

REGINA -v- MOSI GASIMATA

High Court of Solomon Islands
(Muria, CJ.)
Criminal Case No. 114 of 1993

Hearing: 20 July 1995
Judgment: 3rd August 1995

DPP for Crown
T. Kama for Accused

MURIA CJ: The accused has been charged with the offence of grievous harm contrary to section 219 of the Penal Code. He has pleaded not guilty to the charge.

The evidence for the prosecution came from Dr. Roger Brown (PW1) and the victim, Michael Giningele (PW2). The defence called the accused who gave evidence on oath. The accused's brother, Blum Gasimata, also gave evidence for the defence.

Briefly the circumstances surrounding this case are that in the evening of the 4th July 1993 the victim and his friend, one Warren, were having some drinks at the Agnes Lodge in Munda. The accused and some of his friends were also having drinks at the same place, although not inside the Lodge.

It was about 10.00 pm when the victim and his friend left the Lodge. They were coming out of the Lodge area, when they met the accused outside who was having an argument with another person by the name of Sago. That argument was said to be caused by Sago blocking the way for the accused's wife to pass.

In the course of that argument, the victim grabbed the accused resulting in him (victim) and the accused falling down. There was allegation that the accused punched the victim at that time. After they were separated the victim and his friend, Warren, went to the victim's house.

When the victim and his friend were already at the victim's house the accused followed them. Coming close to the victim's house, the accused was shouting out in an angry manner calling the victim who at first did not go out to see the accused. The accused continued to shout calling for the victim to go outside and so eventually the victim went out to see the accused. After some exchange of talking, the victim and the accused's wife took the accused to his house.

The victim returned to his house and not long after that he could hear the accused started yelling and asking for the victim to go outside again. The victim went out to see the accused. It was then that the accused assaulted the victim by punching and kicking him resulting in him falling to the ground.

It was alleged that while the victim was on the ground, the accused continued to deliver strong kicks to the victim's body. Some of the kicks landed on the victim's leg while he was on the ground. Then, it was alleged, a severe kick was given by the accused to the victim's left leg and which resulted in the victim's leg to break. The victim then lied down in agony on the ground and eventually taken to the hospital.

The accused denies the allegation that he kicked the victim's leg causing it to break. The accused's case is that the victim's leg was broken as a result of a fall in the course of the struggle between him and the victim.

Blum Gasimata supported the accused's story. He said that it was the victim who kicked the accused's right leg and as a result the accused fell on the victim. He also said that it was when he lifted the accused away from the victim that he saw the victim's leg broken.

I have watched the witnesses gave their evidence and the manner in which they did so. I can appreciate the fact that the incident happened two years ago and that memories of what actually took place at the time may somewhat fade by now.

There is however one piece of evidence which cannot be regarded in this case as being affected by fading memories. This is the evidence of the Dr. Brown contained in the report which he made following his examination of the victim at the Helena Goldie Hospital.

The doctor's evidence clearly confirmed that the victim "sustained a severe blow to the left lower leg, and some blow to the faces. He has a severe fracture of his left tibia and fibula, with marked swelling and angulation of his leg." The report also confirmed that the victim sustained bruising and swelling to his face and upper lip.

In his evidence in Court, the doctor reiterated his findings on the victim's injuries and stated that the tibia (shin bone) and the fibula were strong and for them to break, there must certainly be considerable force applied to them. In cross-examination by defence Counsel,

the doctor stated that it would be unusual for the injuries sustained by the victim in this case to have been caused by a fall in which another person fell on the victim.

In his expert opinion the doctor also ruled out the possibility of the kick being delivered with a bare foot and said that person kicking must be wearing a heavy footwear.

There is only one conclusion which can be drawn from the evidence of the doctor given in court and that contained in his report. That conclusion is: that the injuries suffered by the victim were a direct result of a severe blow to the leg causing both the shin bone and fibula to break. That evidence has never been shown by any evidence to be unworthy of credibility. In fact it is the only evidence standing independently from that of the victim as well as that of the accused pointing to the probable cause of the victim's injuries in this case.

I have considered the evidence of the accused and his brother and weighed their evidence against that of the victim. From their evidence, I have no doubt whatsoever that there was an altercation between the accused and the victim in the course of which the victim was severely kicked at his left leg causing it to break, not his right leg as the accused's brother testified.

The victim's story in this case has been supported by not a relative nor a wantok of his but by the independent evidence of a doctor. The accused on the other hand found support for his defence from his blood brother. Such evidence must always be viewed with caution for the obvious reason which I need not go into it here.

The defence has also sought to raise the defence of accident in this case, that is to say, that the victim broke his leg when he and the accused fell to the ground during the fight. Unfortunately, the evidence adduced by the prosecution leaves no room for such a defence here. I am satisfied so that I am sure that the prosecution has succeeded in excluding that defence in the present case.

After considering all the evidence and having anxiously considered what has been submitted on behalf of the accused, I come to the firm conclusion that the ring of truth lies in the evidence adduced by the prosecution in this case. I have great difficulty in accepting what had been urged upon me by Mr. Kama on behalf of the accused.

On the evidence before the Court, I am satisfied beyond reasonable doubt that the accused wore a heavy footwear that night of the incident. With that he kicked the victim severely causing the victim to sustain the injuries described by the doctor. The injuries so

described cannot be described as anything but grievous harm or serious harm. The evidence does not point to any justification for the action of the accused at all in this case.

In those circumstances I find the prosecution has discharged its duty by proving the guilt of the accused beyond a reasonable doubt. Consequently I find the accused guilty and convict him of causing grievous harm to the victim in this case.

Verdict: Guilty of grievous harm

(Sir John Muria)
CHIEF JUSTICE