



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 38 of 2019

THE REPUBLIC

-v-

GEESON DEMAUNGA

JUDGMENT

*Before:* RM P. R. Lomaloma  
*For the Prosecution:* Ms. Susan Serukai  
*For the Defendant:* Mr. Joshua Scotty & Mr. Vinci Clodumar  
*Trial dates:* 6, 7, 12 & 12 May 2020  
*Submissions:* 5 June 2020  
*Judgment:* 12 June 2020

**Catchwords:** *Intentionally causing harm—section 74 of the Crimes Act 2016; self-defence—section 51 of the Crimes Act.*

**Introduction**

1. The accused stands charged with the following offence:-

**Statement of Offence**

**Intentionally causing harm:** Contrary to section 74(a)(b)(c) and (ii) of the Crimes Act 2016

**Particulars of Offence**

**Geeson Demaunga** on the 22<sup>nd</sup> of December 2019 at Boe District in Nauru intentionally caused harm to Kahiko Harris with a weapon.

2. The accused pleaded not guilty and the prosecution called 4 witnesses. After I found that the defendant had a case to answer, he elected to give evidence on oath and called two witnesses on his behalf.
3. The prosecution witnesses are:

- a. Kahiko Harris,
- b. Dr. David Demaunga,
- c. Noel Detenamo; and
- d. Frederick Spanner.

#### THE EVIDENCE

4. On the 21<sup>st</sup> of December 2019, a double birthday party took place at Quinlan Debao's residence at Boe for his two sons, who turned 16 and 21. Kahiko Harris (PW1), Noel Detenamo (PW2) and Frederick Spanner (PW3) were invited to the party. All three had been drinking before the party and they continued to drink there. Ed-coan Demaunga (DW2) was not invited to the party but his girlfriend, who had been invited, took him there with her. Ed-coan is the brother of the accused.
5. The party continued all night and a fight erupted at about 7:30 a.m. the next morning, 22<sup>nd</sup> December. All the prosecution witnesses who were at the party and Ed-coan Demaunga were drunk and there were many people involved in the two fights that resulted so there are understandable gaps in their evidence.
6. Frederick Spanner said that sometime around 4-5 in the morning of the 22<sup>nd</sup> December, he forced Ed-coan Demaunga to leave the party as he was not invited. Ed-coan said that he then called his father to come and pick him up. While he was talking to his father on the phone, one Frederick challenged him to a fight. Ed-coan said he was not up to it and Frederick told him if he moved or tried to leave, they were going to "gang up" on him, meaning they would beat him up.
7. Kahiko Harris testified that he had been drinking before the party and continued to drink at the party. He knows the accused as they went to school together. Kahiko Harris said the accused arrived at the party sometime in the morning when he saw the accused and his family arrive. He said they appeared "energized, hyped up and angry and "intending to start up a fight." Kahiko Harris said that the accused and his family first attacked Noel Detenamo and Frederick Spanner who then fought back. Kahiko then took out his phone and started filming the fight but as it got worse, he stopped filming. Noelle and Frederick were getting badly beaten up so he ran towards the fight to try and stop it. He saw the accused and approached him as he did not know anyone else in his group. He could not remember how he tried to

stop the accused as he was very drunk but he did remember that Frederick was lying down on the floor.

8. Kahiko said that when tried unsuccessfully to stop the accused. He does not remember if the accused said anything to him. Kahiko then testified, **“He then stabbed my stomach with a small knife. He pulled the knife out, I saw something silvery, long, thin and sharp. I had seen this type of object before. It looked like a needle that divers use to string together their catch. It felt like I was stung by a bee and then there was pain after about 2-3 seconds. I pulled up my bula shirt to check and my eyes saw it. I saw blood and that’s when I knew. I saw the wound—a little opening. I started to panic and I told people I had been stabbed and needed to be taken to the hospital.** Police then arrived and stopped the fight. The police took about 4-5 minutes to stop the fight. I was taken to hospital by police after they stopped the fight.”
9. In cross-examination, Kahiko was asked about a statement he gave to police in December in which he said the accused challenged him to a fight. Kahiko denied this and said “the police officer who recorded it needs to improve his English.” **He said he tried to stop the fight by pushing Geeson (the accused); that he thought Geeson was punching him and did not see the knife until after he felt the pain after being stabbed. Kahiko denied that the accused had collided with him and in the process, he had collided with the knife which the accused held in his right hand on his right side at belt level.**
10. In re-exam, **Kahiko said that after the accused pushed him, the accused ran to him and he thought he had punched him but instead the accused stabbed him.**
11. Dr. David Demaunga examined Kahiko at the hospital. He prepared a medical report which he identified in court. Dr. Demaunga said the victim suffered a laceration<sup>1</sup> below the umbilical with a diameter of 1.5-2 cm. In his opinion, it was caused by a something thin and sharp. In cross-examination, Dr. Demanunga said the wound was superficial and didn’t reach the underlying muscle.

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<sup>1</sup> A laceration is a wound that is produced by the tearing of soft body tissue. This type of wound is often irregular and jagged <https://medlineplus.gov/ency/imagepages/19616.htm> (US National Library of Medicine)

12. Noelle Detenamo was invited to the party. He did not see what happened to Kahiko Harris.
13. PW4 Frederick Spanner was invited to the party. He said he chased Ed-coan from the party earlier that morning. At about 6-7 a.m. he told Noelle to go with him to the road as Ed-coan was going to return to the party with his brothers because he had challenged him to a fight but Ed-coan refused. He expected Ed-coan to return with his brothers and they in fact did. In cross-examination, PW4 denied that he had told Ed-coan that they would "gang up" on him if he tried to leave the party.
14. PW4 did not see the stabbing of Kahiko Harris.

#### THE DEFENCE

15. At the end of the prosecution case, I found that the accused had a case to answer and I put him to his defence. His rights were given to him and he elected to give evidence on oath and called his brother and his father as witnesses.

#### Evidence of the Accused

16. The accused, Geeson Demaunga is 23. He is single and lives in Ijuw with his family. On 22<sup>nd</sup> December 2019, he was at home when his brother Ed-coan called him on the phone and told him to come to the barber shop at Boe District. He put on the clothes he was wearing the day before in which he said there was a knife he used to start his motor bike as he had lost the key. His father, Gad Demaunga decided to go and pick up his brother.
17. At the barber shop, he said he saw Frederick and Noelle fighting his brother Ed-coan. He was about 4 meters away when he saw this so he joined and stared fighting with Noelle. Frederick was knocked out and the fighting stopped. The accused said that was when everybody (from the party) came out and the second fight started. In this second fight, they were outnumbered so he took out the pocket knife. He continued, "We were fighting 6-7 people. I was leaning on the fence and they closed in on me. They were around me. When they were fighting me, I was crouching. I stood up and Kahiko ran towards me. The knife was in my pocket and I pulled it out when I could not take it. I just had it by my side (**demonstrated with the knife in his right hand hanging by his side** ). When he ran up, he hit me, we clashed and then that's when it (the knife) hit him. I noticed the knife was in my pocket when they were

ganging up on me. **I didn't use it at the first fight because it was balanced and I could handle it."**

18. **The police tried to stop the fight but they couldn't. There was not enough of them.**

19. **There were 7 people in front of me. When they were ganging up on me, I couldn't handle it and I was scared. I only saw Kahiko just before we crashed. He punched me when we ran into each other. I didn't stab him. I had the knife by my leg on my right side.**

20. In cross-examination, the accused said he received a call from Ed-coan and immediately left with his dad. His brother Marson joined them just before they left; that they went to get Ed-coan out and not to fight but that they ended up fighting because they "ganged up" on him. He denied that he, his father, and his brothers Ed-coan and Marson ganged up on Noelle and Frederick; and denied that Kahiko had tried to stop him from fighting. He said he was angry when he saw Frederick and Noelle "ganging up" on his brother Ed-coan but denied that he pulled out the knife and stabbed Kahiko because he was angry with him.

21. The accused denied that he swung his hand and stabbed Kahiko with the knife as Kahiko was approaching him.

22. The accused said the knife he had was a flip knife and that it was short and thin, not long and thin. It was then put to him that with a short blade, Kahiko would not have been injured as he described but he would not move from his story in evidence in chief. He said the knife was to start his motorbike but he didn't get to Boe in his motorbike but was driven there by his father.

23. The accused denied that he carried the knife knowing that Ed-coan needed help and denied that he intended to use the knife.

**Defence Witness 2 (DW2) Ed-coan Demaunga**

24. Ed-coan is the accused's brother. He testified about the events leading to the stabling but did not see the stabbing itself. He said when his father and brothers arrived, he was just about to leave when Noelle punched him from the side and that started the first fight. He denied that he had left the party and returned with his brothers and father to challenge the others to a fight; and insisted that he didn't leave the party

after he was told to leave because they told him if he left, “they would gang up on me.”

### DW3—Gad Demaunga

25. Gad Demaunga is the father of the accused. He is 53 years old. Ed-coan called his phone on the morning of 22<sup>nd</sup> December 2019. He gave the phone to the accused and they decided to go pick him up. His other son Marson got on the vehicle before they left for Boe. At Boe, they parked at the tennis court and went looking for Ed-coan. His two sons found Ed-coan and there was a fight. He said he called out to his sons to just get Ed-coan out and not make matters worse. He then called the police. **He said as they went in, the accused was beside him. About 3-5 people were bashing him and he tried to get between them to stop them but he did not succeed. He said he saw people running to attack, retreating and running forward again. He saw a person wearing a green shirt who was trying to help. He later found out this was Kahiko.** The first group of policemen arrived and the fight stopped for a while. At this stage, Gad Demaunga said, **“Only Geeson, was close by. He was getting bashed up. I saw Ed-coan, he was knocked out to one side. We had separated from Marson and they had chased him away. We came back together.** The police picked Ed-coan up and the second group came and the fight continued. I tried to stop it and I couldn’t. A second group of police arrived and they stopped it. When they arrived, I saw Geeson still fighting.

26. Gad Demaunga did not see the stabbing.

### Discussion

27. I fail to see how a knife held in the accused’s right hand by his side suddenly cut Kahiko below his umbilicus, which is the centerline of the body. The accused and Kahiko are both about the same height, they went to school together. The accused said he was afraid but he denied using the knife in self-defence. I prefer the evidence of Kahiko about the knifing. It is logically consistent or probable in the situation—the accused had come with his father and brother to rescue a third brother. In the first fight, it had been relatively even. In the second fight, Ed-coan had been knocked out and Marson had been chased away and he was on his own fighting about 7 men. He was scared and any man in that situation with a weapon on him would be tempted

to use it to defend himself. I believe that is what the accused did and when Kahiko struck at him, he used the knife. The knife caused injuries to Kahiko.

### **The Charge**

*Section 74 of the Crimes Act provides:-*

*74 Intentionally causing harm*

*A person commits an offence if:*

*(a) the person intentionally engages in conduct; and*

*(b) the conduct causes harm to another person without the person's consent; and*

*(c) the person intends to cause harm to that or any other person by the conduct.*

### **ANALYSIS**

28. The accused said he had the knife in his pocket when he went to Boe; that when the first fight started, he and his two brothers were fighting against Frederick Spanner and Noelle. He did not use the knife because he said it was a balanced or a fair fight. The fight was stopped by police and then a lot of people came out of the house and the second fight started. He said at one stage there were 6-7 people fighting him near the airport fence. His father said that his brother Ed-coan had been knocked out and his brother Marson had been chased away from the scene by some people so the accused was there fighting with his father against a lot of people. The accused's father said they were attacking and retreating and attacking again. The accused said "there were 7 people in front of me and I was scared." He then pulled out the knife from his pocket. We can infer from this that he now intended to use the knife to defend himself. When Kahiko came towards him, he struck using the knife. I find that the defendant intended to use the knife and he intended to harm Kahiko with the knife. The police had stopped the first fight but they could not stop the second fight.

29. I am satisfied on the evidence that the prosecution has proved beyond reasonable doubt all the elements of the offence of intentionally causing harm with which the accused is charged.

### **Self-defence**

30. Defence counsel relied on the defence of self defence which is in section 51 of the Crimes Act 2016:-

### **51 Self-defence**

(1) *A person is not criminally responsible for an offence if the person engages in the conduct constituting the offence in self-defence.*

(2) *A person engages in conduct in self-defence only if:*

(a) *the person believes the conduct is necessary:*

(i) *to defend the person or another person; and*

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

31. Before he can rely on the defence of self-defence, the accused must admit first that he caused harm to the victim without his consent. I have found above that he had committed the offence. The defence of self-defence, if proved would justify his actions and lead to his acquittal.

### **The onus of proof**

32. The onus is on the prosecution to negative self-defence where the evidence discloses a possible defence of self-defence. In *Zecevic v DPP*<sup>2</sup>, Wilson, Dawson & Toohey JJ said:

*Although self defence is still commonly referred to as a defence, the ultimate onus of proof with respect to self defence does not rest on the accused. Since Woolmington v Director of Public Prosecutions [1935] AC 462, it has been clearly established that once the evidence discloses the possibility that the fatal act was done in self defence, a burden falls on the prosecution to disprove that fact, that is to say, to prove beyond reasonable doubt that the fatal act was not done in self defence. The jury must be instructed accordingly whether or not the plea is actually raised by the accused.*

33. In the circumstances shown by the evidence, with 7 people all attacking the accused, I am satisfied that the accused was scared and without any help, he believed it was reasonably necessary to do what he did. This is reinforced by the fact that in the first

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<sup>2</sup> (1987) 162 CLR 645 at 657



fight, he did not think it necessary to use the knife because the fight was fair or balanced.

34. The next issue to decide is whether the stabbing of Kahiko Harris was reasonable in the circumstances as the accused saw it?

35. In *Palmer v The Queen*<sup>3</sup>, Lord Morris, delivering the advice of the Privy Council said:-

*"If there has been an attack so that self defence is reasonably necessary, it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his defensive action. If the jury thought that that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought necessary, that would be the most potent evidence that only reasonable defensive action had been taken ..."*

36. The accused was in a fight for his life. He could have been killed. He could not rely on anyone so he pulled and use the knife. It was only a small foldable knife that fitted into his pocket. He only struck once with the knife at Kahiko. I find that the force used was reasonable in the circumstances.

#### **Conclusion**

37. I find, for the reasons given that the prosecution proved beyond reasonable doubt that the accused intentionally caused harm to the Kahiko Harris on the 22<sup>nd</sup> December 2019.

38. I find further:

- a. though that the accused was entitled to rely on the defence of self-defence in s. 51 of the Crimes Act;
- b. The prosecution has failed to disprove beyond reasonable doubt that the nature of the force used and the force was reasonable in the circumstances.

39. In the premises, I acquit the accused of the charge.

  
**Penijamini R Lomaloma**  
Resident Magistrate



<sup>3</sup> [1971] AC 814, [1971] 1 All ER 1077