

REGINA. -V- LEO RUAIA NAWAIA

High Court of Solomon Islands

(Muria, C.J.)

Criminal Case No. 24 of 1994

Hearing: 6 March 1995

Judgement: 24 April 1995

*DPP for Prosecution**M.B Samuel for Accused*

MURIA, CJ: The accused LEO RUAIA NAWAIA has been charged with the murder of the deceased DAVID TEKERA. The incident occurred on 24th November 1993 at Harapa Village, Shortland Islands, in the Western Province. The accused pleaded Not Guilty to the charged.

It was alleged that the deceased had been drinking home-made liquor made from coconut during the day of 24th November 1993 with his friends one of whom was PW1. Earlier in the day, the deceased while drunk, had an argument with his wife (PW4) and chased her with a knife. As a result, the wife left her house and went to stay in Pastor Takanang's house. This was confirmed by the wife in her evidence in court.

At some time after 7.00 pm the deceased went to the accused's house and had an argument with the accused. That argument was over a coconut which was specially planted to remember the birth of the deceased's child. The argument became heated leading to the deceased challenging the accused to a fight. The accused accepted the challenge, ran into his house where he took a knife and came out to meet the deceased who was standing outside his (accused's) house near toward the kitchen house.

Immediately after the accused came out to meet the deceased, a struggle ensued between them and in the course of which, they were moving closer to the kitchen. It was there in the course of the fight that when the deceased bent down (suggested by the Prosecution as ducking to avoid being hit by the accused) the accused stabbed the deceased on the back. The deceased fell to the ground and was struggling in pain. He was rushed to the clinic but died shortly thereafter.

On the evidence before the court, there can be no doubt that the accused stabbed the deceased with a knife. This has clearly been confirmed by PW1 and accused himself both in court and in his record of interview with the police. It has been further established beyond reasonable doubt that the deceased died as a result of that stabbing.

The issue to be decided really is whether the accused caused the death of the deceased with malice aforethought as required under Section 195 of the Penal Code. This requires the Court to consider the state of mind of the accused at the time of doing the act which caused the death of the deceased based on the evidence before the court. In doing so, the court will also have to consider any defence raised by the accused.

The defence raised in the present case is mainly one of a combination of self-defence and mistake of fact. The provisions of the law relied on by counsel for the defence are sections 10 and 17 of the Penal Code which are as follows:

s. 10 A person who does or omits to do an act under an honest and reasonable, but mistaken belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

s.17 Subject to any express provisions in this Code or any other law in operation in Solomon Islands criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English common law."

It has been submitted by defence counsel that during the fight, the accused honestly and had reason to believe that the deceased was reaching out for a weapon to use against the accused when he bent down by the corner of the kitchen and as such the accused had to act in the manner which he did as a matter of self-defence.

There was no evidence to show that the accused was actually bending down to pick up a weapon but nevertheless, Counsel argued that in view of the evidence from the accused that earlier in the day the deceased had a knife with which he chased his wife, that the deceased later came via the kitchen and was seen by the accused stopping by the kitchen and bending down near the kitchen as though he was doing something, that a challenge to a fight in Gilbertese custom involves the use of a weapon, that in the course of the fight the deceased was moving toward the kitchen and that upon reaching the corner of the kitchen (where the accused earlier

saw the deceased stopping and bending down as though he was doing something) bent down, he (accused) honestly believed and had reasons to believe that the accused was reaching out for a weapon to use on him. Counsel urged that although the accused's belief might have turned out to be mistaken, it nevertheless provides the accused with a defence to the murder charge brought against him.

The learned Director of Public Prosecutions, on the other hand argues that the defence of mistake of fact as provided under section 10 of the Penal code is not available to the accused as, he says, it only applies to offences which have intention as an element. He further argues that the defence of self-defence is not available to the accused since he was the aggressor and one who charged toward the deceased with a knife while the deceased was not armed. I am satisfied that these defences are available to the accused.

The accused has raised these defences and it is for the prosecution to exclude them. The prosecution must do so beyond reasonable doubt. Any doubt as to whether the prosecution has excluded the defences raised must be resolved in favour of the accused.

This is a case where two people entered into a fight and one of them died. The prosecution has established beyond reasonable doubt that the accused stabbed the deceased resulting in the death of the deceased. However I do not think that the prosecution can seriously impose upon the accused that he was solely the aggressor in this case. The fight could not have occurred had the deceased not made the challenge to a fight to the accused. It was the deceased who having bang the accused's house challenged the accused to go outside to fight. The accused accepted the challenge, took his knife and came out to meet the deceased who by then was moving toward the kitchen where he came via earlier on.

The evidence shows that the accused did not immediately use his knife on the deceased upon coming out from his house. Rather it was when the deceased was bending down by the kitchen during the fight that the accused stabbed the deceased only once believing the deceased was reaching out for a weapon to use on him.

The basis for the accused's belief had been outlined by the defence and in order for the prosecution to exclude the defence raised, it must also lead evidence to negative the basis for the accused's belief. In this case, the undisputable facts are that the deceased had used a knife earlier to chase his wife; that he came via the kitchen; that he challenged the accused to a fight; that having made the challenge, the deceased had moved to the corner of the said kitchen; that in the custom of the deceased and the accused a challenge to a fight would involve the use of a weapon; that it was night time and that there was not much light to see clearly; and that upon reaching the corner of the Kitchen in the course of the fight, the deceased bent down, an action

believed by the accused to be an act of reaching for a weapon and not ducking away from the blows from the accused. The accused's belief emanated from those undisputed facts although he was mistaken.

In those circumstances, I cannot find the prosecution establishing any basis for excluding the defence raised by the accused. I am satisfied that on the evidence before the Court the accused honestly and had reason to believe that the deceased was reaching for a weapon to use against him and had to act in self-defence by striking the deceased before the deceased could get him. It would not be reasonable to expect the accused to wait to see what the deceased would do. For if in fact the deceased was actually bending down to pick up a weapon, the chances were, that the deceased could have struck the accused before he could do anything. There was evidence that no weapon was found on the deceased after he was struck and fell down. But that does not mean that the accused could not have had the honest belief that the deceased was reaching for a weapon to use on him. There is no rule of law that he should wait to see if the deceased would strike him before striking the deceased in self-defence. See *R -v- Deana (1909) 2 Cr. App. R 75*. Although mistaken, the accused had shown the basis for his defence and the prosecution upon whom the burden rests to exclude that defence have failed to do so. The Court is therefore left with a doubt which must be resolved in favour of the accused.

It was suggested by the prosecution that the accused had asked PW1 to help him tell the police that the deceased had a knife at the time and that was why he had to be armed during the fight. It was also suggested that the accused had asked PW1 to help him because he was worried about a life sentence and the effect on his children. I find PW1's evidence to this effect unconvincing. I bear in mind that PW1 was a good friend of the deceased. However even if the accused did say such things to PW1, it would not be unthinkable for the accused to say in the circumstances to PW1 that he was worried about a life sentence, especially where a man's life had been lost at his hands and without any appreciation of whether or not in law he was guilty of a crime.

The accused has been charged with murder and he admitted he stabbed the deceased and that death was a result of that stabbing. However, before the accused can be convicted of murder, the prosecution must prove that the act which caused death was unlawful. If that ingredient has not been proved because the accused was acting in self-defence or acting in an honest but mistaken belief that it was necessary to do what he did to defend himself, then the accused cannot be guilty of murder.

On the evidence before the court, I am left with a doubt as to the guilt of the accused and he must be given the benefit of that doubt. The accused is found not guilty as charged.

Verdict: Acquitted of murder.

(MR. JUSTICE GJB MURIA)

CHIEF JUSTICE