

REGINA -v- TUBARA and KARANGE

High Court of Solomon Islands  
(Ward C.J.)

Criminal Case No. 17 of 1989

Hearing: 23, 24 and 25 October 1989 at Honiara

Judgment: 26 October 1989

Director of Public Prosecutions in person  
A. Radclyffe for the First and Second Accused

Ward CJ: This accused, Vincent Tubara, was charged jointly with Nelson Karange with the murder of Ambrose Radi on 31st July 1989.

The facts can be stated very briefly. All three men were drinking in Aola and consumed a carton of beer. They then purchased another, drank most of the contents with one other man and then boarded a truck with the few remaining cans and sat on the open back. They were clearly all drunk.

As the truck drove along, the deceased stood up, made a few bragging comments and jumped off the moving vehicle. The truck stopped, backed up and one of the other passengers got out. At that, the deceased stood up and ran into the bush but then returned and got back on the truck.

A short time later he again stood up and an altercation took place between him and this accused. I shall return to the details of it as it is vital to the case, but the upshot was that both men fell onto the side of the truck and the deceased then fell out onto the road. At the time they first struggled the truck was moving but, by the time the deceased fell out, it was stationary.

He got up and asked the accused for a fight but then shook hands with him and was helped back onto the truck by him. The argument had caused three women passengers on the truck sufficient apprehension to decide to walk the remaining distance to Niumidi village.

The truck continued and yet another argument occurred between the drunken men which resulted in the accused punching the deceased in the chest so he fell back in the truck. Thereafter, the prosecution case was that the accused and his co-accused each took one of the deceased's legs and pushed him off the moving truck. It is likely the accused never moved again and died then or shortly afterwards. The three women walking past a little later saw him lying on the road and assumed he was in a drunken stupor.

The truck had driven on and the timber it carried was unloaded. The driver and the accused then returned, saw the deceased still lying there and went to Aola and told the police.

The medical evidence revealed fractures on the right side of the 1st, 2nd, 3rd, 4th and 5th ribs anteriorly and the 7th, 8th and 9th ribs laterally. There were fractures of the left 2nd, 3rd, 4th and 5th ribs anteriorly. There was also a stellate rupture of the liver. There had been substantial bleeding into the pleural cavity as a result of the rib injuries and a small amount into the peritoneal cavity from the liver. Death was caused by the effect of the haemorrhages and I accept that was the case.

The doctor told the Court that the fractures to the ribs could not have been caused by the falls from the truck. They would have been caused by a very heavy blow to the front of the chest or by a fall onto the back where a very heavy object was on top. On the evidence before the Court, I am satisfied the only time these injuries could have been caused was in the second incident on the truck.

Although there was evidence from the police officer of a tyre pattern on the victim's chest, I am satisfied on the doctor's evidence and that of other witnesses as to the traffic on the road, that the injuries were not caused by the deceased having been run over.

The evidence of both prosecution and defence witnesses is in agreement over the start of that second incident. It is clear that the deceased first punched this accused in the face and the accused retaliated with a similar blow. The accused's account is that the deceased fell on the timber, stood up again and was grabbed by the accused. The two of them fell so that the deceased landed on his back and the accused fell with him and landed on him.

The co-accused who has already been acquitted, also gave evidence to similar effect.

The learned prosecutor suggested to the Court that this evidence did not accord with the prosecution witnesses. They, he said, all described the deceased landing on his chest. A perusal of the evidence shows that is not so.

The first prosecution witness said the accused after the exchange of punches, grabbed the deceased around his body and they both fell with the deceased underneath and the accused on top. The third prosecution witness saw the accused grab the deceased around the chest in a double armed hold and they both fell. The fourth prosecution witness described the accused holding the deceased by his shoulders and pushing him down so the deceased fell out of the truck. The second prosecution witness Leni Lepo, who was the only witness that described the accused throwing the deceased out of the truck in the third incident, gave extremely bad evidence. I have already ruled that I would not be able to accept his evidence unless corroborated. Having reconsidered his evidence and compared it with that of the remaining prosecution witnesses and the accused, I do not feel I can attach any weight to his account.

On the evidence as a whole, I am satisfied the deceased died as a result of injuries received when he fell during the scuffle with the accused in the second incident. They were caused by the weight of the accused landing on the deceased's chest. It may be the effect of those injuries was exaggerated or accelerated by the two subsequent falls from the truck but I cannot say, on the evidence, that this accused was the cause of either of the falls.

The injuries were clearly grievous bodily harm but I am satisfied the accused did not intend those injuries or the death of the deceased. Neither do I feel there is sufficient evidence to satisfy me to the required standard that the accused knew it would probably cause such injury or death. There is, therefore, no malice aforethought and the accused is acquitted of murder.

I must now consider whether he is still guilty of manslaughter.

The learned DPP has pointed out that the accused punched a very drunken man and the circumstances made that a clearly unlawful act. The evidence was that all three men were drunk. The deceased started this argument and also struck the first blow and the punch by the accused was, in my view, a reasonable response. Had he continued to attack, thereafter, he would have been acting unlawfully but the evidence suggests that, when he grabbed the deceased, he may have been trying simply to stop any further assault. The evidence of that could, I accept, be read the other way and suggest the accused was continuing the attack but the burden is on the prosecution. I cannot, on the evidence, be satisfied to the required standard that the accused was still on the attack. It is equally likely, in my opinion, that he was trying to stop the deceased's attack. That does not discharge the burden of proof that the act was unlawful and so he cannot be convicted of manslaughter.

(F. G. R. Ward)  
CHIEF JUSTICE