



**IN THE SUPREME COURT OF NAURU**  
**AT YAREN**  
**[CRIMINAL JURISDICTION]**

Criminal Case No. 25 of 2021

**BETWEEN: THE REPUBLIC**

**PROSECUTION**

**AND: CASSIE HARRIS**

**ACCUSED**

**BEFORE: Keteca J**

**DATE OF TRIAL: 11 and 12 December 2023**

**CLOSING SUBMISSIONS: 23 January 2024**

**DATE OF JUDGMENT: 06 February 2024**

**CITATION: Republic v Harris**

**KEYWORDS:** Causing harm to a Police Officer; Was the arrest lawful; Self-defence;

**LEGISLATION:** Section 8, 25, 51, 77 and 270(1) (2) of the Crimes Act 2016;  
Section 24 of the Nauru Police Force Act 1972

**CASES CITED:** Beckford v The Queen [ 1988] AC 130; R v Lawrie [1986] 2 Qd R 502; Zecevic v DPP (Vic) (1987) 162 CLR 645; Director of Public Prosecutions v Walker [1974] 1 WLR 1090;

APPEARANCES:

Counsel for the Prosecution: **Ms W. Deiyé**

Counsel for the Accused: **Ms S. Hazelman**

## JUDGMENT

### INTRODUCTION

1. The accused is charged with:

*Statement of Offence*

*Causing Harm to a Police Officer: Contrary to Section 77(a)(b)(c) and (d) of the Crimes Act 2016.*

*Particulars of the Offence*

*Cassie Harris on 28<sup>th</sup> December 2021 in Yaren District, in Nauru intentionally engaged in conduct that caused harm to Francine Kepae, a police officer, without her consent, that is to say, by biting the forearm of Francine Kepae and that Cassie Harris intended to cause harm to Francine Kepae, who she believed was a police officer.*

2. The prosecution called five witnesses. There were two exhibits. On 12<sup>th</sup> December 23, the prosecution closed its case. The Defence did not make a no case to answer submission. The accused opted to give evidence under oath.

### THE LAW

3. Section 77 of the Crimes Act 2016 provides: -

***Causing harm to a police officer***

*A person commits an offence if:*

- (a) *The person intentionally engages in conduct;*

- (b) The conduct causes harm to another person without the person's consent;*
- (c) The person intends to cause harm to the other person because the person believes the other person is a police officer; and*
- (d) The other person is in fact a police officer.*

*Penalty*

- (i) If aggravating circumstances apply- life imprisonment*
- (ii) In any other case- 20 years imprisonment*

4. The accused is charged without any aggravating circumstances.
5. The elements of the offence which the prosecution must prove beyond reasonable doubt are that: -
  - i. The accused Cassie Harris (Cassie)
  - ii. Intentionally engaged in conduct
  - iii. The conduct caused harm to Police Officer Francine Kepae (FK)
  - iv. Without FK's consent
  - v. The accused intended to cause harm to FK because he believed FK is a police officer;
  - vi. FK is in fact a police officer
6. Under Section 25 of the Crimes Act 2016, the prosecution has the legal burden of proving each element of the offence. This legal burden of proof on the prosecution shall be discharged beyond reasonable doubt unless the law specifies a different standard of proof.

**THE EVIDENCE**

**PROSECUTION**

**I. PW-1- Francine Kepae (FK)**

Examination-in-Chief

7. She's been a police officer for five years. On 28<sup>th</sup> Dec 2021, she was doing traffic duties at Civic. When Tigress vehicle approached the Civic checkpoint- I saw Cassie on top of the

car. She was dancing. I told them to get off the car. They didn't. I told Cassie that she'll be arrested. I told her repeatedly to get off the truck. I told her of "possible charges." I had my hand on her. She yanked her arm away and ran to the trailer. She gripped the frame of the trailer. I was trying to loosen her fingers so we can take her away. There were many girls on the trailer. Other girls were yelling and screaming like crazy. The truck was moved to the Bendigo Bank side as it was causing a traffic jam. Aileen was with me. We took Cassie out of the trailer- in front of Bendigo. We told Nina to drive the vehicle back to Base. At the station, Cassie got off the trailer. We took her to the front desk. I left the station. My supervisor told me to check on Cassie and collect her phone. I went to see her. She was sitting down. I asked her for her phone. She said she needed it to call her family first. I let her use the phone. When I came back for it, she refused to hand it over. She gripped it to her chest with both hands. I tried to get it off her. She bit my hand- my left forearm. I got the phone, left her and gave my supervisor the phone. I told him that she bit me. My supervisor told me to go and get an injection. I went to the hospital. After I had my injection, I came back to the station.

#### Cross- Examination

8. I'm a trained police officer. Trained in crowd control including dealing with drunk persons. John and Jehu escorted the Tigress victory lap around the island. At Yaren, they abandoned the parade as girls weren't complying with their instructions- they joined the checkpoint at Civic. Jehu said that female police officers to manage the girls. I stopped the vehicle. Cassie was drunk. She refused to get off the vehicle. I did not pull her hair. She was swearing. I never laid a hand on her. Aileen and I escorted Cassie to the station in the trailer. Cassie did not have any visible injuries at the checkpoint and outside Bendigo Bank. At the station, I got off the trailer and took her to the front desk. I made a statement of the incident on 29/12/21. Statement in court today is true. Both versions are correct. I allowed her to use the phone. I forgot to include that in my statement. My arm was so sore, I forgot to include that in my statement. Referred to paragraphs 4 & 5 of her statement where she said- "The victory parade came where I saw Cassie standing on top of the vehicle. I stop the traffic and informed her to get off from the top of the vehicle. She got off from the vehicle and walked straight towards me where I then informed her that we will arrest her for not complying to police instruction. Para 5- *"After speaking with the subject she then started to act aggressive by means of using obscene language towards us (police) I then arrested her and escorted her to the police station."*

*Q: Statements para 4 & 5 not true?*  
*Ans: Typing error.*

*Q: You typed it?*  
*Ans: Yes*

*Q: You didn't correct it?*  
*Ans: Once I typed it, I didn't read through it again. I had to go home, my arm was swelling, /sore. Statement is just typing error*

*Q: When she said she didn't have a phone, you decided to use force?*  
*Ans: Yes, she refused to hand over the phone*

*Q: You grabbed her right arm and pulled it?*  
*Ans: She had her arms across her chest. Grabbed both arms*

*Q: Accused sustained bruising from your pulling of her right arm?*  
*Ans: I didn't grab her. I just reached between her crossed arms trying to get her phone.*

*Q: She had it in her arm?*  
*Ans: Somewhere*

*Q: Referred to para 7 of her statement- "I asked her for her phone where she refuse to show it to me. I repeatedly asked her **where I then forced to search her and found her phone in her crotch inside her pants.**"*

*Q: Different version in court?*  
*Ans: She pulled the phone out of her pants when I asked her for her phone*

*Q: Accused lost her balance and fell during the struggle?*  
*Ans: She was sitting the whole time*

*Q: When she fell on the floor you stomped on her face with your boot?*  
*Ans: I never stomped on her face- never laid a hand on her*

*Q: She sustained swelling on the right side of her forehead because you stomped on her?*  
*Ans: I never kicked her, never punched her*

*Q: She was defending herself to stop you from stomping on her head?*  
*Ans: Never laid a hand on her. Never hurt her*

#### Re – Examination

*Q: Any assault on accused?*

*Ans: No*

## **II. PW-2- Aileen Hiram**

### Examination-in-Chief

9. Joined Nauru Police force in 2020. On 28/12/21, I saw Cassie on top of a vehicle She was dancing. PW-1 asked accused to come with us to the station. She refused. Accused was loud and rowdy. We tried to get her of the vehicle. She didn't comply. PW-1 and I were in the trailer that took accused to the police station.

### Cross-Examination

10. Accused, PW-1 and myself were in the trailer when we went to the police station. PW-1 took accused into the station. I don't know who took her to the cell.

## **III. PW-3-Senior Constable Francis Togagea**

### Examination-in-Chief

11. Escorted the Tigress victory lap on the day. Twenty vehicles in the convoy. Explained rules of victory parade to girls. Reaching Nivok, stopped the parade as girls started getting on top of the vehicles. Accused was one of them. When we reached Ijuw- we stopped the parade again as accused got out of the trailer and was standing on the wheel cover of the trailer- hanging outside the trailer. John Ross stopped them and got her back inside. We were in police vehicle ahead of parade. I was the driver of the police escort vehicle. At Yaren, accused got off their vehicle and came to our police vehicle. She asked to get into police vehicle. John Ross said no. Accused got on top of their vehicle- on the roof of the land rover. John Ross called base- we will be leaving the parade- they were not complying. We went to the Civic checkpoint. John instructed PW-1 to stop the parade at Civic checkpoint and to arrest Cassie. I heard PW-1 telling accused to get off from the top of the vehicle. Accused complied and got into the trailer. PW-1 and the accused struggled in the trailer. I saw PW-1 trying to pull accused away from the cage- she was gripping the cage refusing to be taken off the trailer. John told the driver of the vehicle to park next to Bendigo Bank- traffic jam on the road. Police officers couldn't remove her. John told their driver to take vehicle and trailer to police station. In the trailer were PW-1, PW-2 and the accused.

Cross – Examination

12. I did not notice who escorted the accused to the police station.

**IV. PW-4- Dr Bill- practicing medicine for five years**

Examination-in Chief

13. Shown a medical report of PW-1. He examined PW-1 on 29/12/21. Para-D12- left forearm swelling distal area. Referred to Page 10- left arm around wrist area- “swollen, slight tender, no active bleeding.” Could have been caused by many things including a bite. PW-1’s Medical Report is PExh-1.

14. No Cross- Examination

**V. PW-5- Sergeant Jehu Ageidu- senior constable**

Examination-in-Chief

15. On 28/12/21- on duty, escorting football team victory lap. Members of the Tigress team. When they got on top of the vehicle- we stopped, told them to get down. At Iju, we stopped the parade again. Cassie was standing, leaning outside the trailer. Spoke to the organisers. Girls got back inside the vehicle. Informed base that group had increased. Drove slowly. At Yaren, extension side, I spoke to their coach to tell girls- comply. Accused dancing behind police car- stood on tray of police vehicle. Reminded by John Ross to get off. She did. I told coach that we’re all men- can’t handle the girls. I informed Base. Inspector told me to leave the parade and go and wait at Civic check point. Coach was also drunk. At Civic, I told PW-1 to be ready, stop the parade and arrest drunks who were misbehaving. I saw accused on top of the lead car, dancing. I stopped the driver. I told accused to get off the vehicle and we were going to arrest her- so many warnings and she had not complied. PW-1 approached the accused and told her that she was going to be arrested. PW-1 struggled with her on the road. They entered the trailer. Too many people on the trailer. Other girls were in the way, obstructing us. PW-1 & PW-2 were struggling to get the accused off the trailer. I told the team to keep her in the trailer and the vehicle to go to the police station. PW-1 & PW-2 were in the trailer when it drove to the police station. I followed them. PW-1 handed the accused to the watch house. I wrote my report. I later

escorted the accused to hospital. There were no injuries on the accused. Confirmed the record of interview. Record of interview is PExh-2. I was the charging officer. Referred to "Statement Answer to Charge Form" where the accused supposedly writes- "I did not mean it to hurt her for she had assaulted me first."

### Cross-examination

16. Accused was not the only one not complying with police instructions. Too many people to handle. I took accused to hospital for medical examination on 29/12/21 after I was informed that she was assaulted. She named PW-1 as the police officer that assaulted her. He filled up the relevant parts of the medical report.

**Q:** *You charged her before being interviewed?*

**Ans:** *Yes*

**Q:** *You hadn't investigated the case?*

**Ans:** *Correct*

**Q:** *You should interview her first?*

**Ans:** *Correct*

**Q:** *Investigation was not fair?*

**Ans:** *Correct*

**Q:** *Obstruction caused by other girls?*

**Ans:** *That's right*

**Q:** *No attempts made to arrest other girls?*

**Ans:** *Odds against us- lots of people. We focused on the accused*

**Q:** *Injuries visible when you took her to RON hospital?*

**Ans:** *I couldn't see any injuries. She said she was injured.*

17. She was arrested by PW-1 and our team for public nuisance

### THE DEFENCE

18. There was no application for no case to answer and the accused opted to give evidence on oath.



## I. DW-1

### Examination-in-Chief

19. She's 23 years old with three children. On the morning of 28/12/21, with a friend, bought 3 Vodka and a case of Pure Blond from Capille. Went to the Oval at Aiwo and met football teammates. We started drinking until we went for the victory march. Six of us got into a transport- a land rover with a trailer connected- we were at the back of the trailer. Headed towards Denig and police stopped us there. The police told us not to stand in the trailer but to sit down. We all sat down and the vehicle continued. We were happy. I was not intoxicated. We were stopped again at Ijun. I was leaning out and waving a flag. Police officers told me to sit down. I complied. We were stopped again at Yaren- extension. I got off the vehicle and was dancing with my friends on the road. I got onto the back of the police twin cab- I told the girls to take a photo of me. The police told me to get off. I did. Went to our team vehicle. We continued on our trip. Police escorts were no longer with us. I got onto connecting bar and stepped up to roof of vehicle. I saw police at Civic checkpoint. I got down and onto the trailer. Police stopped us at the checkpoint. PW-1 and John Ross came towards us. There were about seven of us at the trailer. John Ross came towards me and said for me to get off. I didn't want to get off. I just sat there.

*Q: Why didn't you want to get off?*

*Ans: I didn't want to be arrested.*

20. PW-1 approached the trailer and said she was there to arrest me. I said- please don't arrest me. PW-1 & PW-2 got onto the trailer and tried to pull me off. We struggled. PW-1 pulled my hair. I got angry and swore at her. My husband approached us, got onto trailer and asked PW-1 to stop. He said he'll be the one to talk to me. My husband spoke to me. I still refused to get off. I told him to get off and go away. He did. The vehicle went to the police station with PW-2 and I in the trailer. Two male police officers escorted me to front desk. I was not hurt. PW-1 came later. She told me that she'll take my phone and search me. I said- I had none. She grabbed my right arm and forced me to be searched. She had a phone which hit my lower lip. It bled. I lost my balance. I fell to the floor. She stepped on the right side of my head with her boot. I tried to defend myself. I was able to pull her arm toward me **and I bit her.**

*Q: After she stepped on your head, how were you feeling?*

*Ans: I felt extreme pain on that side of my head.*

**21. I was able to stop her when I pulled her arm and bit her.** Two police officers picked me and put me in the cell. The day after, I was taken to hospital. Jehu ( PW-5) accompanied me. Referred to para D(10) of her medical report- “ assaulted by lady police officer.” **Note- Para D(14) on professional opinion reads- (1)A small soft tissue swelling Rt head above forehead (2) Bruises Rt arm(3) Small bruise lower lip (4) Small abrasion of Rt ear, no active bleeding.**

Cross Examination

*Q: You refused to give your phone to PW-1?*

*Ans: No*

*Q: PW-1 took the phone from you?*

*Ans: No*

*Q: Edge of your phone hit your lip?*

*Ans: She had a phone in her hand.*

*Q: You bit her arm when she took the phone from you?*

*Ans: No*

*Q: You were never hurt by a police officer outside the cell?*

*Ans: Only PW-1, she did hurt me*

**II. DW-2- Dr Yee Yee Wynn**

**22. General Med Officer in Emergency department. Fourteen years in Nauru. Referred to Def MFI-1- Identifies it and her signatures on the pages. Referred to D(12)- Appendix 1 “small swelling Rt forehead, Bruises.” Went through D(14) Bruise- contusion- leaking of small blood vessels- colour black/blue- caused by blunt trauma **Consistent with history on D(10)- kicked with a boot.** Med report is DExh-1.**

### **CLOSING SUBMISSIONS**

23. Parties were to give their closing submissions by 19/12/23. On this date, counsel for the DPP, Ms Debye did not turn up. The court was informed that she was unwell. The matter was adjourned to 21/12/23.
24. On 21/12/23, Ms Debye again did not turn up. Counsel for the Accused had filed her written submissions. As the Court was closing for the legal vacation on 22/12/23 and to reopen on Monday 22/01/24, the closing submissions were to be heard on 23/01/24.
25. On 23/01/24, Ms Debye again did not turn up. Ms Hazelman objected to any further adjournments. I agreed with her.

### **SUBMISSIONS BY THE DEFENCE**

26. In summary, Counsel for the Defence raised the following:

- a) the accused was not properly arrested. PW-1 said she arrested the accused for not complying with police instruction. PW-5 said that the accused was arrested for public nuisance.
- b) Self Defence- at paragraph 5 of her closing submissions, Counsel submits- "The Defence don't dispute the fact a police officer can use reasonable force to arrest a suspect if a suspect obstructs or resists arrest. We further don't dispute that in the likely situation of the aforesaid an accused cannot raise the defence of self- defence in those circumstances.
- c) She adds- "However, in this case, we submit that it was not at the time of arrest however whilst in the police station. We submit that whilst Cassie was in police custody at the police station her life was at risk, and she had no other option but to act in self-defence to save herself from the brutal assault by officer FK."
- d) PW-1 has given different versions in how a phone was recovered from the accused thus she is an unreliable witness.
- e) PW-5 has admitted that he did not investigate the case adequately. He charged the accused before she was interviewed. He agreed that the way he conducted his investigation was not fair to the accused.

- f) The accused remained consistent with her version of the events. When she said- “I did not mean to hurt her for she assaulted me first”- this is consistent with what is in para D(10) of her medical report and her evidence in court.

## **DISCUSSION**

### **Was the Arrest lawful?**

27. Section 270(1) (2) of the Crimes Act 2016 is relevant here.

*(1) A police officer may arrest a person without warrant, if the police officer:*

- (a) Suspects on reasonable grounds, that the person has committed, is committing or is about to commit an offence against this Act; and*
- (b) Considers that the arrest is reasonably necessary.*

28. The police also have powers of arrest under the Nauru Police Force Act 1972. On the duty of the police to keep order on public roads, Section 24 of the Act provides:

*(1) It shall be the duty of the Force:*

- (a) to regulate and control traffic;*
- (b)*
- (c) to keep order on public roads...;*
- (d) to prevent obstructions on the occasions of assemblies and processions on the public roads ...;*

*(2) A person who opposes or disobeys a lawful order given by any police officer in the performance of his or her duty under any of the provisions of this Section is guilty of an offence and is liable to a fine not exceeding \$40 and to imprisonment for 3 months;*

*(3) A person who opposes or disobeys a lawful order given by any police officer in the performance of his or her duty under any of the provisions of this Section **may be arrested without warrant....***”

29. From the facts, the accused was part of a procession- a victory parade around the island. They were escorted by the police. It is assumed that the procession had the relevant permit issued under Section 24A of the Nauru Police Force Act 1972. During the procession, the accused did not comply with police instructions not to climb on the vehicle roof on several occasions. The instructions were lawful orders. She disobeyed those orders.

30. PW-5, Sergeant Jehu Ageidu said this – *“At Civic, I told PW-1 to be ready, stop the parade and arrest the drunks who were misbehaving. I saw accused on top of the lead car, dancing. I stopped the driver. I told accused to get off the vehicle and we were going to arrest her- so many warnings and she had not complied. PW-1 approached the accused and told her that she was going to be arrested”.*

31. This is confirmed by PW-1. She said- *“When Tigress vehicle approached the Civic checkpoint- I saw Cassie on top of the car. She was dancing. I told them to get off the car. They didn’t. I told Cassie that she’ll be arrested. I had my hand on her. The truck was moved to the Bendigo Bank side as it was causing a traffic jam.”*

32. **From the above-at the Civic checkpoint, to keep order on the public road and to prevent obstructions on the public roads, the accused was instructed several times to get off the vehicle. The instructions were lawful orders. The accused disobeyed the lawful order. She was arrested.**

33. **I find that the arrest of the accused by PW-1 was lawful.**

*Causing harm to a police officer.*

34. The elements of Section 77(a)-(d) of the Crimes Act 201 that the prosecution must prove beyond reasonable doubt are:

- i. The accused Cassie Harris (Cassie)
- ii. Intentionally engaged in conduct
- iii. The conduct caused harm to Police Officer Francine Kepae (FK)
- iv. Without FK’s consent
- v. The accused intended to cause harm to FK because he believed FK is a police officer;

vi. FK is in fact a police officer

35. In her evidence, the accused said - *"I lost my balance. I fell to the floor. She stepped on the right side of my head with her boot. I tried to defend myself. I was able to pull her arm toward me and I bit her"*.
36. PW-4, Dr Bill referred to the medical report of PW-1 – At page 10, he wrote- *left arm around wrist area- "swollen, slight tender, no active bleeding."* ***Could have been caused by many things including a bite.*** On page 5, the doctor recorded- *"Lt forearm swelling, Distal area."*
37. PW-1 with reference to her injury said- *"I got the phone, left her and gave my supervisor the phone. I told him that she bit me. My supervisor told me to go and get an injection."*
38. Under cross examination, she said- *"I had to go home, my arm was swelling, /sore."*
39. *"Harm"* is defined under Section 8 of the Crimes Act as- *"physical harm or mental harm or both."*
40. Under the same section, *"Physical harm"* includes- *pain, disfigurement."*

### **Self – Defence**

41. Ms Hazelden submits as follows: *"We submit that whilst Cassie was in police custody at the police station her life was at risk, and she had no other option but to act in self-defence to save herself from the brutal assault by officer FK."*
42. The question for the court is this- **Can the accused rely on self- defence here?**
43. Section 51 of the Crimes Act 2016 provides:
- (1) *A person is not criminally responsible for an offence if the person engages in 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*

- (ii) ..
- (iii) ..
- (iv) ..
- (v) ..

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

### Pre-emptive strike

44. In *Beckford v The Queen* [1988] AC 130; Lord Griffiths said (at 144):

*“The common law recognises that there are many circumstances in which one person may inflict violence on another without committing a crime... The common law has always recognised the right of a person to protect himself from attack and to act in the defence of others and if necessary to inflict violence on another in so doing. If no more force is used **than is reasonable** to repel the attack, such force is not unlawful and no crime is committed. Furthermore, a man about to be attacked does not have to wait for his assailant to strike the first blow or fire the first shot; circumstances may justify a pre-emptive strike.”*

45. In *R v Lawrie* [1986] 2 Qd R 502(CCA) Connolly said (at 505):

*“An honest and reasonable belief that a blow is about to be struck may justify a pre-emptive blow.”*

46. This case is not one where the accused was about to be attacked. Rather, she claimed that she had been attacked.

### Common Law Test

47. In *Zecevic v DPP (Vic)* (1987) 162 CLR 645; Wilson, Dawson and Toohey JJ said (at 661):

*“The question to be asked in the end is quite simple. **It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did. If he had that belief and there were reasonable grounds for it, or if the jury is left in***

*reasonable doubt about the matter, then he is entitled to an acquittal. Stated in that form, the question is one of general application and is not limited to homicide.”*

**Burden of disproof**

48. In *Zecevic v DPP (Vic)* (1987) 162 CLR 645; Wilson, Dawson and Toohey JJ said) at 657):

*“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 whether or not the plea is actually raised by the accused: Director of Public Prosecutions v Walker [1974] 1 WLR 1090 at 1094. ”*

**Did the accused raise Self- defence?**

49. In her evidence, she said- *“I lost my balance. I fell to the floor. She stepped on the right side of my head with her boot. I tried to defend myself. I was able to pull her arm toward me and I bit her”.*

50. It is noteworthy that the biting did not occur when the accused was being arrested. She was not resisting arrest. She had been arrested. According to the accused, she bit PW-1 to stop her. In her words- *“I was able to stop her when I pulled her arm and bit her.”*

51. PW-1 denies laying a hand or boot on the accused. Under cross- examination:

*Q: When she fell on the floor you stomped on her face with your boot?*

*Ans: I never stomped on her face- never laid a hand on her*

52. I note that the accused suffered injuries. Her description of the injuries is consistent with the findings of the doctor. As DW-2, Dr Yee Yee Wynn noted- D(12)- Appendix 1- *“small swelling Rt forehead, Bruises”* She went through D(14) Bruise- contusion- leaking of small blood vessels- colour black/blue- caused by blunt trauma. **Consistent with history on D (10)- kicked with a boot.**



53. I have considered the different accounts by the accused and PW-1 as to what transpired outside the cells at the police station on the day in question. I have observed their demeanours too. I remind myself of the inconsistencies in PW-1's statement which she wrote on 29/12/21 and what she said in court. In her written statement, she said- *"I asked her for her phone where she refuse to show it to me. I repeatedly asked her where I then forced to search her and found her phone in her crotch inside her pants."*

54. In court, she said-

*Q: Accused sustained bruising from your pulling of her right arm?*

*Ans: I didn't grab her. I just reached between her crossed arms trying to get her phone.*

*Q: She had it in her arm?*

*Ans: Somewhere.*

55. There is a profound difference between *"in her crotch inside her pants"* compared to *"reached between her arms trying to get her phone."* When pressed as to where the phone was? She said- *"Somewhere."*

56. Further, the injuries suffered by the accused is consistent with her evidence in court. **I therefore believe the accused that PW-1 stepped on her face with her boot.**

**Does Self-defence apply here?**

57. The accused has raised the defence. As in para [48] above, in *Zecevic v DPP (Vic) (1987) 162 CLR 645; Wilson, Dawson and Toohey JJ said) at 657):*

*"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."*

58. I remind myself that it is the prosecution that has the burden to prove beyond reasonable doubt that the “biting” was not done in self-defence. The cross examination of the accused has not proven this. Neither were any closing submissions filed with arguments to satisfy this burden.

59. In applying the common law test in para [47] above- did the accused believe upon reasonable grounds that it was necessary in self-defence to bite PW-1 to stop her from further stomping on her head? In her words- *“I was able to stop her when I pulled her arm and bit her.”*

60. I remind myself of the observations of Brennan J in Zecevic v DPP case above where he said- *“Self-defence is not a charter to kill or assault those who are under a duty or who have a right to apply force to the accused.”*

61. He added- *“It follows that the defence of self-defence is not available when the force against which the accused defends himself is lawfully applied.”*

62. In Viro v. The Queen (1978) 141 CLR 88, Gibbs J observed:

*“It is obvious enough that a person cannot rely upon the plea of self-defence unless the violence against which he sought to defend himself was unlawful.”*

63. As I have stated in para [50] above-

*“...the biting did not occur when the accused was being arrested. She was not resisting arrest. She had been arrested.”*

64. After being arrested, I find that the stomping by PW-1 of the accused’s head **was unlawful**.

65. Has the prosecution proved beyond reasonable doubt that the “bite” was not done in self-defence?

66. I give the benefit of the doubt to the accused here. I find that the prosecution has not proven beyond reasonable doubt that the “bite” was not done in self- defence.

67. I therefore answer the question posed in para [59] above in the affirmative in that- *the accused believed upon reasonable grounds that it was necessary in self-defence to bite PW-1 to stop her from further stomping on her head.*

68. Accordingly, I find that the accused acted in self- defence.

**CONCLUSION**

69. I therefore find the accused not guilty as charged and acquit her accordingly.

DATED this 06 day of February 2024.

