

REGINA -V- KARAWASI TAISIA

HIGH COURT OF SOLOMON ISLANDS
(F. O. Kabui, J.)

Criminal Case No. 295 Of 2001

Date of Hearing: 25th, 26th, 27th 28th March and 2nd, 3rd, 4th, 5th, 10th and 12th
 April 2002
 Date of Judgment: 18th April 2002

D. P. P. in person for the Crown
Mrs M.B. Samuel for the Accused

JUDGMENT

(Kabui, J): The accused is charged with the murder of the late Eddie Messach “**the deceased**” on the night of 24th August 2001 at Vara Creek near Matanikau, contrary to section 200 of the Penal Code Act. This section states “**Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder and shall be sentenced to imprisonment for life**”.

The accused pleaded not guilty to the charge against him. The Prosecution called six Crown witnesses to prove the charge against the accused. This being a criminal case, I remind myself of the age-old rule in criminal law that the burden of proof always lies upon the Prosecution to prove its case beyond reasonable doubt for a conviction to be entered against the accused. I must therefore look to the Prosecution evidence to satisfy myself that the Prosecution did indeed prove its case beyond reasonable doubt. To do this, I must now turn to the Prosecution case.

The case for the Prosecution

The case for the Prosecution is that which is set out in the charge laid against the accused. At about 5:00 pm on 24th August 2001 Mr. and Mrs. Barnabas Paragu went to St. Barnabas Cathedral in Honiara to have their little girl baptized. After the baptism they returned to their house at Vara Creek on the east side of the Matanikau River. Food was then prepared to mark the occasion of that baptism. Soft drinks and two bottles of vodka were brought in for that evening. The accused was invited to attend, as he and Barnabas Paragu are work mates at a garage in Honiara. The accused did arrive at Barnabas Paragu’s house and was given food to eat. The accused also drank some vodka and VB beer. There were other men also at Barnabas Paragu’s house. They were Rex Siama, Moses Koualisi, the deceased and his friends. The women were Mrs. Paragu and her sister. After food had been served the men commenced drinking in the house. They drank vodka mixed with soft drinks and lemon. Two knives had been used to slice the lemon fruits. The first one is blunt and it was put away. The second is a sharp one and was used during the course of drinking in the house. Later the men moved out of the house and

continued drinking outside. These facts are not in dispute. What happened outside the house that night and what caused the death of the deceased is what is in dispute. I now turn to the evidence adduced by the Prosecution witnesses.

The evidence of the Crown witnesses

The first Crown witness was Dr Oberli (PW1). He performed the post-mortem on the body of the deceased on 27th August 2001 at the Central Hospital morgue. He produced a written report of his findings dated 27th August 2001. He found the cause of death to be a stab wound to the heart penetrating both the ventricles causing massive cardiac tamponade. The next Crown witness was Barnabas Paragu (PW2). He was an eyewitness. This is his story on oath. In the evening of 24th August 2001, he and his wife were at the St. Barnabas Cathedral in Honiara. They were attending a baptism ceremony for their little girl. They were there from about 5:30 pm to 6:00 pm. After that they returned to their house at Vara Creek. When they got back food was prepared for the evening meal. They ate and then the men commenced drinking alcohol inside the house. There were 2 bottles of vodka plus soft drinks. They commenced drinking about 8:00 pm or 9:00 pm. The men were himself, Moses Koualisi, Rex Siana and the accused. They used soft drinks and lemon fruits for the vodka mix. The lemon fruits were sliced with a small knife. He used the knife but was blunt and was put away. A second knife was then produced by his wife Miriam. The knife is a small one similar to the blunt one. It has a black handle and the blade is of stainless steel. It is slightly longer than the blunt one. It is sharp on one side and has a sharp pointed end. This second knife was used to slice the lemon fruits in the house. The knife belongs to Pricilla a female relative of his wife Miriam. Some visitors then arrived at about 10:00 pm. They were the deceased, Moses Eki, Luke Cheka and John Dalei. He knew them as they were from the same area on Guadalcanal. He went out to meet them. The visitors sat on a pile of timbers outside the house. His family then asked the men in the house to move outside of the house. The vodka and the lemons were also moved outside. Moses Koualisi (PW3) and the accused put the vodka and lemon on the cement slap that adjoins the sink outside the house. The accused was slicing the lemons on the sink with the second knife for the mixing of the vodka. The drinks ran out at about 2:30 am in the morning. By that time Luke Cheka and John Dalei had left. The only men who were still on the premises were Barnabas Paragu, Rex Siana, Moses Koualisi, the deceased and the accused. Barnabas Paragu then went into the house and asked his wife for money to buy alcohol. His wife refused him the second time and this angered Barnabas Paragu who wanted to slap her. His wife wept. Barnabas Paragu came back and told the men outside that it was not possible to obtain any further drinks and they understood. The accused then enquired as to what the matter was between Barnabas and his wife. The accused spoke to the deceased and said, **"it was you"**, in pidgin. The accused moved towards the deceased after he uttered those words. The accused punched the deceased and missed. At that moment Barnabas Paragu ran towards the accused and the deceased and told the accused to stop. The accused pushed Barnabas Paragu aside and punched the deceased the second time. The punch landed on the left side of the deceased's face. The deceased fell to the ground face up. The accused held up a knife, bent over the deceased and stabbed the deceased on the chest. Light was coming from the kitchen

window situated right above the sink outside the house and from the other side of the street opposite Barnabas Parugu's house. Barnabas went towards the deceased on the ground and tried to lift him up. The deceased never got up from the ground. Barnabas discovered there was blood in the deceased's shirt underneath the deceased's back. Rex Siama and Moses Koualisi also went towards the deceased to help. The shirt was removed and the deceased was then carried into the house awaiting transport to the Hospital. The deceased gave one breath whilst in the house and no more. The accused brought transport and the deceased was taken to the Central Hospital. At the Hospital the nurse said that the deceased was already dead.

The third Crown witness was Moses Kuoalisi (PW3). He was also an eyewitness. This is his sworn story. He was in Barnabas Parugu's house in the evening of 24th August 2001. He is related to Barnabas Parugu's wife. The events of that evening at the house started about 8:00 pm. They ate first and consumed alcohol a little later. There were about 5 men in the house drinking. The accused was one of them. He did not know the exact time drinking commenced. They started off with the vodka mix. They used soft drinks and lemon for the vodka mix. They used a small knife to slice the lemon fruits but one of the knives was blunt. They used the sharp knife produced by Miriam. Later on some men arrived at the house. Barnabas Paragu went out of the house to meet them outside. He recalled leaving the house and going outside to drink with the other men outside of the house. The men who had come sat outside on the pile of timber there. He was the one who moved the vodka and lemon outside of the house and put them on the sink there. They drank beer as well outside the house. He sat on the sink. There was an argument between the accused and the deceased outside the house. He did not know what the argument was about or how it started. He saw the accused punched the deceased and the deceased fell to the ground. He saw Barnabas Paragu was close to both the accused and the deceased. There was light coming from the house and the other house across the road. The accused was light-skinned and so he was able to see him. He recalled the accused was the one who held the sharp knife because he was doing the mixing for them outside the house. He went to assist when the deceased was on the ground. He washed the deceased and then they carried him into the house awaiting transport to the hospital. He had also noticed a mark on the chest of the deceased and blood on him.

The fourth Crown witness was Rex Siama (PW4). He was also an eyewitness. This is his sworn story. He was also in the same house in the evening of 24th August 2001. He arrived at about 7:00 pm and went into the house. The only men he saw at that time were Barnabas Paragu and Moses Koualisi. The others were Barnabas Paragu's wife, Miriam, another woman by the name of Patricia, Miriam's sister and two children. He ate and then left the house. He returned at about 8:00 pm to drink alcohol at the house. There were 2 bottles of vodka in the house. At that time there were three of them drinking. They were Barnabas Paragu, Moses Koualisi and himself. He and the accused had brought the vodka and soft drinks earlier on in the evening from Chinatown. The accused arrived at the house at about 8:30 pm and joined the men already drinking in the house. Some visitors then arrived and sat outside the house on a pile of timber. They were the deceased and his friends. They arrived at about 7:30 pm. The deceased and his cousin came into the house and sat.

They were able to finish one bottle of vodka. The second bottle was then opened and when it was halfway, they moved outside of the house. They had to because the deceased was swearing loudly, saying, "fuck". The accused and Moses Koualisi sat on the sink outside the house. Others sat on the pile of timber outside. He also sat on the same pile of timber. The same sharp knife used in the house to slice the lemon fruits in the house was also brought outside. The vodka and the lemon fruits were placed in the sink outside. The knife was on the cement slab near the sink. The accused sat nearest to the sink and was doing the mixing for them. He saw the accused using the knife to slice the lemon fruits outside. The drinks ran out and they bought no more drinks. He heard Miriam wept in the house. Barnabas Parugu then came out of the house. The accused then moved towards the deceased and deceased ran towards Rex Siama. The deceased ran past Rex Siama followed by the accused. The accused caught up with the deceased and punched the deceased the second time. The deceased fell to the ground backwards face up. There was light coming from Barnabas Parugu's house and from across the road opposite Barnabas Parugu's house. He therefore was able to see when the accused came into contact with the deceased that night. He moved closer to the deceased on the ground and saw the white part of the deceased's eyes turned upwards. He assisted Barnabas Parugu and Moses Koualisi to get the deceased into the house and later to the Central Hospital where the nurse said the deceased was already dead.

The case for the Defence

The case for the defence is simple. The accused said that the stab wound that caused the death of the deceased was caused by someone else. That is to say that the accused had nothing to do with the death of the deceased. This is his story on oath in the witness box. The accused did recall 24th August 2001. He had been fixing Robert Chow's truck. In the evening, he went to Barnabas Parugu's house at Vara Creek. He got there about 7:00 pm or 7:30 pm. He and Rex Siama with his small son then went to Chinatown to buy soft drinks. They returned to Barnabas Parugu's house and put the drinks in the house. He and Rex Siama then ate. Barnabas Parugu, Rex Siama and Moses Koualisi were outside the house that time. After that he left the house as he was then returning Robert Chow's truck that he had been using that evening. He left at about 8:00 pm. When he got to Robert Chow's place, he asked Robert Chow to drop him at the Central Hospital to visit his wife there. This was done. He later left the Central Hospital premises with Eddie Tonisi. That is he got a lift from Eddie Tonisi and returned to Barnabas Parugu's house at Vara Creek. He got there between 9:00 pm and 10:00 pm. Barnabas Parugu came out and spoke to Eddie Tonisi about a mobile phone. He was then told by Barnabas Parugu to join the men in the house. He saw some men sitting on the pile of timber outside the house. There were about four men sitting there. He saw Rex Siama carrying beer outside. Moses Koualisi was in the house. Barnabas Parugu then went into the house. He also entered the house. He saw Moses Koualisi and Rex Siama in the house. He saw two bottles of vodka in the house. One was almost empty. The other one was still full. Lemon slices were used in the vodka mix. He used the sharp knife to slice the lemon fruits. The blunt knife was put away. The visitors then joined them inside the house. Later they went outside as the deceased was swearing a lot inside the house. He sat on the pile of timber outside the house

with Barnabas Parugu. Lemon and the vodka were put in the sink outside the house. The knife was also on top of the cement slab. Moses Koualisi sat on the sink leaning against the wall of the house. The deceased then asked Barnabas Parugu if he could adopt Barnabas Parugu's child. He then in a joking manner said that a drunken person such as the deceased was not a suitable candidate for adopting any child. The deceased was angry as a result of that remark. Barnabas Parugu also laughed at the deceased. The deceased said the accused was cross and was going crazy. He stood up and said, "**man ia how ia**" or words to that effect. Luke Eki said the deceased was always like that when he was drunk. He then walked towards the fence. The deceased swore and then walked towards the fence. Barnabas Parugu was between the back door and the pile of timber at that time. Rex Siama was ahead of him towards the fence. He walked towards the deceased and asked the deceased what the deceased had said about him. The deceased moved back and he punched the deceased. Barnabas Parugu ran up and pushed him away. Barnabas Parugu got in between him and the deceased and pushed the deceased who fell to the ground. He saw Barnabas Parugu reached for a knife in his pocket and held it in his hand before the deceased fell to the ground. He was afraid of that knife and pushed Barnabas Parugu away from himself. He then saw the deceased fell to the ground. He was able to see the knife because light was coming from the house as well as from the other house. He then saw the knife shone from the light. He stood near the deceased. When the deceased fell to the ground Barnabas Parugu went towards the deceased and tried to lift up the deceased. Rex Siama and Moses Koualisi were also there to help. He was told by Rex Siama to fetch transport and he did so. He came to know about the death of the deceased at the Central Hospital when Barnabas Parugu told him that the deceased had died.

The Law on murder in Solomon Islands

The law on murder is as set out in section 200 of the Penal Code Act above. Section 202 of the Act defines the phrase "**malice aforethought**" as used in section 200. Section 202 states, "**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 cause 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 indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused".**

The law of murder has its origin in verse 13 of Chapter 20 of the Book of Exodus and verse 17 Chapter 5 of the Book of Deuteronomy in the Holy Bible. Verse 13 says, "**Thou shall not kill**". This biblical proscription is also found in verse 9 in Romans Chapter 13 of the Holy Bible.

Analysis of the evidence

The accused and Barnabas Parugu are workmates. The accused is a mechanic and Barnabas Parugu a panel beater at the same workplace in Honiara. Barnabas Parugu said in evidence that he knew the accused very well indeed. The accused was invited by him to his house for the baptism party that night on 24th August 2001. Barnabas Parugu and his wife Miriam were therefore the hosts that night. The drinking of the vodka mix commenced inside the house after food. The accused was one of the men drinking the vodka mix in the house although he said that by the time he joined the men the first bottle was almost empty. The accused said he was using the blunt knife to slice the lemon fruits but Moses Koualisi told him to use the sharp knife. He said he left the knife in the house. What happened outside of the house that night is very crucial to determining the guilt of the accused or otherwise?

The Attack on the Deceased

Barnabas Parugu saw the attack on the deceased. He said that before the attack he went inside his house to ask his wife for money. She refused to give him money for more drinks and so he wanted to slap her. He said his wife swept. When he came out of the house, the accused asked him was the matter. The accused then spoke to the deceased and said, "**it was you**" in Pidgin English. The accused then moved towards the deceased after he uttered those words. The accused punched the deceased and missed because the deceased stepped back. He ran towards both men and stood between them and told the accused to stop. The accused pushed him aside and punched the deceased the second time. The punch landed on the left side of the face of the deceased. The deceased fell to the ground lying face up. The accused help up a knife, bent over the deceased and stabbed the deceased on the chest. Moses Koualasi confirmed that there was an argument between the accused and the deceased but he did not know what it was about. He said he saw the accused punched the deceased once and the deceased fell to the ground. After that he said he saw the accused and Barnabas Parugu standing up beside the deceased lying on the ground. Rex Siama also confirmed that he saw the accused moved towards the deceased after Barnabas Parugu came out of his house and his wife weeping in the house. He said that the deceased ran towards him followed by the accused. The accused caught up with the deceased and punched him. The accused punched the deceased who fell to the ground. He said the accused was aggressive at that time. He moved closer to the deceased on the ground lying face up. He saw the white part of the deceased's eyes turned upwards. He said he did not know why the accused chased the deceased that night.

The Knife

There is no dispute that the second knife, the sharp one, was used to slice lemon fruits inside the house before the men moved outside. The accused admits in evidence that he used that knife inside the house whilst they were drinking in the house. However, he said that he left it in the house. Moses Koualisi however said that it was him who moved the vodka bottle and lemon fruits outside and placed them inside the sink outside. Who took the knife outside was not confirmed by anyone of the Crown witnesses. However, Crown witnesses PW2, PW3 and PW4 all

confirmed that they continued drinking the vodka mix outside the house. They all said the accused was doing the mixing for them outside which suggested that the accused was using the same knife he was using inside the house. Barnabas Parugu said that the accused used a knife to stab the deceased. He said that knife was the same knife the accused used to slice the lemon fruits that night. Moses Koualisi and Moses Siama also said that the accused used the knife outside to slice the lemon fruits for the vodka mix. The accused himself admitted in evidence that the knife was on top of the cement slap next to the sink outside. In his own words he said in evidence in chief **“When we came outside I spoke to Moses who was sitting on the sink. I was standing up. The lemons were on the cement slap on the sink. Vodka was there too. Knife was on top of the slap. I can’t recall the knife being inside the sink”**. I must therefore accept as a fact that the knife was on the cement slap next to the sink that night.

The Lighting

It is not disputed that there was light coming from the kitchen window of Barnabas Parugu’s house and from a neighbour’s house across the road opposite Barnabas Parugu’s house. The accused admitted under cross-examination that there was light coming from Barnabas Parugu’s house and the other house across the road that night.

The Issues in Dispute

The issues in dispute are really who was in possession of the knife on the cement slap outside the house prior to the attack, the quality of the lighting that night and the credibility of the Crown witnesses and the accused. I listened very carefully to the evidence of the Crown witnesses and that of the accused. I find that there are inconsistencies in the evidence given by Barnabas Parugu, Moses Koualisi and Rex Siama about the sequence and times of events that night. The most glaring one being about the movement of the accused before the accused joined in the drinking with the other men in the house. The other inconsistency is about the alleged swearing by the deceased inside the house and other conversations about the adoption of Barnabas Parugu’s child and an alleged association by Barnabas Parugu with the deceased’s wife long ago in terms of a marriage arrangement. These inconsistencies are in my view irrelevant in determining the guilt of the accused. I consider that the events after the accused and other men had come outside of the house are the most relevant and important in this case.

The important event was the sweeping by Miriam inside the house. At that point in time the drinks had been exhausted. When Barnabas Parugu came out of his house the deceased spoke to him about his wish to adopt Barnabas Parugu’s child. On hearing this, the accused joked to the effect that the deceased was not a suitable person for that purpose because he was always drunk. The deceased seemed to have been angered by the accused’s remark. Barnabas Parugu also laughed when the accused made that joking remark. The deceased then said the accused was cross and crazy or something to that effect. At this point, the accused’s story differs from the evidence of the Crown witnesses. The accused said that he

walked with Moses Eki and Moses Koualisi towards the fence by the roadside. The deceased had called Moses Eki to stop a taxi for them. The accused stood there and said **"man ia now ia"** to which Moses Eki remarked that the deceased was always like that when he was drunk. The accused told Barnabas Parugu that he was leaving too to go to the Hospital. Barnabas told him to wait for another taxi. Barnabas Parugu was standing outside the house when the accused began to walk towards the fence near the road. The deceased was then still sitting on the pile of timber outside the house. The accused said the deceased swore and walked towards them near the fence. The accused asked the deceased what he had said. The deceased moved backwards. The accused punched the deceased once and the deceased fell to the ground. Barnabas Parugu ran up and pushed the accused. The accused said Barnabas blocked him and he pushed Barnabas Parugu who came into contact with the deceased who then fell to the ground. He said he saw Barnabas Parugu went to the deceased and tried to lift him up from the ground. The accused said he saw Barnabas Parugu held a knife just before Barnabas Parugu came into contact with the deceased who fell to the ground. The evidence from the Crown witnesses and that of the accused do suggest that the attack upon the deceased happened after the drinks had been exhausted and the guests were about to leave Barnabas Parugu's premises. The accused said the last time he saw the knife was when it was on the cement slap near the sink outside. The evidence of Barnabas Parugu and Rex Siama clearly shows that the person who attacked the deceased that night was the accused. Moses Koualisi confirms this to the extent that he saw the accused hit the deceased and the deceased fell to the ground. The accused himself admitted in evidence that he punched the deceased twice but said nothing about using any knife as alleged by Barnabas Parugu. The accused, instead, implicated responsibility for the death of the deceased on Barnabas Parugu. The implication the accused made in this regard was vague because he did not say directly that he saw Barnabas Parugu stabbed the deceased. He was the closest to the two men at that point in time. There was light enough for him to see any stabbing movement that might have been done by Barnabas Parugu. I am certain that the accused is not telling the truth when he said he saw a knife in the hand of Barnabas Parugu when he pushed Barnabas Parugu away from him towards the deceased suggesting that the stab wound on the chest of the deceased somehow must have come from the knife he saw in the hand of Barnabas Parugu that night. The post-mortem report by Dr Oberli confirms fresh scars on the left side of the deceased's face and a fresh wound over the left upper nose of the deceased. This is consistent with the evidence of Barnabas Parugu as to where the second punch from the accused landed on the body of the deceased. Photograph No. 5 taken by Police Officer Taga also confirms the position of the scars and wound on the face of the deceased. Whilst it may be argued that no one saw the accused when he took the second knife outside and when he picked it up from the cement slap outside to attack the deceased, there is overwhelming evidence from the Crown witnesses that he was the only person who was doing the vodka mix outside up until the attack on the deceased. The distance between the pile of timber where Barnabas Parugu and Rex Siama sat to the sink and the cement slap where the lemons and the knife were is about 10 feet or so. More so, Moses Koualisi sat next to the accused when he was slicing the lemon fruits. The light from the kitchen window is directly above the sink and the cement slap. The slicing of the lemon fruits could not possibly escape being seen by the Crown witnesses. If one calls it circumstantial

evidence only, I say it is compelling evidence indeed in this regard. The Police never found the knife. The quality of lighting that night was said to be good by the Crown witnesses. The accused agreed to the extent that he acknowledged light coming from Barnabas Parugu's house and from a neighbour's house across the road. By the light he was able to see the blade of the knife he said was in the hands of Barnabas Parugu. I visited the scene of the murder on 4th April 2002 at 3:00 pm and also at 8:00 pm that same day. My observation is that the area in front of Barnabas Parugu's house to the roadside is only a small area. Light coming from the kitchen window of Barnabas Parugu's house and from the house across the road would have been enough to enable the Crown witnesses to see what they saw that night. No question of the identity of the accused arises in this case. The accused is well known to Barnabas Parugu. Rex Siana also knows the accused. Moses Koualisi had been drinking with the accused that night both inside the house and outside. There were only 4 men left that time. There is no evidence to suggest that Barnabas Parugu was in possession of any knife when they were drinking vodka and beer outside the house. I have already said the accused was not telling the truth. In fact, Moses Koualisi and Rex Siana were standing near the fence when they saw the accused hit the deceased who fell to the ground. Barnabas Parugu was intervening in the interest of peace and got himself blamed by the accused for the death of the deceased. I believe the evidence of the Crown witnesses. I cannot think of any reason why they should blame the accused for the murder of the deceased although the deceased was regarded by Barnabas Parugu as his uncle. They told the Court what they saw despite discrepancies in the details of sequence of events that night. They stuck to their stories under heavy cross-examination by defence counsel as regards the events outside of the house after the drinks had exhausted and it was time to leave. Alcohol as it is had caused the deceased to say a little too much I suppose which sparked off an argument between the accused and the deceased. It would seem that the accused was under the impression that the deceased's presence and behaviour that night did have some connection with what he perceived to be a row between Barnabas Parugu and his wife that night, coupled with the exchange of direct remarks between the accused and the deceased. I find that the accused did cause the death of the deceased on the night of 24th August 2001 at Vara Creek. The evidence against him is overwhelming in this case.

Was it Murder with Malice Aforethought?

On this point section 202 cited above speaks for itself. In this jurisdiction, this issue was raised and commented upon in **Joel Aosi v Reginam [1988/1989] S I L R 1 at 2 and 3 by the Solomon Islands Court of Appeal**. At page 3, the Court said, "**The learned Chief Justice accepted that the applicant did not intend to cause the death of the deceased. However, the mens rea which is called for in cases of murder, which is defined as being the causing of death of malice aforethought, is the subject of section 195 of the Penal Code. This provides that 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 is an intention to cause the death of or grievous bodily harm to any person. That was not thought to be applicable here. The second is knowledge that the act which causes death will probably cause the death of or grievous bodily to some person**

whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.

"Grievous harm" is defined by section 4 of the Penal Code to mean any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely so to injure health or which extends to permanent disfigurement or to any permanent or serious injury to any external or internal organ, membrane or sense. It is beyond question that grievous harm was certainly suffered by the deceased and that her death was a consequence. It will be noted that the definition of malice aforethought refers to grievous bodily harm but then one sees that the definition of harm in section 4 means any bodily hurt and so forth. Clearly enough the definition of grievous harm is a definition of grievous bodily harm"

In my view, the action of the accused does fall within section 202 (b) of the Penal Code Act. The accused must be taken to have known that plunging the knife into the chest of the deceased by force would most likely cause grievous harm leading to the death of the deceased. Inside the chest of a person are the heart, lung and liver apart from accompanying veins and arteries. The deceased was a small person compared to the accused who is tall, well built and strong. The knife used is sharp enough to slice lemon fruits. Plunging that knife into the chest of the deceased was a sure way of causing his death and it did happen in this case. The accused somehow was oblivious to these factors and stabbed the deceased in the way he did. The accused must therefore be taken to have intended to cause the death of the deceased within the meaning of section 202 (b) of the Penal Code Act. The accused raised no defence known to the law. Counsel for the defence however placed emphasis on the evidence of Dr Pikacha who described the various possible angles from which the weapon used could have come thus suggesting the stab wound was not consistent with the description of the stabbing posture of the accused in this case as described by Barnabas Parugu. The fact is that the movements of the accused were fast with short steps before he stabbed the deceased. The effect of the stabbing however was devastating in this case. Whatever happened or how the knife was positioned in his hand before landing on the chest of the deceased was not known. A small knife gripped in the palm of the hand of the accused could have entered the body in the way it did. The wrist of the accused's hand provided free movement of the knife and would have determined the angle at which it entered the chest of the deceased. I do not think the evidence of Dr Pikacha would in the slightest way exculpate the accused in this case. In the result I find the accused guilty of murder as charged and I convict him accordingly. The sentence for murder is life imprisonment. I accordingly sentence the accused to imprisonment for life for the murder of the late Eddie Messach, the deceased. I order accordingly.

**F.O. Kabui
Judge**