

BETWEEN: CHIEF TOFOR TAMAL  
rep. by Mr. Hudson.

AND: PUBLIC PROSECUTOR

Coram: Mr. Justice F.G. Cooke, Chief Justice.  
Mr. John Balango, Assessor.  
Mr. K. Kiri, Assessor.  
Mr. F. Coté, Public Prosecutor.  
Mr. Hudson, Defence Counsel.  
Miss J. Walsh, Chief Registrar.

JUDGMENT

On the 17th of August 1980, early in the morning a witness Julienne Mary Bongname was in her house with her husband Alfred, near the village of Tombang, on the island of Ambrym. About 3 a.m. she left the house to go to the lavatory a little distance away. It was still dark when she returned she said her husband Alfred took his torch and left the house intending to also go to the lavatory. She said after he left the house she heard rifle fire and heard her husband say "Oh" but she did not take any notice and she thought some men from the village were shooting flying foxes. After awhile she heard her husband say "Oh" again and then heard another rifle shot and someone say "You go Singautem August" and then she heard more groans and thought her husband had been shot.

She said she was too scared to leave the house but after awhile she did open the door and saw her husband lying on the ground with the torch still lighting. She ran to where her husband was lying, took his torch and ran to Tombang village to her sister's house and told her what happened. She said the people were too frightened to go to the spot where her husband was as it was still dark but when it was daylight she and the others went to the spot and saw her husband dead. He had two bullet holes, one on the rib cage underneath the right arm and one bullet hole on his left shoulder. This witness stated that she heard the accused say that he would shoot either her husband or one of his brother's because he had been assaulted by some people in Tombang village.

Statements of Rosina Weyang, Manses Bob, Edul, Louis-Marie Bule, Thomas Adel, Carla Loda, Luan, Ronnie Martin, and Andrew Tom were admitted in evidence with the consent of the defence counsel Mr. Hudson.

From the statements it was made clear that Alfred deceased had received three bullet wounds, one on the left forearm and two on the right side.

Witnesses stated that the accused had come to one house and said -  
"The trouble is I have shot Alfred Bongname."

Ronnie Martin stated he gave the accused a loan of the rifle in June 1980. Further evidence was that the accused hid the rifle in the bush which was later found.

In his statement to Captain Willie David, Head of the Criminal Investigation Department, the accused stated he had been to America and that President Carter had instructed him to carry out the killing of the deceased.

Mr. Hudson for the accused stated at the commencement of the case that the defence would be one of insanity. For the defence he called Dr. Bowden who stated he had many conversations with the accused. The accused told him that God had visited him and told him that one day he would be the leader and ruler of Vanuatu, that the whole country would be one under the SDA Church and other religions would be destroyed.

That God regularly has had conversations with him since then, particularly in the early hours of the morning and still continues to do so.

That God sent his light to shine on him which he feels burns his skin, his eyes and his ears and he can't escape this light even if he tries to run away into the bush, it is always with him.

That God told him, following a conversation around 3 a.m. on the night of the murder, that it was alright to kill this man.

That he believed he met President Carter of the United States at Lamap several years ago and that he will go and live with President Carter.

That he believed that the Duke of Edinburgh would declare him King of Vanuatu. That all the people in his area are against him and are trying to deprive him of his land.

From physical examination the accused revealed no abnormalities and investigations have not revealed any evidence of diabetes, tuberculosis and syphilis. Lumber puncture was normal.

That his mood varies from depressed to one of uncontrolled mirth.

In the opinion of the Doctor, the accused is suffering from a serious mental disorder characterised by a paranoid delusional (schizophrenic) state in which he may neither understand nor interpret reality nor can he make rational decisions.

He cannot understand the meaning of his actions in terms of the real world.

The Doctor's treatment of the accused consisted of interviews and discussions and drugs and medication. He used the drug Modcate all the time.

He stated that the accused must continue to attend Hospital for examination and treatment. That he must be under regular medical supervision for many years and that he would not be allowed to return to his island Ambrym because his mental state may deteriorate as there is a lot of ill feeling against him in the community. Again the accused has threatened to kill other people on Ambrym and finally there may be retribution against him by his people in Ambrym.

In answer to the Court the Doctor said that if the accused is given the correct medication and kept away from his own island it would be safe for him to move freely about Vila.

The Doctor stated in ending his evidence that he was quite satisfied that when the accused shot the deceased, he did not know what he was doing.

The Doctor was of the view that the accused should stay in a friend's house and engage himself in some work. Dr. Caroline Knowles a visiting psychologist at the Central Hospital, stated that she was willing to undertake supervision treatment of the accused, provided a medical consultant advised on the drug treatment of the accused.

She would see the accused on Friday the 23rd of April at 1.30 p.m. and thereafter would advise the accused when he had to visit the Hospital. She was willing to be a probation officer for the purpose of the Penal Code.

At the end of the evidence the assessors and myself were fully satisfied that the accused at the time of committing the offence was suffering from a defect of reason, due to a disease of the mind which rendered him incapable of appreciating the probable effects of his conduct, We accordingly acquitted him of this charge.

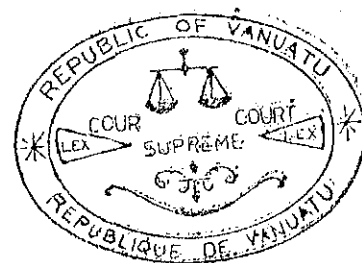
The Court Orders that the accused is to reside with Kalo Mwana who lives in Vila near the main wharf. It is further Ordered that he cannot leave Vila without the permission of the Court and further Ordered that he is to attend the Central Hospital once a month commencing Friday the 23rd of April at 13.30 hours and thereafter as agreed with Dr. Knowles.

On the second charge of carrying arms, the accused is found guilty on his own admission and is fined 1000Vatu or 2 weeks imprisonment. He is allowed until the 30th of April 1982, to pay the fine.

*Frederick G. Cooke*

FREDERICK G. COOKE.

Chief Justice



Dated this 20th day of April, 1982.