IN THE SUPREME COURT OF SEYCHELLES

The Republic

Vs

Gonzaquee Sidonie of

Mont Buxton, Mahé **Defendant**

Criminal Case - CR No: 59 of 2008

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Mr. D. Esparon for the Republic

Mr. F. Ally for the Defendant

D. Karunakaran, J

JUGDMENT

The defendant **Gonzaquee Sidonie** stands charged before the Court with the offence of "Manslaughter" contrary to Section 192 and punishable under Section 195 of the Penal Code. These sections read thus:

192. *Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed "manslaughter'. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.*

195. *Any person who commits the felony of manslaughter is liable to imprisonment for life.*

The particulars of the charge allege that the defendant on 10th July 2008, at Mont Buxton, Mahé unlawfully killed Herve Sidonie.

The defendant denied the charge. The case proceeded for trial. The defendant was duly defended by Learned Defence Counsel Mr. Ally throughout the trial. The prosecution adduced evidence calling 14 witnesses to prove the charge against the defendant. After the close of the case for the prosecution, the Court found that the defendant had a case to answer in defence for the offence he stands charged with. He was accordingly, put on his election in terms of Section 184 (1) of the Criminal Procedure Code. The defendant elected to adduce evidence in defence. He gave his own testimony and also called one more witness in support of the defence.

The facts of the case as transpire from evidence are these:

The defendant is an elderly person. He is now 68. He is living with his family at Mont Buxton. In the past he used to work as a mechanic but now he is retired and a pensioner. His wife, who is 71, is a chronic psychiatric patient suffering from a mental disorder. They had five children. The elder son Joliffe is now 40. He is also a psychiatric patient and being taken care of by his elderly parents. The younger son Herve Sidonie hereinafter called the "deceased" is the one who has allegedly been killed unlawfully by his father, the defendant herein. The deceased died on 10th July 2008, at the age of 30, following a stab injury, which the defendant admittedly inflicted on him whilst both had engaged in a fight at their family residence at Mont Buxton. According to Dr. Marija Zlatkovic (PW14), a Pathologist - who conducted autopsy on the body of the deceased - the cause of death was *internal bleeding* due to stab injury namely, a lacerated wound between 6th and 7th ribs on the right side with

penetration through muscles and pericardial sac, 8. 5 cm in depth. The Pathologist also testified that a wound of that nature could have possibly been caused by a sharp-edged weapon with considerable force as it had penetrated deep into the chest and had punctured the right anterior side of the heart of the deceased. If the heart is thus punctured according to the pathologist, death could occur to the injured in ten seconds.

Be that as it may, at all material times the deceased was married to one Jamila Sidonie (PW13), a woman police constable and had two children with her. In fact, the deceased had left his parent's home at Mont Buxton a couple of years before the fatal incident and had been living with his family renting a house on his own at Belonie.

Jamila, the wife of the deceased testified that on the 10th July 2008, in the morning she went to town with her husband. She then left him in town and went to assume duty at the Central Police Station as custody officer. At around 1700 hrs, while she was on duty, a police officer Mr. Monthy (PW9) called her and said that he received a phone call from the defendant stating that he had stabbed his son Herve Sidonie and he did not know then if his son was dead or alive. Following this information, Jamila with other police officers Messrs. Monthy and Dugasse rushed to the house of her father-in-law namely, the defendant at Mont Buxton. As she was approaching the house, she found her husband lying down on the road side near the defendant's residence. The testimony of Jamila in this respect runs thus:

> *"Upon leaving the main road going to the side road I found my husband lying down face up. We stopped. I went close to him. His eyes were open facing up. Both his hands were spread out. There was blood stain on the right side of his*

shirt. I lifted the shirt to look where the blood was coming from. I saw a small stab wound. There was little blood but not flowing. I checked the pulse there was none. I hit him on the face and asked him to wake up but there was no response. Monthy went in the house where he found his father. I did not pay too much attention because I was still with my husband. Then he came with my father in law with a knife which he supposedly committed the offence with. When passing near me he said <Monn bez ou liki ou maman, i ava les don mon gren>..... etc.

Once I was at the residence of the defendant when the deceased had gone to see his mother and he had an argument with his father and his father told him to stop and leave him alone and then the father took a knife and ran after him but then he (the deceased) ran away. That was about a year ago"

Police Officer Mr. Mike Monthy (PW9) also testified that as soon as he saw the deceased lying down on the side-road without any movement, he immediately called Central Police Station for taking the deceased to hospital for emergent medical assistance. Whilst Mr. Monthy was making the call, the defendant came to him holding a steel knife - a sharp 22 centimetre blade - soaked with a red substance which looked like blood - exhibit P4 - and showed it to him saying that that was the knife he used to stab the deceased. Mr. Monthy took possession of the knife from the defendant and immediately arrested and handed him to PC Dugasse, who also had accompanied him to the scene. Subsequently, the defendant was taken to Central Police Station and kept in custody pending investigation. The body of the deceased was taken to the English River Hospital, where Dr. Vivekanand (PW3) examined the deceased and

declared him dead. According to the doctor, the deceased had already been dead before they brought him to the hospital. The same evening at around 6.30 pm, police officer Ms. Dolly Parcou (PW1) photographed the scene of occurrence including the location where the body of the deceased was lying down as sketched by Mr. Monthy (PW9), a bottle of Guinness kept on a small wall at the house of the defendant, broken wardrobe in defendant's bedroom, a minor injury found on the left hand of the defendant, body of the deceased showing a penetrated stab injury on the right side of his chest etc. The photo album containing all those 20 photographs was produced in evidence and the same was marked as exhibit P1.

0n the 10th July, 2008, that is, on the same day of the alleged incident at 19. 25 hours, the defendant, whilst in police custody at the Central Police Station admittedly, gave a free and voluntary statement to the Detective Police Constable Mr. Labiche (PW10) concerning the incident. This statement was admitted in evidence and marked as exhibit P8, which reads in verbatim thus:

> *"Mr Labiche has explained to me that I need not give any evidence but I want to explain to the Police what happened today. I, Gonzaque Sidonie, am sixty-eight years old and all my life I have lived at Mont Buxton. Today Thursday the 10th of July 2008 I woke up at 7.30 am. I swept my place and cooked for my wife Daphne Camille. My wife is mentally sick. I have five (5) children and their names are: Erica Sidonie, Cecile Sidonie, Cynthia Sidonie, Molly Sidonie and my son Herve Sidonie. At around 8.30 am my daughter Erica picked me up in her jeep as she used to, and took me to her place at Pte Aux Sel where I*

spent the day. I left Erica's place around 15.30 hrs and took a bus and alighted at the Bus Stand in town. I then did a small shopping at SMB and then went home at Mont Buxton. I arrived home around 16. 35hrs and at that time Daphne was at her niece Rosina Constance who live lower down. I prepared myself to cook dinner. I brought the spices, that is to say; ginger, garlic and onions near a small wall facing the secondary road. At that time I had a small shinning knife which I habitually use to clean the ingredients with me while cooking. Around 17.30 hrs while I was preparing the things to cook my food and was still outside my house near the small wall, my son Herve Sidonie arrived coming from the direction of English River. It seems that he had come in short cut that ends near my house. I wish to add that it is several times now, that each time HERVE is drunk he creates trouble with me. He swears and threatens me. Even in the past he has broken louver blades at my house and also broke empty pints there. I wish to add that yesterday around 21 .00 hrs, Herve who was drunk came to my place. My wife Daphne asked him what he was looking for. He answered, "I have no right to be here? ". Then I told Herve:" This is not the reason". Then he left without doing any problem. As I was telling you I was preparing diner and Herve was drunk. He approached me and said, "Yesterday you throw me out" and I replied by saying," yesterday I did not throw you out". HERVE started swearing at me and there was a time when he pushed me against a wall and I got a scratch on my left hand. At that time my small shining knife which I use to prepare my ingredients was there on the wall, I took the knife and stabbed Herve in his chest, I stabbed him once. After that Herve ran on the secondary road and fell further down. I called the Police and told them what happened.

The Police came and I gave a Policeman the knife which I stabbed Herve with and told them that it is the knife which I stabbed Herve with"

The defendant's neighbours Mr. Jean Sydney Pool (PW11) and Mr. Philip Oredie (PW12), who had known the defendant's family for more than 20 years also testified for the prosecution. According to these neighbours, the relationship between the defendant and the deceased had always been acrimonious. The deceased was a habitual drunkard. Whenever he visited his parents, he used to have arguments with his father. However, on the fateful day, although both neighbours could hear some arguments at the material time, none of them witnessed any physical struggle between father and son or the circumstances in which the defendant stabbed the deceased. In view of all the above, it is the case of the prosecution that the defendant committed the offence of "Manslaughter" as particularised in the charge first above mentioned.

On the other side, the defence did not dispute the material facts pertaining to the alleged incident of stabbing and the resultant death of the deceased. In defence, the defendant gave evidence to the effect that the deceased was drunk, aggressive and abusive at the time when he came to the defendant's house and developed arguments with the defendant. During arguments, according to the defendant the deceased jumped on him, pushed to the nearby wall and provoked him. He sustained a minor scratch on his arm. Moreover, the defendant testified that consequent upon the aggressive behaviour he feared at the material time that the deceased might take possession of the bottle of Guinness, which the deceased had kept on a nearby wall and might hit him with that bottle. As a result of such provocatively aggressive behaviour of the

deceased at the material time, the defendant out of fear acted in self defence and caused the said injury to the deceased. The relevant part of the defendant's evidence runs thus:

> *"While cleaning the ginger, garlic and onion I heard someone yelling on the way up. It was Herve. He was coming my way. He came into the yard where I was. Then he started swearing at me. …… He said "cant of your mother. I will fight with you today. If it is not me it will be you". He had a pint of Guinness with him. And he put it on the wall next to me. I was very afraid. I thought he was going to take the bottle of Guinness and hit me with it… I stopped him from arguing but he pressed on me and pushed me against the wall and I hurt my hand on the left side. I tried to move but he was pushing me. He was about to jump on me. I was very afraid. I thought he was going to take the bottle of Guinness and hit me with it. I took the small knife that I was using and pressed it against his stomach but not strongly"*

Mr. Dave Constance (DW2), a friend of the deceased also testified for the defence. According to this witness on the fateful day from 10 am until 5 pm the deceased was in his company at English River. Both of them were consuming alcoholic beverages during that period. While leaving his company at around 5 pm, the deceased was bit drunk. He told Mr. Constance that that day was his last day and he would not be able to see him again as he was going to die as God was calling him. The deceased also told that he was going to his father's house to make trouble. In the circumstances, the defendant claims that he only acted in self defence that resulted in the death of the deceased.

Mr. F. Ally, learned defence counsel in his final submission contended that the defence has proved that the defendant at the material time acted in self-defence since he feared that the deceased might harm him with the bottle of Guinness kept on the nearby wall. Hence, Mr. Ally argued that the prosecution had thus, failed to establish their case against the defendant beyond reasonable doubt that the defendant did not act in self defence. This Court therefore, cannot convict the defendant in this matter for the offence charged. For these reasons, learned defence counsel urged the court to dismiss the charge and acquit his client.

On the other side, Learned State Counsel Mr. Esparon submitted in reply that the evidence adduced by the prosecution including the testimony of the police officers were very reliable, strong, consistent and cogent. According to counsel, there was no necessity for the defendant to apply such unreasonable and unnecessary force against the deceased at the material time. There was no imminent danger so as to necessitate the defendant to take a knife and stab unlawfully the deceased as he did, in the circumstances. He further submitted that the prosecution has established the case against the defendant beyond reasonable doubt and has discharged its evidential burden that the defendant did not act in self defence in stabbing the deceased. He submitted that the Court therefore, should rely and act upon the evidence on record and convict the defendant for the offence he stands charged with.

I meticulously perused the entire evidence on record. I diligently analysed the submissions made by both counsel. Obviously, the only issue, which requires determination in this matter, is that of "Self-defence". That is the only line of defence the defendant has obviously, relies upon to exonerate himself from criminal responsibility for his use

of force allegedly to defend himself, from an imminent peril of attack by the deceased. Indeed, Section 18 of our Penal Code reads thus:

> "*Subject to any express provisions in this Code or any other law in operation in Seychelles criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English common law".*

At English common law the defence of self-defence operates in three spheres. It allows a person to use reasonable force to:

(1) Defend himself from an attack.

(2) Prevent an attack on another person; and

(3) Defend his property.

In any case Right to Self Defence is the first fundamental right of nature. A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened. In the case on hand the defendant claims that by stabbing the deceased at the material time, he was only using force necessary to defend himself from a possible attack by the deceased, who at the critical time, potentially had access to a Guinness bottle kept on a wall close to the place where the incident happened. The defendant thus claims that he had to act as he did out of "necessity". On the contrary the prosecution contends that there was no necessity for the defendant to use such an unreasonable force having regard to the circumstances surrounding the fatal attack. In this respect two crucial questions arise for determination. They are:

1. *Was there any attack by the deceased to the degree of putting the defendant in imminent peril at the material time, necessitating him to use such a force as he did, to defend himself? and*
2. *In any event, did the defendant use reasonable force necessary to defend himself against the attack if any, by the deceased having regard to the entire circumstances of the case?*

It is settled position of law that in order to justify the act of causing death of the assailant, the defendant has simply to satisfy the court that he was faced with an assault which caused a reasonable apprehension of death or grievous hurt. The question whether the apprehension was reasonable or not is a question of fact depending upon the facts and circumstances of each case and no strait-jacket formula can be prescribed in this regard. The weapon used if any, the manner and nature of assault and other surrounding circumstances should be taken into account while evaluating whether the apprehension was justified or not.

Having said that, for answering the question formulated above, one ought to examine the following facts and circumstances in the light of the principles enunciated in ***R vs. Francois*** - ***Case No: 3 SLR (1975):-***

1. **Attack and Imminent Peril:** At first place, the issue of self defence would succeed only if there had been an attack putting the defendant in imminent peril. In the instant case, the deceased who had been under the influence of alcohol developed arguments, uttered abusive words and has admittedly pushed the defendant using his hands in the heat of the moment. In fact, the deceased

had no weapons on him nor had any lethal object or instruments in his possession to cause any physical harm - let alone a grievous harm - to the deceased at the relevant time. Hence, as I see it, there was no attack by the deceased to the degree of putting the defendant in imminent peril or perceived threat at the material time so as to necessitate the defendant use such a lethal force as he did, to defend himself. There was no justification for the defendant to use such a lethal force, in the name of self-defence alleging a farfetched fear arising from an outstretched imagination of the defendant over the presence of a bottle of Guinness, which remained intact on a wall in the vicinity and so I find.

2. ***Reasonable Reaction:*** A person who is attacked may do what is reasonably necessary to defend himself. Indeed, the defendant herein has stabbed in the chest of the deceased, which reaction to the situation on the face of it, is not only unnecessary but also unreasonable in the given circumstances of the case. No reasonable person in good sense would overreact and use such a lethal force against another, who simply embarks on an aggressive argument, pushes especially, with bare hands and that too, whilst under the influence of alcohol. Self defence is a straightforward conception not involving abstruse legal thought; it is a matter of good sense based on commonsense. Hence, as a man of the world, not necessarily as a judge, I find that the defendant has acted unreasonably and unnecessarily when there was indeed, no imminent peril or any potential threat from the deceased at the material time and place.

3. ***Reasonable Force:*** The general principle is that the law allows only reasonable force to be used in the circumstances and, what is

reasonable is to be judged in the light of the circumstances as the defendant believed them to be whether reasonably or not. In assessing whether a defendant used only reasonable force, Lord Morris in *Palmer v R* [1971] AC 814, felt that a jury should be directed to look at the particular facts and circumstances of the case. His Lordship made the following points:

> *"A person who is being attacked should not be expected to "weigh to a nicety the exact measure of his necessary defensive action If the jury thought that in the heat of the moment the defendant did what he honestly and instinctively thought was necessary then that would be strong evidence that only reasonable defensive action had been taken"*

Herein, it is also pertinent to note that in *R v Owino* [1995] Crim LR 743, the Court of Appeal firmly denied permitting a subjective test in examining whether force used in self-defence is reasonably proportionate. The true rule is that a person may use such force as is objectively reasonable in the circumstances as he subjectively believes them to be.

Having said that, the defence of self-defence will fail if the prosecution could show beyond reasonable doubt that what the defendant did was not by way of self-defence. Coming back to the case on hand, having carefully examined the entire evidence on record, I conclude that what the defendant did in the circumstances was not by way of self-defence. He has committed the act in question undoubtedly, out of uncontrolled anger which he had accumulated over the years against his son, the deceased. As an angry man he has turned his back on reason due to a kind

of pain and inner convulsion, This is evident from what he stated to his daughter-in-law Jamila (PW13) at the scene of crime, soon after he had admittedly stabbed the deceased i. e "*<Monn bez ou liki ou maman, i ava les don mon gren>.*

In the light of all the above, I find answers to the above questions as follows:

1. *There was no attack by the deceased to the degree of putting the defendant in imminent peril at the material time, necessitating him to use such a force as he did, to defend himself.*
2. *The defendant used unreasonable force by stabbing the deceased on his chest, which lethal force was not at all necessary to defend himself as he was not put in any imminent peril having regard to the entire circumstances of the case.*

To put it simply, the defendant did not act in self defence when he stabbed the deceased at the material time, place and in the circumstances that gave rise to the fatal incident.

The last but not least, is the issue as to the standard of proof. In fact, the standard of proof defines the degree of persuasiveness, which a case must attain before a court may convict a defendant. It is true that in all criminal cases, the law imposes a higher standard on the prosecution with respect to the issue of guilt. Here the invariable rule is that the prosecution must prove the guilt of the defendant beyond reasonable doubt or to put the same concept in another way, the court is sure of guilt. These formulations are merely expressions of high standard

required, which has been succinctly defined by ***Lord Denning (then J.) in Miller Vs. Minister of Pensions [1947] 2 All. E. R p372&973*** thus:

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

Having said that, on a careful analysis of the evidence on record firstly, I find that the prosecution evidence is so strong and no part of it has been discredited or weakened or contradicted by any other evidence on record. I am sure and find on evidence that the defendant on 10th July 2008, at Mont Buxton, Mahé unlawfully killed Herve Sidonie. The defendant did not act in self-defence in the entire episode of the stabbing incident. Secondly, I am satisfied that the prosecution has proved the case beyond reasonable doubt covering the essential elements of the offence the defendant stands charged with.

In the final analysis, therefore, I find the defendant **Gonzaquee Sidonie** guilty of the offence of "Manslaughter" contrary to Section 192 and punishable under Section 195 of the Penal Code. Accordingly, I convict him of the offence he stands charged with.

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D. KARUNAKARAN

JUDGE

Dated this 14th day of May 2010