

**REGINA -v- DONGA RAKEFI**

High Court of Solomon Islands  
(Muria, CJ.)  
Criminal Case No. 17 of 1995

Hearing: 31st October 1995  
Judgment: 6th November 1995

*J. Faga for Crown*  
*Andrew Radclyffe for Accused*

**MURIA CJ:** The accused Donga Rakefi has been charged with the murder of Tome Beni. The incident was alleged to have occurred on 24 November 1994 at Foueda Island, Malaita Province. The accused pleaded Not Guilty to the charge.

At the end of the prosecution case, Mr. Radclyffe submitted that there was no case for the accused to answer. The Court ruled, however, that there was a case to answer. The accused then elected to give evidence on oath which he did.

I remind myself that burden of proving the guilt of the accused is on the prosecution and that must be done on proof beyond a reasonable doubt. Any slightest doubt, must result in the acquittal of the accused.

The evidence called by the prosecution comes from eight witnesses. But at the outset, if I may say so, the only evidence which is worth looking at are those given by PW1, PW2, PW4, PW5 & PW8 whom the prosecution called to prove the allegation that the deceased died as a result of the stone thrown by the accused and landed on the left side of the head of the deceased.

The prosecution's case is that on the morning of 24 November 1994, the accused Donga Rakefi and his group which consisted of Gwali Ukanisi, Fred Bou, John Bou, Tuita Ukanisi Rakefi Ukanisi and Donga Rakefi (accused) himself, came to PW1's house to ask for a fight with him. It is said that there was no fight then except that PW1's mother was hit by Fred Bou. Then it is said that the accused's group went away and not long after that they came back again that morning, this time two of the men, Fred Bou and Gwali Ukanisi, armed with knives. There was no fight either on that second occasion. They left, says PW1, after Lania Bata talked to them. The third time the accused's group came to PW1's place is said to be at about 8.30 pm on that day (24 November 1994). It was on that third occasion that a fight is said to have occurred.

On each of alleged occasions, PW1 said that the accused's group came to his (PW1) house and asked for a fight. According to PW1 a fight broke out and he saw the accused with a stick, about one fathom long in his right hand. PW1 said that he saw from four metres away the accused threw the stick which was sharp on one end, at the deceased, Tome, landing on his left ankle. It is then said that when the deceased bent down

to remove the stick from his leg and raising his body after that, that the accused shot the deceased with the stone which PW1 says it landed on the head of the deceased. When asked in cross-examination about the stone, PW1 said that the accused might have pick it from the river as the stone was like those found in the rivers. He later changed that to say that the accused probably picked it up from the ground where the accused was standing.

The evidence of PW1 paints the picture that on all the three occasions and particularly on the third occasion, when the accused's group came to his place, he did nothing at all except to stand and watch the fighting, the sticks and stones throwing. Even when the deceased had been hit by the stick and stone, PW1 and also the others such as George Buga, Lania Bata did not lift a finger to attend to the deceased who is said to have been "speared" and "stoned". PW1 was only four metres away from the deceased while George Buga was only five metres away from the deceased.

On the third occasion, PW1 stated that the accused's group came and fought him and then after that as they were leaving they then started throwing stones. It was then that the deceased was shot on the head with a stone by the accused. PW1 also stated that he did not see anyone in the accused's group holding a knife.

George Buga (PW2) on the other hand said that when he heard the shouting, "kill them", he went outside and saw all the men in the accused's group armed with knives. He said he actually talked to the accused and his group and told them to go back. Not only that they held knives but PW2 also said that they all had sticks and knives. According to PW2 the accused had a knife on his hand and stick on his right hand and that it was after the accused threw the stick at the deceased that he (accused) picked up the stone from the ground and shot the deceased with it.

In cross-examination PW2 stated that he did not see Billy Mouli (PW1) at the scene at the time but that he (PW1) was just standing in front of his house. If that is correct then PW1 could not have been four metres away from the deceased at the time of the alleged shooting of the deceased with the stone by the accused. It would also be not possible for PW1 to see the stick landing on the deceased's left ankle if he was not there.

Again PW2 gave evidence and said that he did not see anyone in Donga's (accused) group going over to PW1's house in the evening. PW1's evidence is that the accused's group came to his house and fought him. It is also the evidence of PW2 that PW1 came to where he (PW2) and others were standing after the fight was over. That evidence runs in contradiction to PW1's evidence that he was there with George Buga & others standing when the fighting and stone throwing were taking place.

PW4 gave his account of what he said he saw that day of the incident. In the morning, he says, only Gwali Ukanisi, John Bou, Fred Bou and Tuita Ukanisi came to fight PW1. The accused was not with them. He himself talked to Gwali's group that morning and told them that they should go back and come back in the evening to straighten the matter.

When the group came in the evening the accused was with them. As soon as they arrived, says PW4, they attacked PW1 and when they were stopped they then started shooting with sticks and stones. PW4 says that the accused was holding a stick and knife at the time. When pressed in cross-examination he admitted that when he first gave his story to the police after the incident he never mentioned to the police that the accused had a knife. This was the first time he mentioned about the accused holding a knife.

According to PW4, Billy (PW1) was there during the fight but that he was standing underneath John Tuita's house watching. This of course is the third version of the whereabouts of PW1 during the incident that evening of 24 November 1994.

As to the injuries allegedly suffered by the deceased, PW1, says the stone landed on the top of the deceased's head. PW2 and PW4 say the stone landed on the left side of the deceased's head. All those three witnesses say that after the stone hit the deceased, he (deceased) walked away back to the house where he was staying.

It is also worth noting that it was a dark night with no moon light. The only lighting relied on by the Prosecution came from the hurricane lamps from Kokoto's, Tosai's and from Jennifer Foua's houses and another from PW1's house. It is clear that the lighting from PW1's and Tosai's houses were from lamps hanging outside those houses. It was Jennifer and Kokoto who were holding lamps near the area where the alleged fighting occurred. Within that area there were a lot of people moving about.

In a Village setting, it would not be difficult to imagine the extent of visibility at night where hurricane lamps are often the only means of lighting. In view of the way the witnesses described what happened that night under the form of lighting described, the court must be very cautious when considering the evidence from witnesses who said they saw what happened under such lighting. I too bear this in mind.

PW5 was the nursing officer who saw the deceased body at about 10.00 pm on 24 November 1994 and confirmed him dead. The next day, he attended the house where the deceased's body was kept and upon request from police he examined the head of the deceased. In order to properly see where the alleged injury was on the left head of the deceased PW5 shaved the left side of the deceased's head. He saw a round wound at the left side of the head of the deceased. It was not a laceration wound. According to PW5 the wound was round and swollen, blackish with haematoma. There were also some small cuts and folds at the same area of the deceased's head. PW5 also found a small wound to the ankle of the deceased left leg.

Dr. Oritaimae (PW8) who examined the deceased's body after it exhumed on 2 December 1994 gave evidence that he was not able to determine the cause of deceased's death in view of the decomposition of the body. He meticulously look at the head of the deceased and could not find any fracture of the skull.

The other witnesses also called by the prosecution are Rose Mouli(PW3) and two police officers. Det Sgt. Mark Oge and Det. Const. George Rifasia (PW6 & PW7). The evidence of PW3 is that she remembered

giving her story to the police at Naha early this year. She could not remember what she told the police. When asked about the incident of 24 November 1994, she said that she was in her mother's house with her mother during the whole evening of 24 November 1994. She did not see anybody coming past their house nor did see anything happening. All that she heard was the noise of a fight. When asked about her mother's second name, she said she did not know her mother's second name.

From the Court's point of view, PW3 is a witness that is lacking credibility. I watched her giving evidence and I concluded that she was a very unimpressive witness.

PW6 is the police officer who prepared the sketch Plan of the scene. His information to sketch the plan of the scene came from PW2. The officer says that it was PW2 who demonstrated to him what took place on the evening of 24 November 1994. The Sketch plan was prepared on 27 November 1994, three days after the incident. PW6 says that no items could be found at the scene. He however says that there were stones on the ground since the surface of the ground at the Village was a stony-surface.

PW7 is the officer who took the photographs of the grave and the exhumed body of the deceased. Nothing much turned on this witness's evidence.

The accused gave evidence on his own behalf. He said the deceased was his uncle but in custom the deceased was his daddy and with whom he had no dispute. The matter over the tree suggested by the prosecution was not a dispute as such, says the accused. It was only a family matter.

The accused says that he never went to PW1's house on the morning of 24 November 1994. This is consistent with what Lania Bata (PW4) says. PW4 says that the accused was not with Gwali & Others when they went to PW1's house on the morning of 24 November 1994.

The accused also gave evidence and said that it was true he came to PW1's house in the evening on 24 November 1994 and asked for PW1. He told him that PW1 was not in the house. It was when he was going back that he met Fred Ukanisi and the others between Sisia's and Tosai's houses. It was there that Mouli (PW1's father) came up to him and shone a torch onto his eyes. This made the accused angry and so he pulled the torch from Mouli and threw it to the ground. He was still standing there when the accused says that other people accompanying Mouli came, shouting "kilim oloketa" (kill them). Also they shouted saying "shit long daddy blong oloketa" (to shit on their daddies).

Shortly after that Mouli's group started throwing stones toward the place where the accused and others were standing. One of those hit the accused on the head and he fell unconscious. He was taken away and did not know anything else after that.

The accused denied seeing PW1, PW2 & PW4 at the scene before he was hit by a stone. He said if they were there, then it must be after he was taken away. He also said that he did not see the deceased there that evening.

In cross examination the accused was unshaken. He was firm in his evidence as compared to the prosecution witnesses who were shown to be susceptible to contradicting each other's story of what happened that night.

#### The weapons used.

The evidence from the prosecution witnesses described the weapons used by the accused to be a stick and a stone. PW1 described the stick as about 1 fathom and that it was bigger than the size of a microphone stand. He demonstrated that the accused threw the stick at the deceased in a "spear - throwing" motion. PW2 described the stick as a "Koa" which women usually use for firewood. He said that the stick was about 2½ to 3 feet long, sharp on one end and that it was like a batten pointing to a batten on wall of a Court house and heavy. PW4 described the stick as a "mangrove stick" and about 1 fathom long. He said the stick was flat and that it was a firewood. He demonstrated that the accused swang the stick at the deceased in whipping motion, not a spearing motion. He also did not see the stick landing on the deceased. He only heard the deceased said so.

As to the stone, PW1 demonstrated it as round and like a stone from the river. He also said that the stone could have been picked by the accused from the river. PW2 described the stone as a rough stone and that it was picked up by the accused at the place where he threw the stick at the deceased. PW4 described the stone as a rough stone and that the accused picked it up after he threw the stick at the deceased. He did not see when the stone landed on the deceased's head. He only heard the deceased said that he was shot.

There is clearly variances in the descriptions, not only of the weapons said to be used by the accused but also as to the manner in which they were thrown at the deceased. Yet these are the witnesses who are said to be with the deceased or at least standing close to the deceased at the time of the incident.

#### **The Injuries**

The injuries said to have suffered by the deceased were described by PW5 and PW8. It was PW5 who examined the body of the deceased on 25 November 1994. He found a small dirty wound to the deceased left ankle, and about 3 cm deep and a swollen, blackish wound with haematoma of about 2½ cm in diameter on the left temporal of the deceased. PW5 also found other small cuts and folds within the area where the round swollen wound was.

PW8 was not able to determine the cause of death of the deceased as the body had started decomposing. His examination did not reveal any fracture of the cranium or any other part of the body.

#### **Conclusion**

What is the position of the prosecution evidence in this case? The prosecution case is that the deceased died as a result of the injury to the head. That injury is said to have been caused by a stone thrown by the accused at the deceased's head.

PW5's evidence revealed that apart from the one swollen wound, there were other injuries as well to the same area of the head. These were the small cuts as described by the witness. What caused those wound is not known and the prosecution does not, it seems, think that those other injuries matter. In my view those injuries are important especially where the evidence shows that the incident not only one stone being thrown but a barage of stones was said to have been thrown by others as well apart from that alleged to have been thrown by the accused.

I have dealt with the evidence of each of the prosecution witnesses, especially those of PW1, PW2 & PW4. Their evidence have demonstrated a number of inconsistencies which I have already pointed out in this judgement. These three witnesses are said to be at the scene and from their evidence they could not be more than three to six metres from each other. Yet their evidence when combined do not hold together.

I watched all the witnesses gave their evidence in Court in this case. PW1, PW2, PW3 & PW4 did not appeal to me to be impressive witnesses.

It was suggested by Mr. Faga for the prosecution that the death of the deceased was a direct result of the accused's act. I am far from comfortable to accept that suggestion. Factors which led the Court to such a discomfort are: it was a dark night and the only form of lighting were hurricane lamps; there were a lot of shooting with stones that night (and the evidence showed that the two sides were barraging each other with stones that night); the deceased on the prosecution evidence was standing where the stones were thrown to; the surface of the ground at the scene was stony and rough; the deceased fell down as he was going out to his house after he was said to be stoned; there were a lot of people at the scene that night and there was a lot of commotion as well; there were differences in the description of the stone said to be thrown by the accused; there were more than one wound to the left side of the deceased's head; no fracture of the cranium; and the apparent lack of coherence in the prosecution witnesses' evidence. The first thing that the prosecution must establish beyond a reasonable doubt is that the death of the deceased was caused by the accused. Short of that, the prosecution case must fall.

As for the accused, even if I have to view his evidence with circumspection he does not have to satisfy the court of his innocence. He does not have to prove anything. The burden is on the prosecution to satisfy the court beyond a reasonable doubt of the accused's guilt. If the Court is not sure of the accused's guilt, then the law says that he cannot be convicted of the crime he was charged with.

On the evidence before the Court, I am left with this lurking doubt and a sense of discomfort as to the guilt of the accused. Consequently the law directs in those circumstances that the Court must return a verdict of Not Guilty. I therefore find the accused Not Guilty of the crime of murder and he is acquitted.

**Verdict: Not Guilty**

**Accused acquitted.**

(Sir John Muria)  
**CHIEF JUSTICE**