

REGINA -v- SIMON MANISINA

High Court of Solomon Islands

(Muria CJ.)

Criminal Case No. 6 of 1993

Hearing: 1 June 1993

Judgment: 8 June 1993

DPP for Prosecution

J. Wasiraro for the Accused

MURIA CJ: The accused SIMON MANISINA had been charged with the murder of his wife, Rose Thaona (deceased). The accused pleaded Not Guilty to the charge.

It was alleged by the prosecution that at about 5.30 p.m on 9 November 1992 the deceased and PW1, having arrived back to the house at Ranadi, were confronted by the accused who asked where they had been. As a result of the argument he told the deceased to cook her 'shit' for her meal as the accused had left the rice which he bought at his place of work. Upon hearing that, the deceased told PW1 to go and pick some cabbage from the garden for them to cook and eat. This they did.

After having eaten, PW1 and the deceased proceeded to the Tobacco Factory to give some food to PW1's husband, and then returned to the house. By then it was already dark. In an angry manner the accused asked them why they were late in returning to the house. The accused then proceeded to kick the deceased with his right leg which landed on the deceased's lower back. The kick caused the deceased to fall to the ground and cried.

The accused, after kicking the deceased, left the house and went to his place of work.

Sometime later, the deceased and PW1 decided to go fishing. They followed the main road until they came to the Tobacco Factory. Upon reaching the factory PW1 went to inform her husband who was a security man at the factory that she was going fishing with the deceased while the deceased turned down to the seaside and went to look for baits for fishing.

A little later, PW1 returned to join the deceased fishing. As PW1 approached the deceased who was then standing by the sea shore she saw the accused come behind the deceased and struck the deceased at the back of her neck with a stick. The blow caused the deceased to fall into the sea.

It was a clear night with a bright moonlight. PW1 could see clearly what the accused did. She saw the accused also holding a knife in his left hand.

Having seen the deceased fall, PW1 went to her and tried to help her. PW1 carried the deceased ashore and the only words she said to PW1 were "mi die nao." The deceased died shortly after that.

After the accused hit the deceased and fell, he did not make any attempt to help her. Instead he ran away leaving PW1 attempting to help the deceased.

PW1 then called for assistance and a security man came. It was the security man that went to get the police who came and took the deceased to the Hospital. The deceased was confirmed dead before reaching the Hospital.

The prosecution called other witnesses who were police officers. One of the police officers, Police Constable Williams Peresini described meeting the accused and a child that night, on their way to the police station at Naha. When the officer arrived at the station, the accused and the child were there also.

The Constable stated that the accused told him that he (the accused) fought his wife at Ranadi with a branch of Christmas tree which he cut at the Ranadi Marine Training School and that he did not know what happened to his wife after he left.

The Constable described the accused's clothes were dry and that he had a bush knife and a torch with him.

Another officer, Sgt. Fredrick Pado also gave evidence that he saw the accused come to Naha Police Station that night with a child. Sgt. Pado also described how the accused told the police that he hit his wife with a branch of Christmas tree. The reason why he hit his wife was because she disobeyed him and went to the sea to fish. The accused told the police that he hit his wife while she was fishing.

According to Sgt. Pado, the accused came to the police for protection because he feared his wife's relatives.

Police Constable Wate gave evidence that on 13/11/92 he and the accused together with other police officers went to Ranadi where the accused showed them the place where he cut the branch of the christmas tree. The suspect was cautioned before he showed the part of the branch of the christmas tree which he cut. Constable Wate also gave evidence that the accused admitted using the branch of the christmas tree to hit his wife.

Another police officer, Gibson Ado took photographs of the scene of the murder as well as that of the body of the deceased. The photographs clearly showed the area where the deceased was fishing when the accused hit her.

The medical report was tendered under section 180A of Criminal Procedure Code and admitted. No cause of death was established because the doctor examining the body was not able to carry out a post mortem and also lacked the qualification of a forensic pathologist. However the doctor found that there was mobility of the movement of the neck, suggestive of a fractured neck. There was also hyper pigmentation at the region behind the neck.

The accused gave evidence on oath. He agreed that he had a row with his wife on 9 November 1992 and that he kicked her. He said however that he kicked her with his left leg which landed on his wife's right hip.

The accused further stated that when he kicked the deceased, she knocked a piece of timber which was a 3" x 1" and it fell on her hitting the back of her head. After that the accused's evidence agreed with what PW1 said about the swearing by the accused that the deceased was to eat her 'shit' and that he left the house, leaving PW1 and the deceased.

When the accused was away, the deceased and PW1 left to go fishing. When accused the came back to the house and found them missing he went after them.

The accused stated that when he got to the Ranadi beach he saw the deceased and PW1 by the beach. He then cut a branch of a christmas tree beside the Ranadi Marine School. He said that it was his intention to hit his wife with the stick if she made him angry. He took the branch of the tree and went down to the sea side where his wife was fishing.

The accused first approached PW1 and then proceeded toward his wife. The accused stated that it was then PW1 shouted to the deceased that the accused was going to hit her with the stick.

The accused said that as soon as he went toward the deceased, she jumped into the sea. The accused said he did not hit her. If he did, he said he would have his clothes wet.

The accused stated that seeing his wife (deceased) in the sea, he shouted to her to come ashore. His wife came ashore and as soon as she did, she called PW1 who went and helped her. Both the accused and PW1 heard the deceased said that she was about to die. The accused saw his wife fell back and died. He also saw PW1 tried to help his wife.

Instead of helping PW1 to do something to the deceased, the accused left and went away despite PW1's request for his assistance to carry the deceased.

The accused said that he had to go to his house, took his child and went to Naha Police Station for safety. This he said was because PW1 and others had by then given reports to the police.

The accused agreed he showed the police where he cut the branch of a christmas tree. The actual piece which he cut was thrown away and so he did not show it to the police.

In cross-examination the accused agreed that PW1 was just 2 yards away from him when he went towards his wife at the beach, and that PW1 could see every thing he did clearly. He also agreed that he intended to use the stick to hit his wife. He further agreed that when he saw his wife died on the beach he did not bother to do anything to help her or PW1. He further agreed that before he went to the police station he threw away the stick which was about 2 1/2 feet long.

There were other parts of his evidence which were basically supporting the prosecution case and I need not go into them. Needless to say, they present a sad story of what happened that night.

The accused had been charged with a very serious crime which if proved will result in the accused being put away for life in prison. It is therefore for the prosecution to prove the guilt of the accused beyond reasonable doubt. If I have any doubt about his guilt, I must acquit the accused.

The crime of murder is provided for under section 193 of the Penal Code. Under that provision the prosecution must prove that the accused caused the death of the deceased and that he did so with '*malice aforethought*.' Section 195 of the Penal Code then defines what *malice aforethought* is. That provision had been considered in a number of cases by the courts here. It provides that malice aforethought is established by proving either one of two states of mind namely:-

- (a) an intention to cause the death of or grievous bodily harm to a person, whether such person is the one actually killed or not; or
- (b) knowledge that the act which caused death will probably cause the death of or grievous bodily harm to a person, whether he is the person actually killed or not.

In the present case, the first question to be answered is whether the accused caused the death of the deceased. That question must be answered on the evidence before the court.

The crucial witness in this case is PW1. She was with the deceased the whole afternoon and night of 9 November 1992. She was present when the accused and deceased had argument at their house. She was with the deceased at the beach. She was only two (2) yards away from the accused when she said she saw the accused struck the deceased with a stick, hitting the deceased at the back of her neck.

The accused agreed to cutting the stick with the intention of using it on the deceased. He agreed he had the stick and the knife when he went toward his wife at the beach. PW1 also clearly saw the accused holding the stick and knife when he approached the deceased.

The accused's story was that the deceased upon seeing him, jumped into the sea. Looking at the photographs of place where the deceased was said to be standing and fishing, there is nothing to indicate that the deceased needed to jump into the sea. Also clearly the accused would not get his clothes wet at the place where he struck the deceased. Further he never bothered to help his wife when she fell into the sea. The only believable story is that the deceased fell down into the sea. The cause of that fall was that as exactly described by PW1 who was there standing.

The accused's story differs very little from that of the prosecution except that he denied delivering a blow with the stick, which he admittedly was holding, to the back of the neck of his wife. Unfortunately no reasonable judge of the facts could accept the accused story. I certainly do not.

I believe entirely the evidence of PW1 as well as the other evidence of the prosecution. The denial by the accused of striking the deceased with the stick at the back of her head was a desperate attempt by the accused to run away from the truth that he caused the death of his wife by striking her with the 2 1/2 feet long branch of a christmas tree.

The evidence against the accused is overwhelming. They clearly establish beyond reasonable doubt that the accused caused the death of the deceased.

The question as to whether the accused caused the death of the deceased with malice aforethought must also be seen from the evidence placed before the court. It may be implied or expressed.

The evidence of PW1 clearly established that the accused was angry that night. His anger continued from the incident earlier in the house to the incident at the sea side where the accused angrily went toward the deceased with a stick and knife in his hands. Having reached the deceased, he struck her at a very fatal spot on her body.

When his wife (deceased) was dying, the accused never lifted a finger to help PW1 do something to his dying wife. As soon as his wife died at the beach in the middle of the night, the accused took off leaving his dead wife and PW1, despite plea from PW1 for his help. Instead he ran off to take refuge at the police station. That is clearly a picture of man who showed no remorse for his action.

His own evidence clearly showed his intention after cutting the branch of the christmas tree. His intention was to use it on his wife and he did use it on her by striking her with it at the back of her neck. He threw away the stick before going to the police and never showed it to the police. His story to the police was clearly indicative of his state of mind also.

The accused could not have failed to realize that the use of a live-branch of a christmas tree to strike the deceased at the back of her head would probably cause grievous bodily harm to or even death of the deceased. He intended to use the live branch and he did use it on the deceased. The direct consequence was the death of the deceased. There is no evidence of any other act suggestive of causing the death of the deceased. The accused story about the piece of timber falling on the deceased's head is unbelievable.

On the evidence before the court, the only conclusion is that the accused caused the death of the deceased and he did so with malice aforethought. That is murder and he is convicted of the murder of the deceased.

The accused is guilty of murder.

(G.J.B. Muria)
CHIEF JUSTICE