

REGINA v. JOHN TEO'OHU

In the High Court of Solomon Islands
(Ward C.J.)

Criminal Case No. 21 of 1990

Hearing: 28 and 29 November 1990

Judgment: 7 December 1990

F. Mwanosalua for DPP

A. Nori for the Accused

JUDGMENT

This accused is charged with the murder of Frank Osi on 4th June 1990.

On that day the accused and another man, Abraham, were drinking at Naha and, when they were quite drunk, took a bus to Kukum. They were seen by witnesses in Naha and were clearly affected by alcohol and the accused was seen to be armed with a knife.

When they reached Kukum, the prosecution case is that they made some extremely offensive remarks to an old woman. The victim, Frank Osi, and all the prosecution eye witnesses are related to that old woman. She was accompanied by her son, the third prosecution witness, and they went from the market to a house nearby. As they left, the son remonstrated mildly with the accused and his companion and received a threatening aggressive reply.

A short time later the son returned to the market. He was accompanied by another man, Jack Luiramo, and they went to the accused and his companion. Jack grabbed the companion by his shirt and the son went to the accused.

The events are, thereafter not clear on the evidence. It is clear that, besides these two men, there were also the deceased involved and another friend, Reuben Suiga. Also, at some stage, two men from Langalanga were involved in an argument with the accused and Abraham.

Abraham soon ran off leaving the accused alone. The

prosecution case is that, about that time, the accused was confronted by the deceased and stabbed him with the knife by a downward stabbing motion. All the prosecution witnesses described that action in similar terms. The accused, whose case I shall deal with in a moment, claimed at this stage to be trying to keep a number of men at bay by wildly swinging his right hand, holding the knife horizontally, in circular motion from front to back at something near to chest height. I shall return to the actual stabbing later because it is a very important part of the evidence.

The accused has raised the defence of self defence and so I need next to consider his case. He was interviewed by the police and after some initial prevarication, agreed he had brought the weapon with him. He said he was surrounded by a number of men and was 'sweeping' around with his arm and must have stabbed the man then. He said he only carried the knife because he was drunk.

In court, he gave evidence on oath and said that the reason he had the knife and came to Kukum at all was because his father had telephoned to say he was leaving for Malaita and needed a knife. He described the oral exchanges with the woman and, although there is considerable dispute about this part of the evidence, I do not need to deal with it here.

The two drunken men then went to the store where Frank Luiamo worked and, when they came out, they were confronted by a crowd. Frank went to the accused's companion and spoke to him and pushed him. He then ran away leaving the accused surrounded by at least five men. He was grabbed by the shirt and kicked so he fell. He got up and was hit and half fell again. As he regained his feet, he took out the knife in self defence and swung it in the way described. He was doing it very forcibly and he felt it strike someone behind him. When that happened the crowd dispersed and he was able make good his escape.

He was very frightened and ran away abandoning most of his

clothes and the knife on the way. He said he acted in self defence. He never stabbed down with it and he never intended to stab anyone.

He called his companion, Abraham. He said that they were confronted by a semicircle of men and he was then grabbed and pushed into the crowd. He was kicked and fell. The attack continued whilst he was on the ground and then suddenly it stopped. He got up and ran away and, as he did so, saw a crowd around the accused.

When an accused claims self defence he may only use such force as is reasonable in all the circumstances. The accused's case is that he was severely outnumbered by a group of angry, aggressive men. Although they were unarmed, he was in serious danger and that was why he took out his knife. He was simply using it in a way that would keep them at bay. Having raised that defence, it is on the prosecution to disprove it beyond reasonable doubt.

The evidence of the prosecution witnesses is that the accused was never surrounded in the way he describes. By the time Frank Osi was stabbed no one else was involved. I do not go through that evidence in detail and I bear in mind the fact that all those witnesses have a good reason to mislead the court because of their relationship ~~one~~ ^{one} to another and to the deceased man. However, I am satisfied so I am sure that the accused was surrounded at first but, by the time he took out the knife the crowd had dispersed and he was dealing with only one man. He had, at that time, a chance to retreat and get away and he did not take it. I am satisfied he was not thereafter using reasonable force for self defence and I reject that defence.

I also satisfied on the evidence that the deceased man died as a result of the stab wound he received from the accused with the knife he held. However, the matter does not end there.

In order to be convicted of murder the prosecution must prove

that the accused intended to kill or cause grievous harm or performed an act that he knew will probably cause death and was indifferent to that consequence.

The stabbing described by the prosecution witnesses would be a clear example of a murderous blow committed with the necessary malice aforethought. On the other hand, if I accept that the accused may have swung the knife horizontally as he described intending and believing the action would serve only to keep his attackers at bay, then it could be that the prosecution has failed to prove malice aforethought. I have said the blow is important. The medical evidence showed the deceased died from that single stab wound. The knife went between the ribs in the chest and penetrated right through the chest making a small exit wound on the back. It severed the major pulmonary blood vessels and caused massive haemorrhage.

The position of the wounds is important in deciding the nature of the blow. The entry wound was in the right front of the chest in the second intercostal space i.e between the second and third rib. The exit wound was at the right back of the chest at the level of the fifth rib. If the ribs are horizontal that would make the exit wound a maximum of three inches lower than the entry wound. That, in itself, is a much shallower angle than would be expected from the type of blow described by the prosecution witnesses. However, the fact is that the stance of a normal man is such that the ribs run at an angle downwards from the back to the front. As a result, the second intercostal space at the front is only very slightly above the level of the fifth rib at the back. I cannot accept that was the result of a downward swinging blow. On the other hand it does conform with a horizontal swinging blow.

Thus I find in the accused's favour that the blow could have been the result of the actions he described.

As I have said, I do not accept he was acting in reasonable self defence but, on the evidence as a whole, I accept he may

have been using his knife in such a way as to try simply to keep the others at bay. Those were wild and stupid actions by a drunken man but I do not feel the prosecution have proved to the required standard that he was acting with malice aforethought. His actions were dangerous and unlawful but I am not satisfied he realised they would probably cause death or grievous harm. Thus he is acquitted of murder.

However, as I have said, the blow that killed Frank Osi was an unlawful act and the accused is therefore convicted of manslaughter

Sentence

I accept and allow for the fact compensation can be paid and the reconciliation and settlement that must go with it. I hope that will help to mend any rift between the communities.

However, this was a crime and it resulted in the death of an innocent man by the illegal act of a man who had drunk to excess. That must be taken seriously.

The minimum sentence I can pass is one of 6 years imprisonment.

IRA.

(F.G.R. WARD
Chief Justice