

IN THE HIGH COURT
OF THE SOLOMON ISLANDS

Criminal Case: 315 of 2004

REGINA
V
WILLIAM HENCE
GEDDILY ISA
CARRADINE PITAKAKA

Date of Hearing: 19, 20, 23, 24, 26, and 30 August 2010, and 1 September 2010.

Date of Decision: 1 October 2010.

Mr. M. Coates and Ms. T. Walenenea for Crown.

Mr. P. Cavanagh and Mr. Ghemu for William Hence.

Ms. M. Waqavonovono and Mr. W. Orisi for Geddily Isa.

Mr. S. Barlow and Mr. A. Kesaka for Carradine Pitakaka.

DECISION AFTER TRIAL

Cameron PJ:

1. The three accused are charged with the murder of Melanesian Brother Nathaniel Sado on the Weathercoast between 1 and 28 February 2003. All denied the charge and stood trial. The trial was in fact a re-trial which had been ordered by the Court of Appeal.
2. It is common ground that the Melanesian brothers were assisting with the peace process on the Weathercoast during the final few months of the tension period in Solomon Islands. In February 2003 the victim Brother Sado and a Brother Tabo were given a letter from Archbishop Pogo of the Melanesian church. The letter was to be delivered to Harold Keke, who on the evidence was the leader of a militant group known as the Guadalcanal Liberation Front (GLF). The two Brothers then travelled to Pite on the Weathercoast, and on 13 February 2003 the letter was handed to a Dyell Tati, who was Harold Keke's secretary. A reply to the letter was received by Brother Tabo from the GLF and Brother Tabo and another member of the Melanesian Church, Father Francis Lauvatu, then departed. Brother Sado, however, remained in Pite, saying he was going to speak to Harold Keke.
3. The evidence of Dyell Tati was that the next day he and Ronnie Cawa, who the evidence establishes was the second in charge to Harold Keke of the GLF, went to

from Brother Sado's mouth, ears, and nose and that blood was running down his face.

10. As for the third accused Geddily Isa, he stated that he was at the back of the group watching the beating.
11. A point of some significance is that Allan Saravo's evidence was that during this beating Pitakaka was saying "*kill the evil man*". He stated that Hence was also shouting those words.
12. After the beating, Allan Sarevo stated that Brother Sado was pulled to a different location by his assailants, a point beside a low wall about 38 metres from where Allan Sarevo was standing. There, stated Allan Sarevo, the beating continued, though Brother Sado had been knocked onto the ground and was thus obscured from his view by the low wall. While he was being pulled to that second location, the shouting "*kill this evil man*" continued.
13. Allan Sarevo's evidence was that he had a clear view from where he was standing of both locations where the beatings took place.
14. After witnessing the beatings, Allan Sarevo stated that he went back to Ghorombau, and the next day a boy came and told him that Brother Sado was dead, and explained to him where he had been buried. Allan Sarevo stated that he then went to Pite and saw some loose ground and what looked to him like a grave.
15. The first point I make about the beatings as described by Allan Sarevo is that there is no direct evidence that these occurred on the day prior to Brother Sado's death. Obviously any such beatings must have occurred after Brother Sado's arrival on 13 February. However, the only evidence of their proximity to the death of Brother Sado is the hearsay evidence Allan Sarevo said he received that Brother Sado had died the day after the beatings, and his subsequent inspection of what appeared to him to be a grave site. I am not prepared to make a finding that the beatings allegedly witnessed by Allan Sarevo happened the day before the death of Brother Sado based on hearsay and on an inconclusive inspection of what may or may not have been the grave site of Brother Sado. Nor is there any other evidence from which I can safely infer that the alleged beatings took place the day before Brother Sado's death. Thus there is no causal link between the alleged beatings and the death of Brother Sado, and his evidence is of limited probative value.

16. In addition to that difficulty, it became apparent during cross-examination that there were significant discrepancies between what he told this Court and what he told the Court in 2006, during the first trial of these accused. What he did not tell the Court in 2006 was that while he was watching the beatings he heard Pitakaka and others shouting out *"kill this evil man"* or words to that effect. Clearly that piece of evidence is highly significant to the Crown case that Brother Sado's assailants intended to kill Brother Sado by beating him to death, and yet Allan Sarevo said nothing about this in his evidence in 2006. He was unable to explain satisfactorily why he had not said anything about this at the trial in 2006, raising the possibility of him fabricating his evidence as to this in this trial.
17. It also became apparent during cross-examination that in his police statement of 19 August 2003 Allan Sarevo had told the court :

"I heard Harold Keke order a number of men to take Brother Sado away and kill him. They were to take him away to Pite Village which is almost one kilometre away from Ghorombau"

He said nothing to that effect in this trial. When asked in this trial if he remembered saying that to the Police, he answered that he could not remember. Then when it was suggested to him that being present when Harold Keke gave an order to kill someone is not something one would forget, he gave a non-responsive and in my view evasive answer. When questioning persisted he resorted to stating that Ronnie Cawa had said that Harold Keke had given the order to kill Brother Sado.

18. I am in no doubt the witness was deliberately evasive on this point. The crown in closing submissions attempted to downplay the significance of this, stating *"he never agreed that he did say those things in the statement"*. However, the Crown did not suggest at the time that what was put to the witness was an inaccurate version of what was contained in the police statement. In short, I find he did make that statement to police, that he would have remembered such an event if it had taken place, that he was deliberately evasive when confronted with this, and in an attempt to extricate himself he gave a different version to that given to the police.
19. Another inconsistency relating to his evidence is that he told police on 19 August 2003 that:

"when they were accusing Brother Sado I saw them putting spears into his body."

In his evidence in chief he did not say anything about this. When asked about whether he remembered saying this to police, he said that he could not remember, and then later in cross examination he admitted that he did not see this happen but was simply told about it.

20. Another inconsistency is that while he told police in 2003 that he saw men digging Brother Sado's grave, in his evidence he accepted that he did not see this.
21. I accept the defence submission that Allan Sarevo is not an independent witness. He was related to Brother Sado, had stayed with him on a previous occasion at Savo, and disliked the GLF, who he said took his land and stole his crops. When one combines these factors with the inconsistencies and his unsatisfactory explanations for them and the untruths, I conclude that the evidence of Allan Sarevo is inherently unreliable and place no weight on it.

Jeffrey Kibo:

22. Jeffrey Kibo is said by the Crown to be its key witness. He gave evidence that he was aged 22 years now, so he would have been 14 or 15 years old in early 2003.
23. He gave evidence to the effect that he arrived at Pite from his home village of Kuma (a long distance away) sometime after Christmas 2002. He took up residence at Vatuloki, a small village within the general area of Pite. He said he did not become a GLF member, and spent his time tending to his gardens and cooking food.
24. After his arrival in Pite, his evidence is that he first saw Brother Sado, who he recognised, at Pastor Michael's house. He said the next time he saw him was one evening in a prison tree with his hand tied. He explained that the term prison tree referred to an abololo tree and a photo in evidence as an exhibit showed this to be a tree with external and tall roots around which a net had been placed, thus creating a space within which a person could be confined. He said that around the tree at that time he recognised the accused Pitakaka, and that Ronnie Cawa and Owen Isa (the accused Geddily Isa's brother) were also present. He said that he noticed a mark on Brother Sado's head, and that he had blood running down from it. He then returned to his village at Vatuloki.
25. His evidence was that early the next day, when he was cooking food for himself, Ronnie Cawa came to him and told him to come to Pite where he, Ronnie Cawa,

would meet him. He said that he told Ronnie Cawa that he would come when he had cooked and eaten his food, and that Ronnie Cawa then left.

26. He said that following the cooking and eating of his food, he walked down to Pite, where he met Ronnie Cawa again, and that at that point Ronnie Cawa told him to go down to the beach area to help two men dig a grave. His evidence was that he went down and assisted two men with the grave digging, but during this process Ronnie Cawa came down and told him to go back to Vatuloki to get a spade. He said that when walking back along a small road to Vatuloki to do this he saw Brother Sado being led down past him by a group of men, who he recognised as Pitakaka, William Hence, Geddiy Isa, Owen Isa and Ronnie Cawa. He said he noticed a mark on Brother Sado's face and that his face was bleeding. He said he then proceeded to Vatuloki, got a spade, and on his return along that same road he passed the same group, who were still with Brother Sado. This time, he said, Brother Sado was sitting on the ground, and the group were kicking and punching him. He identified all three of the accused as actively participating in this, as well as Ronnie Cawa and Owen Isa. He said brother Sado was crying out 'ei, ei' while he was receiving this beating.
27. Jeffrey Kibo said that he then walked on down to the grave site, and that about an hour later (although because he did not have a watch he couldn't be sure how long) this same group arrived carrying the body of Brother Sado in a canoe. His body was then dropped into the grave, along with some of his personal possessions, and Jeffrey Kibo then assisted in the burial.
28. At this point I refer to the medical evidence from Dr. Malcolm Dodd, who carried out a post mortem on Brother Sado's body on 11 October 2003, following its exhumation. His evidence was that the body was so decomposed that essentially there were only skeletal remains left, and thus the Doctor was unable to comment on what if any trauma had been suffered by the soft parts of the body. Dr Dodd's examination found that the left ribs 1 to 8 inclusive were fractured, as were the right ribs 1,2,3,5,7,8,9,10 and 11, and as were both collar bones and shoulder blades. His evidence was that the fractures to the collar bones were consistent with hitting and kicking.
29. Because of where the fractures occurred on the ribs and the characteristics of those fractures, the doctor's conclusion was that the cause of death was deliberate blunt force trauma to the chest. Dr. Dodd said that the blunt force trauma was consistent with either stomping on the chest or a large rock being dropped on the chest.

30. Returning to the evidence of Jeffery Kibo, it is important to analyse what role he played in the events leading up to the death of Brother Sado. In Court he continually denied being a member of the GLF, insisting that he was neutral. Consistently with that position, he denied that his job for the GLF was to act as a gatherer of food and as a cook. He based his claim to neutrality on the assertion that he had been forced to come to Pite from his home village of Kuma by a person called Amon, who had said that if he did not do so he and others would return to Kuma and kill him.
31. It was clear from the evidence that at that time Pite and its surrounding areas were a GLF stronghold. The village houses had been burnt, the villagers had fled, the area was occupied virtually exclusively by gun-carrying GLF, there were operational bunkers, the area was a no go zone for outsiders, and it was under the military control of the GLF commander Harold Keke and his second in command Ronnie Cawa. It was in effect a war zone, and at that time the opposing forces were the Joint Operations Group (a government contingent) and other so called liberation front groups.
32. Jeffrey Kibo admitted that he shared accommodation at Vatuloki with a group of men who were members of the GLF and who carried guns. He also admitted that sometimes GLF members would share his food. Nevertheless, he obstinately refused to accept in court that he was in fact a member of the GLF, and went to quite extraordinary lengths to create a different impression. To illustrate, he denied that he knew what the purpose of a bunker was despite agreeing he had seen them, he denied that boys would congregate at bunkers with guns and ammunition, he denied that he pretended to the other boys that he was a member of the GLF, and he denied spending significant time with those he was living with. All this I find quite implausible, coming from a person who admitted living there for some time prior to the death of Brother Sado. To illustrate further his attempts to distance himself from the GLF by creating an impression of spending most of his time on his own, he stated:

"Because the group I was living with I just stayed there with them when I wanted to go for a walk about I will get the bag and a knife go to the gardens get some food stayed in the bush until about evening and then I will come back".

Again, I find this answer has an element of implausibility about it. If he had in fact dis-associated himself from the GLF in the way he suggested, one might ask why

would the second in command of the GLF, Ronnie Cawa, specifically seek him out and order him to dig a grave?

33. I am satisfied that the reality was quite different to that which Jeffrey Kibo asserted. I consider that for all intents and purposes he was a member of the GLF and with that went some responsibilities to the organisation. As to whether he was a provider of food and a cook for the organisation, I note that when it was put to him that he would obtain and cook food for the GLF, he finessed this by saying:

"So after cooking when it's ready and if somebody comes around when this food is ready I will give them food".

The following statement from his police statement of 14 August 2006 was then put to him as follows:

"My job was to garden and get food for them".

His unsatisfactory response was *"I've forgotten because it's a long time"*. I am satisfied that his job was to obtain and cook food for the GLF, and to carry out other duties on request.

34. Consistently with that, I accept that he was ordered by Ronnie Cawa to assist in digging the grave, and whether by so doing he was complicit in the murder of Brother Sado may depend on the extent of his knowledge as to who the grave was intended for. I make no finding in that respect. Even without that knowledge, it may be that by stating that he buried the body of Brother Sado this implicates him as an accessory after the fact. Again, I make no finding in that respect. What is clear, however, is that Jeffrey Kibo cannot be regarded as an independent and objective witness.
35. Consistent with an apprehension on his part about being implicated in the murder were his actions when interviewed by police on 4 February 2004 at Kuma. Following a session with police in the morning, by which time his police statement was only partially complete, it is not contested that at lunch time he then ran away, and failed to re-appear that day to continue his statement. It was only on some later date, when the police next returned to Kuma, that he re-appeared and completed his statement. His explanation was that he ran away because some big men and some boys told him that if he stayed then he would be tied up and taken to Rove. Whether this conversation with big men took place or not, his hasty departure points

to him being scared of being charged for his part in the events. It is of course the case that the evidence of an accomplice has to be treated with great caution. I refer to the following extract from *R v Chai* (1992) 60 A Crim R 305, or 328, where the following trial direction was approved:

"His Honour said:

There are no doubt many reasons why the evidence of accomplices may be unreliable and I am sure you can think of many yourselves. You may think it is only natural for an accomplice to want shift the blame from himself to others, perhaps to downplay his role, perhaps to justify his own conduct. In that process the accomplice may construct an untruthful story, he may play up the part of others, he may even blame innocent people. Experience has shown that once an accomplice gives a version to the police, he may feel locked into that story and be unwilling to tell the truth later. Of course you may think, it is a matter for you, that the risk that an accomplice has told an untrue story may be greater when where he has been offered a prospect of receiving some reward or immunity from prosecution either for himself or for someone else. It is a matter of common sense. Freedom from prosecution either of an accomplice or someone else who is associated with him, either here or in some other place in return for giving evidence against an accused person, may – although not necessarily will it do so – constitute an inducement or persuasion to give false evidence."

In my view, because of his acknowledged involvement at the grave site, Jeffrey Kibo has to be treated for the purposes of this trial as an accomplice, and the above considerations apply to his evidence.

36. Quite apart from these matters, there were a number of significant inconsistencies arising from the evidence of Jeffrey Kibo. It is recalled that he gave evidence that Ronnie Cawa had come to where he was living at Vatuloki on the day of Brother Sado's death and asked him to meet him at Pite. Jeffrey Kibo said he then went down to Pite on his own, met Ronnie Cawa again, and was told to go and help two men dig a grave, and as instructed went and assisted with the digging of the grave. However, it was apparent from cross-examination that in his police statement in September 2005 he had told Police that Ronnie Cawa had come and spoken to him and two other boys at Vatuloki and told them there and then to go and dig a grave, and that he and those other two had then walked to where they were told to dig the grave. This is quite a different version to that given in Court. While on its own this inconsistency may not be very important, it casts doubt on whether Jeffrey Kibo was a truthful witness.

37. In another inconsistency, Jeffrey Kibo told this court that he could not remember the names of the other grave diggers. However, it became apparent that in the first trial in 2006 he told the court one of them was named Mou, and that Mou had watched the beating for a short time. In cross-examination during the present trial he denied ever knowing a person called Mou. His answer was unconvincing, in that if he knew in 2006 that a man named Mou helped him dig a grave in 2003, then he surely he would have recalled that important fact in 2010. I also note that in the first trial Jeffrey Kibo told the court that 5 boys from Haliatu followed behind the persons who he said brought Brother Sado's body to the grave site. He was asked in this trial whether anyone else was present at the grave site other than the grave diggers and the persons who carried the body there, and he responded in the negative. Thus once again a different version was being given at this trial, raising a question about his credibility.
38. Jeffrey Kibo also told the court that, while digging the grave, and after he saw the 3 accused beating Brother Sado, he heard a single gunshot. There was no evidence, though, of any of the group said to be beating Brother Sado carrying any guns. Further, when Dr. Dodd was asked about the possibility of Brother Sado having been shot, he stated:

"So I could find no injury to the rib cage which would fit with gun shot"

I consider that the medical evidence further undermines the credibility of Jeffrey Kibo's evidence, whose evidence suggested Brother Sado may have been shot. The medical evidence suggests this is not true, and raises a question as to the truthfulness of Jeffrey Kibo's testimony.

39. It is the case that throughout his evidence, Jeffrey Kibo continually repeated that he had seen all the accused administering the beating to Brother Sado on the day of his death. He was not shaken from this version during cross-examination. However, repetition of this on a number of occasions, including when being asked about other matters, does not strengthen that evidence in any way. I test that piece of evidence by considering all his other evidence, and assessing how consistent that is. I reject the Crown submission to the effect that inconsistencies in his other evidence related to peripheral matters and can be safely put to one side. If significant discrepancies are identified, as they have been, one must consider possible explanations for this and how this may affect the reliability of the evidence as a whole. In considering possible explanations for inconsistencies the Court must do so against the

background of the role played by the witness in the events, and his reactions to police when first questioned about the matter. I have already canvassed these matters in this decision.

40. Evidence was given by the accused William Hence, who denied participating in beating Brother Sado, except that he admitted punching him on one occasion. The defence witness Ben Isaac gave evidence to the effect that around the time Brother died, he witnessed Jeffrey Kibo drop a large stone on Brother Sado while he while he was lying down in a dry river-bed. Ben Isaac admitted to being a member of the GLF.
41. In the case presented by the Crown there was an absence of evidence as to who inflicted the severe blunt force compression to Brother Sado's chest. The Crown submits that the only rational inference is that it was one of the group, including the three accused, who Jeffrey Kibo said he saw beating Brother Sado. To draw such an inference it would be necessary for me first to be satisfied as to the reliability of Jeffrey Kibo's evidence, and secondly for me to discount altogether the evidence of Ben Isaac. However, I am not satisfied that Jeffrey Kibo gave reliable evidence, and I am not prepared to discount Ben Isaac's evidence altogether. Nor am I prepared to find that the evidence of William Hence was necessarily untrue. Ben Isaac gave straight forward evidence which considered alone contained no significant inconsistencies. The suggestion by the Crown that he was fabricating a story merely to assist William Hence was not apparent from the cross-examination, reducing that matter to an unsubstantiated assertion. I accept the defence submission that there is no basis to prefer the evidence of Jeffrey Kibo to the evidence of Ben Isaac and William Hence.

Conclusion:

42. I note that Geddily Isa gave an unsworn statement to the Court denying any involvement in administering violence to Brother Sado. Carradine Pitakaka gave no evidence and made no statement to police.
43. The evidence of Allan Sarevo is of limited probative value as it is not causally linked to the day Brother Sado died. In addition, his evidence is unreliable, containing significant inconsistencies about which he was evasive, and untruths.
44. The evidence of Jeffrey Kibo is also unreliable, particularly as by assisting in digging the grave he was in effect an accomplice, he ran away the first time police

interviewed him because he was frightened of being charged, and gave evidence that was full of inconsistencies. His evidence to the effect that Brother Sado may have been shot was not supported by the medical evidence.

45. It is a reasonable hypothesis that Jeffrey Kibo killed Brother Sado by the independent act of dropping a large stone on Brother Sado's chest, which hypothesis the Crown has failed to disprove.
46. The Crown must prove its case beyond reasonable doubt. I am not satisfied beyond reasonable doubt that the Crown has proved that any of the accused murdered Brother Sado.
47. I find each of the accused William Hence, Geddily Isa and Carradine Pitakaka to be Not Guilty of the charge of murder in relation to Brother Sado, and all are acquitted of that charge.

BY THE COURT

IDR Cameron
Puisne Judge