



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

**Criminal Case No. 20 of 2024**

**BETWEEN: THE REPUBLIC**  
**PROSECUTION**

**AND:**  
**LIAM TOM**  
**ACCUSED**

**BEFORE: Keteca J**

**Closing Submissions: 28<sup>th</sup> November 2025**

**Date of Judgment: 27<sup>th</sup> February 2026**

**Catchwords:** Intentionally Causing Serious Harm: Contrary to Section 71(a) (b) (c) and (i) of the Crimes Act (**the Act**) 2016; Self-Defence-Section 51 of the Act.

**Appearances:**

Counsel for the Prosecution: **K. Itsimaera**

Counsel for the Accused: **V. Clodumar**

**JUDGEMENT**

**BACKGROUND**

1. The accused is charged with one count of ‘Intentionally Causing Serious Harm’ contrary to Section 71(a)(b)(c) and (i) of the Act. It is alleged that on 02<sup>nd</sup> June 2024, he intentionally engaged in conduct by biting off the right ear of the complainant, Rocky Demauna; the conduct caused Rocky serious harm and that the accused intended to cause serious harm to Rocky by biting his ear. PW1 is Rocky Demauna, the complainant.
2. The prosecution called 7 witnesses. The accused and another gave sworn evidence.

## THE LAW

3. Section 71(a)(b)(c) and (i) of the Act provides:  
‘A person (the accused) commits an offence if:  
(a) The person intentionally engages in conduct;  
(b) The conduct causes serious harm to another person;  
(c) The person intends to cause serious harm to that or any other person by the conduct.  
  
Penalty:  
  
(a) If aggravating circumstances apply- 20 years imprisonment; or  
(b) In any other case- 15 years imprisonment.

## PROSECUTION CASE

4. The prosecution looked at the following provisions of the Act:
  - i. Section 71;
  - ii. Section 8- definition of ‘serious harm;’
  - iii. Section 17- definition of ‘intention; ‘and
  - iv. Section 51- ‘self- defence.’
5. Counsel summarised the prosecution evidence and submits:  
Facts not in Dispute
  - i. On 02<sup>nd</sup> June 2024, at Cliff Lodge, the accused fought PW1; and
  - ii. The accused bit off the right ear of PW1.  
Facts in Dispute
  - i. Whether the bite caused serious harm to PW1; and
  - ii. Whether ‘self- defence’ applies here.
6. On self- defence, Counsel submits that *‘there were no real threats from the complainant at the time of the incident because the Defendant was on top of him when the complainant was on his back on the concrete floor. The complainant was defenceless during this time of the fight.’* PW1 poked the accused’s eye to stop him from biting him. *‘When the accused started biting his forearm, PW1 had to pull the accused’s head to his right ear side, in an attempt to flip him over and that’s when the accused bit his ear until he had literally bitten it off.’*
7. On the injury suffered by PW1, Counsel submits that it’s not serious but he *‘will be permanently disfigured and will have to live with his ear missing.’*
8. On the accused’s reliance on Section 51 of the Act- ‘self-defence’, Ms Itsimaera submits that there was no threat to the accused and it was PW1 that was ‘defenceless.’
9. Counsel concludes that alternatively, Section 129 of the Criminal Procedure Act 1972 will apply on the consideration of a minor offence.

## THE DEFENCE

10. Counsel considers the injury suffered by PW1 and whether it falls within the definition of 'serious harm' under the Act. As the doctor testified that the injury was not life threatening and there is 'no long-lasting effect, then the injuries are not serious. In this regard, the accused's conduct of biting off the ear of PW1, this did not cause him 'serious harm' as defined in Section 8 of the Act. As 'serious harm' is an element of the offence, the prosecution has failed to prove this. It follows that the court should find the accused not guilty.
11. Counsel refers to Section 273 of the Act in that the alternative offences of 'intentionally causing harm' or 'recklessly causing harm' under Sections 74 and 75 maybe relevant here. On this alternative offence, Counsel submits that 'self- defence' should exculpate the accused.
12. On Section 51 of the Act- 'self-defence', Counsel submits that the accused's 'conduct of biting the victim, Rocky, was necessary to stop possible injury to one of his eyes and secondly, possible injury to his neck by the twisting of his head.'
13. Counsel adds that the defence witnesses' version of the events is to be preferred due to inconsistencies in the testimonies of the prosecution witnesses. Where the accused was seated, he could not have reached PW2's leg as alleged by PW1. This evidence is supported by DW2.

## THE EVIDENCE

14. On 02<sup>nd</sup> June 24, PW1, the complainant was drinking Vodka and beer at NPC, TopSide with some friends. His girlfriend, PW2 and another girl, PW3, joined them. PW2 sat next to PW1. The accused started harassing PW2 by touching her thigh. PW1 told the accused to stop. He didn't stop. The accused told PW1 to stand up and fight. PW1 did so. The accused tackled him and they both fell to the ground. The accused bit PW1's chest his face and forearm. PW1 pulled the accused close to him and tried to flip him over. The accused bit his ear. PW1 did not consent to having his ear bitten off. PW2 told PW1 that they should go to hospital.
15. On cross-examination, they were all sitting in a circle; drinking and talking. PW1 talked to the accused and also to others. They were enjoying themselves. PW2 came and sat next to PW1. PW1 denied that PW2 had moved away from them and the accused called her to come back to the group. He also denied telling the accused not to talk to PW2. He did not challenge the accused to a fight neither did the accused tell him to calm down and sit next to the accused.
16. PW1 admitted that the accused was on top of his chest. **He admitted telling the police that he poked the accused's eyes with his fingers.**  
Ques- Referred to his police statement dated 03<sup>rd</sup> June 24, paragraph 6- 'Using my fingers, poking his eyes.'  
Ans- Yes, I told the police that.

Ques- That's when he moved to the side and bit your ear?  
 Ans- Yes.  
 Ques- No one came to break the fight whilst struggling?  
 Ans- No  
 Ques- Only when you screamed, others came to stop the fight?  
 Ans- Yes.  
 Ques- You wanted to continue fighting him?  
 Ans- Yes.  
 Ques- Since that time, you still call him in public to continue the fight?  
 Ans- Yes  
 Ques- Injury to your ear, no disability to you?  
 Ans- No disability.

17. On Re-examination-

Ques- Since that time, explain why you continue to challenge him to a fight?  
 Ans- I was calling him to finish what we started- to finish the fight.  
 Ques- Injury- how do you feel?  
 Ans- Embarrassed, don't feel good.

18. **PW2, Ukiko Detudamo** works at the Bank. Whilst they were drinking, the accused leaned over and touched her leg. PW1 told him to stop. He didn't. The two fought. The accused tackled PW1 to the ground. The accused got on top of him. She heard PW1 scream in agony. PW1 got up with his hand to his ear. It was bleeding. The accused circled around them. She took PW1 to hospital.

19. On cross – examination, she had a couple of drinks before joining PW1 and others at the drinking site. PW1 introduced the accused to her.

Ques- You wanted to go and drink with girlfriends?  
 Ans- No. I intended to see PW1 afterwards.  
 Ques- PW1 asked you- 'Who's this guy you want to go and drink with? I will go and bash him up.'  
 Ans- No- never happened.  
 Ques- PW1 still wanted to fight?  
 Ans- No, he was in shock.

20. PW3- Mary Chris Demaunga, went with PW2 to Cliff Lodge, where the other men were drinking. The accused touched PW2's leg. The accused and PW1 fought. She and PW2 checked PW1's ear. It was bitten off. PW1 told the accused- 'We'll see each other tomorrow to continue the fight.'

21. On Cross- examination, she did not see the fight as she was talking to Seva, DW2 most of the time.

22. PW5, Dr Philip Duburiya, noted in the Medical Report- 'Right ear, 1/3 missing, bleeding.' PW1 is permanently disfigured.

23. On cross- examination, the injury is not life threatening.

Ques- Will he continue to suffer pain after it has healed?

Ans- No.

Ques- Not a serious injury?

Ans- No.

## THE DEFENCE

24. The accused opted to give sworn evidence. He had been drinking with Seva and other friends. He met PW1 at Cliff Lodge for the first time that night. They were in a good mood. Girls joined them later. PW1 and PW2 started arguing as PW2 wanted to go and drink elsewhere. PW1 told her to stay and said- “Who is this guy you want to drink with? I want to bash his face.’ He spoke to PW2 three times but she ignored him. PW1 challenged him to a fight. He told PW1 that he’s a young person. PW1 said- ‘If you don’t want to fight, I’ll punch you in the face now.’ The accused said- ‘OK.’ As PW1 threw the first punch, he tackled PW1. He picked PW1 up and put him to the ground. **PW1 poked his eyes. (PW1 admitted this in court and in his police statement)** The accused bit his arm. PW1 locked his neck ‘**very hard, he kept going.**’ ‘**He twisted my neck.**’ ‘**I bit his ear to protect my neck.**’

Ques- What was he doing with you head/neck?

Ans- **He locked it, kept twisting it. To stop him, I bit his ear.’**

Ques- You were touching PW2’s leg?

Ans- She was 3 feet away from her boyfriend.

Ques- How do you feel about the incident?

Ans- Not happy. I will say sorry to PW1.

Ques- Since that night, you spoke to him?

Ans- He saw me and challenged me to fight. He called me on the phone to fight again.

25. On Cross- examination- on the night in question, he didn’t tell PW1 that he knew PW2. He denied leaning over to touch her legs.

Ques- When PW1 approached you- you spear tackled him and got on top of him?

Ans- Yes.

Ques- You bit his chest and arm?

Ans- Yes- only his arm and ear.

26. DW2, Sevanaia Tavuto came to court in his overalls. He is a plumber. PW 1 introduced himself as a trained boxer and plays football. His girlfriend was a Ms Nauru. The girls arrived. PW2 was about 3 feet away from PW1. He saw PW1, standing up, shirt off and pointing at the accused. He thought they were playing. PW1 punched the accused. The accused grabbed his legs and spear tackled PW1 onto the concrete. He tried to stop the accused. PW1’s hands were around the accused’s head. He took the accused away. The accused said- “Rocky punched me first.’ He drove the accused to his place.

27. On Cross- examination, PW2 argued with PW1 before leaving. She returned later.

## CONSIDERATION

28. I remind myself of the elements of the offence under Section 71 of the Act as-
- A person (the accused) commits an offence, if:
  - (a) The person intentionally engages in conduct;
  - (b) the conduct causes serious harm to another person (PW1)
  - (c) the person (the accused) intends to cause serious harm to PW1 by the conduct.
29. There is no dispute that the accused bit PW1's ear. The accused intentionally did this. Did the bite cause 'serious harm' to PW1? I remind myself of the definition of 'serious harm' under Section 8 of the Act which provides-
- "Serious Harm"- (except in Part 14) means harm, including the cumulative effect of any harm, whether or not treatment is, or could have been available:
- (a) That endangers, or is likely to endanger, a person's life;
  - (b) That is or is likely to be significant and longstanding. Ms Itsimaera highlights that the bite on the ear is 'likely to be significant and longstanding.' PW5, Dr Philip said that though 'PW1 is permanently disfigured,' the injury was not serious. PW1 admitted that he has not suffered any disability from the injury to his ear. From this, I find that the element of 'serious harm' is not satisfied.
30. I find that the accused may be found guilty of the lesser offence under Section 74 of the Act- 'Intentionally causing harm.'
31. Mr Clodumar has raised the defence under Section 51 of the Act- 'Self- defence.' Section 51(2) provides that – 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) – (v)
  - (b) The conduct is a reasonable response in the circumstances as the person perceives them.
32. I dealt with a similar question in *R v Jando Andrews*, Criminal case No. 14 of 2024 ( 23<sup>rd</sup> Feb 2026). I considered the following principles-
- 'In Beckford v The Queen [ [1987] UKPC 1; 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."*
- 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."*

33. **The common law test** - In *Zecevic v DPP* (Vic) [1987] HCA 26; (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.”*

34. For the present case, applying the common law test, **did the accused ‘believe on reasonable grounds that it was necessary in self-defence to bite PW1’s ear?’** To pose the question within the wordings of Section 51- **Did the accused believe that biting PW1’s ear was necessary to defend himself?**

35. To answer this, guidance is again sought from case law. In *R v Wang* [1990] 2 NZLR 529 at 536, the court said:

*‘It is accepted in the context of self- defence, ‘force’ includes not only the use of physical power but a threat to use physical power. But what is reasonable force to use to protect oneself or another when faced with a threat of physical force must depend on the imminence and seriousness of the threat and the opportunity to seek protection without the recourse to the use of force. There may well be a number of alternative courses of action open, other than the use of force, to a person subjected to a threat which cannot be carried out immediately. If so, it would be reasonable to make a pre-emptive strike.’*

36. This leads me to ask- **Was there an imminent and serious threat to the accused’s life that led him to bite PW1’s ear?** The evidence shows that PW1 was poking the accused’s eyes with his fingers. PW1 then locked the accused’s head around his arms. PW1 went further. He was twisting the accused’s head. When examined-

**Ques- What was he doing with your head/neck?**

**Ans- He locked it, kept twisting it. To stop him, I bit his ear.’**

37. From the above, I find that the conduct of PW1 in locking and twisting the accused’s head and neck, this presented an imminent and serious threat to the accused’s life. I further find that under the second limb of Section 51(2)(b), the biting of PW1’s ear by the accused was a reasonable response in the circumstances as he ‘perceived’ the imminent and serious threat to his life.

38. I further find that the prosecution has not proved beyond reasonable doubt that self-defence does not apply here.

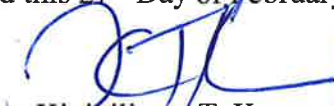
## CONCLUSION

39. I accept that the accused was acting in self-defence when he bit off PW1’s ear. He is not criminally responsible for such conduct.

40. I find the accused not guilty as charged.

41. Liam Tom, you are acquitted accordingly.

Dated this 27<sup>th</sup> Day of February 2020



Kiniviliame T. Keteca

Judge

