

REGINA
V.
DANIEL SAMANI

High Court of Solomon Islands
(Palmer J)

Criminal Case No. 4 of 1995

Hearing: 3rd, 4th, 6th and 11th July 1995

Judgment: 21/7/95

DPP for Prosecution

C. Tagaraniana for Defendant

PALMER J: The accused was first arraigned in the Magistrate's Court on the 18th of November, 1994, on a charge for murder, and committed for trial before the High Court on the 24th of February, 1995.

The Prosecution's case is that the deceased, Susan Dau, was murdered on the 6th of September, 1994, by the accused. It was alleged that the murder was committed by the application of two powerful blows to the same part of the left abdomen of the deceased; the first being a direct punch with a clenched fist, and the second being, a kick from the right leg of the accused, when the deceased was lying on the ground. The effect of these blows, ruptured the spleen of the deceased, causing internal bleeding and which led subsequently to the death of the deceased not long after.

The defence raised by the accused on the other hand, is that those blows were never administered by him. Instead, he sought to suggest in his unsworn statement to the court, that the injuries may have been caused when the deceased fell down over some stones when she was fleeing from him.

Much of this case will therefore turn, on the evidence before this court; on one hand, the sworn evidence of the prosecution witnesses, and on the other, the unsworn statement of the accused.

The key prosecution witness was Rosemary Sousou, PW5. From the beginning, this witness gave her evidence in a very reserved, quiet and low key manner. At times, her evidence was given in barely a whisper, and she had to be asked several times to speak up, though she had an interpreter assisting her. There was a certain amount of crying towards the latter part of her evidence, and it became obvious that she was under a lot of emotional pressure and stress. Especially, after re-examination by prosecution, she was asked a number of questions by the Court for clarification purposes. Unfortunately, no further response could be elicited from her, even after a short adjournment of five minutes was granted, and a further adjournment of about a week.

This witness is the daughter of the accused and the deceased. In those circumstances it is accepted that it would not be an easy thing to have to give evidence in court. There were two other brothers, and an elder sister who were also required to give evidence. They were able however, to compose themselves and give evidence as required to the end. I do bear in mind though, that not all the members in the same family would be expected to behave and act in the same manner. And as has been seen in the way this witness, Rosemary Sousou, performed in the witness box, it became obvious that she was torn between her love for her father, despite what he had done to her mother on one hand, and on the other, her sorrow at the loss of her mother. In the end, it was decided to discharge her, with concurrence of learned Counsels, that it would not be any advantageous or of any further assistance, to have her remain in the witness box.

Her evidence therefore needs to be treated very cautiously. The crucial question, is whether in spite of her demeanour and the way she conducted herself in the witness box, her evidence can be relied on by the Court.

The relevant part of the evidence of this witness commences from the time she and her mother, the deceased returned from the garden that day to their house. She says that she reached the kitchen of their house first. Her dad, the accused, was still sitting in the kitchen. His appearance at that time, she says, was that he still looked the same as when she first saw him earlier that day; that is, he still looked cross. She then sat on a long seat in the kitchen, which she described as a bed, because it

looks like a bed, but is used mainly as a seat, or for putting things on top. Her dad was sitting near the door. Her mother then came in through the kitchen with her bag on her back, in which she had put her food that she had collected from the garden. Her knife was on top of the bag. When her mother entered the door to the kitchen, her dad spoke to her and told her to hurry up and go and prepare their food. At the same time, he hit her with a bamboo stick (*used for storing lime - a white powdery substance obtained from heating coral limestone, and used in chewing with betel nut*), on her right backside. The bamboo she says was quite big, with an estimated length, as demonstrated in court, of about a metre. The bamboo on contact with her body broke. As her mother turned her back, side ways in reaction to that blow, the knife which was placed on top of her bag scratched the backside of her dad and drew blood.

One of the matters which it was intended by this court to get clarification from this witness, was the way in which that knife had been placed on top of her bag; whether it was placed inside the bag with its pointed end protruding outside the bag, or was it simply tied across, on top of the bag. Another matter which was intended by the court to get clarification on, was as to the manner in which the blow with the bamboo stick was delivered to the shoulder or backside of the deceased, and the way she reacted so that the knife on her bag was able to scratch the backside of the accused. Unfortunately, as earlier explained, she was unable to respond to the questions put to her by the court, and so we are stuck with her story as to what occurred in respect of that bamboo stick and wound on the backside of the accused. However, this will have to be weighed against the unsworn statement of the accused, in which he stated that the deceased had cut his backside with a knife. Also, the court will have to decide which of those witnesses account is to be believed. The deceased then put the bag down on the seat and sat down beside the accused, crying. They then argued between themselves, over cigarettes, betel nuts and leaves, during which the accused swore at the deceased. The deceased however never responded with any swearing. The accused then stood up, and with his right hand clenched fist, hit the deceased on the left side of her stomach, at which the deceased fell down from the seat to the ground. The height of that seat from the ground was described as being about the same height as the bar table in court (*about 3/4 of a metre height*).

Whilst the deceased was still on the ground, the accused kicked her with his right leg, on exactly the same spot that he had hit her with his clenched fist. The deceased exclaimed: "Oh me die nao". The accused then seized his bush-knife nearby, and held it up in a ready position to cut the deceased with. This knife was described by this witness as about ½ - ¾ metre long. This witness says that when she saw this she sought to shield her mother with her body, at the same time trying to push the accused out of the door, away from her mother. At that same instant, her brother, Robert Dickson (PW1), arrived at the scene and held the accused. She says that Robert Dickson then struggled with the accused and pushed him against the wall. This gave her the opportunity to wrench the knife from the accused and run away with it and hide it in the bush. After, she returned to the kitchen, where the accused and Robert Dickson were still struggling. However, as she approached the kitchen, she noticed that her dad was naked; the lavalava which he was wearing had fallen off during the struggle. She therefore quickly removed herself from the scene and ran away to the big village nearby, and took refuge in the house of his uncle, Robert Saelea.

She says that when she ran away with the knife to hide it, the deceased was still lying on the ground. This was the last time she saw her alive. The next time she saw her was when she had been found dead near Robert Dickson's kitchen.

Under cross-examination, she says that her mother was carrying a 20 kilogram size bag, filled with potatoes. She also had a bundle of leaves for chewing betel nut, wrapped in a home-made umbrella (normally made of pandanus leaf) with her. This was tied together to her bag with a rope.

It was suggested to this witness under cross-examination, that the deceased initially refused to give the bundle of leaves to the accused, to sell and buy for himself some tobacco, and that it was only after the argument that she agreed to give them to the accused. This witness however remained firm in her evidence that the deceased only suggested to the accused that he take the leaves and sell them, during their argument.

It was also suggested to this witness that the deceased swore at the accused, using words to the effect, "You kaikaim arse blong mother blong you", and that the accused in turn swore at the

deceased. This witness again however remained firm, that she did not hear her mother swear at her father; only vice versa.

She was then asked if both the deceased and the accused were talking in the kitchen. Her response was that her dad was talking too much. It was then suggested to her that the previous witness, Robert Dickson, had earlier stated that he heard them both talking in the kitchen. To this, the witness responded that her dad was arguing too much in the kitchen.

It was further suggested to this witness, that Robert Dickson had earlier stated that when he entered the kitchen, he saw her standing behind her mother. It was put to her, that this was inconsistent with what she had earlier stated that she was trying to shield her mother from her dad. To this, she explained that after she had pushed her dad away from her mother, she stood behind her mother, crying. It was at this point, that Robert Dickson arrived and grappled with the accused.

It was also put to this witness under cross-examination, that the deceased had cut the accused's back with a knife. This witness however remained firm, that it was the knife on the bag at the back of the deceased, which had scratched his back, as she turned to avoid the bamboo stick struck at her by the accused. It was further suggested to this witness that when her mother had cut her dad's backside, that her dad became very cross. She replied however that, he became more argumentative, after his back had been scratched by the knife. It was then put to this witness that after the deceased had cut her dad, that he in turn slapped the deceased; to which she replied that when the knife scratched his backside, he became cross and hit her.

Robert Dickson Samani, (PW1), says that Rosemary Sousou arrived first at their kitchen. He and his wife arrived shortly after, and then the deceased arrived. This is consistent with what Rosemary Sousou had said in her evidence.

Robert Samani says that on his arrival, he saw his dad sitting in the kitchen. After his mother arrived, he heard them arguing. His house is not far from his parent's house; he estimates the distance about the width of the court-room. His house faces that of his parents. He says, he then

heard his mother shout for him and say "Oh me die nao". When he heard this, he shouted for his wife, gave his child to her and then ran towards his parent's kitchen. On entering, he saw his mother lying down. When he wanted to touch her, the accused held up the knife he was holding, in a position to cut the deceased with it, and then said to this witness, "You wande lukim". Which meant in the context in which it was said, that the accused was threatening to cut the deceased with the knife in front of this witness's eyes. He says that when the accused said this, he turned towards the deceased with his back to him. It was at this point that he then grabbed hold of the accused's arms from the back and locked him in a hold, which enabled Rosemary Sousou to eventually wrest the knife from the accused's hands and run away with it and hide it. Also, it enabled his mother, his wife and children, and Rosemary, to run away from the accused before he released him, and himself also escaping thereafter.

In his evidence in chief, this witness said that he was the one who had told the others to make their escape from the accused because he had seen that he was very cross. This witness also said that it was after he had released the accused from his hold that he realised that there was blood from the body of the accused. Under cross-examination, he stated clearly that he did not know when or where the blood had come from.

After warning myself to treat the evidence of this accused also with some caution, in view of the fact that I had detected a certain amount of animosity between him and the accused, I am not satisfied, that I could find any major discrepancy in his evidence under cross-examination, and when compared with the evidence of Rosemary Sousou. I am satisfied I can rely on the evidence of this witness.

The evidence of Chris Fuana, PW2, a youth of about 15 years old, relates to the latter part of the incident, towards the evening. His evidence correlates with the evidence of Robert and Rosemary. He says that he saw both of them in front of his uncle's house at the big village. That was when he was informed for the first time about what had happened earlier that day. He says he later went to their village, despite being told not to go, and saw his mother lying down on the ground, with his dad, standing near her holding an axe. He then returned and told Robert Dickson about what he had seen.

Again, I have not been satisfied otherwise, that the evidence of this witness should not be relied on. He gave his evidence in a very quiet and collected manner, and was never shaken in cross-examination. I also accept his evidence as confirming the evidence of Robert and Rosemary as to what transpired in the latter part of the incident.

The evidence of David Mau is also consistent with what the other witnesses have said transpired during the incident. His evidence relates only to the appearance of the accused at the main village where this witness resides. He says that he was sitting at his verandah around 4.00 pm, when he saw a lot of children running in the direction of the main village. He then saw the accused. He says that the accused was holding an axe at that time and was shouting. This caused all the children to be frightened and to run away. He then heard that the accused had had a row with his wife. The accused came to his house and asked for his children, in particular, Robert Dickson. The accused appeared cross and was swinging his axe and shouting. He also said that the accused swore in custom at the ancestors of PW1, at PW1, and at his wife. Such swearing, this witness explained would have been for the purpose of provoking PW1 to a fight. The accused then returned to his village. Later, he heard PW1 and his wife talking outside his house, and so he warned them to stay away from the accused. It was later that he heard about the death of the deceased.

I do not find with respect, any inconsistency in the evidence of this witness as compared with the evidence of PW1 and PW5. And accordingly, I also accept the evidence of this witness.

The final witness, though not the least, who gave evidence as to the events of that day, was Dorothy Kaelonga, PW4. Her evidence though not directly related to the events of the latter part of that day, does contain information which when put together, help to show the temperament of the accused even in the earlier part of that day; as being cross and grumpy because he had not had a smoke that day!

This witness says that at about 10.00 am that morning, the accused asked her to go and buy tobacco ("spear" brand), from a shop in the village owned by David Mau, on credit basis. This witness says

that she was frightened and so sent her little child instead. Her child however, returned without any tobacco. The accused then got very cross and told her to take her children and go from that place.

From the evidence of this witness, the scene was more or less set for what would transpire later that day. Dorothy's evidence is supported to some extent by the first part of PW5's evidence, in which that witness had stated that when she returned home from her garden, in the first place, she noticed that her father's eyes looked cross. However, she did not know what it was that may have caused his eyes to look cross. From the evidence of Dorothy, we are told or may conclude that one of the reasons why he may have looked cross that time was because he had not had a smoke, amongst other things.

Lastly, we have the crucial evidence of Dr. Chester D. Kuma, who carried out the post-mortem on the body of the deceased. His report of the 10th October 1994 has been submitted as a court exhibit. His report states at paragraph (1), that the deceased was reported to have died on the 6th of September, 1994. The post-mortem was carried out on the following day, 7th of September, 1994. In his report, he made the following findings:

"Abdomen was distended and upon entering the peritoneal cavity blood began oozing out. There was approximately 4 litres of blood in the abdominal cavity. The spleen on examination was found to be broken or torn in half with the two halves completely separated from each other. The hilum was involved as well as the major splenic vessels in the hilum area. It was an enlarged spleen."

The cause of death as stated in his report was:

"severe haemorrhage as a result of very severe injury to the spleen secondary to a severe kick to the abdomen. As a result of severe blood loss heart and brain functions were compromised which eventually led to death."

In his evidence in chief, this witness stated that it was his first time to see a spleen completely split in half. He states that each person has about 5 litres of blood in his system. If a person loses half of his blood, then he would be in trouble. If he loses four litres, then he is dead. The spleen he explained is located on the left upper quadrant of the stomach area and is normally protected by the ribs. In normal circumstances therefore, it would not be palpable. However, in areas where the incidence of malaria is high, the spleen sometimes is also affected and enlarged as a result. In such cases, the spleen could be enlarged to as much as twice its normal size; as was the case with the deceased's spleen.

He says that the spleen was completely torn into half in the middle with the splenic vessels also severed. He was asked if a fall from a table height would be able to cause a similar injury, but his response was that there would be more of a laceration than a complete tearing of the spleen. It would be more consistent with a blunt injury. In his opinion, the learned doctor said that such an injury would be consistent with the application of a severe kick on the upper left quadrant of the abdomen, directly over the spleen. When asked as to the magnitude of such a blow or force, he stated that it would have to be a severe blow.

Under cross-examination, it was suggested to him that if a blow was exerted on the right side of the body, that no injury would have occurred to the spleen. In response, the learned doctor conceded that no injury would have occurred to the left side, though he qualified this by saying that in certain situations, if a massive blow had been inflicted that it could cause vibrations and damage to the spleen; as it is a friable organ. He further pointed out that even when repairing the spleen in surgical operations, that it is quite possible to do damage to the spleen. He again reiterated that a rupture of the spleen was consistent with the application of a very severe blow; such as a kick or a punch.

He was then asked whether a blunt instrument such as a piece of timber would have the same effect. His answer was that such an instrument would more likely cause external injuries, such as bruising. A kick on the other hand, he says, would deform the abdominal cavity and cause the internal injury,

without showing any external injury, such as bruising. The use of a stick or timber however, would cause reverberations, resulting in bruising and lacerations, of which he says there was no evidence.

The accused on the other hand, elected to give an unsworn statement. He says that he had gone to the garden that day with his wife, the deceased. She then sent him home early to go and climb some betel nut. On arrival, he sent two of his sons to go and climb betel nut. His wife then came home in the afternoon, and on arrival, inquired about whether he had climbed betel nut as instructed. To which, he answered in the affirmative. He then inquired for some betel nut leaves with the intention of binding them into three parcels so that he could sell them to get some money for his tobacco. The deceased however, prevented him from doing this, and then swore at him. He says he responded to her swear, but did not do anything. He wasn't angry either. Whilst he was still looking at the main door, he felt a knife cutting his backside. So he asked Rosemary Sousou to check his backside and find out what was as he puts it, "*running like water.*" Rosemary then said that it was blood, and told him that the deceased had cut him. He then turned around and exclaimed if she was '*mental or karange*'. Rosemary then got a piece of cloth and wiped the blood off his backside. The deceased then sought to cut his backside again the second time, but this time he was ready and blocked her hand. He pushed her against the wall and took the knife from her hand, at the same time slapping her on her chest. It was at this point of time that PW1 arrived and held him. He denied punching the deceased on the left side of her stomach, and kicking her on the same spot. He also denied saying to PW1 "*You like lukim*". He denied what PW5 said about the deceased not swearing at him. He denied holding an axe and swearing at PW5 when he went to the main village to look for them. He denied seeing David Mau or anyone at the main village that afternoon. He denied telling his daughter, Dorothy Kaelonga, to go and buy '*spear tobacco*' for him on credit. He denied being cross that afternoon, but conceded that he was cross when the deceased had cut his backside with a knife. This was the only time, he says he slapped her. After this, the deceased ran away, whilst he stayed behind in the kitchen. It was then that he saw the deceased falling on top of some stones, whilst she was running away. Thereafter, he says he noticed that her running was not "*clear*".

After they had all left, he looked for them, but couldn't find them and so went for a drink at their "*pipe*" (*water supply tap*). It was then that he saw the deceased at the back of PW1's kitchen. On

reaching her, she said to him that she was dying. At the same time he saw PW2 nearby and so called him to come and help him carry the dead body to the kitchen. He expressed the view that the deceased may have died from injuries caused as a result from falling on rocks or stones, but not from his hands.

It has been said that it does not help the defence case, for Defence Counsels not to put to prosecution witnesses, the case for the defence and to give an opportunity to prosecution witnesses to explain any denials or contradictions raised by the defence (see *The State v. Ogadi Minjipa* [1977] PNGLR 293 at 296 & 297). In this case, it was not suggested to PW5 that the deceased was attempting to cut the accused a second time and that he then blocked her blow and struggled with her, when PW1 arrived. Both PW1 and PW5 stated clearly that the deceased was lying on the ground when PW1 arrived. It was never put to them that the deceased was standing at that time and that she was struggling with the accused. It was also never put to them that the deceased may have fallen on some rocks and stones and thereby injured herself. The exact location of those stones or rocks around that area was never put in evidence and not put to PW1 and PW5 to respond to and contradict, confirm or explain. What sort of rocks were those referred to by the accused, was also not put in evidence. Were they round smooth rocks, sharp pointed rocks, or small rocks, was also not put in evidence.

In his unsworn statement, the accused referred to a knife wound which he claimed was caused by the deceased when she cut him with a bush knife. He submitted in support of this, a medical report from the nurse who attended to his wound at the Nafinua Clinic. The nurse's report reads:

"Nature and site of injury: knife wound on right shoulder blade (Rt upper back).

Extent and seriousness of injury: Wound about 1 cm and supervisial (sic). Dry not bleeding now".

With respect, a wound described as "1 cm and superficial" is more consistent with having been caused by an accidental scratching than from a deliberate blow. This witness said that the wound was inflicted suddenly on his backside. In other words, he did not see it coming and therefore could

not, and did not take evasive action. If what he alleges was true, then it is more likely than not, that the wound would have been deeper and bigger and not described as supervisial. I must say that I find his explanation highly unlikely, and when weighed together with all other relevant factors already canvassed, I reject his explanation and accept the explanation of PW5 instead, as to its cause.

I have considered the evidence of the accused carefully, giving what due weight needed to be attached, bearing in mind that the weight to be attached to a sworn statement as opposed to an unsworn statement are essentially not the same; the former being given under oath, and subject to cross-examination, whereas, in the latter, that is not so. With respect, I have not been convinced by the unsworn statement of this accused to the point where there exists a reasonable doubt in my mind as to the veracity and accuracy of the prosecution witnesses evidence. I believe and accept the prosecution witnesses evidence and account as to what occurred that day. I am satisfied that their evidence is reliable, and to that extent, it is clear in my mind that the cause of death was directly related to the punch to the left abdomen with a clenched right fist, followed by a powerful kick to the same region by the accused, and that both blows completely tore the spleen of the deceased into half, resulting in a massive haemorrhage, which eventually led to the death of the deceased not long thereafter; some 30 minutes later. This would seem to be consistent with the time frame in which death would have occurred in such circumstances.

Having made those findings of facts, this brings me to consider the next crucial question, as to whether they do constitute the offence of murder as laid down in the Penal Code or not.

Section 193 of the Penal Code defines the offence of Murder as follows:

"Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder and shall be sentenced to imprisonment for life."

"Malice aforethought" in turn, is defined in the following manner, by section 195:

"Malice aforethought may be expressed or implied and express malice shall be deemed to be established by evidence proving either of the following states of mind preceding or co-existing with the act or omission by which death is caused, and it may exist where that act is unpremeditated -

- (a) *(not relevant)*
- (b) *knowledge that the act which caused death will probably cause the death of, or grievous bodily harm to, some person whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused."*

The crucial question for determination is whether the accused knew that the unlawful and voluntary act of punching and kicking the deceased on the same spot on her left abdomen, will probably cause grievous bodily harm to the deceased (see *Joel Aosi v. Reginam*, [1988/89] SILR 1 at pages 2 and 3). If the accused had known about the internal condition of the deceased, that she had an enlarged spleen, and that thereby her spleen which would normally be protected by her ribs were exposed; and that he unlawfully and voluntarily punched and kicked her on the same spot, then surely he cannot have failed to realise the result that he would probably cause really serious injury to the deceased. But even if he did not know that she had an enlarged spleen, the clear opinion of the learned doctor was that the magnitude of the force would have to amount to a severe blow, to be able to tear the spleen completely in half.

There is clear evidence from PW5 and PW1 that the kick must have been applied with considerable force. PW5 stated that the accused kicked strongly with his legs. Immediately after, the deceased cried out "*Oh mi die nao*". That in my view is a cry consistent with someone who is in extreme pain, and knows that something very serious or wrong has happened to her. PW1 also stated clearly that although he was aware that his father and mother were arguing in their kitchen, he took little notice of

it as it was not unusual for them to be arguing. However, he was alerted by the cry of her mother, and rushed immediately to his parents' kitchen. This witness's evidence is supportive of the fact that a cry of extreme pain was let out by the deceased, and could be heard and recognised for what it was, some thirty feet away, (*the distance of Robert Dickson's house to the kitchen of the accused*).

Then there is the evidence of PW1, PW3, PW4, and PW5, that the accused was cross at that time. When all the above factors are taken into account, there is more than sufficient evidence to show and satisfy me, that the kick that was applied was done with considerable force.

In those circumstances, whatever the wish of the accused be, and despite the fact that he did not know that she had an enlarged spleen, I am satisfied beyond reasonable doubt that as he kicked her with that force, he cannot have failed to realise, that the magnitude of that kick would probably cause grievous bodily harm to the deceased. That there was grievous bodily harm caused to the deceased is not in dispute. The offence is complete and the accused must be convicted of murder. Conviction entered. Sentenced to life imprisonment.

ALBERT R. PALMER

A. R. PALMER
JUDGE

N.B: Sentence of life imprisonment to be effective from 7th September, 1994; date accused was first taken into custody.