

REGINA -v- SALOME LAMTOA IROBAKO

High Court of Solomon Islands

(Muria ACJ)

Criminal Case No. 24 of 1991

Hearing: 13 and 14 April 1992

Judgment: 21 April 1992

J. Faga for Prosecution

Mrs M. Samuel for the Defendant

MURIA ACJ: The accused in this case is charged with two counts of Infanticide contrary to section 199 of the Penal Code and has pleaded Not Guilty to both counts.

It is alleged by the prosecution that on 20 April 1991 the accused delivered a child alive in the bushes beside a toilet at Feraladoa Settlement and that she inflicted injuries to the head, neck and other parts of the body of the child which resulted in the child's death and that she then put the child in a bag and hid it among the bushes beside a garden. The other allegation is that the accused delivered the child alive, deliberately left it to die and later she put the child in the bag and hid it among the bushes beside a garden.

The onus is on the prosecution to prove beyond reasonable doubt that the accused, in Count 1 wilfully on 20 April 1991 caused the death of her child under 12 months old by causing injuries to it but at the time she inflicted the injuries to her child, she had not fully recovered from the effect of giving birth to the child and that by reason of her not being fully recovered from the effect of giving birth the balance of her mind was then disturbed. In Count 2 the prosecution must also prove that the accused on 20 April 1991 wilfully caused the death of her child by wilfully neglecting to feed her child but at the time of the wilful neglect, she had not fully recovered from the effect of giving birth to the child and that because of that the balance of her mind was then disturbed.

The evidence for the prosecution comes from six witnesses and a Record of Interview. The prosecution has also sought to rely on the medical report but the defence objected to the report, although not to the doctor's findings but to his conclusion. However Mrs Samuel for the defence later did not press hard her objection

but asked the Court to give whatever weight to the doctor's report bearing in mind that the doctor's conclusion might be open to other factors as well. Mrs Samuel says that as the doctor who made the report is now out of the country the defence is not able to elicit other possibilities of the cause of death from him. I feel Counsel's comments on the medical report are valid and I shall treat the report as such.

PW1, Salome Riki, gave evidence and said that on the morning of 21 April 1991 she went to the toilet when she found traces of blood on a piece of timber beside the toilet. She then told two others who went with her about the blood and together they followed the traces of the blood until they found a placenta which was still fresh. PW1 did not know where the placenta came from.

PW2, Timothy Tafirobo, is related to the accused and he lives at Feraladoa as well. He said that on the morning of 21 April 1991 he heard people talking about seeing blood and an after-birth and that the accused's name was mentioned. Mr Tafirobo then went and asked the accused if she delivered a child. The accused admitted to Mr Tafirobo that she delivered a child and hid it. Mr Tafirobo went to search for the child but when he could not find it returned to the house and asked the accused where she hid the child. The accused told him where she hid the child and Mr Tafirobo then went together with the police who had already arrived by then, to search at the place where the accused mentioned. Mr Tafirobo found the bag with the child in it, already dead. The bag containing the child was hidden among the bushes beside Caspar Riki's garden which was over 100 metres away from the house where the accused was staying.

The other witnesses are police officers.

In her cautioned statement which was not disputed, the accused gave her account of what had happened. The following are some of the questions put to the accused and her answers:-

**Q.15. Is that true that on Saturday 20 April 1991 you gave birth to a baby boy at Feraladoa Village in Honiara?*

A.15 Yes but it was on Saturday night 20 April 1991.

Q.16 At the time you delivered the child, is that true you did squeeze its neck and killed him?

A.16 I did not kill him because it is my own blood

Q.17 On the evidence the police gathered against you if the child is your blood why did you put into an empty bag (Trukai) and just thrown away like a rubbish?

A.17 I put into the bag because I think it is now hard for me. I have no wantok or relative but only different people that is why I have to do

this.

- Q.18 I put it to you that the story which you tell is not true but you did kill the child that is why you hid it into the bag. What would you say on this?*
- A.18 I delivered the child so only one time he cried out but I did not look to it because I felt so weak. I touched the child but found it dead already.*
- Q.19 I put to you that you delivered the child alive so can you explain how the child had his arms brain lungs it damaged and the neck had bruises?*
- A.19 I will not say anything because I knew nothing.*
- Q.20 Why did you put the child into an empty bag (Trukai) is that when he died already or still alive?*
- A.20 It already died.*
- Q.21 Can you explain in this paper why you put the body of the child into the bag then you just thrown away into the grass?*
- A.21 I think there is no relative there. I have to do it this way.*
- Q.22 I want you to explain that the empty bag used to put the child into, did you carry it with you at the first place or after delivery?*
- A.22 On the morning of Sunday 21 April 1991 between 6.00 am and 7.00 am.*
- Q.23 As you put the child into the bag is that your intention to bury it there or just left it there in the grass?*
- A.23 I think to leave it there before I buried it."*

The accused gave evidence on oath and she did not deny giving birth to the child. She said she delivered the child while standing up. As a result the head of the child came down first and fell onto the ground. She said the ground was bare and hard. She said at the time she was weak and that she fainted and fell down. She said she did not know what happened to the child. After a while she recovered and looked to the child and when she touched the child she said the child was already dead. She then went back to the house leaving the child where she delivered it. When she felt a little stronger early in the morning of 21 April 1991, she went back to where the child was with an empty bag. She then put the dead child into the empty bag and took it to the place where Mr Tafirobo found it.

The medical report shows that on external examination the doctor found that there were blood issuing from both nostrils; the whole scalp was red and bruised; the neck was markedly blue on the front and sides going to the back with several areas of superficial abrasions corresponding to pressure marks, and there were bruising and

swelling of the arm (R) and foot (L). On internal examination, the doctor found the skull to be heavily bruised with multiple fractures of the vault of the skull on all sides. The brain was pulped with multiple large haemorrhages throughout the cerebral hemispheres with part of the pulp found outside the skull. The neck muscles had all been heavily bruised with blood clots on the right side of the larynx. The trachea and the larynx were bruised. There was blood in the trachea. The doctor also found that the shaft of the right humerus was fractured. The lung was found to contain air which was heavily congested with haemorrhages on the surface and in its substance.

The doctor concluded that in his opinion the baby had been born alive and had lived long enough to breathe but has not been fed. Secondly the doctor was of the opinion that death was due to multiple injuries to the skull, brain neck, right arm and lungs and that those injuries were compatible with multiple acts of violence inflicted on the parts concerned with a lot of force.

Although the accused did not deny giving birth to the child on the night of 20 April 1991 she however denied causing injuries to the child resulting in the death of the child.

I observed the accused giving her evidence and I am satisfied that the accused was not telling the truth when she said she did not do anything which caused her child to die. the injuries found by the doctor clearly showed that they caused the death of the child. I bear in mind Mrs Samuel's cautionary argument on the doctor's conclusion but in this case, I am satisfied so that I am sure that the child was delivered alive and that it died as a result of injuries to the skull, brain, neck, arm (R) and lungs, such injuries being inflicted by forceful acts of violence. There was no evidence that anyone else who could inflict those injuries to the child except the accused.

The evidence in this case as to the death of the child, although circumstantial, is very strong against the accused and I have no reasons to doubt it. I am satisfied beyond reasonable doubt that the accused inflicted the injuries as found by the doctor which caused the death of her child.

Normally such killing is murder. However section 199 of the Penal Code is designed to give a more realistic legal protection to recently born infants and at the same time to admit a reduced degree of culpability on the part of the mother who has been charged with the killing of her child in the circumstances stated under that section. Thus under section 199 of the Penal Code the accused will be guilty of infanticide if at the time of the killing of her child the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth of the child. It is for the prosecution to prove that her mind was so disturbed.

The evidence as to the disturbance of her mind was that she was not well-cared for by her relatives and that they did not help her when she asked them for help. Her cousin brother had not been good to her. She was afraid of letting her relatives know that she was pregnant and that the child was illegitimate. There was nobody willing to assist her to go to the hospital. She was weak and fainted at the time of delivery with nobody to help her. In the circumstances of this case together with the personal circumstances of the accused I am also satisfied beyond reasonable doubt that at the time of the killing of her child, the accused's mind was disturbed by the effect of childbirth.

The accused is therefore convicted on Count 1.

The evidence adduced by the prosecution in this case do not support the allegation of causing death by wilful omission as alleged in Count 2. That being so I acquit the accused on that count.

VERDICT Guilty on Count 1 of Infanticide.

Acquitted on Count 2 of Infanticide.

(G.J.B. Muria)
ACTING CHIEF JUSTICE

SENTENCE

The offence of infanticide is a very serious offence. The seriousness of the offence lies in the fact that an innocent child has been deprived of the right to life and to reflect that seriousness, the law puts the maximum punishment for the offence to imprisonment for life.

You pleaded Not Guilty and you had been convicted after a full trial. Thus you lose the benefit of a guilty plea.

As I have stated, I accept the social pressures brought to bear upon you especially the fact that you were not well-liked by your relatives due to the fact that you had become pregnant and that the child was an illegitimate child. Those matters clearly must have affected your mind sufficiently to reduce the culpability from that of murder. At the same time I cannot see how your actions resulting in the death of an innocent child can be anything less than a deliberate and callous act.

The case of *R -v- Hilda Tiu* (1982) Crim. Case No. 2 of 1982 referred to me was a case where the accused pleaded Guilty. She had 6 other children to care for apart from her illegitimate child which she killed. She was conditionally discharged on the condition that she made no further trouble for one year.

Your case is distinguished from that case.

In deciding the sentence I must bear in mind the public revulsion over such cases as this.

I take into account also all that has been said by your counsel on your behalf. Doing the best as I possibly can, making as much allowance as I can in the light of the circumstances of your case, the minimum sentence I can pass is one of 12 months imprisonment of which 6 months is to be suspended for 1 year.

SENTENCE: 12 MONTHS IMPRISONMENT

6 months of which is suspended for 1 year.

(G.J.B. Muria)
ACTING CHIEF JUSTICE