

IN THE HIGH COURT OF SOLOMON ISLANDS

Criminal Jurisdiction

CRC. No. 528 of 2024

REX_V_ JOE KOTI

Date of Hearing: 13, 14, 15/8/2025, 15/12/25

Date of Ruling: 30th January /2026

Zoze J. W: For the Crown

Ifuto'o: For the Accused

Judgment

Kouhota PJ:

Introduction

By information filed by the Director of Public Prosecutions on 13th December 2024, the Accused Joe Koti was charged with one counter of Murder contrary to section 200 of the Penal Code and one count of rape contrary to section 136(f) of the Penal Code (Amended) (Sexual Offences) Act 2016. The Accused pleaded not guilty to both charges thus putting burden on the State to prove the charges against him. In order to prove the Accused is guilty of the charges the prosecution must prove all the elements of the offences charged.

The elements of the offence of murder prosecution must prove are that the Accused

1. with malice afore thought
2. cause the death of the late Elsie Kela

The element of Rape prosecution must prove are, that the Accused had sexual intercourse,

1. With late Elsie Kela without her consent, and
2. Knowing or been reckless as to lack of consent.

The prosecution called 8 witnesses to give evidence in support of the charges. The prosecution with consent also tendered statements of 6 other witnesses and five exhibits which are as follows;

Statement of Witnesses tendered

1. Statements of John Vure dated 22nd September 2024,
2. Statement of John Lolani dated 22nd September 2024,
3. Statement of Patricia Haro dated 18th September 2024,

4. Statement of Jack Meta dated 9th September 2024,
5. Statement of George Solopoto dated 9th September 2024,
6. Statement of Frank Bollen dated 9th September 2024

Exhibits Tendered

7. The record of interview of the Accused Joe Koti dated 29/8/24 (Exhibit P.7)
8. Post Mortem photographs of the deceased dated 26/9/2024, (Exhibit P.8)
9. Autopsy report of the deceased Elsie Kela by Doctor Roy R. Maraka dated 3rd October 2024, (Exhibit P.9)
10. Medical Report on Elsie Kela by Doctor Nelson.S.Mamani dated 12/9/2024.(Exhibit P.10)
11. Crime scene photographs by PC Mathew Mumane (Exhibit P.11)

The statements and exhibits tendered formed part of the evidence.

The Court had heard the evidence of the prosecution witnesses, most of whom, their evidence was treated as dying declaration.

The law relating to judging the declaration

The test relating to dying declaration was stated by Palmer CJ in Regina v Popoe [2014] SBHC 126, as follows, the test of satisfying a dying declaration is threefold. First, the **deceased is dead**. Secondly, the trial must be held on a **charge of homicide**, thirdly, **the statement of the deceased must be related to the cause of death**. Fourthly, the declaration must be under a **settled hopeless expectation of death**.

Evidence of Prosecution witnesses

I had considered the facts of the case, the evidence and the submission of counsel and that at the trial, the defence did not specifically object to admitting the evidence of the prosecution witnesses as dying declarations. I am satisfied the evidence of the prosecution witnesses repeating what the deceased told them before she died satisfied the test cited in Regina and Popoe. Thus, under the exception provided under section 123 of the Evidence Act, the Court accept the evidence of the prosecution witness as dying declarations.

The evidence of the witnesses repeats what late Elsie Kela told them as she was struggling with her injury and was in distress and a hopeless condition. She told them that the Accused Joe Koti had pulled her and shut her mouth and then went and had sexual intercourse with her near the men's latrine and **had spoiled her**. I heard the deceased saying that "accused **spoiled her**" means that accused caused injuries to her or she suffered injury when the Accused had sexual intercourse with her. There is no evidence by any of the prosecution witnesses that the deceased told them that the Accused used a foreign object when he had sexual intercourse with her.

The First Prosecution witness PW1 is Julian Kelo Veo. She told the Court that while late Elsie was struggling and in bad stage and distress condition, she said to her and Rebecca “hem **hard for me nao by mi dae nao**”, meaning, **it is now hard for me I will die**. She also told the women who were helping her Julian Kelo Vui, Rebecca Togi and others that the Joe Koti had sexual intercourse with her and spoiled her.

When PW2 John Gora asked her what happened to her, she cried and said to John Gora “mi **nogud nao ia, mi dae nao**”. She told PW2, when Joe Koti had sexual intercourse with her, she feels bad because Joe Koti’s penis is very big and he struggle to push his penis inside her vagina. She told PW2 that when Koti pushed his penis inside her vagina she felt her belly explode and blood started running out of her vagina. She told the witnesses that she said to Joe Koti, **you spoilem me nao ia**. After that Joe Koti went away, she struggled to stand up because she was weak and bleeding.

When PW5 Michael Galobiru late Elsie’s father asked her at Tulagi hospital what happened, she told PW5 that Koti had raped her. She also said to PW5 to look after or care for his grannies. PW 5 told the Court that when he spoke to her, she was weak and talking small and very slowly.

Malice Aforethought

The prosecution submit that their case is premise on the second limb of section 202 of the Penal Code. 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 state 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 the death will probably cause death of, or grievous bodily harm to, some person whether the person is the person killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily is caused or not, or by a wish that it may not be caused.*”

The Accused exercised his rights and did not give evidence on oath or unsworn evidence nor did he make any statement from the dock. Thus, the only evidence before the Court for consideration is the prosecution evidence and the admitted facts.

Counsel for the defence submitted that the dying declarations by the declarant were not made under hopeless expectation of death because according to Dr, Maraka’s autopsy report the deceased could have been saved if she sought medical help early and that she only attended Tulagi hospital 4 hours after she was injured. I consider the submission that the deceased could be saved if she attended medical treatment early is irrelevant to the dying declaration because it

was the injury, she was currently suffering from at that time she told the witnesses that is relevant to dying declaration not that she can be saved if she attends medical treatment early. Counsel submission runs counter to the provision of section 207 of the Penal Code and must be rejected.

The contested issue for trial and – consideration of the issues.

- i. Whether the Accused Joe Koti on 26th August 2024 between 12 midnight and 3 am did have unlawful sexual intercourse with complainant late Elsie Kela?’
- ii. Whether the Accused used a stick to penetrate the vagina of late Elsie Kela?
- iii. Whether the Accused caused the death of late Elsie Kela and Identification of the Accused.

On the evidence before the Court, the Court can easily dispose of issue (ii) because the prosecution had adduced no evidence that the Accused used a stick to penetrate the deceased vagina. The issue of identification can also be disposed of easily. There is evidence before the Court that deceased knew the Accused very well. PW5 the deceased father, gave evidence that the Accused is a person who frequent his house. PW5 told the Court that his family knew the Accused very well because he is a frequent visitor to his house. PW5 said the Accused usually came to his house for smoke and betel nut and some times ate at his house. PW5 said he treats the Accused as one of his children.

In that respect I believe the deceased knew the Accused very well thus she could not have mistaken him for another man when said the Accused pulled her and went and had sexual intercourse with her. With regard to issue (i), the evidence of PW1 and PW2 repeat what the deceased told them when she was struggling with her injury. The deceased told PW1 and the women who were attending to her that the Accused held her hand pulled her and went and had sexual intercourse with her and spoiled her. The deceased told PW5, Accused raped her when PW5 asked her at Tulagi hospital. On the evidence before the Court, the Court is satisfied that the accused had sexual intercourse with the deceased on 26th August 2024, but the only question is whether the sexual intercourse is consensus on rape.

The Charge of Rape

After considering the evidence of the prosecution witnesses especially the women who were helping late Elsie Kela that night, the evidence of PW5 and the evidence of Dr. Maraka’s findings when he examined the deceased body and the injuries he found on the deceased body, such as bruises on her arms, two injuries in her vagina and the injury to her cervix, it can safely be inferred that the injuries were caused by forceful sexual intercourse and the big penis of the Accused. I am satisfied the deceased suffered the injuries when the Accused raped her. On the evidence the Court is satisfied beyond reasonable doubt that the Accused guilty of rape and convict him as charged.

The Charge of Murder

The Court is now left to consider the charge of murder. The charge poses the difficult question, that is, ***“whether the injury the deceased suffered as result of raped amount to injury unlawfully cause by the Accused, thus an offence.*** It is unfortunate that none of the counsels addressed the Court on this issue in their closing submissions. I had also made researches on this question and could not find any case authority on the issue as well. I however, came across section 235 and 236 of the Penal Code. I think the provisions of these two sections covers this issue. Section 235 of the Penal Code states ***“Any person authorised by law or by consent of the person injured to use force is criminally responsible for any excess, according to the nature and quality of the act which constitute the excess”***

Section 236 of the Penal Code, states, ***“Notwithstanding anything contained in section 235, consent by a person to causing of his own death or his own maim does not affect the criminal responsibility of any person by whom such death or maim is caused”.***

By virtue of section 235 and 236 of the Penal code, even if the deceased consent to have sexual intercourse with the accused or was raped by the Accused, the Accused was responsible for the harm or injuries he inflicted on the deceased when he had sexual intercourse with her.

The evidence of Dr. Roy Maraka confirmed the serious injury to the cervix is compatible with sexual intercourse. He confirmed that the cause of severe blood loss was from a tear in the deceased vagina and cervix was caused by a blunt trauma. Expert consultation indicates that that the trauma could be caused by either vigorous sexual assault or insertion of a foreign object. I believe that injury suffered by the deceased was cause by a vigorous sexual intercourse and the Accused very big penis.

The evidence that the Accused penis is very big was stated PW2 who told the Court that the deceased told him that the Accused penis is very big and that the Accused struggle to push his penis into her vagina and then he eventually pushed his penis into her vagina she felt that her belly exploded and she start bleeding. On this evidence I am satisfied that the injury suffers by the deceased which resulted in her death was a resulted of the Accused having vigorous sexual intercourse with the deceased with his big penis. Thus, under section 207 of the Penal Code I am satisfied the accused caused the death of the deceased.

Intention of the Accused

The prosecution evidence, however, did not show that the Accused intended to cause grievous harm or death of the deceased when he had sexual intercourse with her. Although sexual inter course was without consent, the Accused intention was only to have sexual intercourse with the deceased and not to cause her grievous harm or death. For this reason, there is no evidence before the Court to prove malice aforethought by the Accused to cause the death of the deceased

thus, malice aforethought under section 202 is not proven. In view of this the Court cannot convict the accused of murder and he must be acquitted of that charge.

Lesser Offence

There is however, evidence that the deceased died as a result of injuries she sustained to her cervix when she had sexual intercourse with the Accused. By virtue of section 235 and 236 of the Penal Code, as read with section 207 of the Penal Code, even the deceased consented to have sex with the Accused or she was raped by the Accused, the injury she suffered, which resulted in her death amounted to an excess hence under section 235 of the Penal Code. Thus, the Accused is criminally responsible for the excess. Section 235 of the Penal Code, makes the excess force unlawful". In present case therefore, by virtue of section 235 and 236 as read with section 207 of the Penal Code the Accused unlawfully cause injuries to the deceased which led to her death, although he has not intention to cause her death. On the evidence before the Court, I am satisfied the facts proven, prove the elements of the offence of manslaughter.

Thus, as provided under section 159 (2) of the Criminal Procedure Code which states "***When a person is charged with an offence and facts are proved which reduced it to a lesser offence, he may be convicted of the lesser offence***".

Since the evidence prove the element of the manslaughter by virtue of the provisions of section 159 of the Criminal Procedure code, I find the accused guilty of manslaughter and convict him of that offence.

IRA.

