

REGINA-v-MARCUS RONGODALA

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Criminal Case No.468 of 2004

Hearing: 12th, 13th, 14th and 15th September 2005

Judgment: 16th December 2005

P. Little and R. Iomea for the Crown

D. Hou for the Accused

JUDGMENT

Mwanosalua, J: The accused Marcus Rongodala is charged with one count of Murder and one count of attempted murder. The Crown alleged that on 16th July 2004 at Kunu settlement on Malaita, the accused murdered the deceased Ellen Olifaisua by cutting her with an axe, and attempted to murder Rose Anna KiKiramo (Rose) by also cutting her with an axe. The accused admitted cutting the deceased with the axe, but alleged that he was provoked by insulting words from the deceased. He denied cutting Rose with the axe.

Crown Case

The deceased was the defacto wife of the accused. They lived with the parents of the deceased at Kunu settlement near Auki on Malaita. On 15th July 2004 they went to the Auki market to sell their goods. They returned to their house around 7pm. after the accused consumed some kwaso with Mr. Mamani at the market. Mr. Mamani also went with them to the house. The deceased's mother, Rose was still awake when they arrived. The accused and Mr. Mamani drank some more kwaso when they arrived at the house. It was the deceased who mixed the kwaso for them but she did not drink it with them. Some while later Mr. Mamani told the accused and the deceased that he would go to the Auki Market to buy cigarette as he wanted to smoke. He was then accompanied by the accused and the deceased. When they arrived at the market Mr. Mamani bought one cigarette role and left to his house. He left the accused and the deceased at the market. The accused and the deceased separated from each other at Auki that night.

The deceased returned to the house sometime before day light on 16th July by herself. Rose opened the door for her. The deceased entered and went to sleep. The accused returned to the house about 6am. He stood at the door to their bedroom and spoke to the deceased who was lying in bed.

Rose walked passed their bedroom on her way out to the kitchen located close to the house. A moment later the deceased called out to Rose saying "**Mami midae nao**". Rose ran to the house and saw the door to the bedroom of the accused and deceased closed. She kicked the door open and saw the accused with an axe in his hand. The accused cut Rose twice with the axe. She missed one blow but the other landed on her left hand. The accused then ran out of the house with the axe and escaped to Mage his home village.

The deceased received medical attention soon after the accused had escaped. She had a wound on her head. She looked pale and the wound bled profusely. She and Rose were taken to Kulu'ufi Hospital. In the afternoon she was transferred to the National Referral Hospital in Honiara where an emergency surgery was performed on her head injury. She was unconscious on admission with left hemiplegia and right dilated pupil. Despite Surgery her condition continued to deteriorate until she died on 18th July 2004. Her postmortem report confirmed that the cause of death was severe head injury. That injury was consistent with the history of axe wound to the head.

The accused admitted cutting the deceased and explained how he used the axe to inflict the head injury which caused the deceased's death in his caution statement dated 17th July 2004.

The caution statement was tendered where he explained as follows:

- Q17. How now you hollem axe time you cuttem wife belong you?**
A17. Me hollem axe long inside long two fella hands belong me and liftem up before me daunem.
- Q18. Which position now wife belong you hem stap time you cuttem hem?**
A18. Time hem try for stand up from bed.
- Q19. Wasiwe you stand up or you sit down?**
Q19. Me stand up.
- Q20. Who now you cuttem first Ellen or Rose?**
A20. Ellen.
- Q21. Which part long axe yia now you held long hem for cut long hem that fala time?**
A21. Long bottom part.
- Q22. What now you doim after you cuttem two fala yia?**

A22. Me go out from house then ran away now.

Q23. Long where now you ran and kasim before Police arrestem you?

A23. Long Mage big village.

The axe was owned by the deceased's father, Mr. Stanley Siliau. Before 16th July 2004, the axe was usually kept under a small table close to the bedroom occupied by the accused and the deceased. The axe was recovered by the police near a pig pen some distance from the scene of crime on 17th July 2004. The accused admitted that he throw the axe to the spot where it was recovered.

Defence Case

The accused was at the Auki Market on 15th July 2004 where he drank kwaso with Mr. Mamani in the early evening. On the night of that day the accused and Mr. Mamani drank some more kwaso at the deceased parents' house at Kunu settlement. Sometime later Mr. Mamani, the accused and the deceased went to the Auki market. Whilst in Auki the accused continued to drink kwaso with Mr. Mamani when the deceased left the accused. In the early morning of 16th July 2004 the accused looked for the deceased at the market but she was not there. At about 3am. the accused went to check for the deceased at their house but she was not there as well. He then returned to the Auki market to look for her. She was not at the market. At about 6am. he returned to the house and saw the deceased lying on their bed. The accused told the deceased that he was looking for her but she was not at the market. Their conversation development into an argument. The deceased accused the accused of having sex with a girl at the market and told him to eat the vaginal sperm of that girl. The deceased continued to repeat these words to the accused. The deceased did not stop there. She told the accused to eat the sperm of her own vagina as he had fucked the girl. These words made the accused so angry that he went to the place where an axe was kept, near their bedroom, took it to their room and cut the deceased with it. He struck the deceased when she was getting up from the bed. The accused knew the axe would cause serious harm to the deceased. After cutting the deceased he ran out from their bedroom while Rose stood in his way. He escaped from Kunu settlement to his home village of Mage as he had done wrong and feared that the relatives of the deceased might kill him. He was subsequently arrested by the Police near his village and taken into police custody.

Law

The Provisions of the Penal Code which are relevant in this case are sections 200, 202, 205 and 215. These sections provide:

- "200 Any person who of malice aforethought causes the death of another person by an unlawful or omission is guilty of murder and shall be sentenced to imprisonment for life.
- 202 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 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.
- 205 Where on a charge of murder there is evidence on which the court can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be determined by the court; and in determining that question there shall be taken into account everything both done and said according to the effect which it would have on reasonable man.
- 215 Any person who -
- (a) attempts unlawfully to cause the death of another; or
 - (b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony, and shall be liable to imprisonment for seven years".

Injury Caused by Accused to Deceased

The accused was aware of the axe being close to the bedroom occupied by him and the deceased. In the midst of the argument with the deceased he went and took it. He returned with the axe as the deceased was in the process of sitting up on their bed. He held the axe on the handle with both hands and lifted it up. The deceased was close to him. He knew that the axe would cause serious harm to the deceased. The axe was very sharp. He

swung the axe down ward and the metal portion of the axe struck the head of the deceased, inflicting a depressed and open skull fracture on the right parietal area of the deceased's head, approximately 10cm long. The depressed skull was more than 2cm. in depth and impinges into the cerebral cortex and shearing the meninges (covering of the brain). The area of the depressed skull measured 10 x 7cm. and impacted. The deceased died on 18th July 2004. The cause of death was severe head injury. I find that the accused had intention to cause grievous bodily harm to the deceased. He committed the offence of murder.

Provocation

The accused advanced provocation as his defence to the murder charge. The provocation put forward by the accused were the insulting words addressed to him by the deceased referred to above. The accused was looking for the deceased both at Auki and at their house in the early hours of 16th July 2004. He told her about that at their bedroom about 6am. The deceased then accused him of having sex with a girl at the Auki market and told him to eat the vaginal sperm of that girl. The deceased went on to tell him to "eat the sperm of her own vagina." The words made the accused angry so he immediately left to collect the axe and inflicted the head injury on the deceased. Those words when addressed repeatedly to a person in the Community of the accused as in this case would cause him to lose self-control and react as the accused did. The Crown did not negative the defence of provocation. I find the defence open to the accused in this case. He is acquitted of murder and is convicted of manslaughter.

Attempted Murder

The Crown adduced evidence from the victim, Rose to prove this offence. The evidence from Rose was that the accused first cut her with the axe at the door to the accused and the deceased's bedroom. She missed that blow and the deceased went after her and cut her the second time. The axe cut her on the left arm. She alleged that the deceased could have killed her if she had not moved away from the axe.

The accused denied cutting to kill Rose. He said the axe cut her when she blocked the door as he ran passed her to escape.

I do not think Rose would miss the axe if indeed the accused was out to kill her. I think the axe cut Rose when the accused ran passed her with the axe to escape. There is no evidence to prove this offence. I will acquit the accused of this offence.

- Verdict:**
1. Acquitted of murder
Guilty of Manslaughter
 2. Acquitted of attempted murder.

**Francis Mwanosalua
Puisne Judge**