

REGINA -v- ALICK TE'E

High Court of Solomon Islands

(Muria ACJ)

Criminal Case No. 1 of 1992

Hearing: 30th March 1992

Judgment: 1st April 1992

MURIA ACJ: The accused ALICK TE'E stands charged with the crime of murder. It is alleged that the accused, on 12 November 1991, at Noro, Western Province, murdered the deceased STEPHEN TAHARAVANIA.

The onus is on the prosecution to prove beyond reasonable doubt that the accused caused the death of the deceased and that he did so with malice aforethought.

The prosecution called six witnesses including the doctor who examined the body of the deceased and whose evidence contained in a Medical Report had been admitted pursuant to the provisions of section 180A of the Criminal Procedure Code.

The evidence for the prosecution is that the accused and the deceased were among the fishermen employed by Solomon Taiyo Ltd on board the fishing vessel Tokyo Maru No. 5. On the 11 November 1991 the accused and the deceased had an argument over an empty bucket of flour. A fight broke out between them as a result. That fight was stopped by other work mates and as a form of settlement of the row, the accused was paid the sum of \$10.00 which he accepted. The accused and the deceased shook hands. That incident took place while they were out at sea fishing on board the Tokyo Maru No. 5. At about 2 o'clock in the afternoon of 12 November 1991 the ship arrived back at Noro and started unloading their catch onto the wharf. The deceased was helping to unload the fish from the ship using basket trays. The accused was not helping to unload the fish but he was sitting fixing his eyes on the deceased. As the deceased bent over to lift a tray of fish, the accused jumped at the deceased and plunged a one-blade scissors into the deceased's left chest. The accused then pulled the one-blade scissors out and thrust it into the deceased's left neck also. Having done that, the accused turned his attention onto one Dominic Besa. The accused attacked Dominic Besa and stabbed him on the left shoulder with the one-blade scissors as well. The accused then ran away. The deceased staggered and fell into the sea. Other workmates helped the deceased out from the water and rushed him to Munda Helena Goldie Hospital but the deceased died on the way.

The medical report shows the external injuries noted are: (1) one centimetre clean edged laceration at the anterior inferior angle of (l) jaw, at the level of the thyroid cartilage. Fresh dark blood oozing from it. It was about four centimetres deep when probed, (2) one centimetre clean edged laceration on the (L) sixth intercostal space, at the anterior axillary line. The laceration went in a medio anterior direction for about four to five centimetres under the intercostal muscles before entered the pleural space. The post mortem examination revealed a (L) tense haemopneumothorax, collapse (L) lung, acute cardiac tamponade; lacerations of (L) lung, pericardium and the heart. The internal jugular vein was also lacerated. The doctor concluded that the injuries were consistent with a sharp pointed object and that the deceased died from acute cardiac tamponade and (L) tension haemopneumothorax, directly as a result of the injuries to the (L) pleura, pericardium and the heart itself. That deceased could easily have died within the hour of the incident.

All the prosecution witnesses clearly described how the accused stabbed the deceased and their evidence have not been challenged by the defence.

The accused elected to give evidence and had done so on oath. In his evidence, the accused agreed he stabbed the deceased twice as alleged by the prosecution. He said when they arrived back at Noro, he thought of the row with the deceased over the empty bucket and his mind went "wrong". The accused said in cross-examination that he was still cross with the deceased about the bucket so he went and took the scissors from his room. He then went toward the deceased stabbed the deceased once on the left side and once on left neck. He said he did not mean to kill the deceased but only to put his "mark" on the deceased and that he did not think the deceased would die from the stabbing.

The facts as established by the evidence are not in dispute. I therefore find as facts the following. The accused and deceased had an argument over an empty bucket on 11 November 1991 and that argument was settled with the offer of compensation of \$10.00 paid by the deceased's side to the accused who accepted it; that the next day, 12 November 1991, at Noro, the accused was still angry with the deceased about the previous day's incident; that on 12 November 1991, there was no argument between the accused and deceased; that the accused took a one-blade scissors from his room and jumped to where the deceased was, stabbing the deceased once on the left side of his chest and once on the left side of his neck causing injuries as found by the doctor; that the stabbings were unprovoked; and that the deceased died as a result of the injuries arising out of the two stabbings.

The crime of murder is provided for under section 193 of the Penal Code which provides that:

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

The mens rea in cases of murder is expressed as *malice aforethought* which the prosecution must prove to the required standard. Section 195 of the Penal Code then goes on to define malice aforethought as follows:

"195. Malice aforethought may be expressed or implied and expressed 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 mission by which death is caused, and it may exist where that act is unpremeditated -

- (a) an intention to cause the death of or grievous bodily harm to any person, whether such person is the person actually killed or not; or*
- (b) knowledge that the act which caused death will probably caused the death of or grievous bodily harm to, some person whether such 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 accused stated in his evidence that he did not mean to cause the death of the deceased. I accept he might not intend to kill the deceased but the mens rea to be proved is that of malice aforethought as provided under section 195. Under that section malice aforethought may be kept expressed or implied and the section provides what constitutes express malice.

Under the first limb of section 195, the prosecution must prove either the deceased, when he plunged the one-blade scissors into the left chest and again into the left neck of the deceased, intended to cause the death of the deceased or intended to cause grievous bodily harm to the deceased. The second limb of the section requires the prosecution to prove either, the accused knew at the time that the acts which caused death would probably cause the deceased's death or knew that the acts of stabbings would probably cause grievous bodily harm to the deceased. Thus the court must consider the accused state of mind when he plunged the one-blade scissors twice into the deceased's body.

The learned Director submitted that the accused was still angry about the previous day's incident and that the accused deliberately took the one-blade scissors which he kept in his room, thrust it into the deceased's left chest and left neck with intent to cause grievous bodily harm to the deceased. The weapon was lethal and that the accused used it on the most vital part of the deceased's body, the direct result of which was the death of the deceased. The learned Director further submitted that there can be no question of provocation in this case.

Mr. Radclyffe on the other hand submitted that although the accused admitted stabbing the deceased twice because he was cross with the deceased, it does not necessarily mean that the accused had the necessary intent required in murder.

On the evidence before me the court must ask itself whether the accused's state of mind was such that he intended to cause grievous bodily harm to the deceased or that his state of mind was such that he knew that act would probably cause grievous bodily harm to the deceased.

The weapon used by the accused in this case to inflict the two lacerations on the deceased is potentially lethal. It is sharp pointed and when plunged into a person's body it can be fatal especially if it is directed at parts of the body where the vital organs of the body are. I am satisfied that the thrusting by the accused of the one-blade sharp pointed scissors into the left chest and left neck of the deceased could cause very serious injury, if not, fatal as it happened in this case and I have no doubt whatsoever that the accused must have realised that. A sharp pointed weapon such as a one-blade scissors does not need substantial force in order to cause serious injuries to a person when thrust into vital areas of the body, such as the chest and the neck.

The doctor's evidence clearly shows that the injuries caused as the result of the stabbings are fatal and are consistent with the use of the sharp pointed object. I am satisfied that the sharp pointed object was the one-blade scissors used by the accused on the body of the deceased.

I must consider Mr Radclyffe's suggestion that the stabbings admittedly done in anger does not necessarily mean that the accused had the necessary intent as required in murder. The mental element required to be proved in murder is that set out in section 195. In this case the evidence was that the accused on 12 November 1991 was still cross with the deceased over their row the previous day, and upon arriving back at Noro, he had his eyes fixed on the deceased. The accused said, then his mind went "wrong" and went into his room and took the sharp pointed one-blade scissors which he had kept in his room. He came out of his room, jumping from the first pool to the second pool on the ship where the deceased was and saying in pidgin "you man ba nao ia!" (meaning "you are the man, Yah") thrust the one-blade scissors into the left chest of the deceased and pulling it out, he again thrust it into the deceased's left neck. The accused admitted doing these and in his own words he said on oath:

"I know a man's neck is soft. I know if I butchered Stephen's neck, it would go inside. I also know the scissors would cause damage to his belly. But at that time I did not think it would cause severe damage to Stephen's body."

On those evidence there can be no other conclusion than the accused meant to seriously injure the deceased and that he knew that his act would cause serious bodily harm to the deceased.

I am therefore satisfied beyond reasonable doubt that the accused intended to cause grievous bodily harm to the deceased. I am equally satisfied beyond reasonable doubt that the accused knew that his act would cause grievous bodily harm to the deceased. That is malice aforethought as defined in section 195 of the Penal Code.

On the evidence before me I am satisfied that the prosecution has proved beyond reasonable doubt that the accused is guilty of the murder of the deceased and he is convicted of murder.

(G.J.B. Muria)
ACTING CHIEF JUSTICE