



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No. 14 of 2018

BETWEEN

Republic

AND:

Weron Denuga

Before: Khan, J
Date of Hearing: 18, 19 and 24 June 2019
Date of Judgement: 2 July 2019

Case may be cited as: *Republic v Denuga*

CATCHWORDS:

Criminal Law – Where defendant charged with intentionally causing harm contrary to s.71 of Crimes Act 2016 – where the defendant raises the defence of self defence which is ignored by the police.

Self defence raised – prosecution has the burden of satisfying that the defendant was not acting in self defence – prosecution unable to discharge that burden as it did not accept that issue of self defence.

Held – defendant acquitted.

APPEARANCES:

Counsel for the prosecution: F Lacanivalu
Counsel for the defendant: R Tagivakatini

JUDGEMENT

INTRODUCTION

1. The defendant is charged with one count of intentionally causing harm. The charge reads as follows:

Statement of Offence

Intentionally causing harm contrary to s.71(a), (b), (c) (ii) of the Crimes Act 2016.

Particulars of offence

Weron Denuga on 12 March 2017 at Nauru, intentionally engaged in conduct and the conduct caused serious harm to Beau Adeang and the said Weron Denuga intended to cause serious harm to Beau Adeang by the conduct.

FACTUAL BACKGROUND

2. The defendant is a 24-year-old security officer. On 12 March 2017 the defendant was living in Location Block in Denig (Location) with his father, his step-mother, 2 sisters and 3 younger step-brothers. His sisters' names are Meruwa Denuga(Meruwa) and Cindre Denuga(Cindre).
3. On the night of 11 March 2017, the defendant slept at the family house at Location and left his house early in the morning to go Aiwo. He returned to his house between 7 to 8 am to collect his fishing gear.
4. As the defendant entered the house, he saw Beau Adeang (complainant) upstairs and asked him as to what he was doing inside the house and according to the defendant he did not say anything in response.
5. Both the complainant and defendant did not know each other at the material time and according to the defendant the complainant was a total stranger.
6. When the defendant saw the complainant, he was outside Meruwa's bedroom door and knocking on the door in an attempt to gain entry.
7. The defendant asked the complainant to leave and according to him he resisted and he dragged him down the stairs and punched him twice. His younger brother upon hearing the commotion woke up and intervened and the complainant left the defendant's house.
8. The matter was reported to the police by the complainant's father, Leon Adeang, on 12 March 2017 at around 1.17pm. The First Information Report (FIR) states as follows:

Date: 12 March 2017 - Time: 1.17.03pm - HR Leon Adeang rang into CPS reported one Mr Weron Denuga for assaulting his son namely Beau Adeang, and did cause serious injuries to his son, dislocated jaw. Complainant informed the police that the victim was conveyed to RON Hospital for a medical examination.
9. On 14 March 2017 the defendant was arrested at 6.34pm from his house in Location and taken to the Nauru Police Station where he was interviewed under caution and the allegation was put to him that: 'Weron Denuga, it is alleged on the date Sunday 12 March 2017 you allegedly intentionally caused serious harm with Mr Beau Adeang. Do you understand?'

10. Unknown to the defendant his 2 sisters Meruwa and Cindre were drinking during the previous night and they had come home with the people they were drinking with which included the complainant. There was a dispute that the sisters and in particular Meruwa did not invite the complainant to her house and he just followed his friend, Van Dam Scotty, who was invited by Meruwa.
11. When the defendant saw the complainant his sister Cindre was sleeping in the lounge and Meruwa was sleeping with the people that she was drinking with (this was not known to the defendant) and the complainant was outside Meruwa's door.

POLICE INTERVIEW

12. The record of interview was conducted on 14 March 2017 and prior to that the police obtained a statement from the complainant in which the complainant stated that he was invited to the drinking party at Meruwa's house so the police were treating this case as the complainant being invited by the defendant's sister and later assaulted. However, as I stated earlier the defendant had no knowledge of how the complainant got into the house.
13. The record of interview states as follows from question 13 to 21:

Question 13 Weron Denuga, you escort Beau down to the stairs until you both reach in the kitchen area what can you say?

Answer: Yes I escort Mr Beau down the stairs.

Question 14: Weron Denuga, did you throw a right arm with closed fist from behind which is Mr Beau's right-side facial area where Mr Beau fell to the ground, what can you say to that?

Answer: Mr Beau was facing me when I punched him on the facial area, due to that he was holding on to the wall refusing to leave.

Question 15: Weron Denuga, when Mr Beau stood up he told you that 'his jaw's hurt' and he didn't fight back, again you throw another closed fist to his left facial area, and again telling him 'is this a place for you to consume alcohol', what can you say to that?

Answer: I don't recall Beau saying anything so I do.

Question 16: Weron Denuga, where did you come from earlier before you arrive at location, what can you say to that?

Answer: I came from Aiwo, and went to pick my brother for scuba diving.

Question 17: Weron Denuga, who is in the house upstairs when you arrived, what can you say?

Answer: Making my way upstairs I saw my sister Cyndre sleeping in the lounge and I was walking and I saw Mr Beau knocking on Meruwa's room.

Question 18: Weron Denuga, is there anyone awake in the house? What can you say to that?

Answer: Only Beau was awake trying to open Meruwa's door.

Question 19: Weron Denuga, did you know how Beau get into the house, what can you say to that?

Answer: I don't know how Beau got into the house.

Question 20: Weron Denuga, did you know that in result of assault, Mr Beau received an injury by means of dislocating his jaw which is causing serious harm, what can you say to that?

Answer: I didn't expect this to happen for I knew that he also landed on the bucket of paints, having his facial area leading to the area.

Question 21: Do you agree that there were no threats against you to make you provide the answers?

Answer: I agree.

14. At Question 19 the defendant was asked if he knew how the complainant got into the house and his response was that he did not know. Although the police knew that he was invited by Meruwa according to the complainant's statement they did not give that information to him, nor did they make any efforts to ascertain as to what did he meant by saying as to how the complainant got into the house.
15. The police did not make any efforts to ascertain as to who were the other occupants of the house and as to whether they knew about the presence of the complainant and others at the drinking party.

COMPLAINANT'S VERSION

16. The complainant's version is that although he may not have been formally invited by Meruwa, he just followed his friend, Van Dam Scotty, who was invited so insofar as the complainant is concerned, he had the tacit approval of Meruwa. Meruwa in her evidence stated that the complainant was never invited to the drinking party or allowed to enter the house. Meruwa's version was not put to the complainant in his cross examination for him to comment on and this is directly in breach of the rule in *Browne v Dunn*¹ and because of this failure I accept that the complainant was an invitee of Meruwa.

DEFENDANT'S VERSION

17. The defendant left his house early in the morning and went to Aiwo and returned between 7 and 8am to collect his diving gear and upon entering the house he saw the complainant knocking on Meruwa's door. The complainant's evidence is that he got

¹ (1893) 6 R.67, HL

into the house between 10 and 11am and Van Dam Scotty's evidence is that they got into the house between 7 to 8am.

18. The defendant was not aware of the circumstances as to how the complainant got into the house. As one of the occupants of the house, as he entered the house, he saw the complainant knocking on Meruwa's door.

19. The defendant in his evidence stated:

That his thoughts were not good when he saw the complainant trying to open Meruwa's door as he was a total stranger. He asked the complainant as to what was he doing there and he did not give a response. He said that the complainant was very drunk and his breath smelt of alcohol. The complainant refused to leave because he was drunk and grabbed the doorknob of his sister's bedroom door. He demonstrated in court by holding onto the court room door as to how the complainant was shaking the door violently in an attempt to open it. The defendant then pulled him away and he still did not want to leave and when they were halfway down the stairs the complainant held onto the railings and that is when the defendant punched him on his face and he fell down and the complainant got up he again faced the defendant and that's when the defendant punched him again.

20. Because of the commotion that took place in the stairway the defendant's stepbrother, Saliono, woke up and intervened between the defendant and the complainant who by then was bleeding from his mouth.

CONSIDERATION

Self Defence

21. The defendant has raised the defence of self-defence.

22. S.51 of Crimes Act 2016 provides:

“ss(i) A person is not criminally responsible for an offence if the person engages in conduct consisting the offence in self-defence.

(ii) A person engages in conduct in self-defence only:

(a) The person believes the conduct is necessary:

- (i) To defend the person or another person; or
- (ii) To prevent or end the unlawful imprisonment or another person; or
- (iii) To protect property from unlawful appropriation, destruction, damage or interference; or
- (iv) To prevent unlawful entry to land or premises; or
- (v) To remove from land or premises a person who unlawfully entered; and

(b) the conduct is reasonable in the circumstances as the person perceives them.

23. In *Martin v R*² it was stated as follows by the Court of Appeal (UK):

“There was no dispute that Mr Martin had shot the 2 men. Mr Martin’s defence to the principal offences with which he was charged was that he was acting in self-defence. When this defence is raised the prosecution has the burden of satisfying the jury so that they are sure that the defendant was not acting in self-defence. A defendant is entitled to use reasonable force to protect himself, others for who he is responsible and his property. (See *Beckford v R* [1988] 1 AC 130).”

24. The defendant did his level best to raise the defence of self-defence in the record of interview. He stated in his answers at 14, 17 and 19 as follows:

14. Mr Beau was facing me when I punch him on his face due to him holding onto the wall refusing to leave.

17. Making my way upstairs I saw my sister, Cyndre, sleeping in the lounge and when I was walking further, I saw Mr Beau knocking on Meruwa’s room.

19. I don’t know how Beau got into the house.

25. Despite raising these matters the police ignored them and/or did not accept it. Unfortunately, the police did not look at this case with an open mind; they just treated the case as an ordinary case of assault. The response in answers 14, 17 and 19 was sufficient in my view for the police to accept and consider the issue of self-defence. Having failed to do so the prosecution has lost the opportunity to discharge the burden cast upon them that the defendant was not acting in self-defence.

26. In *Beckford v R*³ the Privy Council stated as follows at page 431:

“It is because it is an essential element of all crimes of violence that the violence or threat of violence should be unlawful that self-defence, if raised as an issue in a criminal trial, must be disproved by the prosecution. If the prosecution fails to do so the accused is entitled to be acquitted because the prosecution will have failed to prove an essential element of the crime, namely, that the violence used by the accused was unlawful.”

27. In this case I sit both as Judge of law and fact (both as Judge and jury).

28. In *Martin v R* (supra) it was stated as follows at [5], [6] and [7]:

[5] In judging whether the defendant had used reasonable force, the jury has to take into account all the circumstances, including the situation as the defendant honestly believes it to be at the time, when he was defending himself. It does not matter if the defendant was mistaken in his belief as long as his belief was genuine.

[6] Accordingly, the jury could only convict Mr Martin if either they did not believe his evidence that he was acting in self-defence, or they thought Mr

² (2001) EWCA Crim 2245

³ (1987) 3 All ER page 4 to 6

Martin had used an unreasonable amount of force. These were issues which were ideally suited to a decision of a jury.

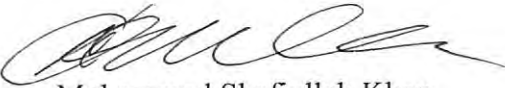
[7] As to the first issue, what Mr Martin believed, the jury heard his evidence and they could only reject that evidence if they were satisfied it was untrue. As to the second issue, as to what is a reasonable amount of force, obviously opinions can differ. It cannot be left to a defendant to decide what force is reasonable to use because that would mean that even if a defendant used disproportionate force but he believed he was acting reasonably he could not be guilty of any offence. It is for this reason that it was for the jury, as a representative of the public, to decide the amount of force which it would be reasonable and the amount of force which it would be unreasonable to use in the circumstances in which they found that Mr Martin believed himself to be in. It is only if the jury are sure that the amount of force which was used was unreasonable that they are entitled to find a defendant guilty if he was acting in self-defence.

29. The defendant found the complainant in his house at Meruwa's bedroom door. He was knocking on the door in an attempt to gain entry and the defendant said that 'his thoughts were not good'. He asked the complainant to leave and he kept on going back to the door and that is when he dragged him down the stairs and the complainant resisted and held on to the railings and the defendant punched him and when he got up he was facing him and he punched him again.

CONCLUSION

30. I find that the amount of force used to remove the defendant including punching him twice was a reasonable response in the circumstances of the case and therefore the defendant is acquitted of the charge of intentionally causing harm.

DATED this 2 day of July 2019


Mohammed Shafiullah Khan
Judge

