
THE CROWN

V

SEPASITIANO MANU

BEFORE THE HON MR JUSTICE SHUSTER
MS A FINAU REPRESENTED THE CROWN
MS L TONGA REPRESENTED THE DEFENDANT
TRIAL DATE 21ST NOVEMBER 2011
JUDGMENT 22ND NOVEMBER 2011 @ 15.00

JUDGMENT

BACKGROUND

The defendant **SEPESTITIANO MANU** of **MATAHAU** - **DOB 20 January 1976** was charged by police in 2002 with the crime of murder. The crime is alleged to have been committed during the afternoon of 18th January 2002.

It is alleged the defendant killed his father in the living room of their family home - having earlier that same day, been released on "day leave" from the Viola Hospital's psychiatric ward, where the defendant was an inpatient and had been so on and off, since 1992.

According to the evidence, the defendant's family had requested that the defendant be released from the Viola Hospital- in order to attend a birthday celebration apparently to be hosted in the defendant's honour.

Twice the attendant Psychiatrist refused the defendant's families requests for a day release. Once the defendant's father had asked alone, and been refused, then the defendant's father and his mother asked again both requests were refused.

On the third time of asking [this time by the entire family] Doctor Puloka relented and agreed to a day release - to allow the defendant to attend the family gathering – because a number of family members had travelled to Tonga from the US and Canada, for the occasion.

The main reason for Dr. Puloka refusing the family request for the defendant's day release was because the defendant had showed - hostility towards family members, and, there had been an incident, a year before this incident in January 2002, when the defendant had thrown a stone at his father.

THE INDICTMENT

Count One Murder – an offence contrary to sections 87 (1) (a) of the Criminal Offences Act (Cap 18) of the Laws of Tonga - Particulars are: -

SEPESITIANO MANU of MATAHAU on or about 18th January 2002 at Matahau you did murder TU"A MANU by striking him with a knife causing his death, and you intended to cause his death

IN THE ALTERNATIVE

Count Two Manslaughter – an offence contrary to sections 92 and 93 of the Criminal Offences Act (Cap 18) of the Laws of Tonga - Particulars are: -

SEPESITIANO MANU of MATAHAU on or about 18th January 2002 at Matahau you did cause the death of TU"A MANU by striking him with a knife causing his death

CHRONOLOGY

It will be necessary for me to address and explain in some way - the inherent delay in the disposition of this particular case.

- According to our - court records- the defendant first appeared before Ford J on 28th October 2002, on that date the defendant was ordered to be detained in custody - until further order of the court.
- On 28th October 2002, Ford J ordered the arraignment be delayed until 07th November 2002

- On 07th November 2002, Ford J ordered the arraignment be delayed until 08th November 2002 a Production Order was issued by the Court.
- On 8th November 2002 the record indicates arraignment was delayed until 15th November 2002, on that date it was decided a hearing regarding the defendant's "fitness to plead" would be held - a jury was to be empanelled and the case was adjourned to 08th October 2003.
- On 21st August 2003 the records indicate the hearing set for 08th October 2003 was vacated, a chambers hearing was set for 30th October 2003 - to set a firm date for trial.
- Nothing happened on 30th October 2003; on 07th November 2003 a three day trial was set for 17th-19th January 2005. A further PTC was to be held on 14th December 2004.
- On 29th March 2004 the records indicate the January 2005 trial date was brought forward to 16-18th August 2004 with a PTC on 15th August 2004.
- On 20th July 2004 Ford J vacated the trial of 16th-18th August 2004 and a directions hearing was set for 04th August 2004
- On 04th August 2004 a jury trial was set for 20th -22nd June 2005 and the accused was ordered to be kept in custody. A further PTC was listed for 01st June 2005.
- On 01st June 2005 the trial for 20th June 2005 was vacated and the trial was reset for 15-17th May 2006, with a PTC on 28th April 2006. The accused was ordered to be kept in custody- until further order of the Court.
- On 28th April 2006 at a PTC attended by Mr Kefu and Ms Tonga, Ms Tonga confirmed in Chambers that the accused's mother wanted the defendant kept in custody. The parties heard the accused was in custody at Hu'atolitoli and that the situation was being monitored from time to time by - Dr Puloka.

- On 28th April 2006 the record show the Court called for an updated report from Dr. Puloka on the accused's mental condition, pursuant to part IV of the Mental Health Act 2001; in particular the Court sought conformation that the accused is fit to stand trial and in the meantime the Court fixture for 15th May 2006 was vacated.
- On 28th January 2008 - Registrar Tuita noted on the file - this case still awaits an update report from Dr. Puloka after the Order of 28th April 2006- for your direction please to Ford CJ.
- On 28th January 2008 the file was marked - a Copy of this Order and the Court Order of 28th April 2006 is to be served on Dr Puloka. The Court seeks a report from Dr Puloka in terms of Order 1 of the Court Order dated 28th April 2006
- On 21st July 2011 this particular file was retrieved from a number of files left over by Ford CJ when he departed Tonga and it was ascertained that nothing had been done to this file since 28th January 2008 and this Court - wanted to know why.
- On 26th July 2011 the case was listed in open court on 05th August 2011 for plea and a Production Order was issued.
- On 18th August 2011 the defendant appeared before a Jury in the morning "for a fitness to plead hearing"- after hearing evidence on oath, the jury found the defendant was fit to plead to the charges laid against him.
- During the afternoon of 18th August 2011 at 15.00 the defendant was arraigned in open court and he entered Not Guilty plea to murder and a Not Guilty plea to an alternate charge of manslaughter.
- I assigned the matter for hearing before the Hon Lord Chief Justice.
- A trial date was later fixed by the Hon Lord Chief Justice for 21st November 2011 and the trial was later listed for hearing before me.

TRIAL

On 21st November 2011 the defendant appeared from custody for trial before me.

In a trial by Judge sitting alone, I remind myself the prosecution brings this case and they must prove the defendant is guilty.

A defendant does not have to prove his innocence. In a criminal trial the burden of proving the defendant's guilt is - and remains, on the prosecution, and that burden remains on the prosecution throughout the duration of the trial.

A defendant is entitled to sit in the dock - say and do nothing - that is his legal right.

STANDARD OF PROOF

How does the prosecution succeed in proving the defendant's guilt? The answer is - by making me sure of it. Nothing less than that will do.

So if after considering all the evidence I am sure the defendant is guilty of the charge against him, then I MUST return a verdict of 'GUILTY'

If I am not sure of his guilt, then my verdict MUST be a verdict of - NOT GUILTY'.

ESSENTIAL ELEMENT OF THE OFFENCE

To succeed in gaining a conviction for murder - the prosecution must prove all the essential elements of the offence of murder

- That is was the accused who committed - an Unlawful Act
- An intention to cause death
- That death ensued within a year and a day.
- If the prosecution cannot prove the element of intention then the defendant may be found guilty of manslaughter – unlawful act.

In this particular case the triable issue- is the defendant's intention at the time of his committing the alleged offence.

AGREED FACTS - EXHIBIT 1 - Formally read into evidence

1. The defendant Sepasitiano Manu was formally admitted to the Psychiatric Unit at the Viola Hospital in 1992
2. In 1992 the defendant was diagnosed with schizophrenia and since he has been admitted to the Psychiatric Ward he has been discharged several times.
3. On 18th January 2002 the defendant's family asked the Psychiatrist Dr. Mapa Puloka if they can take the defendant home so they can celebrate his birthday together with him.
4. On the afternoon of 18th January 2002 the defendant's father Tu'i Manu [the deceased} picked the defendant up from the hospital and took him to their residence at Matahau
5. While at their residence at Matahau, the defendant took some food from the kitchen and the deceased stopped him and told him to take just enough for himself, or else he would take him back to the hospital
6. The defendant was angry and left their residence
7. After 15 minutes the defendant went back to their residence. The deceased was at this time sitting in the living room.
8. The defendant went to the kitchen and took a chopping knife from there and walked to the living room towards the deceased.
9. The deceased called out to the defendant to come and take his medicine.
10. The defendant approached the deceased and hit the deceased with the chopping knife on the deceased hand and head.
11. The deceased was taken to the Viola Hospital where he was examined by Dr. Faka'osi Pifeleti.
12. The deceased passed away on the same evening.
13. According to Dr. Faka'osi Pifeleti the cause of death was profuse bleeding from the deceased's injuries to his head and hand.

EVIDENCE

PW1 Dr MAPA PULOKA - Dr Puloka has 23 years experience as a Psychiatrist - he has treated the defendant on and off since 1992 and he is and has previously been ruled an expert in court proceedings.

The Doctor set out a report in detail EXHIBIT 2 - which he compiled and which is dated 28th January 2002 concerning the defendant.

That report was compiled 10 days after the alleged incident, though the evidence shows the doctor interviewed the defendant - three days after the alleged murder - as shown on page two of his psychiatric report - Exhibit 2.

BACKGROUND

The Doctor indicated in his report that the defendant has been a known sufferer from schizophrenia since 1992 and that he had been admitted and discharged from the Unit - about 16 times since 1992

The doctor indicated the defendant's illness is a chronic condition and the defendant does not respond well to medication.

The doctor indicates the defendant - had been having auditory hallucination i.e. hearing voices at time commanding him to hurt others or himself.

According to Dr Puloka - the defendant told him, that he killed his father because his father warned him not to take food from the refrigerator and give it to other people in the village or, he [the father] would take him back to the hospital

According to Doctor Puloka this caused the defendant anger – and the defendant told the doctor that he heard the voice of God, commanding him to kill his father.

The defendant also told the Doctor there was another voice commanding him not to kill his father - but he said - it [the voice] was weak.

The defendant told the doctor how he went around the kitchen; and how he got hold of a chopper - without the knowledge of all the other people.

The defendant told the doctor he waited until all the other people went outside the house.

The defendant also waited until his father had finished taking a shower and he was resting inside.

The defendant waited until his father called him, to take his afternoon medication

The defendant told the doctor how he walked towards his father, holding the chopper behind his back.

The defendant explained the voice in his head was quite strong at the time he eventually chopped his father with the chopper.

His father died at the hospital later that day.

The doctor said the deceased was chopped - three times.

MENTAL STATUS EXAMINATION - 21 January 2002

DOCTORS REPORT - Quote

- The defendant presented as a casually dressed calmed looking person. Appearance appropriate with stated age.
- Good eye contact, sat on the chair with appropriate behaviour.
- He was alert and well oriented to time place space and person.
- There was some thought disorder of delusional content in association to his strong and auditory hallucination to harm other people
- His mood was incongruous with the content of his thought and perception.
- He was smiling while explaining the act of killing his father.
- His intellectual functioning and memory were normal

- Impulse control was unpredictable
- Judgment was poor but had fair insight into his illness.

OPINION

Re Psychiatric disorder

- In my opinion the defendant is suffering from Paranoid Type Schizophrenia

Re Mental Disorder - within the meaning of the current Mental Health Act 1992

- In my opinion the defendant is mentally disordered within the legal definition of mental disorder of section 2 of the existing MHA

Re - Legal Insanity

- In my opinion the defendant is not legally insane according to section 17 Cap 18 of the Criminal Offences Act Cap 18

Doctor Puloka indicated and he clarified - in his evidence that he felt the defendant had in fact planned what he did – the doctor said this - because the defendant waited for all the people to go outside, waiting until his father was alone. He took the chopper as his father was reminding him of his medication.

Doctor Puloka said when the defendant took the chopper from the kitchen there were people in the house and the defendant had been there for about two hours. People were preparing food. People were also at the church hall preparing for the celebration and when the defendant took some food his father told him the food was for all the people. When he was told that by his father the doctor said - the defendant was angry.

The defendant told the doctor how he heard a voice telling him to kill his father. Other voices said no. The defendant told the doctor - he chopped his father with three cuts.

The doctor said in evidence after one chop, the defendant would know what he was doing and he should have stopped, the doctor said the defendant generally knew the difference between right and wrong.

In Cross Examination the Doctor stated there was an incident when the defendant banged the head of another patient against a wall but the doctor could not recall another incident put to him, allegedly involving the defendant punching a lady - at a baseball match.

The doctor clarified he did not think the defendant was legally insane. He admitted the defendant reacted to medicine but the hospital was giving the defendant the best medicine available in Tonga at the time, he was given shots which lasted 8-10 weeks the defendant was also prescribed medicine for side effects to his long term medication – such as cramp in muscles.

At the close of the prosecution's case the Court found that there was a case for the defendant to answer - for the crime of manslaughter.

The defendant, as is his legal right, elected to remain silent and he did not elect to call witnesses in his defence.

The defendant's counsel in her closing address asks me to find the defendant not guilty of manslaughter by reason of insanity - citing the defendant has been a patient in the Viola Hospital - since 1992.

Counsel said the defendant heard voices and he was under strong medication and he was not responsible for his actions. Counsel asks me to acquit the defendant on that basis.

On the other hand Crown Counsel stated in her opening and in her closing address that the Crown agrees, this case turns on the state of mind of the defendant at the time of the commission of the offence and they would leave it to the court to decide on the defendant's guilt or his innocence based on the evidence heard in court and, on the agreed facts.

Prosecuting Counsel pointed out, the defence accept via the agreed and admitted facts - that the defendant caused the death of his father - by committing an unlawful act with the chopper.

The Crown claims the evidence of Doctor Puloka shows the defendant knows the difference between - right and wrong and they say he should be convicted for the crime of manslaughter.

CONCLUSION

The law says evidence of an expert is admissible in evidence, to furnish the court with scientific information which is likely to assist the court, but which is likely to be outside the experience and the knowledge of a judge and a jury. ***R v Turner [T] [1975] Q.B. 834***

It follows that whenever there is an issue as to the sanity of the accused, expert evidence will be admissible and indeed such expert evidence is a pre-requisite to an acquittal on the grounds of insanity - in most jurisdictions in the Commonwealth of Nations.

I have taken time to remind myself of the rules in the M'Naghtens case. Archbold 2001 17-82. The onus of establishing insanity on the balance of probabilities - lies on the defendant.

In my respectful opinion, considering the evidence adduced by Doctor Puloka, the defence have failed to establish that the defendant was legally insane at the time of him committing this offence, because Doctor Puloka in his detailed examination of the defendant on 21st January 2002 just three days after the commission of this crime, states - and I quote

Re - Legal Insanity

- **In my opinion the defendant is not legally insane according to section 17 Cap 18 of the Criminal Offences Act Cap 18**

Further, after hearing evidence on oath - a jury, found the defendant fit to plead to these charges on 18th August 2011.

I attach great weight to the evidence of Dr Puloka who detailed his findings in his report dated 28th January 2002 - EXHIBIT 2 Attached, and I attach great weight to the doctor's evidence because Doctor Puloka has treated the defendant continuously since 1992. In fact - who could know the defendant better than Doctor Puloka?

Doctor Puloka knew the defendants mood swings, and he described in court the defendant's hostility towards his family members and others.

I have been left with no doubt in my mind that the defendant knew the difference between right and wrong, on the day he was taken by his father to celebrate his birthday the 18th January 2002 and he killed his father in the manner described in the indictment.

I accept the evidence of Doctor Puloka and I agree the defendant planned and he carried out the unlawful killing of his father on 18th January 2002.

I take into account what was said and done before the crime by the defendant and also what was said afterwards about the crime.

Everything said and done by the defendant, points to the sure conclusion the defendant killed his father, he was not insane and the defendant knew full well what he was doing was wrong

In my view the prosecution have proved beyond any reasonable doubt so that I am sure, the defendant unlawfully killed his father on 18th January 2002.

Accordingly - I convict the defendant of the crime of manslaughter

DATED 22nd November 2011

J U D G E

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TRIAL DATE 21ST NOVEMBER 2011
JUDGMENT 22ND NOVEMBER 2011 @ 15.00
SENTENCING 24TH NOVEMBER 2011 @ 09.30

SENTENCING REMARKS

The defendant was found guilty on Tuesday 22nd November 2011 of the crime of manslaughter, the killing of the defendant's father, and he was remanded in custody - to today's date for sentencing.

It is apparent to this Court, from the evidence of Doctor Puloka that the defendant suffers, and he has suffered, since 1992 mental illness, which illness the Court has been told is permanent, and cannot be cured.

However the defendant's illness can be controlled by him taking regularly prescribed medication – delivered by way of injection.

Mental illness as defined under the Mental Health Act - it means

A condition which seriously impairs, either temporarily or permanently, the mental functioning of a person in one or more of the areas of thought, mood, volition, perception, orientation or memory and is characterised by the presence of at least one of the following symptoms

- (a) Delusions;
- (b) Hallucinations;
- (c) Serious disorder of the content of thought;

- (d) Serious disorder of thought form;
- (e) Serious disturbance of mood; or
- (f) Sustained or repeated irrational behaviour which indicates the presence of at least - one of those symptoms

As accepted by counsel, and also by this Court the defendant killed his father on 18th January 2002 - as evidenced by the Agreed Statement of Facts. Then, three days after the death of his father, the defendant was assessed and examined by Doctor Puloka - straight after the defendant had returned to the Viola Hospital Psychiatric facility from three days in police custody.

Doctor Puloka detailed his finding of his examination and assessment of the defendant's condition on 21st January 2002 - in a detailed report dated 28th January 2002, which report has been duly accepted as an exhibit in this trial.

Doctor Puloka told the Court in evidence that he was firmly of the opinion that the defendant was NOT legally insane at the time he committed the unlawful act, of killing his father.

Further a jury was specifically empanelled in order to consider the defendants fitness to plead on 18th August 2011. After retiring to deliberate the jury found that the defendant was fit to plead - on 18th August 2011.

As I have stated in my written judgment, this Court accepts Doctor Puloka's evidence that the defendant had planned all along to kill his father. The fact the defendant waited until they were both alone in the family home, where two hours beforehand the defendant had been brought from the psychiatric wing of the hospital - to celebrate the defendant's birthday – the facts tend to support Doctor Puloka's evidence.

The maximum sentence for manslaughter here in the Kingdom of Tonga is a sentence of up to twenty-five years imprisonment. In my opinion this particular case warrants, a sentence at the higher end of the scale; I say that, because even today, the defendant poses a significant risk to himself, and to other members of his immediate, and ,also his extended family particularly as regards to the defendant's natural mother.

This Court relies on the fact the defendant had told Doctor Puloka, that he has a list of people to kill - which included the defendant's mother and also Doctor Puloka. The Court also accepts Doctor Puloka's evidence that the defendant has also injured other patients in the psychiatric ward - during his stay as an inpatient.

This court has a duty to protect not only the defendant, but also other people living and working in the wider community, and this Court will not shrink from that task.

Defence - Mitigation

Defence counsel stated there was very little she could say in mitigation on the defendant's behalf, other than to bring to the attention of the court, the defendant's mental state, and, the fact that in the future, there may be some development perhaps some substance or drug found to heal or cure the defendant from the sickness with which he is suffering.

Defence counsel asked the court for mercy on behalf of the defendant. The court asked the defendant if he had anything to say before he was sentenced. He simply replied – "NO"

Sentencing remarks

The defendant was found guilty of the crime of manslaughter on Tuesday 26th November 2011. It is fortunate for the court to have had the benefit of hearing the evidence of Doctor Puloka, who has treated the defendant as an inpatient at the Viola Hospital psychiatric wing, from 1992 to today's date and he has firsthand knowledge of the defendant's character and antecedents .

This Court was also greatly assisted by the fact the defendant was able to be examined and assessed by Doctor Puloka, just - three days after the defendant had unlawfully killed his father, when he was returned to the psychiatric unit at the Viola hospital by the police on 21st January 2002.

As I said in my judgment on Tuesday last - who could know the defendant better? Who is best placed to talk about the defendant's mood swings and

also his attitude towards his family and others? The answer must be Doctor Puloka.

The aggravating features of this offence are the fact that the crime was planned and it was also premeditated. The defendant hit his father to the head and to his body three times with a meat chopper. The defendant's father died from loss of blood from his injuries, later that same day.

In my considered view the Court accepts Doctor Puloka's evidence that the defendant still poses a significant risk to the safety of others - today, more especially he poses a significant risk his other family members. It is significant for this Court to note that not one family member turned up at the defendant's trial. The evidence also revealed the defendant showed hostility to his father before - when in a fit of anger he threw a stone at him.

Based upon what I have been told I consider the defendant to remain a grave risk to others in the community. To protect people from the risk of harm, the defendant is to serve **TWENTY THREE** years imprisonment, which sentence of imprisonment is to start from the date of the defendant's arrest - which was the **18th January 2002**.

Attached to the period of TWENTY THREE years imprisonment the Court makes a treatment order under section 67 [1] of the Mental Health Act

THAT TREATMENT ORDER - UNDER SECTION 67 [1] OF THE MENTAL HEALTH ACT - IS TO REMAIN IN FORCE - FOR THE REST OF THE DEFENDANTS NATURAL LIFE

Dated 24th November 2011

J U D G E

67 Treatment Order - MHA

(1) A court may make a treatment order in relation to a person charged with an offence where the penalty includes a term of imprisonment.