



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

Criminal Case No. 15 of 2024

BETWEEN: THE REPUBLIC

PROSECUTION

GATALO LASALO

ACCUSED

BEFORE: Keteca J

Date of Hearing: 12th February 2026

Date of Judgment: 16th March 2026

Catchwords: Intentionally Causing Serious Harm -Contrary to Section 71(a)
(b) (c) of the *Crimes Act 2016 (the Act)*;

Appearances:

Counsel for the Prosecution: **W. Deiye**

Counsel for the Accused: **M. Degei**

JUDGMENT

BACKGROUND

1. The accused stands charged with one count of Intentionally Causing Serious Harm- Contrary to Section 71 (a) (b) (c) of the Act. It is alleged that the accused threw a pick axe at the head of the complainant Langford Hedmon and the conduct caused serious harm to the said complainant.

THE LAW

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

SUBMISSIONS BY THE PROSECUTION

3. Counsel summarised the evidence according to the elements of the offence and considered the following provisions of the Act:
 - i. Section 8- definition of ‘serious harm;’
 - ii. Section 17- meaning of ‘Intention.’
4. Counsel submits that the prosecution has proved all the elements of the offence beyond reasonable doubt.
5. It is noteworthy that the prosecution, in her wisdom, has not addressed the issue of self-defence as raised by the accused. The prosecutor filed her submissions late. She had ample time to look at the defence Counsel’s submissions and respond accordingly.

SUBMISSIONS FOR THE ACCUSED

6. Counsel summarised the evidence of the witnesses and looked at the following provisions of the Act:
 - i. Section 51- self- defence;
 - ii. Section 17- meaning of ‘Intention.’
7. The following cases were referred to:
 - i. *Republic v Agir* [2025] NRSC 11; Criminal Case 23 of 2019 (17 April 2025)- on establishing the requisite intention.
 - ii. *Republic v Harris* [2024] NRSC 1; Criminal Case 25 of 2021 (6 February 2024)- common law test and burden of disproof for self- defence
 - iii. *Republic v Jeremiah* [2021] NRSC 21; Criminal Case 10 of 2021 (16 June 2021)- the guilty mind, Section 14(2) of the Act- ‘Conduct can only be a physical element if it is voluntary.’
8. Counsel concludes that that the accused acted in self- defence as ‘he was scared and feared for his life.’ The complainant had threatened to kill the accused as he said- ‘I will kill you.’

9. On the elements of the offence not being satisfied, Counsel submits that:
- i. The 'intention' of the accused to cause serious harm is absent and the accused's conduct can be described as 'accidental or unintentional.'
 - ii. Based on the evidence of the doctor, the complainant did not suffer any 'serious harm' as the injury 'was not life threatening.'
10. Thirdly, Counsel submits that the prosecution has failed to disprove beyond reasonable doubt that the accused acted in self-defence.

COSIDERATION

The Evidence

11. PW1, the complainant, testified that on 09th May 24, his father told him to go and check the fence of their property at TopSide. Three persons, of Tuvaluan descent, were there. One of them was Billy. They were fixing the fence. He told them to stop. Two stopped. The third, the accused, carried on working on the fence. PW1 told him to stop again. The accused refused and said- 'You want to fight? PW1 said- 'You want to fight too? PW1 tried to reach the accused. He told the accused to come out of the fenced area. The accused told him – 'Go and get your father to come and talk to us.' *PW1 got angry and went to his father's house and got a pick axe.* He returned on his motorbike to where the Tuvaluans were. He saw the accused. Something was thrown at him. He ducked. It hit his head. He blacked out. He got up and ran towards the accused. He felt wetness on his head. It was his own blood. He got more angry and still wanted to fight. His mother took him to hospital. His wound was stitched. He identified the pick axe he was carrying and the one that hit his head.
12. On cross- examination, he admitted being very angry.
- Ques- You challenged the accused to a fight?
 Ans- Yes, I was aggressive. My father tried to stop me. I do not listen to him.
- Ques- You said to the accused- 'I will kill you?'
 Ans- Yes
- Ques- You said it more than once?
 Ans- I said it plenty times.
- Ques- Your intention was to kill the accused, out of anger?
 Ans- I didn't mean that.
13. On re-examination, he said:
- Ques- Why the difference- you said you didn't see the person throwing the axe, now (cross-examination) you're saying you saw the person?
 Ans- I wasn't sure.
- Ques- Why say, I will kill you?
 Ans- I said it before I was hit with the axe.
- Ques- You challenged the accused to a fight first?
 Ans- He continued fixing the fence so I told him- 'You want to fight?'

14. PW4, Dr Victor Wasson attended to PW1 at RON hospital. He noted at [D14] of the medical report as- 'Gravity of Injury- moderate gravity of injury due to depth of wound & sensitivity of area involved'- meant that the depth of the wound was not life threatening.

DEFENCE CASE

15. In his sworn testimony, the accused (DW1) said that a Billy asked him to fix his fence on that day. PW1 arrived and challenged him to a fight. I told him- 'You're very strong. Tell your father to come and talk to Billy's wife.' The house belonged to Saneta (PW1's aunt) and Billy. PW1 said- '**You wait here, I'll go and get a knife, I'll come back and kill you.**' He felt scared since PW1 said he'll come back and kill him. They picked their tools. PW1 returned on his bike. He asked Billy- Who's on the bike? Billy said- 'It's Langford (PW1).' He asked- 'He has anything? Billy said- 'Maybe it's a knife.' He heard PW1 say- '**Come here, you pofter, I'm going to kill you.**' He turned around and threw a pick axe at PW1.

Ques- Why did you throw the pick axe at PW1?

Ans- Because I was afraid. I thought he was bringing a knife.'

16. On cross- examination, the accused said that PW1 told him- '**You wait, I'll go and get a knife, come back and kill you.**'

Ques- PW1 did not say that?

Ans- He said it. He returned on his bike. He was saying- 'You wait there, I'm going to kill you.'

Ques- When you threw the axe, only the complainant on his bike?

Ans- I just turned and threw the axe.

Ques- You threw the axe at Langford?

Ans- Yes.

Ques- You were scared?

Ans- Yes.

Ques- If you were scared, you could have gone back to Billy's and Saneta's house?

Ans- Yes

Ques- You were not scared, you were there with Billy, with your tools?

Ans- I was scared

Ques- You threw the axe not because you were scared?

Ans- My mind was not clear. I kept hearing- he was going to kill me. I turned back and threw the axe.

17. On re-examination he said:

Ques- Why didn't you run to Billy and Saneta's house?

Ans- Short time. I felt scared. I asked Billy, he said it was Langford. I heard the motorbike getting close- I just turned and threw the axe.

18. DW2 was Billy Lasifo. His wife is Saneta who asked him to fix the fence of her property at Baitsi. PW1 told them to stop working on the fence. He said no as it was not PW1's

land. PW1 said- 'Wait, I'll come back and kill you guys.' He called out to his wife and told her about PW1. He heard PW1's motorbike. PW1 said- 'I'll kill you guys.'

19. On cross- examination, his wife Saneta is the sister of PW1's father.

Ques- You confirm that when PW1 was coming up the hill on his motorbike, the accused threw the axe at him?

Ans- Yes.

Ques- Could you have gone back to your house for safety?

Ans- We stood there. I picked up some stones to defend us. Accused already threw the axe.

20. I remind myself of the elements of Section 71(a) (b) (c) of the Act-
'the accused (Gatalo Lasalo) commits an offence, if

- Gatalo Lasalo intentionally engages in conduct (throwing a pick axe)
- the conduct (throwing of the pick axe)
- causes serious harm to PW1, Langford Hedmon; and
- Gatalo Lasalo intends to cause serious harm to PW1

21. The accused does not deny throwing the pick axe at PW1. From the evidence, he intended to throw the pick axe.

Did the conduct cause serious harm to PW1?

22. Serious harm is defined in Section 8 of the Act as 'harm'

- (a) That endangers, or is likely to endanger, a person's life; or
- (b) That is or is likely to be significant and longstanding.

From the medical report and testimony of Dr Victor, the injury suffered by PW1 falls short of the definition of 'serious harm' above. There is sufficient evidence that PW1 suffered 'harm' which is defined under Section 8 as- 'physical harm, mental harm or both.' Physical harm includes 'pain.' There is ample evidence that PW10 did suffer harm from the pick axe thrown by the accused.

Did the accused intend to cause such harm to PW10?

23. Intention is defined under Section 17 of the Act as-

- 1) A person has '**intention**' with respect to conduct, if the person means to engage in the conduct.
- 2) A person has '**intention**' with respect to a circumstance, if the person believes it exists or will exist.
- 3) A person has '**intention**' with respect to a result, if the person means to bring it about or is aware that it will occur in the ordinary course of events.

The evidence shows that as PW1 drove up towards the Tuvaluan boys, Billy said that he may be carrying a knife. Billy and the accused heard PW1 saying that he was 'going to kill' them. The accused felt scared. He testified that in his mind, he kept hearing the

words- 'I'm going to kill you.' He turned towards PW10 and threw the pick axe at him. From this evidence, I find that the Section 17(3) applies here. In turning and throwing the pick axe at PW1, the accused would be aware that such conduct could result in some harm being suffered by PW10. This satisfies the meaning of 'intention' in Section 17(3). I find that the accused intended to cause harm to PW10.

24. From the above analysis, as the element of 'serious harm' is absent, I find the accused not guilty of the Section 71 offence. The accused may be found guilty of the alternative offence of 'Intentionally causing harm' under Section 74 of the Act.

Self- Defence

25. Counsel submits that the accused was acting under 'self- defence'. This is provided for under Section 51 of the Act-

'(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;

(ii) To prevent or end the unlawful imprisonment of the person or another person;

(iii) To protect property from unlawful appropriation, destruction, damage or interference;

(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 a reasonable response in the circumstances as the person perceives them.

(3) The Section does not apply if:

(a) The person uses force that involves the intentional affliction of death or serious harm:

(i) To protect property;

(ii) To prevent criminal trespass; or

(b) The person is responding to conduct that the person knows is lawful.

(4) For the purposes of subsection (3)(b), conduct is not lawful merely because the person carrying out the conduct is not criminally responsible for it.

26. I dealt with 'self-defence' in *Republic v Andrews* [2026] NRSC 12; Criminal Case 14 of 2024 (23 February 2026). I pose some similar questions here.

Is the court to accept the accused's reliance on Section 51 of the Act- self- defence?

27. 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)

- (c) The conduct is a reasonable response in the circumstances as the person perceives them

In throwing the pick axe at PW1, did the accused believe that this conduct was necessary to defend himself of another person?

28. Guidance is sought from case- law. 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.”*

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.”

29. **Did the accused believe that PW1 was about to strike the first blow or fire the first shot at him?** The evidence shows that when PW1 and the accused had their initial altercation, PW1 said- - ‘You wait here, I’ll go and get a knife, I’ll come back and kill you.’ PW1 went to his home and returned with a pick axe, instead of a knife. Whilst PW1 was on his bike and approaching the accused, the evidence of DW2 show that PW1 said- ‘I’ll kill you guys.’ According to the accused, PW1 said- Come here, you poofter, I’m going to kill you.’ From this evidence, I find that it was reasonable for the accused to believe that PW1 was serious in his threats and that PW1 was about to carry them out- *‘strike the first blow or fire the first shot.’*

30. **Did the accused believe that it was necessary to throw the pick axe at PW1 in order to defend himself or his two Tuvaluan kinsmen?** The common law test is informative here. It is described in - 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.”

This test is codified in Section 51(2)(a)(i) of the Act. From the evidence, the accused was scared of what PW1 threatened to do. It was not only the accused that felt threatened by PW1. Even DW2, Billy, picked up some stones to defend himself against PW1. As

discussed in paragraph [26] above, I find that the accused believed on reasonable grounds that it was necessary in self- defence to throw the pick axe at PW1 before PW1 reached him with his own pick axe. I further find that the accused's conduct was a 'pre-emptive strike.' This is a clear case of PW1, being hit with a pick axe before he could strike the first blow with his own pick axe. The battle of pick axes.

30. **Could the accused have opted for alternative courses of action instead of throwing his pick axe at PW1?** This question 'alternative courses of action' was considered in - *R v Wang* [1989] NZCA 290; [1990] 2 NZLR 529 where the New Zealand Court of Appeal 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.'

On alternative courses of action, the accused was asked as to why he did not run to Billy and Saneta's house. He responded that he did not have the time. PW1 approached with his threats to kill him. He was scared. The threats can be described as 'imminent and serious.' He turned, he threw his pick axe at PW1.

31. Considering all the above and with no submissions by the prosecution to disprove 'self- defence' beyond reasonable doubt, I find that the accused, in throwing the pick axe at PW1, was acting in self -defence. It follows, as provided for under Section 51(1) of the Act, he is not criminally responsible for that conduct.

CONCLUSION

32. Gatalo Lasalo, I find you not guilty as charged. You are acquitted accordingly.

DATED this 16th Day of March 2026


Kimiviliame T. Keteca

Judge

