

PUBLIC PROSECUTOR -v- DAVID KALOPAT

JUDGMENT

On the 8th day of April 1987, the accused appeared before me charged with intentionally causing the death of one Harry Pierre on the 17th day of March 1987 at Muroa, Tongoa, by shooting him with a bullet from a .22 rifle.

The accused pleaded guilty to the charge. I accepted his plea and convicted him.

From the facts placed before the court by Mr Dickenson, the public prosecutor, it seems that Jimmy Pierre, Harry Pierre (the deceased) his son, Tom Charley, Timothy and young Apia Pierre went to a place called Parango at Muroa in Tongoa to put up a fence to enclose cattle. According to Apia Pierre the accused arrived at the area with a small boy and he was told by Harry Pierre (deceased) that he, Harry, went to see his father yesterday but he was not at home and that he and the others were putting up a fence for cattle. That when he reached home and saw his father they were to come and talk with them about this matter. That the accused replied that he would do so and if his father wants to talk he would come again.

The accused went away and sent a young boy, Marie Donald, to go and collect a rifle from one Kenneth so that they could go and shoot a pig at Muroa. That the boy went and got the rifle, a .22 rifle. That he, the accused, then went and got bullets from his house and when at Muroa he told the small boy that he had already made up his mind to shoot Harry Pierre.

The accused, in his statement to the police, Exhibit A, said: "At this time I had already in my mind to shoot Harry Pierre, so the small boy was frightened and stayed on the road. I had two (2) bullets, I went up to the place where they are putting up this fence, so I called out so as to make them think someone is passing on the road. I was standing on top of a small hill when I called out, while I stood there watching or looking at the place where they were putting up the fence. Just a short while I saw Harry Pierre come up and stand by a Nabanga tree. This time I did not call his name, because I could not identify him as the man whom I am aiming at. So I lifted up the rifle, the .22 and fired. I fired straight at his chest, because it seemed that he was trying to go down a small hill. The distance from where I fired was about 30 metres. After I fired, I heard Harry call out and say "Oh Mummy" so I knew that I got him. Harry only called out once. I would like to stress that it was my intention to shoot Harry dead."

The accused then ran away and met his father and told him he had shot Harry. That later he gave the second bullet to one John Kalbau.

further in his statement the accused said: "I shot Harry Pierre, because of a land dispute about the place where they erected the fence" - further - "since I was small, I saw Harry's families was doing against us about this land and we had no custom ceremony made between us. I can stress that since I was a boy my dad and I had reported threats made against us but their action never stopped. We never went to court. I know that some of these reports are still with the police. All these things had built up in my mind that I shot Harry. No one told me to shoot Harry".

All the facts in his statement were corroborated in statements by those he mentioned.

A medical report was admitted. It stressed that the bullet entered the left chest and lodged in the right chest and was removed from the right chest by Dr Tavoia and exhibited as B.


Mr Rissen, the public solicitor, who appeared for the accused stated it was a sad case. That a dispute over land was the cause of the incident and that the Melanesians are very emotional over land problems, more so than anywhere else. That the accused was twenty years of age, unmarried.

In sentencing the accused I made it clear that I considered carefully all the facts presented and submissions of the public solicitor. I also took into consideration the fact that the accused pleaded guilty and gave full details of the event to the police and as set out aforesaid.

Land in this country is a problem as indeed it is in nearly every country. People have gone to war in the past over land. I have had much dealing with land during the past two years in customary land appeal cases. Some claims seemed to be genuine but many claims were spurious. I do not consider the accused's claim was such as I do not know any of the facts as to the claims. Even if the accused and his father had a claim to the land in question, it gives him no right to shoot the son of a man who claims it. If this were the case, there would be a continuous land war in Vanuatu.

I had to take into consideration that this was a self admitted intentional murder. It was not something done on the spur of the moment. Having given all consideration to every aspect of the case and to ensure that the sentence may act as a deterrent to others in view of the many land disputes there are throughout the country, I felt I had to impose a severe custodial sentence. Accordingly, I sentenced the accused to life imprisonment with a rider that I would recommend to the Minister responsible that the accused serve at least twelve years imprisonment with effect from the date when he was taken into custody.

Dated at Vila this 8th day of April, 1987.


Frederick G. Cooke
CHIEF JUSTICE

