to give a statement involuntarily which he now states was false. Further, that despite informing the police that he would only talk in the presence of his lawyer the police never heeded. It was his evidence that he even later saw the boy who was being beaten dragged outside. That he had been threatened into giving a statement (confession) failing which would result into being beaten like the boy who was screaming in the next room.

Members of the jury, you heard this evidence and also observed the demeanour of Garry Payet. You listened to the evidence of the police officers who arrested him as well as that of Inspector Francois and Inspector JerrisDogley who took down his statements which were also read out to you. Now you are in a better position to tell whether those confessions were induced by threats or not and whether Garry Payet was telling lies in the statements. While doing this do not lose sight of the entire picture of the independent evidence by other witnesses. Inspector Francois had told the Court that Garry is a liar. Like I have said, nothing stops you from accepting his part of the statement which you think is correct and reject what you believe to be false.

As for JP Kilindo, he stated that he is 36 years old and with a 9 year old daughter. That on 5 November 2007 at around 8.30 am a group of police officers came to his home at the Chetty Flats and without informing him anything took him away to the Central Police Station. That his constitutional rights were not read to him. That while at the police station Police Officer Jullienne slapped him on the face. That he also came in with a polythene pipe about a metre and a half long which he used to hit Kilindo. He felt a lot of pain especially at the place on the abdomen where he had been operated on. His hands were placed behind the chair he was sitting on before being handcuffed. In short, Kilindo states that the confessional statement was only induced out of him and not given voluntarily. In addition, before giving the statement the police officer opened the door for him to see a boy that was being beaten and promised to treat him the same way in case he did not co-operate and write a statement.

Ladies and gentlemen of the jury this testimony should be subjected to the same test as that of Mr Garry Payet above. Alex Moses (DW3) basically came to inform the Court that he had been beaten by police officers while in custody at the Central Police Station. His evidence could not be of much help to us as he did not tell exactly when the beatings occurred. Similarly the evidence of Denis Marie (DW4) would only be useful if indeed, you find that he had been assaulted by the police, the beating took place before, at or during the writing of the statement. You must not also forget the Court proceedings (DE2) of 9 November 2007 where Quilindo informed the Court that Denis Marie had been beaten. This I will also leave to the members of the jury to examine and decide whether the witnesses were credible and telling the truth. It is also your task to establish the probative value of the entire defence case as judges of facts. You must also note that most of the defence case was generally about the police; the manner in which it conducts its business, treat suspects in their custody and obtains statements. Contrary to the prayer by the defence counsel the prosecution has urged you to find the defence witnesses untruthful and unreliable and therefore reject their evidence.

CORROBORATION BY INDEPENDENT EVIDENCE

Now ladies and gentlemen of the jury, you will remember that whenever a statement is retracted but admitted in evidence (as above), before you use it to convict the accused persons it must be corroborated in material particulars. In other words, it must be evidence by independent witnesses or sources which implicates the accused, confirming in some material particulars (and not in all particulars) not only the evidence that the crime has been committed but also that the accused committed it. For instance, when Kilindo states that "Payet tied the woman's hands with a rope" that is not independent evidence that can offer corroboration. I must warn you to take extra caution while acting on these confessions since the defence has alleged impropriety during the recording of the statements by the police.

However, through the evidence of Inspector James Tirant and Superintendent Reginald Elizabeth, Garry Payet was placed at the beach opposite the house in question when his fingerprints were picked off an empty packet of biscuits. If you believe their testimonies, ladies and gentlemen of the jury, they would corroborate that part of Payet's first testimony (PE27) where he stated that "arriving at the bend near the road that leads to the chalets I descended....and went on the beach". He again confirms this in his confession (PE29).

The retrieving of a bag (PE 26 A) from the bushes along the beach, not far from the house in question, where nobody knew it had been hidden or buried under the sand and dry leaves except Payet who led the police to the scene, may be corroborative evidence if you accept as true the testimony of Assistant Sup Ivy Leon (PW 26).

That bag did not only contain house-breaking implements, blue jeans, a black tracksuit bottom and a black cap which the accused himself refers to in his statement (PE27, 28 and 29) but also, and most importantly, a small axe which was positively identified to the police and in Court by Mrs Veronique Libanotis (PW28) as belonging to the deceased. You will now have to ask yourselves how the axe came to be in Payet's bag yet Mrs Libanotis had in the afternoon of 31 October 2007 placed it in the kitchen and locked the house.

None of the accused persons claims ownership of the axe. Further, in his statement (PE29) which is neither retracted nor repudiated, the accused admits to having taken the axe from the house.

The jury will also be required to make a determination on whether the pieces of surgical gloves picked from the house by Inspector Tirant and Superintendent Elizabeth form part of those referred to by the accused persons in their confessions (PE 27, 28 and 25). Kilindo stated "my glove was torn only when we were leaving".

You now know from the evidence of Inspector Cecile, Inspector Leon, and Inspector JerrisDogley that Garry Payet led a police team to a banana garden near his home at Anse Aux Pins, Caryol Estate and from underneath a heap of rubbish removed a small black bag (PE 22) containing an assortment of jewellery which he stated had taken from the woman's house at Anse à La Mouche. You also remember that one Jacqueline Rose (PW 16), Payet's ex-girlfriend had identified the black bag and its contents which fell out of Payet's pocket on 1 November 2007. By that time Terry Laporte (PW 17) was present and though stationed a distance away clearly saw and identified that black bag. Nigel Pillay (PW13) handed over the yellowish bag (PE 17) containing jewellery to the police. What matters to this case is the fact that Kilindo came with the said bag to Anse Aux Pins and gave it to Nigel Pillay. It is immaterial whether Kilindo was giving it to him in exchange for drugs, as suggested during cross-examination. All this evidence corroborates Garry Payet's statements and that of Kilindo in a number of aspects. Members of the jury, in case you believe all the above independent witnesses and their testimonies then you should ask yourselves the following questions. Where did Garry Payet and Kilindo get the black and yellowish small bags respectively? If in the woman's house as they both confess who gave them permission to enter the house?

Nobody, not even the police, had any idea of the said bags being under the rubbish and in the possession of Nigel Pillay respectively. The two accused have not claimed ownership of the bags nor their contents. Could the reason be found in the fact that Ms Cecile Hodoul (PW8) and sister to the deceased

had not only donated some of that jewellery to the deceased but also positively identified it as belonging to her said sister. Further, Nonna Papadakis (PW9) stated that all the items in PE 22 belonging to her had been left on 31 October 2007 in the wardrobe and some on the table in the bedroom where she was staying. Who removed it from the house?

Only you members of the jury will have to answer those questions from the evidence on record and then decide whether the above pieces of evidence provide corroboration to the statements of first, Kilindo (PE 25) and second, Payet (PE 27 and 28) in some material particulars.

Ladies and gentlemen of the jury, we have evidence right before us adduced by Andrew Michel Joseph (PW25) who was an SPTC bus driver in 2007 and knows Garry Payet very well. On either 28 or 29 October 2007, at 18:55 hrs Garry Payet and about four to five other people had boarded the bus at Anse Aux Pins which was on its way to Baie Lazare via Les Cannelles and disembarked at Anse à la Mouche. On 31 October 2007, Garry Payet among other people boarded the same bus being driven by the same driver at the same place and time and disembarked at Anse à la Mouche. It should be noted that from the blue jeans trouser pocket, one of the items recovered from the beach (PE 26 A) a bus pass/ticket dated 31 October 2007, 18:57 hrs for the journey Anse Aux Pins to Anse Gaulette, Baie Lazare was retrieved. Additionally, David Lai Moy (PW11) a Marine Engineer stated that on the night of 31 October 2007, at about 11:00 pm while returning from Baie Lazare via Les Cannelles road gave a lift to both accused, whom he sat with in the cabin of the pick-up truck and later positively identified in the dock, from the Anse à la Mouche road junction to Anse Aux Pins at the bus terminal. Jean Mark Dogley (PW12) arrived at the 'Izup' bar, Anse Aux Pins on 31 October 2007, at about 11.00 pm. He interacted with Garry Payet at that place and also received a drink from him. Cyril Laporte (PW18) is the manager of 'Izup' bar and on the same day at about 11:30 pm he was behind the counter when two gentlemen, whom he described and later identified as being the accused, came into the bar. The dark-skinned man purchased beers and cigarettes worth 50 Euros and later more purchases for another 50 Euros (PE23). That at one point in time he called the other man, of a fair complexion,

who obliged and pulled out of his trouser and showed to Cyril Laporte a plastic bag containing Euros.

Members of the jury, this is very important evidence bringing out a link between the two accused persons. If you believe that these witnesses were speaking the truth then you will see that their evidence corroborates the statements of both accused in numerous material particulars. For instance, each accused talks of getting a lift at about 11:00 pm from Anse à la Mouche junction and disembarking at Anse Aux Pins around same time, 11:30 pm, and going into the 'Izup' bar to buy drinks and also change the foreign currency. This driver places them together. Again they entered the bar together. What a coincidence! Members of the jury do not forget that it was at the instructions of Kilindo that Garry Payet came to pull out the money (Euros) to show to Laporte. I have not even the slightest doubt that the two accused persons were all the time not only acting together but also with a common intention and for a common purpose.

On the same subject, the author, J. P Bishop on *Criminal Law*, Vol 1 (3rd Ed) 439 wrote:

When two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or of all, proceeding severally or collectively, each individual whose will contributed to the wrong doing is in law responsible for the whole, in the same way as though performed by himself alone.

You may have noticed by now that all through their addresses both defence counsel have not said anything regarding section 23 (supra). There is however ample evidence to establish common intention. But this is for you to finally determine as judges of facts. In addition, given the above circumstances, timing and evidence not only connecting both accused to the house in question but also placing them inside the house at the material time, and considering the manner in which the deceased was tied with ropes and strings, see photographs No. 2 to 6 (PE27), it is my considered view that this was not the work of one person but some concerted effort, and Kilindo and Payet must have been the people in that house on that fateful night. Garry has further admitted to this fact in his unretracted statement (PE29) which also shows

the pre-planning and subsequent execution of the mission. Moreover, Kilindo in no uncertain terms confessed to tying the woman's hands. The possibility of any other person having entered that house on that night especially at the material time has been excluded. My opinion is not binding on the jury; you are entitled to form yours on these pieces of evidence unless you agree with me.

CIRCUMSTANTIAL EVIDENCE

You will recall that there is no direct evidence for instance an eyewitness placing any or both of the accused persons in the house in question. Nobody saw them commit the alleged offence of murder. However there are confessions some of which have been retracted. In such circumstances the law allows and provides for circumstantial or indirect evidence to be considered. I must however warn you that prosecution has relied upon some circumstantial evidence, which can be powerful, but you should examine it narrowly and with care to be sure that it is reliable because such evidence can easily be manufactured to cast suspicion on another.

What then is circumstantial evidence? Both prosecution and defence counsel have already addressed you on this subject. It is now my turn to offer more guidance on this very crucial part of the case. Circumstantial evidence is indirect evidence that tends to establish a conclusion of inference. It is evidence of circumstances surrounding an event or offence from which the fact in issue may be inferred.

It has been said that circumstantial evidence has to be considered as a chain and each piece of evidence is a link in the chain. But that is not so, for, if any one link broke the chain would fall. Circumstantial evidence is more like the case of a rope comprising several strands or cords. One strand of the rope might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence – there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than mere suspicion. But the whole taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of. See *Teper v R* [1952] AC 480.

But you must also note that where a case depends exclusively on circumstantial evidence, it is necessary for the judge to direct the members of the jury, expressly, which I hereby do, that you must find, before returning a guilty verdict (and therefore before a conviction being entered), that the inculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. The prosecution has to exclude any alternative possibility that might point to the innocence of the accused. Further, before drawing the inference of guilt from circumstantial evidence, the jury must also be sure that there were no other circumstances weakening or destroying the inference of guilt.

You have heard a lot of criticism of this type of evidence by the defence counsel urging you even to reject it totally. Citing the likely dangers in relying on circumstantial evidence, Mr Elizabeth related to you a number of illustrations, one of them about a man dressing and talking strangely to people whereupon he is mistaken for a homosexual. The other was about an unemployed woman who dresses well and keeps in the company of different men so much so that the people around her think she is a prostitute. Then there was the example of Ti Jean who when milking his cow had to strap the cow's legs and tail and eventually Ti Jean's wife filed for divorce because she thought that Ti Jean was going to commit the offence of buggery (anal intercourse with an animal) with the cow.

Members of the jury I must tell you that in all his examples there is one thing that was missing and which is not missing in the case before you. In Mr Elizabeth's examples we do not have the version of the accused, Ti Jean. Ladies and gentlemen of the jury the circumstances surrounding the death of Mary-Anne Hodoul have now been made very clear to you with the evidence adduced on record. You also have the four confessional statements of the two accused persons in addition to their testimonies made from the dock. Further, you may wish to particularly consider the following pieces of evidence: the accused visiting the vicinity of the house in question a day before the murder, being transported to the same place on the day of the murder and taking cover at the

beach opposite the house, burgling the house, tying the hands and legs of the woman before ransacking and stealing various items from the house, gagging and strangling the woman and later being arrested with various items which were not only in the house of the deceased at the time of her death but also belonging to her. These are but just a few examples of the circumstantial evidence that needs to be treated or looked at collectively. I hereby therefore direct you to put together all the pieces of circumstantial evidence that there is in this case so that it only points to the irresistible guilt of the accused beyond reasonable doubt.

CONCLUSION

I shall remind you again that you are to consider whether the prosecution has proved all the three elements of murder beyond reasonable doubt. Although the prosecution and defence counsel have addressed you that there is no contention with regard to the fact that with malice aforethought Mary-Anne Hodoul was murdered by means of an act which is unlawful, you are required to satisfy yourselves as well basing on the evidence. One major contention remains for you to resolve – the question of who caused the death of Mary-Anne Hodoul. I must point out to you that if you entertain any doubts or you are not satisfied that it was the accused who killed Mary-Anne Hodoul, then you must without hesitation return a verdict of ‘not guilty’ and acquit them otherwise you find them ‘guilty’. Even where one of the elements of murder has not been proved beyond reasonable doubt you must acquit the accused.

Ladies and gentlemen of the Jury, I have come to the end of my summing-up. It remains for me only to state a few matters that you must keep in mind when you retire now to deliberate on the verdict.

I must also warn you at this point that you must not allow yourselves to be swayed by what you have read about the case, or what you must have heard about the case from the media or from the newspaper. So, you must ignore everything that you have heard from these quarters but confine yourselves to the evidence that you have heard from the witness box and to the directions on the law given by me.

You must free yourself of all these things. That is why when one puts on the mantle of the judge and sits on judgment over his fellow human beings, as you are doing now, one is expected to act and behave rationally. One must be guided by the mind and not by the heart. That is, one must not allow emotions, feelings and political affiliations to cloud reason when sitting on judgment. However, one is not expected to become a robot, because a robot cannot come to a rational decision. In other words as judges of facts you must base your verdict on the evidence given in Court from the witness box. You must apply the law to facts. You must not approach the task you have undertaken in order to settle a personal grudge or to satisfy a personal prejudice.

Remember that each of you has taken an oath to return a true verdict according to the evidence. No one must be false to that oath. You have a duty not only as individuals but you have to act collectively. That is the strength of the jury system. Each of you takes into the jury room with you your individual experience and wisdom. You will do that by giving your views and listening to the views of the others. There must necessarily be discussion, questions, arguments, and give and take within the scope of your oath. That is the way in which agreement is reached.

Ladies and gentlemen of the Jury, I would also like to emphasize another point. I have listened to this case just as you have. Perhaps I have done so with a more experienced ear than you have. It does not mean with a more accurate ear. I am simply more used to hearing evidence than you. It does not mean that I am more likely to get it right than you are and even if I were, that is not the way it is done in a jury trial. You are the ones to decide the case on facts, and so my views of facts are not binding on you. You should not allow my views on facts in any way to influence you to come to a conclusion which does not fully reflect your own views on it. But you are bound by my direction on the law.

In this case you are only to allow yourself to be guided on the legal points or matters which I have put to you in the course of this summing up. It is for you to decide on the whole of the evidence whether you find the charge of murder has been proved or whether you find that the accused are not guilty of

murder or if you have reasonable doubts, in that case you must give the benefit of that doubt to the accused and acquit them.

Finally members of the Jury, when you retire to consider your verdict in a short while you should make an effort to come to an unanimous verdict, that is a verdict upon which you all agreed, ie a collective verdict. It is likely that there may be arguments and differences of opinion, so there must be a willingness to listen to one another. As I have just said your verdict should be unanimous. The time is now 2:00 pm, you may retire to consider your verdict. Should you require any guidance on the law or any other matters please feel free to contact me through the Court Orderly. However, any further or such guidance will be done in the open Court in the presence of the accused and their counsel as well as those for the prosecution. Like I have already told you all the exhibits and statements are available and can be accessed by yourselves through the Court Orderly.

Member of the Jury, you may proceed to consider the verdict.

Thank you.

Record: Criminal Side No 67 of 2007