

IN THE HIGH COURT OF SOLOMON ISLANDS
Criminal Jurisdiction
(Bird J)

Criminal Case No. 252 of 2024

REX

-v-

ROCKY MAESULAONE

Date of Hearing: 2nd, 3rd, 4th and 7th April 2025

Date of Decision: 3rd October 2025

Mr Samuel Koeto Tovosia & Mr Steward Beto for the crown
Mr Ben Alasia & Miss Alice Silas for the defendant

JUDGMENT

Bird PJ:

1. Mr Rocky Maesulaone (defendant) is charged with 1 count of murder contrary to section 200 of the Penal Code (Cap 26). The defendant has pleaded not guilty to the charge. Trial was conducted on the above dates and I now deliver my judgment.
2. The defendant was alleged to have murdered Dickson Boeni (deceased) between the 12th and 13th December 2023 in the sea area between Lalana and Laulasi in the Langalanga Lagoon, Malaita Province.
3. Before discussing the crux of this case, I must remind myself that the duty to prove the allegation against the defendant rests on the prosecution. At no stage does that burden of proof swifts to the defence. The standard of proof is proof beyond reasonable doubt. The prosecution is required by law to prove to this court all of the relevant ingredients of the offence. If at the end of the trial and upon assessment of the whole evidence and the court is left with a doubt even as slight as it may be, the defendant must be afforded with a benefit of doubt and be acquitted.
4. In this proceeding, it is alleged that the defendant had unlawfully caused the death of the deceased at sea. For a charge of murder, it is trite law that the prosecution must prove all the elements of the offence to the required standard. The elements of murder as stipulated in our Penal Code (Cap 26) are as the following:
 - i) Any person;
 - ii) With malice aforethought;
 - iii) Caused the death of another person; and
 - iv) By an unlawful act or omission.

5. Apart from the above provision, the prosecution's case is also premised upon section 202 (b) of the Penal Code. It is further alleged that the defendant has knowledge that the act that caused the death of or grievous bodily harm on the deceased have in fact caused his death. It is further noted that the prosecution's case is mostly reliant upon circumstantial evidence. There is also no pathology report produced.
6. In support of their case, the prosecution called four witnesses. The first witness was Michael Lonowale (PW1). This witness stated he was fishing in the sea area where the alleged murder was committed. He used an outboard motor (OBM) to fish. He arrived at the fishing ground at about 2 am on Monday the 11th December 2023. He tied his boat to the floater. He recalled other fishermen were also there. They included Rodney, Jack, Oloman and the Defendant.
7. He felt sleepy and slept in his boat until about 4 to 5am. He looked for his fishing line. Rodney told him the Defendant took it when he was asleep. He was unhappy. He got his torch and used it to locate the Defendant. The first canoe he saw belonged to Francis Sawane and it was floating some 15 meters towards their direction. It was partly filled with water. He told Rodney to retrieve it. Rodney pulled the rope alongside his canoe and they bail the water out.
8. A little while later, they heard the defendant shouted words to the effect, "Dickson, you must die lo me tonight mekem me kakai full". He recognised the defendant's voice. They were about 20 meters away. He told Rodney to go to the defendant and retrieve his fishing line. Rodney paddled towards the defendant and told him to bring back the fishing line. The defendant was floating in the sea bailing out water from his own canoe. He got inside his canoe and told Rodney, the fishing line was there. Rodney went to get the fishing line and pulled on it but it was heavy. Rodney told him that the fishing line was heavy and could be stuck. PW1 started his OBM and drove to Rodney. He got the fishing line and pulled on it. As he pulled it up, he saw the deceased's legs coming out from the water. He and Rodney lifted the deceased's body into his boat. They saw that the fishing line was stuck to his left leg and toe. He saw the deceased had stary eyes and noticed blood on his left eye and nose. He saw the deceased was dead. The defendant helped them to lift the deceased's body into his boat. When they were inside the boat, the defendant spoke to the deceased in their language and in custom for water to come out of his body. PW1 transported the deceased to Talakali clinic. At the clinic, the nurse confirmed that the deceased has died.
9. From the court's enquiry, PW1 stated the fishing line was a test 80. It was wrapped around the deceased left leg and toe. There was no knot on the fishing line.
10. The second prosecution witness was Rodney Dilatafusia (PW2) also known as Kelema. He could recall that on a Monday night, he went fishing with Michael and Oloman. Michael used his outboard motor. Oloman and himself used canoes to paddle to the floater, their usual fishing ground. Whilst they were fishing, Michael fell asleep in his boat. The defendant came and took his fishing line and left with it. After waking up, Michael asked about his fishing line. He told Michael that the defendant took it whilst he was asleep. Michael told him to go and get it back from the defendant.

11. PW2 paddled to where the defendant's canoe was floating and asked him for the fishing line. As PW2 was paddling towards the defendant, he could see that the defendant was floating in the sea hanging onto the side of his own canoe. He was bailing out water from his canoe. He asked the defendant for Michael's fishing line and was told it was there. He used a torch to locate the fishing line and saw it. He saw the line's floater, got it and started to pull on it. It was heavy and he asked the defendant what he did with it. The defendant told him to leave it and he will dive in to get it out.
12. PW2 told Michael that the defendant had caused the fishing line to be stuck. He asked Michael to help him pull it up. Michael came to his aid and they pulled on the fishing line. As they pulled on the line, they saw the deceased legs appear. They were shocked. PW2 noticed the deceased's eyes were stary and there was blood on his right eye and nose. His right nose was injured. He and PW1 tried to apply first-aid on the deceased and noticed water came out from his mouth. He saw the deceased has died and swore at the defendant. The defendant did not reply. He saw the defendant came into Michael's boat and sat near the deceased's legs. PW2 also said that it was the same fishing line that the defendant took from Michael's boat. He recalled that the defendant was drunk when he came to get Michael's fishing line earlier on. He has been drinking since Monday night. It is noted that in cross-examination, PW2 stated that he was awake the whole night whilst they were fishing. The night was fine. He and PW1 were about 20 meters away from where the defendant was. He did not hear any altercation occurring between the defendant and the deceased.
13. Mr Francis Sawane (PW3) was the third prosecution witness. He is from Laulasi Village. The summary of his evidence was that between 3 to 6pm on Monday, he and the deceased paddled to Lalana Village and drunk kwaso and returned to Laulasi. At about 7pm, the deceased asked him if he and his mother could use his canoe to go to his mother's sister who was living in another island. He did not see the deceased again that night until his dead body was brought home the next morning.
14. The final prosecution witness was Angella Orugwaugwau (PW4). The witness was the deceased's biological mother. She told the court that on Monday, the deceased was drinking with Francis Sawane. In the evening the deceased returned to their house. She accompanied the deceased and paddled to Gwalaga village to get some money from her sister. Her sister gave the money and the deceased paddled back to Lalana to get more drink. It was about 10pm. That the last time, she saw the deceased alive.
15. During the night, PW4 heard the defendant shouting. She heard him saying "Dicky hem arrive lo there or hem die na? If shark kakaim hem good lo me for me full". She also heard the defendant shouting three times words to the effect "pikinini blo me go up go nao". Upon hearing the defendant shouting, she went out from the house and stood at a distance from about 6 to 7 meters from where the defendant was. It was already daylight when she heard the defendant shouting. People were already going to the market. She was crying and said his son had died. She could recall that on previous occasions, if the defendant was angry with the deceased or want money, he would say that he will kill him.
16. At the close of the prosecution's case, the defendant had opted to remain silent. He did not call any witnesses.

Overview

17. On the outset, I must say that the charge of murder against the defendant in this case, is substantially based on circumstantial evidence. There is no direct evidence adduced by the crown. Upon that basis, it is pertinent for the court to discuss the law in relation to circumstantial evidence in this jurisdiction.
18. The case law here can be seen in the case of R -v- Dudley Pongi (Unre. Criminal Case No. 40 of 1999) by Muria CJ. The learned Chief Justice stated on page 5 the following, *“The prosecution case is substantially based on circumstantial evidence. As such, the court must be very cautious when considering the case as presented against the accused. It is the duty of the court in such a case to consider all the evidence together at the conclusion of the case, ensuring that it can only draw an inference of guilt from the totality of the facts which are proved beyond reasonable doubt”*.
19. In the case of Doney -v- The Queen (1999) NSSC 50, the court said, *“Circumstantial evidence is evidence which proves or tends to prove a fact of set of facts from which the fact to be proved may be inferred. Circumstantial evidence can prove a fact beyond reasonable doubt only if all other reasonable hypothesis are excluded”*. Further to the case authorities cited is a commentary In paragraph 4 at page 1675 of Blackstone’s Criminal Practice which states, *“...It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference”*.
20. It is also essential at this juncture for me to touch on the issue of propensity evidence. The prosecution through the evidence of PW4 had adduced propensity evidence. In their closing address, Mr Alasia for the defendant raised objection on the admissibility of her evidence . Propensity evidence is defined under section 2 of the Evidence Act 2009. I hereby setout that provision.
- Section 2: Propensity evidence means evidence that tends to show a person’s propensity to act in a porticular way or to have a particular state of mind, being evidence of acts, omissions, events or circumstances with which a person is alleged to have been involved: but does not include evidence of an act or omission that is:-*
- a) One of the elements of the offence for which a person is being tried; or*
 - b) The cause of action in the proceeding is questioned.*
21. Mr Alasia has assisted the court in providing the applicable laws and case authorities in this jurisdiction on the issue. He further discussed the requirements of section 80. The court’s power on whether or not to admit propensity evidence is provided for under that section. He also refer to and relied upon the principle as set out by the Court of Appeal in the case of Alagere -v- Reginam (2015) SBCA-CRAC 7. The appeal court stated inter alia as follows: *“If the prosecution seeks to admit propensity evidence it may only be admitted where its probative value in relation to an issue in dispute in the proceeding outweighs the risk that the evidence may have an unfairly prejudicial effect. That decision must be made by the court and not by the prosecution. If it is in issue, submissions on it must be made and o determination to admit or exclude it should be made by the court. Whilst no procedure is laid down for that to happen what must be taken into account is set out in section 80 of the Evidence At”*.
22. It is therefore the defendant’s case that the propensity evidence adduced by PW4 against him should not be admitted as evidence in this trial. By the provision of section 2 as read with

section 80 of the Evidence Act and the authority of the Alagere case, the unfair prejudice to the defendant would outweigh the probative value it holds.

23. Mr Tovosia and Mr Beto for the prosecution did not make any submissions in their closing, on the issue of propensity evidence, notwithstanding having adduced such evidence during trial. It was only having heard submission from Mr Alasia that the court required them to file supplementary submission on the issue.
24. The prosecution's position on the issue is the threats made by the defendant against the deceased on prior occasions is relevant to the charge against him and are admissible in his trial. They say that the evidence relates to his intention. He made prior habitual threats against the deceased. His statements at sea were heard by PW1 and PW2. The piece of evidence has a very high probative value as opposed to the likely unfair prejudice to him. They refer to case authorities which are noted. It is therefore their case that the propensity evidence by PW4 should be admitted as evidence in the trial.

Discussion on propensity evidence

25. I have noted the part of PW4's evidence that is under scrutiny. That piece of evidence relate to alleged previous acts and circumstances by the defendant. They were directed against the deceased. It is however unclear from PW4's evidence as to the frequency of the defendant's acts and the extent to any similarity to the current allegation made against him.
26. As stated by the prosecution, that piece of evidence tends to show the connection of the words spoken to what he said on the night of the incident. It also tends to indicate and show that the defendant had an intention to kill the deceased before the alleged incident unfolds. Out of the four witnesses called, only PW4 adduced propensity evidence. Section 80 (3) of the Evidence Act discussed circumstances the court must consider and take into account in its duty to decide whether or not to admit such evidence. They include the frequency of the acts, events and circumstances, the connection in time between the acts, events and circumstances and the extent to which the acts, events and circumstances which are the subject of the evidence and the acts, events and circumstances which constitute the offence for which the accused is charged is being tried are unusual.
27. In considering the requirements, the court must also assess if the evidence is likely to unfairly prejudice the fact-finder against an accused and whether the fact-finder will tend to give disproportionate weight, in reaching a verdict, to evidence of other acts and omissions.
28. In this case, there are no other witnesses that gave evidence on propensity evidence apart from PW4. From her evidence, it is unclear to me when the acts, events and circumstances were made or done and also the frequency. It is also unclear to me as to the timing of the allegation as against the incident for which the defendant is being charged for. It is further unclear to me whether there was any similarity of previous acts, events and circumstances by the defendant to what was alleged to have transpired between the 12th and 13th December 2023.
29. Having said the above, I wish to refer to section 80 (1) of the Evidence Act. It provides:

Section 80 (1) The prosecution may offer propensity evidence about an accused in a criminal proceeding only if the evidence has a probative value in relation to an issue in dispute in the proceeding which outweighs the risk that the evidence may have an unfairly prejudicial effect on the accused.

30. The issue in dispute in this proceeding, is the alleged murder of the deceased by the defendant. That brings up the issue of the identity of the defendant. The law is clear in that if probative evidence is offered by the prosecution, its probative value should outweigh the risk that the evidence may have an unfairly prejudicial effect on the accused. From the evidence of PW1 and PW2, the identity of the defendant is an issue. There is no other admissible evidence provided by the prosecution on it.
31. Having noted and taken into account the above circumstances, case authorities and the law, it is my considered view that the extent of the propensity evidence adduced by PW4 is likely to unfairly prejudice me as fact-finder against the defendant. That would lead me to give disproportionate weight in reaching a verdict to the evidence of other acts and omissions. I am therefore not satisfied that its probative value in relation to the charge outweighs the risk that the evidence may have an unfairly prejudicial effect on the accused. I hereby hold that the propensity evidence adduced by the prosecution through PW4 is not admitted as evidence in this trial.

Discussion on the charge

32. Having decided on the admissibility of PW4's evidence, I will now discuss the totality of the evidence adduced at trial. The allegation against the defendant is between the 12th and 13th December 2023, he murdered Dickson Boeni at the sea area between Lalana and Laulasi. The summary of the prosecution evidence is the defendant was drunk before the incident occurred. The deceased and PW3 were also drinking kwaso on the 12th December. On the night of the 12th December PW1, PW2, the defendant and the deceased went fishing at their usual fishing ground where a fishing floater was located. They all went in their own separate canoes. PW1 was using an outboard motor engine. They were all within the vicinity of the fishing ground.
33. Whilst at the fishing ground, PW1 fell asleep in his boat. The defendant came to his boat and took his fishing line. It was a test 80 type. PW2 told the defendant that PW1 will look for his fishing line if he awakens and will not be happy. The defendant took it anyway and paddled away. When PW1 woke up between 4 to 5am on the 13th December, he looked for his fishing line and asked PW2. PW2 told him that the defendant took it whilst he was asleep. He was unhappy and instructed PW2 to retrieve it from the defendant. PW1 shone his torch around and they saw PW3's canoe floating nearby. It was half-filled with water. PW2 got it and laid it on the side of PW1's boat. They bailed the water out. They then heard the defendant shouting words to the effect, "Dickson, you must die lo me tonight mekem me kakai full". They recognised the defendant's voice. They were about 20 meters away
34. PW2 then located the defendant and told him to return PW1's fishing line. As he approached the defendant's canoe, the defendant was hanging on its side bailing out water. It was half-filled with water. The defendant got into his canoe and told PW2 that the fishing line was there.
35. PW2 saw the fishing line and tried to pull on it but it was stuck. He could not pull the line in because it was heavy. He asked the defendant what had he done to the line and the defendant told him to leave it. He will go and dive for it. PW2 told PW1 to go and assist him pull the fishing line. PW1 went to him and they both pulled on the line. As they pulled on it they were shocked to see the deceased's leg came out from the sea. They lifted the deceased inside PW1's boat. They noticed he had stary eyes. He had blood on his right eye and nose. They tried to do first-aid on him but he was dead. The defendant went inside PW1's boat and they took the deceased to Talakali clinic. The nurse at the clinic confirmed the deceased had died.

36. There is no eye witnesses to testify what had transpired between the defendant and the deceased on the night of the 12th December to the 13th December 2023. The only evidence relied upon by the crown are the words allegedly spoken by the deceased in the early hours of the 13th December. PW1 and PW2 heard him saying, "Dickson, you must die lo me tonight mekem me kakai full". The other words alleged to have been heard by PW4 are words to the effect, "Dicky hem arrive lo there or hem die na? If shark kakaim hem good lo me for me full".
37. In relation to the statement, the defence argues that the words uttered are not admission of guilt. It is also equally possible that the defendant was in fact looking for the deceased when he also uttered words to the effect, "Jack Dicky lo there"? That is the possibility that this court must consider in its determination.
38. In their opening address, at paragraph 2, the prosecution stated that on the 12th December 2023, a violent altercation took place between the accused and the deceased at the sea between Lalana and Laulasi. The altercation occurred resulting in the death of the deceased. I have noted that there is no evidence of whatsoever nature adduced by the crown witnesses about a violent altercation between the defendant and the deceased on the 12th December 2023.
39. On the contrary, PW2 had testified that he was awake the whole night whilst they were fishing. The night was fine. He and PW1 were about 20 meters away from where the defendant was. He did not hear any altercation occurring between the defendant and the deceased. If there was any violent altercation between the defendant and the deceased on the night of the incident, it is highly probable that PW2 would have heard it. Absolutely no noise of whatsoever nature was heard on the night of the incident.
40. There could also be an implication by the crown that the defendant tied the fishing line on the deceased's leg. When the court enquired on PW1 if the fishing line had a knot, he said he did not see any. The evidence from PW1 and PW2 was to the effect that the fishing line was coiled or wrapped around the deceased's leg and toe.
41. A hypothesis suggested by the defence was that whilst fishing the line could have got tangled around the deceased's leg. There is a possibility that the sea current could have caused the fishing line to be tangled around the deceased's left leg and toe. That hypothesis is a possibility since PW1 and PW2 stated in their evidence that the fishing line was coiled around the deceased's left leg and toe.
42. As earlier stated, the prosecutions case is substantially based on circumstantial evidence. The law in relation to the use of circumstantial evidence in this jurisdiction is clear. It is as stated in paragraphs 18, 19 and 20 of this judgement. I have noted from those paragraphs that the end effect would be that circumstantial evidence can prove a fact beyond reasonable doubt only if all other reasonable hypothesis are excluded.
43. The defence has raised the hypothesis of the fishing line being tangled around the deceased's left leg and toe by sea current. The evidence from the prosecution do not relate to any act of the defendant tying the fishing line on the deceased's leg and toe. None of the witnesses called were able to state that fact. It is further noted that when the hypothesis was raised during cross-examintaion, the prosecution did not ask question on rebuttal during re-examination.

44. In every murder charge, the prosecution must prove beyond reasonable doubt the identity of the accused. That the accused with malice aforethought had caused the death of the deceased by an unlawful act. In this case, the prosecution must also prove beyond a reasonable doubt that the defendant at the material must have knowledge that the unlawful act have or could have caused death or grievous bodily harm to the deceased.
45. In their closing address, the prosecution did not address the specific elements as required by section 200 of the Penal Code. They made a general analyses of their evidence which was unhelpful for the court. From their submission they merely stated and relied upon the alleged words uttered by the defendant at sea as proof of his identity. That piece of evidence is not enough to prove the identity of the defendant as the perpetrator.
46. Their submission also did not address the element of the unlawful act or omission relied upon. They never provide any admissible evidence on the alleged unlawful act or omission by the defendant. They also fail to provide any admissible evidence that it was the defendant who did coil the fishing line around the deceased's left leg and toe. It is also noted that there was no post mortem done on the body of the deceased by a pathologist. The court is not assisted as to the deceased cause of death. Even the nurse that attended the dead body at Talakali clinic did not make any report. Even in their closing address, the prosecution never mentioned the unlawful act or omission complained of.
47. On the totality, the prosecution have failed to state and prove by evidence the nature of the alleged unlawful act or omission. Consequently the court is unable to make any determination on elements (ii) and (iii) referred to in paragraph 4 of this judgment.
48. To say the least, I am unimpressed and extremely concerned of the case preparation and the conduct of this proceeding by the prosecution. I could also say that the charge against the defendant is defective in that it does not state the nature and aspect of the alleged unlawful act or omission. That issue was never raised by the defence at the beginning of trial so I will leave it at that. But in any event, it is essential in every criminal charge brought before this court or the court below that the charge must specify the unlawful act or omissions alleged against an accused.
49. In this proceeding, the prosecution was unable to connect any alleged act or omission of the defendant to the death of the deceased. In the case of *Tara -v- R* (2006) SBCA, 26th May 2006, the court held that the prosecution had not proved beyond reasonable doubt that the cause of death was a result of the alleged act of the defendant.
50. In the above case, the alleged unlawful act was provided by the prosecution in the charge. The autopsy report also state the cause of death. The cause of death as found by the pathologist did not match the nature of the alleged unlawful act. The defendant was therefore acquitted of the charge of murder. In the case before me, the unlawful act or omission and the cause of death are not provided by the prosecution. This scenario therefore would be far more worse than the Tara case.
51. Taking into account all of this above discussions, the applicable laws and case authorities. I hereby conclude that the prosecution has failed to prove beyond reasonable doubt all of the elements of the offence of murder pursuant to section 200 of the Penal Code. The defendant is hereby acquitted of the charge of murder.

Orders of the court:

1. The defendant is hereby acquitted of the charge of murder
2. The defendant is to be released from custody forthwith



Justice Maelyn Bird

Puisne Judge