

# IN THE HIGH COURT OF SOLOMON ISLANDS

## REGINA -V- WITNEY PIOPIKO

Criminal Case 101 of 2002

Gizo: Brown PJ

Date of Hearing: 15, 16, 18, 19 September 2003

Date of Judgment: 19 September 2003

*Criminal Law - particular offence - murder - self defence - application of S.204 (b) of the Code - whether open on the facts - "malice aforethought" to be decided on all the evidence.  
Penal Code (Cap 26) S.200  
Penal Code S. 202  
Penal Code S.204 (b)*

Under S.200 of the Code, a person is guilty of murder where, with malice aforethought, he causes the death of another person. The defence of self defence was raised.

The Court heard that the killing took place in shallow water, after Piopiko had followed towards his garden by canoe. Ramo was killed by a heavy motu stone thrown by Piopiko. The stone broke Ramo's ribs, injuring the lung and he bled to death. Piopiko, it appears was angry at the old man for he thought Ramo had taken the side of the parents of a girl that Piopiko had been seeing against the wishes of the parents. At that time Piopiko was a visitor in the village.

- Held: 1. The accused animus towards the deceased was expressed by words and actions in chasing the deceased and bringing him to bay.
2. The second state of mind, provided for by S.202 (b) of the Code has been made out on the facts, for the use of a motu stone was with indifference to whether grievous bodily harm would be caused or not, and any-bodies reasonable appreciation of the effect of the stone would encompass the real risk of serious injury, and that real risk was apparent to the accused as shown by his threat to the deceased, Ramo.
3. The facts do not satisfy the test for self-defence, even on the lesser proof standard.
4. The defence afforded by S. 204 (b) of the Code had not been made out for even on the lesser standard of proof, the court could not be satisfied the acts of the old man Ramos so terrorized the accused as to deprive him of his self control.

## Trial for Murder

Mr. S. Balea for the State

Ms. E. Garo with Mr. W. Tigulu for accused

On the conclusion of the trial, I gave short reasons for my findings. I now publish my reasons.

On the 31 October 2001 at Bareho Village near Seghe, Western Province one Ramo Sukulu was killed when struck by a stone thrown by Witney Piopiko. Ramo Sukulu died of haemopneumothorax or bleeding into his collapsed lung following the fracture of two lower ribs, 1 ° 2, which had contused the lung parenchyma. These matters are not in issue. The fact of the two broken ribs is evidence of the magnitude of the force with which the stone struck the deceased.

As a consequence of this killing, Witney Piopiko was charged with the murder of Ramo Sukulu. He has stood his trial at Gizo this week and has raised in his defence the question of self defence. Ms. Garo, for the accused was at pains to press the defence, for as she pointed out, in the events that this court finds on the subjective test, that the use of the weapon (or stone) was used reasonably in self defence, then there was no question of this court finding the accused guilty of the lesser charge of manslaughter, by bringing in objective considerations. She relied upon the decision of the Court of Appeal case Jimmy Kwai -v- R. (1991) 3/91. If the stoning was reasonable in the circumstances, and this court accepts the defence, the accused is entitled to be acquitted.

### The Medical Evidence and Identification

Mr. Balao for the prosecution, argued that the State had discharged its onus by showing that the accused had the animus necessary to satisfy the expression "malicious aforethought" as used in S.202 of the code. The State case, so far as the cause of death is concerned was that medical evidence of Dr. Orolalao Paul of Gizo Hospital who examined the deceased at Bareho Village in November. The deceased was identified to the doctor by Sipriano Rafalea, a nephew of the deceased and Wince Sambo, a very close friend of the deceased.

Also present at the medical examination were five police personnel, including the police photographer who photographed the body while the doctor was indicating the broken rib area and the investigating officer Sgt. Ian Bara. The report was admitted without objection, a course open to the accused since his defence was one based on self defence and there was no dispute about the cause of death.

The report of the doctor contained finding;

"An elderly slim built male identified as Ramo Sukulu by Sipramo Rifalea" before recounting the cause of death which I have set out above. The photographs show an older man with short graying receding hair.

## The Prosecution Case

### The Investigating Officer's Evidence

The investigating officer's evidence was that as a result of information he had been told he arrested the accused at Seghe Police Station on the morning of 1 November 2001 and charged him with this murder. The following day he went with an eye witness to the killing, Jefferson Jeffrey, the police photographer, Felix Kalin'a'mae to the scene where the Sgt drew a sketch plan (which become exhibit "1") having regard to what Jefferson Jeffrey told him.

The position of the deceased and the accused at the end of the point, where the incident took place was shown, only some metres from the shore. A road is shown, backing the beach. The road runs from the point, some 200 m to Bereho Village. About 110 m from the scene of the incident where the deceased was hit by the stone, towards the village, is a water tank where the injured man was taken, hence to a place adjacent where he died and then to the home of Lent where he was laid to rest, and where the doctor examined the body.

It is uncontested that the deceased was paddling towards the point, (to garden) when chased in another canoe by the accused, the incident took place in shallow where both were standing, after being stoned, Ramos turned about and commenced paddling towards the village where when he fell from his canoe, was taken ashore firstly to a hut, hence to the water tank.

The officer identified Piopiko as that arrested person, he knew him personally.

In x-examination he was asked about the depth of water at the scene of the incident.

I am satisfied the photographs depict the scene accurately for the persons standing in the sea were placed by the eyewitness Jefferson and show people, quite close to each other, up to their knees in water only a few meters off some mangroves.

Having heard all the witnesses I am satisfied the ground underfoot was hard sand with clear water.

### The Record of Interview (R of I) with the accused

The second witness Detective Constable Jerry Jackson Suku interviewed the accused and the record of interview was tendered exhibit 2.

The accused said he was from Ru'ku'tu and ½ Bare'ko village. He hadn't been to Bare'ho until he was older. After school in Sonoma in PNG, he came to Ruku'tu, then intended to visit Bareho' village.

*I paddled there. I wanted to holiday. I stopped a month and was a friend of Elcina Luta. Her parents were cross with me. The father wanted to cut me with a knife. His name is Luther. Her parents were very cross. They were anxious to kill me. They swore at my parents. I went back to Ru'ku'tu.*

I was there 2 weeks and played soccer for fundraising visit to Segbe. I went with the team. After the game our big man told us to spend weekend at Bala'va'ini Village, so I decided to spend weekend at Bare'ba village so I went on Friday 26 October. On Saturday 27 October, Luther found out I was in the village, and he sharpened his knife to cut me. When I found out he was angry with me I told my uncle Ti'vu'hu Piali this. He went and spoke to Luther and Luther cooled down a bit.

Three reasons why he was angry:

1. I said Luther's knife too sharp, it might cut me, so I must leave Bareho.
2. When the girl was with me in the house, her parents came and asked me about her, I denied it, even when they swear at me.
3. The parents heard the girl was with me at Segbe during fund raising, when the father was unable to locate me, the parents forced Ramo Sukulu to fight me.

Ramo sent news through Leighton that he did not want to see me. If he saw me, he will fight me. So yesterday 31 October between 8-9am I saw Ramo Sukulu to ask him why angry with me. When he saw me he grabbed the bush knife and ran at me. When I saw him running towards me, I ran to my Uncle Piali Tivu'ru's house. When I was in my uncle's house I was thinking hard why Ramo angry with me. So I went back to ask him. I saw him going to his canoe and paddled to sea.

I got a canoe into sea and I followed Ramo. I caught up with him at Inta Point. I paddle ashore, stood up on the seaside and asked him. Ramo jumped down grabbed the knife and came at me. I said you can't come with the knife, only your hand. But he didn't drop the knife, he kept coming. At that time, I looked down and saw a stone in the canoe. I picked the stone up and held it in my left hand. When he came close, I was frightened he might shoot me with his knife, so I shot him with a stone. When I threw the stone I watched the stone because I was frightened Ramo may cut me with the knife. When I was further away I saw him go back, following the shore. I took the canoe back to Bareho village. I heard news that he came back, he stayed a little time and he died. I don't know whether he was sick or the stone killed him. That's all.

"I put the stone in the canoe before the fight. I did not intend to shoot Ramo with it."

"On Sunday night, don't know date, I took the girl Elkina, the father was so angry with me. Instead of taking her to her house, I took her to her grannies house. On the Monday, the parents and the girl had settled the problem between them. The old man Ramo supported them".

### The Photographic Evidence

The police photographer's evidence showed that his photographic descriptions were given, as were his depictions in the water, by Jefferson Jeffrey.

### The First Eyewitness

An eyewitness, Ferriah Piali gave evidence. He is a student at the vocational training school. He said Piokipio came to the village on 26 October. Piopiko is a relative and friend. On the Friday he was at the home of Jeffrey when he noticed Piopiko with a stone for cracking nuts. A black stone.

He said:

*On the Monday evening, Leyton came with news about Ramo. Leyton said to Piopiko "Ramo like to punch you" afterwards they went to Piopiko's house.*

*On Wednesday 31 in the morning, waiting with Piopiko at Jeffrey's house, Ramo was paddling along the shore about 30 m away. Piopiko said "where are you going" Ramo said "Askem" this was repeated twice. Piopiko swore at him "fucking mothers arse belong em". Ramo said "shut up", jumped from his canoe and chased Piopiko with a knife. Piopiko ran towards his house, Ramo chased 1/2 way, then turned back, to his canoe and continued paddling towards his garden, which belonged to another for whom he worked. Piopiko went and got a canoe and paddled after him. I followed, running along the road with Jefferson Jeffrey. I followed to stop Piopiko.*

*All arrived at end of island. I saw them talk to each other. Piopiko said "you come now and we will fight this time" Ramo said "I don't want" and refused. Piopiko swore – fucking. There were 3 – 4 m apart. Ramo paddled towards village.*

*Piopiko picked up a stone from the sea, hurled at Ramo, but missed him and his canoe. Then Ramo got off his canoe and chased after Piopiko with a piece of rod wire, about 1 m long. Piopiko told him 2 times to drop the rod but he kept coming at Piopiko. Piopiko reversed towards his canoe they were about 3 m apart. The water was up to just below the knees.*

*I saw a stone thrown from Piopiko direction hit Ramo on his left side. A black stone. Ramo went forward then took his canoe and paddled back. So did Piopiko, following behind Ramo. On the way back Ramo fell from his canoe into the water when we saw, we called others to rescue Ramo, I was asked to call my father and I went. I returned with him to Pentani's house but Ramo was dead.*

He was asked whether Piopiko could run away when Ramo chased him with the iron rod. Ferris answered:

*He had a chance to run away, the deceased was weak and slow*

*Q. Why weak and slow?*

*A. He was old.*

Later Ferris confirmed photo 6 showed where Ramo fell from canoe and photo 4 showed where the 3 people, Ramo (b) Piopiko (a) and Jefferson (c) were when the stone was thrown.

Under cross-examination by Ms. Garo, Ferris confirmed Piopiko had a problem over a girl. He couldn't say why Ramo would be cross with Piopiko.

#### The evidence of the message taker

The next witness was Layton Ereck, aged 18 of Bareko Village. He said that on the evening of 29 October Ramo called him to tell Piopiko that he wanted to see him. He passed the message – he said exactly as told him by Ramo. "I want to see him" "I told Piopiko "Ramo wanted to see you" I said no more.

On cross-examination Ms Garo asked whether Ferris was there, and Layton agreed. Ms. Garo recounted Ferris's story of the message, that Layton told Piopiko Ramo would like to punch Piopiko. Layton agreed that Ferris's recollection was the truth.

What I am not sure about is whether Layton changed the message of his own volition, made up the part about punching Piopiko or whether what Layton says in Court about Ramo's message is also a fabrication. Since Layton has been shown to have made up the story in the court, I am left in doubt about what Ramo actually asked Layton to say. In any event, the words recalled by Ferris, that Layton told Piopiko "Ramo would like to punch you" clearly confirmed in Piopiko's mind that Ramos was against him.

It is clear however, that Piopiko at that earlier time, was associating with Ferris and Jefferson, and it is open to find that the villages would see these three as friends. Ferris in fact said it.

#### The evidence of the stone collector

Vicky Henly aged 26 of Bareko village was then called. He gave evidence of collecting a black stone from the sea at the site shown by Jefferson and handed the stone to the police.

Mrs. Garo wanted me to find, on the evidence where the stone was found that the stone was thrown when the deceased was only 1.5 m from the accused. It must be remembered that the photographs of the persons in the sea were reconstructions, the sketch is rough and to suggest with some exactitude, from these documents the distance when the stone was thrown ignores the oral evidence in the court and in any event cannot be used in this fashion. All I can say with some certainty, is that the stone recovered was that thrown. I cannot presume to use that fact to pinpoint, with exactitude, the distance these two were apart when it was thrown. Ferris said he was about 4m from Ramo when the stone was thrown. Jefferson says 3 to 4 m away when the stone was thrown. I accept the evidence of the eyewitnesses.

The stone was tendered and is exhibited "4". A black volcanic, heavy stone that can be grasped by one hand, smooth about its spherical shape. Vicky gave the stone to the police.

#### The evidence of the second eyewitness

The second eyewitness was Jefferson Jeffrey aged 19 of Barako village, in Form V Ku'ku'du Adventist High School. He was with his sister in the kitchen when Ramo paddled by on the 31 October.

He said

*"Piopiko shouted at Ramo" I'm here, you wanted to see me" He called "where are you going?" Ramo replied "Askem" twice. Piopiko swore at Ramo saying "you eat shit. I'm here, you want to see me"*

*Piopiko challenged Ramo to come. He came running with a knife. Piopiko said, "you wanted to see me, you come, we'll fight"*

*Ramo came and chased Piopiko but turned back 1/2 way to the house. Ramo back into the canoe, towards garden. Piopiko called after him, "you eat shit" "you come back here and we'll fight". Ramo said "me laze" (I refuse) and kept paddling. Piopiko went to Piale's house got a canoe and followed. I followed with Ferris along the road. At the end of the island we were standing in the water. Piopiko got out of his canoe and challenged Ramo as Ramo paddles past us, Ramo was heading back to the village. Ramo declined "me laze" Piopiko got a stone from the sea threw it towards Ramo but missed. Ramo turned back to Piopiko jumped out with a steel rod, and ran towards Piopiko. I was about 4 metres away.*

*I told Piopiko not to fight I told Ramo to continue paddling as Ramo came, Piopiko warned him not to come with steel rod but fight with his hands. Piopiko said "I'll use the stone if you use that".*

*Piopiko up to knees, Ramo to thighs in water. When Ramo was 3 to 4 m away Piopiko shot him, hit him on the left side of ribs. L banded, throws. Piopiko ran away, Ramo got back into his canoe and paddled towards the village – Piopiko also. We followed Ramo past mangroves he appeared about to fall out. When he fell, he walked, held onto the canoe. Canoe stuck, I came out, shouted name, he wasn't responding" And so Ramo was taken ashore to die.*

Jefferson went back with Vicky and Vicky recovered the black stone, which Jefferson identified. He also confirmed the photographs' captions except those of the deceased.

In cross-examination Ms. Garo asked whether Jefferson had heard Piopiko threaten to kill Piopiko but Jefferson hadn't. He did say however, that he asked Piopiko in the kitchen not to fight Ramos, when Piopiko was swearing at Ramos. He agreed Ramos came towards Piopiko before Piopiko threw the stone. Ramos was in the deeper part of water. In re examinations Jefferson said Piopiko took two steps backwards before he shot with the stone. Jefferson said the rod was about 2 ft long.

#### The totality of the evidence on which findings were based

So that was the evidence given in this case, where I have stated, the defence contested part, but otherwise it is uncontested and the facts on which I have based my findings are those found in the evidence. The accused exercised his right to remain silent.

#### The Defence argument

Ms. Garo spoke of the evidence which supports her client's use of self-defence. She asked me to discount any talk of a stone on the 29 October. I do so for it is too far away in time, to be of any probative value for the prosecution. In any event, the stone may well, as suggested by the evidence have been acquired principally for nut cracking, and although the accused admitted putting the stone in his canoe, it is not clear when he did this.

Her next point was that there was no independent evidence of any disagreement with the deceased prior to 29 October. I do not accept that the accused felt no animus towards the deceased before the 29 October for his record of interview was full of reasons for animus towards Luther and in 3 of his reasons, by implication, towards Ramos.

I'm further satisfied that the accused intended to harm the old man for the disparity in physical prowess is quite apparent between two. I say that, for I have heard the witness

speak of the slow and weak Ramos and have had the accused before me in the dock where he is clearly of robust physical build. Any fight with fists would have been declined by the old man.

The motu stone, on anybody's reasonable appreciation of its effects if thrown with force, could seriously injure a person. The doctor's evidence shows the injuries inflicted. I am further satisfied that the effect of landing such a stone on a person, could not have escaped the conscious mind of the accused, for he was aware of the potential to harm the old man, by incapacitating him if he maintained his hold on the iron rod. Consequently, by throwing the stone, the accused exhibited an indifference to whether grievous bodily harm would be caused or not.

It was some days after, on the Wednesday following the Monday evening when a message from Ramos was given Piopiko, that Piopiko then saw Ramo. His attitude towards Ramo then, was belligerent. Jefferson said he told Piopiko "not to fight Ramo" while he was in the kitchen. Clearly Piopiko was evidencing animus towards Ramos then, an animus which was in him, possibly as a result of the Monday message.

Ms. Garo then suggested the court should not find that the stone was put into Piopiko's canoe with intent to murder. The prosecution has not suggested that, although the accused admitted putting the stone into the canoe.

Her next point was one with which I took issue in court for the argument tended to suggest Piopiko had been threatened by the deceased, but as I said earlier, I cannot make such a finding on the evidence, since in cross examination, Layton's evidence about the message was discredited and I am left in doubt about just what Ramo's message was.

When Piopiko was shouting at Ramo from Jefferson's house, he did not say, for instance, "you want to punch me, I'm here" rather he said "you want to see me" a form of words which accords with Layton's evidence before he was discredited.

Defence said, in relation to the most material time, about the time of the shooting, that the accused gave the deceased an opportunity to retreat. But it must be remembered that Ramos had been perused for some 200 m from the village by a man who had sworn at Ramos, telling him "you eat shit". Piopiko had two friends with him. One, Jefferson, told Piopiko not to fight Ramos, and told Ramos to paddle away. Yet Piopiko had already thrown, presumably a piece of coral rock at Ramos. Ramos was heading back to the village when stopped. It is reasonable to suppose he was seeking succor at the village for he had been perused by a young man obscenely swearing, threatening to fight him. I do not accept the defence submission that the accused gave Ramos an opportunity to retreat. He had forced him from his canoe by throwing an earlier stone from the sea, and had him at bay, as it were, like a pack of dogs would have a fox they had been chasing.

#### Findings and reasons

Clearly as Ms Garo says, the threat to fight by Piopiko is still in existence. As she says it's conditional on Ramos putting down his short rod. But the old man, described by Ferris as weak and slow (for he was old) had been goaded and insulted by the accused, and it does not



lie in the month of the accused to now say, as Ms Garo puts it, that the accused could, without hesitation use the stone and rightly so, for the deceased had refused to fight this younger man, but goaded and prevented from escape by sea (for Piopiko had already thrown a stone to make his intentions clear if Ramos was to continue paddling) Ramos was forced to confront Piopiko who had two friends close by. Clearly Piopiko had an alternative and that was to defuse the situation by leaving the fellow alone, and not to fight.

In his R of I the accused said Ramo came at him in the water with his knife. It was in fact, a piece of iron, presumably a tool used for digging in the garden, but his R of I clearly makes plain Piopiko's intention to fight Ramos. He would not let Ramo go until Piopiko had the satisfaction of a fight.

#### Direct evidence relied on for self-defence

The principal evidence of self-defence is in that R of I where Piopiko said "I was frightened he might shoot me with his knife, so I shot him with a stone".

The two eyewitnesses said Piopiko expressed the wish to fight, without the rod (or knife). They were up to their knees and able to walk about. Piopiko took two steps back before he launched the stone. He was clearly in a position to retreat, yet had refused to allow the deceased to retreat previously, by throwing coral at him. I am satisfied the accused had the old man at his mercy for the old man realized remaining in his canoe was pointless and got out to face his tormentor.

#### Reasons why the defence has not be made out

I am not satisfied the accused was frightened to an extent that he was entitled to hold his ground, position himself by two backward steps then shoot the deceased with his stone. It could not be said that he acted from such terror of immediate death or grievous harm, so as to deprive him of self-control. The threat posed by the old man could have been further reduced by keeping a safe distance from him. I am not satisfied there was an immediacy of grievous bodily harm to Piopiko for he was out of reach of the old man when he threw the stone. In any event, there is no cogent evidence that Piopiko lost his self-control, rather reacted according to his expressed will. He had already threatened to stone the old man. He could have continued to move away, as he had in the village where he eluded the old man. I am satisfied he could have eluded the old man. I am satisfied he could have eluded him in the water for Ramo was comparatively slow and weak. Having goaded the old man, and put the old man in a position where Piopiko could pursue the fight he so clearly wanted, (for his two friends were there to watch him and he could not back down without shame), Piopiko has not satisfied me (on the balance of probabilities) that he had such justifiable fear from the actions of the old man approaching him in the water, so as to be acting in self defence. If anything, the old man must have been an object of misery.

The facts then do not support the accused claim to self-defence.

On the subjective test I am not satisfied the accused has reasonably acted in such a way by throwing the stone in these circumstances as illustrating a terror in Piopiko, rather the persecution has satisfied me of the intent to cause grievous harm.

Consideration of malice aforethought

S.202 of the Code provides that:

“malice aforethought may be express 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 the act is unpremeditated –

- (a) ...
- (b) knowledge that the act which caused death will probably cause .....grievous bodily harm to, some person ...although such knowledge is accompanied by indifference whether .... grievous bodily harm is caused or not ...”

I am satisfied on the evidence that the accused intended to fight Ramo, and his actions in accosting Ramo in the water were in pursuance of such intent. Having ignored Jefferson's plea not to fight Ramo, Piopiko actively sought a fistfight with the old man, for his words made that plain. The old man's refusal to put down the iron bar caused the accused to act on his animus by casting the stone at Ramo.

I have accepted the evidence of the two eyewitnesses as witnesses of truth. They have recounted a sorry tale. The accused clearly felt aggrieved that his advances towards the girl were unwelcome from her parent's point of view. He was angry about that. He obviously transferred his anger towards Ramo who, on his R ° I, he saw as an agent of the parents. He pursued the old man along the sea. Both his friends followed for they clearly felt something would happen. It did. What happened was the very thing Piopiko had threatened by seeking to fight Ramo. He must live with the outcome for he brought it about.

Defence under S.204 (b) of the Code

Section 204(b) of the Code:

*“Where a person by an intentional and unlawful act causes the death of another person the offence committed shall not be murder but manslaughter if... he was justified in causing some harm to the other person, and that in causing harm, he acted from such terror of immediate death or grievous harm, as in fact deprived him from the time being of the power, of self control”.*

Regrettably I cannot see S.204 (b) of the Code as affording the accused a defence. The prosecution has shown that the accused, (who is a fit, younger man) could not be said to be so terrorized by the older man, in the water, so as to be deprived of his self-control. Whilst he said that he was frightened by the iron rod, even on balance, his attitude (as described by the two eye-witnesses) exhibited, not so much fright, but calculated force to deprive Ramo of any real chance to harm Piopiko. I am not satisfied Piopiko had such fear so as to deprive him of any self-control.

This is not a case of excessive force in circumstances where the defence afforded under S.204 (b) has been made out. For the reasons I have given, the accused was not justified in causing harm to the other person in the circumstances envisaged by the section, rather such harm was intentional and brought about by the conduct of the accused leading to and causing the death of Ramo. There is not available, then the alternate verdict of manslaughter.

Stand up.

**Verdict:**

Guilty of Murder

**Sentence** – Life Imprisonment