

REGINA -v- JOE TOME

High Court of Solomon Islands
(Muria ACJ)

Criminal Case No. 18 of 1992

Hearing: 9 September 1992

Judgment: 14 September 1992

J. Faga for the Prosecution

J. Wasiraro for the Accused

MURIA ACJ: The Accused stands charged for the crime of manslaughter contrary to section 192(1) of the Penal Code. He has pleaded Not Guilty to the charge.

I remind myself right from the beginning that the onus is on the prosecution to establish the guilt of the accused beyond reasonable doubt.

The facts of the case are that on 19 April 1992 at about 9 o'clock in the evening, the deceased, the accused and other relatives were sitting outside on the verandah of one Barnabas' house at Tenaru Bridge. The deceased felt hungry and went into the house to get some sugar for her cup of tea. On seeing this the accused made a remark to the deceased that she liked drinking tea all the time. When the deceased heard the accused's remark she was upset and poured the sugar on the ground. At that time the accused was lying down on a bench outside the house.

The deceased, being still cross, took some cooked tapioca and shot at the accused. Two shots missed but the third shot landed on the accused's face. The accused then got angry and shot the deceased with a seven-battery torch which contained some batteries inside. The

torch did not land on the deceased. The accused immediately stood up, went to the deceased and kicked her with his right foot landing on the right side of the deceased's body.

The accused disputed the number of kicks delivered to the body of the deceased. The accused stated that he only kicked the deceased once and she fell down. The prosecution alleged and confirmed by two witnesses that the accused kicked the deceased three times. PW1 and PW2 stated that there were three kicks. PW3 said he saw only one kick but he said there may be other kicks which he could not tell. I am satisfied so that I am sure that the accused delivered three kicks to the deceased's body and that those kicks landed on the deceased's right side of her body against her right ribs.

The deceased fell after the third kick. She then stood up and staggered with her body shaking. She appeared then to be struggling to take her breath. PW1 and PW2 then took the deceased into the house and she died shortly after.

The crime of manslaughter is provided for under section 192 of the Penal Code which provides:

192 (1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony known as manslaughter. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

(2) Any person who commits the felony of manslaughter shall be liable to imprisonment for life."

The provision clearly requires that for the accused to be guilty of manslaughter, the prosecution must prove that the accused causes the death of the deceased by an unlawful act.

There was no medical evidence to establish the cause of death in this case. The prosecution relied mainly on the evidence of the witnesses who saw what the accused did to the deceased and death followed immediately thereafter.

The evidence from PW1 is that the accused was angry after being shot at by the deceased with a piece of cooked tapioca which landed on his face. The accused took a torch with some batteries inside and shot the deceased with it. The torch missed the deceased and immediately stood up and quickly moved to the deceased and gave a strong angry kick to the side of the body of the deceased. The deceased then walked to a tank. The accused followed her and gave another kick to the same spot on the deceased body. Then the accused delivered a third kick to the same spot on the deceased's body. It was the third kick which caused the deceased to fall. She then stood up and staggered, with her body began shaking. She died immediately thereafter.

PW2 gave evidence confirming what PW1 had said. PW2 in particular confirmed the three kicks which landed on the same place on the deceased's body. PW2 also stated that the accused was cross when he kicked the deceased. She confirmed that the deceased died shortly following the kicks to her body delivered by the accused.

PW3 said he saw only one kick. However he said if there were other kicks he would not know.

The accused elected not to give evidence and called no witness to give evidence on his behalf. His cautioned statement however, having been admitted as evidence, shows that he was very cross when the piece of cooked tapioca, shot at him by the deceased, landed on his face. He retaliated by shooting the deceased with a torch which missed the deceased. Immediately, he stood up, and went to the deceased kicked the deceased with his right leg, landing on her left side of her body to the ribs. The accused said he only kicked the deceased once. However, I am satisfied beyond reasonable doubt on the evidence that the accused kicked the deceased three times. Even if I accept that the accused kicked the deceased once to the left ribs of the deceased, the evidence clearly shows that kicks had also been delivered to the right side of the deceased's ribs. Photograph No. 9 shows a mark on the deceased's body resulting from the kicks delivered

by the accused. Having examined closely photograph No. 9 I am satisfied that it shows the deceased's right side of her body to her ribs, and not left side as put down by the photographing officer.

On the evidence before the Court I am satisfied beyond reasonable doubt that the deceased died shortly following the kicks delivered by the accused to her body particularly to the right side of her body at her ribs. Those acts of kicking by the accused to the deceased's body is clearly an unlawful act with no justification in law whatsoever.

Following the kicks the deceased staggered, gasped for breath and was shaking. PW1 and PW2 who were present throughout the incident then assisted the deceased into the house. Her condition deteriorated and despite attempts to revive her, the deceased died shortly thereafter. There is no evidence of any fresh intervening cause between the kicks delivered by the accused to the deceased body and the death of the deceased.

I am satisfied beyond reasonable doubt that the deceased's death followed as a direct consequence of the unlawful act of the accused. That is manslaughter.

I therefore find the accused guilty and he is convicted of the crime of manslaughter.

G.J.B.

(G.J.B. Muria)

ACTING CHIEF JUSTICE