

REGINA -v- ANTHONY BARA

High Court of Solomon Islands

(Ward C.J.)

Criminal Case No. 13 of 1991

Hearing: 24, 25, 26 and 27 June 1991

Judgment: 1 July 1991

F. Mwanosalua, DPP, for prosecution

J. Remobatu for the accused

WARD CJ: The accused is charged with three offences. Count 2 charges him with arson of a car on 8th December 1990, count 3 charges conspiracy between 1 January and 2 February 1991 with Kong Ming Khoo to murder Sunny Wunsan Tong and count 1 charges him with the murder of Tong on 2 February 1991.

The prosecution case is that he conspired with Khoo over a period of time to commit both substantive offences. He then arranged with another man Keleto Lalani actually to carry out the offences. Afterwards, substantial sums of money were paid by Khoo to the accused.

The prosecution called Toshio Hashimoto to explain much of the background of the case. He, Tong and Khoo were all businessmen and at one time or other their businesses included interests in logging. However, a situation arose which meant that, by the time of these offences, Hashimoto felt Tong and Khoo clearly hated each other. The background does not need to be repeated but a number of problems culminated in Tong suing Khoo for the return of money previously loaned to him by Tong and Hashimoto. The case was strongly contested but Tong was awarded US\$300,000. After many promises and many compromise arrangements, Khoo only made payment of one instalment and, despite his protests of being able to pay, it became clear to Hashimoto that he was neither able to pay nor would he pay if he could avoid it. As a result Tong's lawyer, Jennifer Corrin was instructed to press for execution.

The consequence of all this was that Corrin's car was burned in December 1990 and Tong was murdered in February 1991. Both offences, the prosecution, say, were the result of Khoo's arrangement with this accused and both offences were carried out by Lalani.

Much of the prosecution case was not disputed. It was accepted that Lalani was the person who actually committed both offences and he has been convicted and sentenced to life imprisonment. He was called to give evidence and told how he was friendly with the accused and frequently used to drink with him at weekends and drive with him into Honiara or out to the accused's house in Tanaro.

In early December, the accused told him he had a job for him to do and said it was to burn a car. On the day of the arson, the two men drove to Honiara and, in the evening, went to the Anthony Saru Building where Corrin has her office. They were in a pickup belonging to Kayuken and waited outside until Corrin came out. When she got into her car and drove away they followed and saw where she drove to her house. They then went and drank beer further out on the road for some hours. After that, they returned and the accused dropped Lalani off with two containers of petrol they had bought earlier that day. Lalani went into the garden, poured the petrol on the car threw a match and ran. As he ran he saw the light and felt the heat of the flames. Running to the other side of the hill as had been arranged, he was picked up by the accused driving down the hill. They then drove to Khoo's house before returning to Kakabona.

Lalani said the accused had promised him \$500 for the arson but gave him only \$300 some days later and at that time told Lalani he had another job to kill Sunny Tong. Lalani then went to Malaita until after Christmas.

In preparation for the murder, the accused took Lalani up to show him Tong's house on at least two occasions and told him that, if there were two men, he was to shoot the thinner one. At that time Tong and Hashimoto were sharing the house. The accused had also borrowed a .22 rifle from Thomas Pereki on 24 January. That rifle was used to kill Tong and the accused returned it to Pereki on 4th February.

On the day of the murder, the accused and Lalani had driven to Honiara and with two other men generally drove around the town. The accused's wife was in the Central Hospital at that time to have a baby and the accused went to visit her. Later in the day the other men were dropped and Lalani and the accused went to the Super Club to see if Tong was there. They saw his car and they then drove to Khoo's house.

Later, the accused dropped Lalani on the main road by a short cut up to Tong's house. He had told Lalani to enter the garden by a small gate at the back. The accused loaded a bullet into the gun and gave Lalani two more which he put in his pocket and then he went to the house and shot and killed Tong. He immediately ran back to the road, hid the rifle and returned to Kakabona where he wakened the accused. The accused advised him to have a shower as he was sweating before they asked some people

nearby to give the truck a push start and the accused and Lalani went to recover the gun.

The next morning Khoo came and collected the accused and his son at Kakabona and dropped them off again a few hours later. Over the next few weeks the accused received a substantial sum of money from Khoo mainly, and in particular the larger sums, as cash cheques. The receipt of these is not denied. He paid \$500 to Lalani promising him more later.

The accused was seen by the police and made a lengthy statement under caution. That statement was not substantially disputed in cross examination of the officer but, when the accused gave evidence, he told the court it was not true. It is a very lengthy document and the recording officer said that he only asked two questions and then simply recorded all the accused said. He needed only to interrupt occasionally to clear up ambiguities but otherwise the accused simply gave him a long and detailed account. When the accused gave evidence in court a similar situation occurred. After a very few initial questions by his counsel, the accused went into a long and detailed account unprompted by any further questions.

His statement to the police starts some years before these incidents and tells of how, over a substantial period of time, Khoo was asking him to harm a number of people who opposed him or obstructed his business. He then turned his attention to Corrin and proposed a number of alternative ways to attack her property and also told of his plan to kill Tong.

In his statement the accused described the burning of Corrin's car -

"Then during one evening I told Keleto so we could check Corrin's car and on seeing her car, we followed it and then identified her real house. We came back into town and bought some beer with some money which Khoo had given me. Then at night after we have been drinking, I went and dropped Keleto on top and it was him who went and did it whilst I went up the hill at Tasahe. We then went to Khoo at night and I went and told him that the plan was completed Mr. Khoo then told me off from going to him in the night, otherwise his security guards would suspect anything. He said that I should have waited for Monday at his Office. I asked him for any money and he only gave me \$50.00 cash. We went back and stopped at Kakabona for gambling and then went home. On Monday we came back and I went to see Mr Khoo and he gave me a cheque for about \$2,500 cheque (ANZ) and that was cashed by me at the ANZ Bank and gave \$300.00 (approx) to Keleto."

He then described obtaining the rifle and trying it out with Keleto by shooting two birds. On 28th January Khoo took him up to Tong's house and showed him where it would be possible to hide. When describing the evening of the murder the accused simply says -

"Then in the evening after dropping the children at my father's house at Kakabona and Ramosaea at White River and after waiting for a while went back into town again. We went around and from the Super Club we went up and checked but the car wasn't in, so we went to Khoo and then back again to Kakabona where I rang Sunny's house but there was no one. We then came into town where I dropped him and then I went back to the house.

I was sleeping when at about 11 pm Keleto woke me up and told me that he had already shot the man. I did not believe him, but we went and pick the rifle and then went back to the house and went back again to sleep."

In court the accused gave evidence on oath. He described how Khoo had tried to persuade him to harm various people and he had told Lalani that someone had wanted the accused to do various jobs involving others. He claimed he had never asked Lalani to do anything specifically.

On 7th December he said they parked by the Anthony Saru building by chance and saw Corrin's car leave. He mentioned casually that it was the lady whose house they were meant to burn. They went up the hill intending to go and drink and, as they passed Corrin's house he saw the car parked and mentioned that was where she lived. Whilst they were drinking beer Lalani asked whether the man the accused had spoken of would pay if the house was burned and the accused said he would.

As they passed Corrin's house, Lalani asked to be dropped saying he wanted to see some wantoks. The accused did drop him and didn't notice that he took two containers of petrol the accused had filled earlier for his generator at home. It was arranged that the accused would join him after the accused had been to Khoo's house. When he picked him up he was surprised to hear he had burned the car.

On the day of the murder he was in town with Lalani and some others and, the accused gave a very detailed account of his movements during the day. Eventually they were driving around in the evening to try and get the accused's small boy to sleep and, whilst doing so, they turned, by chance, in the Super Club. As they did the accused noticed Tong's car and mentioned it to Lalani. Later he dropped Lalani on the road with \$2.00 for a bus fare and went home to sleep.

He was wakened some time later by Lalani knocking and again was startled to be told he had shot the man. The accused asked where the gun was and, on being told, went with Lalani to collect it.

I do not need to go into further detail. I did not believe the accused. The account he gave the court was clearly untrue. He was adept at giving vast detail of unnecessary matters and then glossing over the parts of the narrative that were difficult. His account of how the arson and murder happened were totally incredible and his explanation of the subsequent payments by Khoo was equally unbelievable.

In contrast, Lalani was a clear and careful witness. I warn myself of the danger of accepting the evidence of an accomplice even when corroborated. In this case, his account is amply corroborated in particular by the accused's statement to the police and the evidence of his obtaining the rifle. I believed Lalani. I am equally satisfied the police officer was truthful when he described the way the accused gave his statement to the police and I am satisfied the statement is substantially true and confirms Lalani's account.

I am satisfied beyond any doubt at all that the accomplice Lalani committed the offence of arson on Corrin's car and that the accused aided and abetted him in that task. He gave considerable assistance in the planning, purchase of petrol and following of Corrin to her house. After he dropped Lalani near the house, he arranged to be over the hill to assist his escape. He was clearly present and taking part in the offence and only moved away at the time of the actual arson in order to ensure their escape. By section 21 of the Penal Code a person who aids and abets another is guilty of the offence itself and the accused is so convicted of arson.

In the case of the murder, the accused was not present at the time of the offence. I am satisfied Lalani shot Tong and killed him and is guilty of murder. I am equally satisfied beyond any doubt that the accused counselled and procured the commission of that offence. The accused clearly set out to arrange this murder and made the arrangements necessary to ensure it happened. He took a number of essential earlier steps such as obtaining the gun and ammunition, visiting the scene to plan the murder, driving the murderer to the path up to the house, and loading the gun. Afterwards he assisted in collecting and returning the gun as an accessory. Section 21 requires that a counsellor and procurer of an offence should be convicted of the substantive offence and the accused is convicted of murder.

The charge of conspiracy to murder depends largely on the accused's statement to the police. As I have said I accept that as a truthful account. He also told Lalani of the involvement of Khoo and I accept Lalani's evidence of that. The matter is further

proved by the evidence of the murder itself as it relates to his description to Lalani and to the police of Khoo's suggested plans. I am satisfied beyond any doubt that the accused did conspire with Kong Ming Khoo over a period of at least a year prior to the 2 February 1991 to murder Sunny Tong. He is convicted on count 3.

(F.G.R. Ward)

CHIEF JUSTICE