

REGINA -v- KENNETH IRO

High Court of Solomon Islands

(Muria, CJ.)

Criminal Case No. 66 of 1993

Hearing: 3rd March 1995

Judgement: 10th March 1995

*DPP for Prosecution**C. Taga for Accused*

MURIA, CJ: The accused Kenneth Iro has been charged with murder of the deceased Fred Lovania contrary to section 193 of the Penal Code. In court, the accused had entered a plea of Not Guilty to the charge. The prosecution must now prove the guilt of the accused beyond reasonable doubt and nothing less.

The evidence for the prosecution is that on 31/12/92 at Selavana Village on Guadalcanal, the accused attended a New Year's Eve party. There was a Youth Group invited to attend the party and were performing at the party by putting some pan pipe music. This was about 8.00 pm in the evening.

The accused attended the party that evening. However before attending the party, the accused and one Samson Leua (PW2) came to Honiara during the day and bought themselves some beers. They had been drinking before the party.

Upon arrival at the party, Samson Leua had an argument with his wife and there were people there helping to calm down Leua. One of those people was Walter Saemanea (PW1) who is a Chief in the Village.

While Saemanea and others were trying to settle Leua's argument with his wife, the accused came into the scene, took out a knife about 10 inches long with black handle and waving it high saying that he would "butcher" anyone who tried to harm Leua.

The Leua argument was settled. The accused put back his knife by sliding it into the side of his trousers. The account of this came mainly from Christian Tova (PW3) and Judah Poa (PW4). The accused then returned to where the pan-pipe band was playing.

Following that incident when the accused was behaving aggressively with his knife in his hands, PW3 became angry, drew the attention of all those present by tapping and then kicking an empty 44 gallon drum and made an announcement that those who were drunk and behaving in a trouble-like manner should not be at the party. Upon hearing that announcement, the accused approached PW3 who was standing with the deceased and one James Luvena.

As the accused approached within two yards, PW3 turned to face him. It was then that PW3 saw the accused pulled his knife out from his side and stepped toward the deceased from the side toward the back, grabbed the deceased's hands and plunged the knife into the deceased's side. PW3 saw the accused twisted the knife while inside the deceased's body before pulling it out. PW3 further stated that he was about to kick the knife out from the accused's hands as the accused was about to stab the deceased. Unfortunately, James Luvena held PW3 tightly and pulled him away and so could not do anything to prevent the deceased being stabbed.

PW4 also gave evidence that he saw the accused pulled the knife out from his side and stabbed the deceased with it. PW4 further stated that having pulled the knife out from the deceased's body the accused went berserk piercing open two empty 44 gallon drums with his knife. Eventually PW2 jumped at the accused and grabbed him while one John Para removed the knife from him and threw it away.

The accused was rushed to the Hospital but died before reaching Tetere Police Station. He was confirmed death upon arrival at the Hospital.

The accused gave his statement to the police in a record of interview and in his interview, he did not deny stabbing the deceased with the knife. What the accused is alleging is that he wanted to hit PW3 with the knife but instead the knife went into the deceased's body. He further stated that it was the deceased who actually threw the knife to him so that he could use it on PW3 but instead the knife "caught" the deceased. In other words, he was saying that it was an accident that the deceased was stabbed to death.

The accused further stated that at the time he was fully drunk and did not know what he was doing. Counsel for the accused also raised drunkenness as a defence in this case relying on the provisions of section 13 of the Penal Code.

On the question of intoxication as a defence, I agree that intoxication is available as a defence in cases of murder whether such intoxication is self-induced or not, that is to say, all forms of intoxication should be taken into account. See *R -v- Kanwai* (1980 - 1981) SILR 108. *R -v- O'connor* 29 ALR 449.

As to the evidence in the present case, I accept that the accused had been drinking beer during the day and on the way to the party later in the afternoon. By the time the accused, PW2 and one John Kema arrived at the party, it is obvious from the evidence that the accused and PW2 must have had a fair amount of alcohol to drink, particularly the accused. For their behaviour, particularly that of the accused at the party were those of a person having one can too many.

The question is whether the accused's mind was so affected by alcohol that he could not have formed the intention to do what he did or that his mind was so affected by alcohol that he did not know what he was doing at the time. This must be answered in the light of the accepted evidence now before the court.

I accept that there was sufficient lighting at the place of the incidents to see what the accused was doing at the time. On the evidence I also accept as a fact that the accused had in his possession at the time, the knife. The evidence of PW2, PW3 & PW4 in this regard is incontrovertible. During the Leua argument, the accused was seen showing his knife, holding it high, stating that he would use the knife on anyone who tried to fight Leua (PW2). The evidence of PW3 and PW4 clearly confirmed this. I see no reason to doubt those witnesses' evidence on this.

During the second incident when the accused stabbed the deceased, the evidence of PW3, PW4 and to a certain extent, that of PW2, clearly showed that the accused was behaving aggressively. He took out his knife and approached the deceased from the back, held the deceased and plunged the knife into the deceased's side and while the knife was in the deceased's body, twisted it before pulling it out. Still in aggression, the accused was angrily swinging his knife, piercing open two empty 44 gallon drums, before he was overpowered and had the knife removed from him. In the course of that, the accused was talking in his own language.

Those evidence are not evidence of a person who was so affected by drink so as not to know what he was doing, rather the evidence clearly shows that the accused because of drink that he had taken, had become aggressive and was prepared to use his knife having already forewarned and shown to those present that he would do so. I am satisfied beyond reasonable doubt that the accused although had taken in some drink, he clearly intended to use the knife and did use the knife on the deceased. He knew very well what he was doing at the time. He knew he stabbed the deceased and there is nothing in the evidence to suggest that he could not have failed to realise the consequence of his action.

I am satisfied beyond reasonable doubt that the prosecution have excluded the defence of drunkenness in this case.

The other suggestion by the accused is that it was an accident that he stabbed the deceased when he want to stab PW3. One does not need to look far to dispose of that suggestion. Section 195 which is in the following term, provides the answer to such a suggestion:

"195. Malice aforethought may be expressed or implied and express malice shall be deemed to be established by evidence proving either of the following states of mind preceding or co-existing with the act or omission by which death is caused, and it may exist where that act is unpremeditated -

(a) an intention to casue the death of or grievous bodily harm to any person, whether such person is the person actually killed or not, or

(b) knowledge that the act which caused death will probably cause the death of, or grievous bodily harm to, some person whether such person is the person actually killed or not, although such knowledge is accompanied by the indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused."

Under that provision, intention to cause serious bodily harm to the person actually killed or not, or knowing that the act (stabbing) which will probably cause death or bodily harm to a person whether he is the person actually killed or not satisfies the *mens rea* required in murder cases. The accused can find not comfort in such an argument which he raised in this case.

There is also the suggestion by the accused that it was the deceased who threw the knife to him to use on PW3 but somehow the knife went into the deceased's body. This suggestion is, in the light of the evidence, clearly incredible, untenable and one that no reasonable tribunal of fact would accept. I certainly do not

On the materials before the Court including the medical report in this case, the evidence points to one conclusion and one conclusion only, and that is that the accused caused the death of the deceased and that he did so with malice aforethought. That is murder and I so convict him.

(MR. JUSTICE GJB MURIA)

CHIEF JUSTICE