

REGINA -v- MARITINO SUILAMO, TOME AKWASU'U AND MOLOUSAFI

High Court of Solomon Islands

(Muria ACJ)

Criminal Case No. 3 of 1992

Hearing: 30 April 1992

Ruling: 1 May 1992

F. Mwanasalua, DPP for Prosecution

A. Radclyffe for Akwasu'u

M. B. Samuel for Molousafi

C. Tagaraniana for Suilamo

MURIA ACJ: At the close of the case for the prosecution, Mr. Radclyffe submitted on behalf of all three accuseds that there is no case for them to answer on the murder charge. All three accuseds had, however, pleaded guilty to the charge of robbery.

In support of his submission Mr. Radclyffe invited the Court to consider objectively the evidence adduced especially that of Albeta Naoa who is one of the two women who were attacked on the night of 29 November 1991. The general thrust of Mr. Radclyffe's submission as I understand it, is that on the evidence so far, this court cannot reasonably conclude that the accuseds caused the death of the deceased. Further, Mr. Radclyffe is also saying that the evidence do not show any intention to kill nor any intention to cause grievous bodily harm to the deceased nor any knowledge that what the accuseds did would probably caused death or grievous bodily harm to the deceased.

I think what counsel is submitting is that at the close of the prosecution evidence so far, this court ought to determine whether it could reasonably be satisfied that it was the three accuseds who caused the death of the deceased and that they did so with malice aforethought as defined in section 195 of the Penal Code. With respect, that is not the function of the court at this stage. If it were so, then what counsel is saying is that the case for the prosecution must be proved beyond reasonable doubt before there is a case for the accuseds to answer. That cannot be the case under section 196 of the Criminal Procedure Code.

The test under section 196, Criminal Procedure Code is whether the evidence is so insufficient that the accused ought not to be called upon to answer the charge. The test under that section differs from the test sometimes relied upon as to whether it is "unsafe" to convict on the evidence of the prosecution now before the court. The words "sufficiently" in section 196 CPC determines the test to apply in a no case submission in Solomon Islands. It means that if there is no evidence on which the court could convict then the accused should not be required to make a defence and have the charge dismissed and have the accused acquitted. However if there are facts established and there is evidence upon which the court could properly conclude that the accused is guilty and that would depend on other considerations such as the reliability of a witness, then the court at this stage must allow the case to proceed and to require the accused to make his defence.

Mr Radclyffe makes the point also that although each of the accuseds made a cautioned statement, they simply blame each other as to who did what to the deceased. As such Mr Radclyffe says, that cannot be evidence against the other. Even if I accept what counsel says, the undisputed fact is that each of the accuseds admitted robbing the deceased and each of them by his statement clearly put himself at the scene. The Court is entitled to take into account those statements even though they contain admissions to the robbery charge and excuses to the murder charge. Those statements cannot nullify the evidence of the presence of the accused at the scene of the murder.

The learned Director referred me to the cases of *DPP -v- Beard [1920] AC 479 and R -v- Jarman [1945] 2 ALL.E.R.613*. But I need not consider those cases since the test as I have mentioned clearly enables the court to look at the facts as so far canvassed by the prosecution and to consider in the light of those facts whether there is evidence upon which the court could properly say that the three accuseds are guilty.

I consider the evidence of Albeta Naoa, Paul Kwate, Harry Inifelo, the Medical Report and each of the accuseds' Cautioned Statement and I am satisfied that the present case is not one in which there is such an insufficiency of evidence that a reasonable jury ought not to convict on it. I am not prepared, therefore, to acquit the accuseds at this stage and as such they each have a case to answer.

(G.J.B Muria)

ACTING CHIEF JUSTICE