IN THE SUPREME COURT OF

THE REPUBLIC OF VANUATU

CRIMINAL CASE NO. 4/85

PUBLIC PROSECUTOR -v- PETER NALIU

JUDGMENT

The accused, Peter Naliu of Uwena Village, Eniu, North Tanna, appeared before me on the 11th of February 1985 charged with assaulting Helen Naliu with a piece of timber causing her death, an offence contrary to section 107 (d) of the Penal Code.

The main evidence against the accused consisted of a statement made by him to the Police. The statement was challenged by the Public Solicitor representing the Defendant and it was necessary to have a voir dire. The police officer, Paul Willie Reuben, (hereafter referred to as the officer), who interviewed the accused and recorded his statement, said he did so on the 17th December 1984 at 8.30 A.M.; another police officer, Constable Tom Paul No. 262 was present. The officer said he spoke to the accused about the offence which had been committed; that he cautioned him that whatever he said regarding the incident would be taken down in writing in formal statement or suspect form. The suspect form is a standard form used in all police stations and contains the caution as follows: "I ..... acknowledge having been advised that I am not obliged to say anything but whatever I shall say may be used as evidence. In full knowledge of my right I wish to make a statement." When the officer stated that he cautioned the Defendant in suspect form, I accepted that he read what the caution stated to the accused. The officer then said that after taking down the statement, he read it back to the accused who said it was correct and he signed it. He further stated that the statement was made voluntarily.

The Public Solicitor, in cross-examining the officer, asked only three questions as follows:-

Q. You asked questions and he gave answers.
A. I wrote down all the answers.
Q. Suggested that accused said he threw the stick at his wife but it did not hit her.
A. Accused said the stick hit her on the back of the head and neck.
Q. You did not read the statement back to the accused.
A. When I read the statement back to him, he said O.K. He said it was all right.

The Public Prosecutor re-examined the officer who said the signature was made on the caution, on top of the statement, when he agreed to make the statement. "I read the printed words to him, it was before I recorde the statement." That was the evidence of the officer which at that stage seemed a straight forward statement, voluntarily made, as stated by him.

The Public Solicitor at no stage in cross-examination of the officer suggested to him that the statement was not voluntarily made, that it had been obtained from the accused by fear of prejudice or hope of advantages, or by oppression. (Judges' rules).

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I watched this witness very closely. He did not flinch from any question asked nor did he hesitate in his answer. I was impressed by the manner in which he gave his answer.

I would have thought that if the Public Solicitor was satisfied that the accused was threatened, beaten or induced to make the statement, he would have cross-examined the officer regarding such matters. As no such cross-examination took place, I had to assess the evidence of the officer as stated by him in examination in chief, cross-examination and re-examination.

When the accused gave evidence,he made many allegations against the police officers. He was cross-examined very thoroughly by the Public Prosecutor and at the end of his evidence in the voir dire I was more than satisfied from his demeanour in the witness box, his changing of evidence and the general manner in which he gave his evidence, that he was not a witness of the truth and I did just not believe the allegations he made against the Police. On the other hand, I was greatly impressed by the manner in which the officer gave his evidence, at the end of which I was satisfied that the statement was taken as stated by him, and was made voluntarily by the accused. I admitted the statement as evidence of what happened between the accused and his wife on the 15th December 1984.

Dr Tyson, the District Medical Officer for Tafea District, carried out a Post Mortem on the body of the deceased and found one area of the brain very red - left side, left towards the back of the skull - middle and back. He discovered a blood clot on the left side. He stated that a blow on the head could have caused the injury. He expressed an opinion that the cause of death was blood in the brain tissue or cerebral haemorrhage. That it could be one of two causes - a blow on the head or spontaneous abnormality - a bursting blood vessel. He said: "The blow on the head may have caused the death. I think it would be a severe blow ".

There was no alternative cause of death other than a blow on the back of the head with a stick as stated in the cautioned statement made by the accused,which I accepted as having been made voluntarily and admitted it as evidence.

If the deceased died from some natural cause, I think one would have expected the accused to have asked the police what they wanted him for, or to leave him alone as his wife had just died or that he wanted to be with his wife who had just died. Instead, he went with the police and seemingly asked to be allowed to stay in police custody after his cautioned statement had been taken. I drew the reasonable inference that he never even attended her funeral, being in police custody at his own request.

The Defendant then gave evidence:-
He stated that he went to the police because of what happened to his wife. The police came and just said "You have to come to the police station" and that the following morning,the Sergeant told him he would write down his statement. He said he signed the statement. He then said "but the police officer kicked me and pulled my hair" "the Inspector pulled my hair, kicked me and I fell down". Not once was it suggested to the Sergeant in cross-examination by the Public Solicitor, that he, the Sergeant had kicked and pulled the hair of the accused or that the Inspector pulled his hair, kicked him and that he fell down. One would have important evidence to adduce if it is alleged that the statement was not a voluntary statement.

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The Defendant then stated that he put his name in two places after the caution (his name does appear in two places). The Defendant then stated he signed at the back of the page but that he signed all at the same time. He denied the Sergeant had read the statement to him. He denied that he said in the statement:-
"I was angry and threw a piece of wood at Helen, my wife. It hit her between the head and neck". He stated that the police forced him to say those words. "The wood I threw at my wife did not reach her".

That was the evidence given in the voir dire by the Defendant. No evidence was given other than this which would lead me to believe that the wife died from any incident other than that before the Court. The Public Prosecutor vigorously cross-examined the Defendant. He, the Defendant changed his statement from time to time, he hesitated on numerous occasions and indeed I came to the conclusion that he was not telling the truth.

His version of the incident in cross-examination was that his wife swore at him twice - he asked her to carry a child, she refused - he put down the child - he held his wife's hand but she broke away from the grip and ran away - he picked up a piece of wood, threw it at her but it did not reach her. She ran to the house - he picked up the two children and on the way he saw his wife talking to Lopmen Weimo, one of the witnesses, that his wife took up a stone and threw it at him but it did not reach him. That he and the children hid from the wife. That he then returned home while his wife went with Lopmen Weimo to her house. That he was told several times to go and see his wife and that he finally did so and found his wife sleeping in Lopmen's house. He tried to speak to her but she did not answer. He then carried her to his house and there he attempted to speak to her again but got no answers. That after many attempts to speak to her, he noticed she had died.

In view of the circumstances, I could only come to one conclusion that the accused hit his wife on the head as alleged and the blow killed her.

The assessors having retired for twenty minutes were unanimous in their verdict of guilty. I agreed with the opinion of the assessors, convicted the accused and sentenced him to two years imprisonment, as I considered the incident possibly arose as a result of a sudden fit of anger and was not a premeditated offence.

Dated at Port-Vila this 1st day of May ,1985.

Frederick G. Cooke

Frederick G. Cooke
CHIEF JUSTICE