

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of the High Court of Solomon Islands (Keniapisia J)
COURT FILE NUMBER:	Criminal Appeal Case No. 46 of 2024 (On Appeal from High Court Criminal Case No.25 of 2024)
DATE OF HEARING:	14 October 2025
DATE OF JUDGMENT:	31 October 2025
THE COURT:	Muria P Palmer CJ Morrison JA
PARTIES:	STANLEY GEGESI -V - REX
ADVOCATES:	
APPELLANT:	B. Ifuto'o with W. Hatingongo
RESPONDENT:	H. Naqu
EX TEMPORE/RESERVD	RESERVED
ALLOWED/DISMISSED	DISMISSED
PAGES	1 - 15

JUDGMENT OF THE COURT

1. The appellant was charged with two counts. The first was Murder and the second was Grievous Bodily Harm. On 10 July 2024, the second day of his trial, the appellant pleaded guilty to the second charge. The trial on the Murder count continued and he was convicted.
2. The appellant seeks to challenge the conviction on several grounds, contending that there was a substantial miscarriage of justice in that the learned primary judge erred by:
 - (a) not allowing Defence Counsel to put the defence case to witnesses PW1 and PW2;
 - (b) finding that the appellant did not act in self-defence;
 - (c) when rejecting self-defence, failing to consider whether the force applied was excessive in the circumstances; and
 - (d) failing to make a finding on s 201(1) of the Penal Code.
3. The orders sought are that the appellant be acquitted of murder but convicted of manslaughter.
4. **Ground 1: defence case not allowed to be put**
5. This ground concerns a short passage of evidence when witness PW1 was giving evidence.
6. The contention is that the Constitution requires that the appellant be given a fair trial and the trial judge's response denied that opportunity. The relevant provisions are s 10(1) and (2)(e), which provide:
 - “(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, that person shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence:

....

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; ...”

7. When PW1 was being cross-examined it was put to him that, on the night in question when the appellant and another man went to the deceased’s house, the appellant’s main purpose in going there that night was to ask for \$50 from the old man for work the appellant had done carrying timber. An objection was made on the basis that PW1 only came to the scene after the shooting, so that any answer would involve opinion evidence and speculation. Defence Counsel argued that the rule *Browne v Dunn* required that the case be put to that witness.
8. The trial judge responded indicating that the deceased’s wife (PW3) might be such a witness but PW1 was not.
9. The evidence was that PW1 and PW2 were not present when the appellant arrived at the deceased’s house that night, nor were they party to any conversation about why the appellant was there:
 - a. PW1 said that they had heard the deceased’s wife (PW3) shout out that the appellant had cut her husband to death, and in response PW2 ran to the scene, and PW1 followed;¹
 - b. PW1 and PW2 said they heard the wife shout for help and ran to the house; they stood at the door and saw the appellant stab the deceased;²
 - c. PW3 said that PW1 and PW2 arrived at the house and attended to the deceased’s dead body;³

¹ Supplementary appeal book, page 6, paragraphs 3-4.

² Reasons paragraph 10, appeal book page 8.

³ Reasons paragraph 11, appeal book page 8.

- d. the appellant's own account in his record of interview did not include anything whereby PW1 or PW2 could have known his purpose in attending the house that night; in fact, by his account PW3 only knew when he was at the house and asked for the \$50.⁴
10. In the learned trial judge's ruling on the objection, His Honour referred to the evidence that PW1 was not there at the relevant time, but PW3 was, and therefore PW3 was the right person to ask.⁵ That ruling was made before PW3 was called to give evidence.
11. The appellant's submissions do not address the facts central to the resolution of this issue. On the evidence as it was known when the trial started, neither PW1 nor PW2 were present until after the attack on the deceased. They were not party to any conversation or statements as to the appellant's purpose in being at the house that night. The appellant's own account suggested no such thing.
12. On that basis there was nothing that could have been legitimately said by PW1 and PW2 as to the purpose of the appellant's presence that night. The question to which objection was taken could only have elicited hearsay at best. As the learned trial judge pointed out, the witness who could answer such question was PW3, and she had not yet given evidence when the objection was raised.
13. Further, in the circumstances there was no occasion for the application for the rule in *Browne v Dunn*. The rule is a general rule of practice by which a cross-examiner should put to an opponent's witness matters that are inconsistent with what that witness says and which are intended to be asserted in due course. The rule only applies if a party intends to contradict the evidence of a witness, either by way of submission to the judge or jury, or by other evidence. Here, neither PW1 nor PW2 could say anything to contradict the contended purpose.
14. This ground fails.
15. **Ground 2: self-defence**

⁴ Reasons paragraph 13, appeal book page 9.

⁵ Ruling, paragraphs 1, 3 and 4, appeal book pages 13-14.

16. The appellant's contention is that self-defence was raised but not negated by the Crown. The thrust of the appellant's contention is that:
 - a. the learned trial judge referred to the agreed fact that the deceased and the appellant had been involved in a scuffle at Tausoro Village between 10pm and 12pm that night;
 - b. there was evidence that the appellant was under attack when he responded, namely the deceased had hit him twice to the head, with a piece of timber;
 - c. from those two pieces of evidence self-defence could not be excluded.

17. Resolution of this issue requires a consideration of the evidence concerning the fatal attack on the deceased. That evidence was assembled in the learned trial judge's reasons. It is no part of the appeal that there was an error in recording the facts. They are:
 - a. the appellant was an energetic 25 year-old man, and apparently physically stronger than the deceased;
 - b. the deceased was about 86 years old; he was old, weak and fragile;
 - c. the deceased and the appellant had been involved in a scuffle at Tausoro Village between 10pm and 12pm that night;
 - d. between 11pm and 12pm the deceased and his wife (PW3) went to asleep in their house;
 - e. between 11pm and 12pm, the appellant entered the house;
 - f. the deceased and his wife were still sleeping when the appellant arrived;
 - g. the appellant demanded \$50 from the deceased;
 - h. the deceased said he would not give it to him;

- i. the deceased and his wife said something (unknown) which angered the appellant;
 - j. the appellant sat down and explained to them about how he had helped them;
 - k. the deceased picked up a piece of timber and hit the appellant on the face;
 - l. there was no evidence as to:
 - i. the size, shape or weight of the piece of timber;
 - ii. the severity of the blows with the piece of timber;
 - iii. what sort of threat that posed to the appellant;
 - m. the appellant fell to the floor;
 - n. the appellant stood up again and was struck again with the timber, this time on the shoulder;
 - o. the appellant fell to the floor again;
 - p. the appellant saw a bush knife next to a bed, and picked it up;
 - q. the appellant then stood up, and moved closer to the deceased; and
 - r. he grabbed the deceased's shirt around the neck area, and stabbed him multiple times on the head, shoulder and back.
18. There are several points to be made about the evidence.
19. First, on no rational view could it be said that the appellant's actions were justified by the scuffle earlier in the evening. There is scant detail as to what happened, and it is referred to only as a 'scuffle'. There is nothing to suggest any weapons were involved, let alone excessive force, nor is it suggested there were any wounds inflicted. Its irrelevance to the issue in ground 2 is eloquently demonstrated by the fact that when the appellant went to

the deceased's house there was no continuation of the scuffle. Rather, even in the face of a refusal to pay, the appellant sat down to explain why he was entitled to the money he sought.

20. Secondly, there is no evidentiary basis to make a finding that the deceased's refusal to pay the \$50 had any effect on the appellant in terms of his actions thereafter. In his record of interview he said that when the deceased refused to pay, the appellant said "it is alright" and he then told his companion that they would leave. It was only after that occurred that the deceased and his wife said something that made him angry. Just what was said is unknown, but even after that the appellant "sat down and continued to explain to them about every help we did for them".
21. Thirdly, all that is known about the timber used by the deceased was that it was "a piece of timber". There is nothing to say: (i) how long or thick it was; (ii) how heavy it was; or (iii) its shape otherwise.
22. Fourthly, there is little to enable a confident finding to be made about the severity of the two blows made with the piece of timber. What is known is that one hit the appellant in his face and the other on his shoulder. In each case he said he fell to the floor. There is no suggestion of any blows while the appellant was on the floor. There is no suggestion that the deceased attempted a third blow with the piece of timber.
23. Fifthly, once he had picked up the knife, the appellant:
 - a. stood up; and
 - b. moved closer to the deceased; and
 - c. did so in order to grab his shirt.
24. Sixthly, he did not threaten the deceased with the knife. Rather, he used it only once he had moved closer and grabbed the deceased's shirt at the neck. Then, when he used the knife it was not just once, but multiple times, to the head, shoulder and back.

25. That conduct does not bespeak a situation where the appellant was taking steps designed to prevent another blow by the piece of timber. There had been no blows while he was on the floor, yet he stood up. There was no other blow by the piece of timber, nor attempted blow, when he stood up. There was no other blow by the piece of timber while he was stabbing the deceased.

26. In *Waida v Regina*⁶ this Court dealt with the principles applicable to self-defence:

[12] Self-defence is available as a ‘defence’ to crimes committed by use of force. The basic principles of self-defence are set out in *Palmer v R* [1970] UKPC 2; [1971] AC 814: approved in *R v McInnes*, 55 Cr App R 551:

“It is both good law and good sense that a man who is attacked may defend himself. It is both good law and good sense that he may do, but only do, what is reasonably necessary.”

[13] The burden of proof remains with the prosecution when the issue of self-defence is raised. The prosecution must adduce sufficient evidence to satisfy the court beyond reasonable doubt that the defendant was either:

- a not acting to defend himself/herself or another; or
- b not acting to defend property; or
- c not acting to prevent a crime or to apprehend an offender; or
- d if he was so acting, the force used was excessive.

[14] Failure to retreat when attacked and when it is possible and safe to do so, is not conclusive evidence that a person was not acting in self-defence. It is simply a factor to be taken into account rather than as giving rise to a duty to retreat when deciding whether the degree of force was reasonable in the circumstances. It is not necessary that the defendant demonstrates by walking away that he does not want to engage in physical violence: *R v Bird* [1985] EWCA Crim 2; 81 Cr App R 110.

[15] In assessing the reasonableness of the force used, the court should consider, *inter alia*, two questions:

⁶ [2015] SBCA 12 at [12]-[15].

- a was the use of force necessary in the circumstances, i.e. was there a need for any force at all?, and
- b was the force used reasonable in the circumstances?

Both questions are to be answered on the basis of the facts as the accused honestly believed them to be *R v Williams (G)* [1983] EWCA Crim 4; 78 Cr App R 276, *R. v Oatbridge*, 94 Cr App R 367.

To that extent it is a subjective test. There is, however, an objective element to the test. The court must then go on to ask whether, on the basis of the facts as the accused believed them to be, a reasonable person would regard the force used as reasonable or excessive.

- [16] It is important to bear in mind when assessing whether the force used was reasonable, the words of Lord Morris in *Palmer v R* [1970] UKPC 2; [1971] AC 814;

“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 ...”

The fact that an act was considered necessary does not mean that the resulting action was reasonable: *R v Clegg* [1995] UKHL 1; [1995] 1 AC 482 HL.

Where it is alleged that a person acted to defend himself/herself from violence, the extent to which the action taken was necessary will, of course, be integral to the reasonableness of the force used.

- [17] For the above principles to be applied it is necessary as a preliminary step to identify that which the trial judge finds took place of the evidence having determined which evidence can be relied upon and which evidence cannot be relied upon or must be rejected. After that step has been concluded, and those findings set out in the judgement, the trial judge can proceed to apply the test and reach a conclusion as to whether the prosecution have discharged the burden which rest on it beyond reasonable doubt.”

27. In our view, the key to the issue raised by this ground lies in the answers to the questions: (a) was the use of force necessary in the circumstances, i.e. was there a need for any force at all?, and (b) was the force used reasonable in the circumstances?
28. As was said in *Wadia*, both questions are to be answered on the basis of the facts as the appellant honestly believed them to be. To that extent the Court applies a subjective test. However, there is an objective element. The Court must then go on to ask whether, on

the basis of the facts as the appellant believed them to be, a reasonable person would regard the force used as reasonable or excessive.

29. Let it be assumed that the appellant honestly believed the facts to be as set out in paragraph 17 above. Two questions must then be addressed.
30. On the basis of those facts, was the use of force necessary in the circumstances, i.e. was there a need for any force at all? In our view, the answer to that question must be that it was not necessary in the circumstances. It is true that the appellant's grandfather had hit him twice with a piece of timber, but:
 - a. the deceased was an 86 year-old man compared to the appellant who was an energetic 25 year-old;
 - b. there is no evidence which suggests the two hits with the timber were done with such force that it was necessary to respond at all, let alone with a knife;
 - c. the appellant was not hit while on the floor; he could have just stayed down;
 - d. the appellant could have exited the house, as he had said he would before the deceased and his wife said something that made him stay; and
 - e. given the disparity in ages (25 years old versus 86 years old), and apparent fitness (the appellant had been carrying 40-50 pieces of timber, which was plainly a task not being done by the deceased), it was not necessary to take up a knife and then stab with it.
31. On the basis of those facts, would a reasonable person regard the force used as reasonable or excessive? In our respectful view, the learned trial judge was right to find that a reasonable person would regard the force used as excessive. In this regard the factors outlined in the previous paragraph are apposite. In addition:
 - a. at no stage did the deceased use a weapon other than a piece of timber;

- b. even so, there is no evidence from which one could infer that the blows struck by the deceased did particular harm to the appellant;
- c. it may be inferred that when the appellant took the knife and stood up, it was not to ward off any further blows with the piece of timber, as none were made while he was on the floor, nor when he stood up;
- d. it may also be inferred that the appellant's actions in stepping closer to the deceased and grabbing him by the shirt at the neck, were to facilitate the stabbing;
- e. once the appellant commenced stabbing there is no evidence to suggest he stepped away, nor pause until after the deceased was dead;
- f. the appellant did not stab just once or twice, but multiple times to several different places on the deceased's body; and
- g. the appellant chose a knife as a weapon, and a place of attack on the body, where it was likely that his actions would cause serious wounding in the form of the knife blade being inserted into the deceased's body; as he said himself he "cut his head with the knife".

32. This ground fails.

33. **Ground 3: failure to consider was the force excessive**

34. The appellant's contention on this ground is that s 204(b) of the Penal Code should have been applied by the learned trial judge, based on his finding that the force used by the appellant "was unreasonable in the circumstances". It is contended that having found the force "unreasonable" it can be deduced that the force was manifestly excessive, invoking s 204(b). From there it is said that the learned trial judge did not consider s 204(b), thereby misdirecting himself.

35. Section 204(b) of the Penal Code provides:

“204 Cases in which intentional homicide is reduced to manslaughter

Where a person by an intentional and unlawful act causes the death of another person the offence committed shall not be of murder but only manslaughter if any of the following matters of extenuation are proved on his behalf, namely:

a. ...

b. that he was justified in causing some harm to the other person, and that, in causing harm in excess of the harm which he was justified in causing, he acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control; ...”

36. The contention is that the appellant honestly believed himself to be under attack by the deceased, and that circumstance required him to do as he did.

37. The Court is required to find four cumulative elements before s 204(b) is applicable:

a. that the appellant was justified in causing some harm to the deceased; and

b. the extent of the harm which he was justified in causing; and

c. that he caused harm in excess of that which he was justified in causing; and

d. that, in causing that excess harm, he acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control.

38. For the reasons developed in paragraphs 17-31 above, this ground cannot be made out. They support the finding made by the learned trial judge that when the appellant stood up with the knife and moved closer to the deceased, that indicated there was no real threat and the appellant’s attack used excessive force.

39. In any event, the evidence does not permit a finding in the appellant’s favour on two of the elements set out above, namely:

a. that the appellant was justified in causing some harm to the deceased; no blows were directed at him after the second one, and none while he was on the floor;

in any event the blows were with a weapon far less potent than a bush knife;
and

- b. that in causing the excess harm, the appellant acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control; there is no evidence from which that inference could be drawn.

40. This ground fails.

41. **Ground 4: finding on s 201(1) of the Penal Code**

42. Section 201(1) provides:

“Where a person kills another in the course of or furtherance of some offence the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of some other offence.”

43. The section operates so that an offender can only be guilty of murder if the offender’s intent is sufficient for murder. That is, if the person committing the other offence nonetheless had the malice aforethought required for murder.

44. The operation of s 201(1) is plain, in that if an offender kills someone when committing a lesser offence than murder, for example stealing or common assault, and the intention held by the offender was confined to that necessary for the lesser offence, the killing cannot be murder. It can only be murder if the offender held the requisite intention to murder, i.e. to kill or cause grievous bodily harm.

45. Section 201(1) only applies if the killing is:

- a. in the course of another offence; or
- b. in furtherance of another offence.

46. The first alternative (“in the course of”) merely requires a temporal connection, i.e. that the killing occurred during the other offence. The second alternative (“in furtherance of”) is different. It applies if the killing is for the purpose of achieving the other offence.
47. The appellant postulates several offences which are contended to be applicable to this case.⁷ They are:
- a. trespass to the deceased’s house;
 - b. demanding money; and
 - c. causing damage to the house.
48. However, the appellant seems to confine consideration to the postulated offence of demanding money.⁸
49. The third contender (causing damage) may be put aside. There is no sufficient evidentiary foundation to suggest it occurred, let alone could have amounted to an offence.
50. As for the first two (trespass and demanding money) we do not consider that reliance can be placed on that part of s 201(1) which applies if the killing is “in furtherance of” the other offence:
- a. the trespass was already complete when the deceased hit the appellant with the piece of timber, after which the killing occurred, so the killing could not have been in furtherance of it;
 - b. as for demanding money, and assuming for present purposes (without deciding) that could be an offence, killing the very person from whom your demands are expected to produce money could hardly be in furtherance of the demand.
51. There is, in our view, an insuperable hurdle confronting acceptance of this contention. That is because the learned trial judge specifically addressed the question whether the appellant had the requisite malice aforethought for murder, at the time of the killing. His Honour found that he did.⁹ There is, therefore, a factual finding that would prevent s 201(1) applying to deny that the offence was murder.

⁷ Appellant’s outline, paragraph 29.

⁸ Appellant’s outline, paragraph 32.

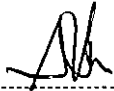
⁹ Reasons, paragraphs 24 and 26.

52. It is true to say that the learned trial judge did not advert to s 201(1) in terms. However, His Honour did deal with the issue of malice aforethought. Having found that the requisite state of mind existed, s 201(1) had no relevant operation. There was no need to mention s 201(1), except, perhaps, as a reference to an unsuccessful submission made. If the failure to mention s 201(1) was an error, which we doubt, it was an error without consequence.

53. This ground fails.

54. **Result**

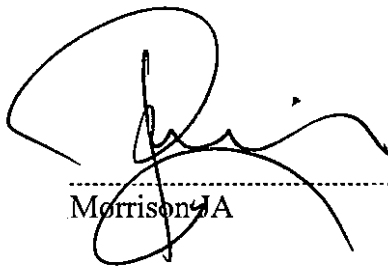
1. The appeal is dismissed.



Muria P



Palmer CJ



Morrison JA