IN THE COURT OF APPEAL OF THE REPUBLIC OF VANUATU

CRIMINAL APPEAL CASE NO. 4 OF 1996

BETWEEN : **LUCIANA MARI PICCHI**

- Appellant

A N D : **THE PUBLIC PROSECUTOR**

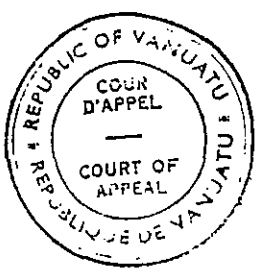
- Respondent

JUDGMENT

Luciana Maria Picchi appeals against her conviction and subsequent sentencing on a charge of murder.

Mrs Picchi was charged with two other persons, Tui George Saipir and Berri Max Jimmy with the premeditated murder of her husband. Her house girl Serah Salome was charged with being an accessory after the fact. His body was discovered early on the morning of the 29th November 1994 on the back of his pick up truck down a cliff in Bellevue. Eventually, the other three accused pleaded guilty. Each gave evidence against the present appellant.

The appellant's trial took place in October and November 1995. The learned trial Judge provided what he described as a summing up which runs to some 127 pages.



An extraordinary raft of evidence was presented by the Prosecutor and on behalf of Mrs Picchi. It may be that the sheer volume of testimony added to the problems in this case. It appears that within a clear framework, with the issues properly confined and in an atmosphere with an appropriate degree of rigour and discipline, the essential issues would have been capable of being properly considered within a substantially shorter period of time.

The fundamental question put simply was whether the Public Prosecutor had proved beyond reasonable doubt that Mrs Picchi was knowingly, and actively involved in what by the time of her trial was an admitted homicide. Few concessions were made in any part of these proceedings but at least in this Court Mr Finnigan wasn't disputing the fact that Mr Picchi's death was an intentional murder. Therefore the sole issue was whether this appellant was proved to be involved as a party to it.

From the day of her husband's death she steadfastly denied either knowledge or involvement. She gave evidence consistent with that. She was not shaken in that position throughout the trial.

Consequently the first question was whether the court (as the trier of fact) could properly conclude that her denials of knowledge or involvement could not reasonably be true. If her claims were a reasonable possibility (namely that she had not been involved) she was entitled to an acquittal.

could be convicted only if the Court rejected her evidence (because it could not reasonably be true) and the remaining testimony was sufficient to prove beyond reasonable doubt her involvement in the death.

The operative decision of the judge is in fact almost entirely encapsulated on just over a page of the Judge's decision (Because this is so important we note it in full).

> *"I have listened to all the witnesses that have been called in this case with great care. The prosecution is correct to say that their case rests on the evidence of three people and three people only. Apart from the evidence of the three accomplices, Tui, Berri and Serah, there is nothing at all to link this defendant with the murder of her husband. I have pointed to those parts of the evidence that I have identified as being capable of corroborating in a material particular the evidence of Tui and Berri. In the case of Serah, I have said that there was none that I could identify. I also bear in mind the caution that I have not stopped mentioning in this case, regarding the danger of convicting the defendant on the evidence of uncorroborated accomplices. I am also aware, bearing this caution in mind, that what I make of each witness does matter, because if I am satisfied beyond reasonable doubt that they are telling the truth, I can nevertheless convict upon their uncorroborated evidence. I have looked quite separately at the evidence of each of the accomplices and I have meticulously avoided comparing the evidence of one accomplice with that of another, in order to avoid the trap that they can corroborate each other. This they cannot do.*

Tui was appalling at remembering dates. He was clearly infatuated with the defendant. He might have had a tendency to exaggerate the number of times that he had sexual intercourse with Mrs Picchi, but that he did, I have not doubt whatsoever. That he was, for whatever purpose, having an affair with Mrs Picchi, does not prove that she is guilty of murdering her husband. Indeed, I bear in mind the possibility that a jealous lover who has been rejected may have, more than any other, good cause to take revenge upon the person who had spurned him. Serah, I am quite certain knows far more than any other exactly what was going on in this case. She could not have failed to have known of her mistress' affair with Tui. I am certain that she was not telling the truth about that matter. I agree that there were conflicts in each of the defendant's accounts. I asked myself whether these were as a result of bad faith on their parts or simply because the incident that they were testifying about was a year old. I found Berri a loathsome man, but he gave his evidence with great clarity. I do not believe that Serah started work at 2.00 p.m. on the 28 November last year purely by accident. I do not believe her on that matter either. I have no doubt that she was there by prior arrangement with her mistress. I believe that Serah lied to cover the fact that she played a far greater role in this matter than she is prepared to admit. But likewise I have not a shadow of a doubt that she was acting out of misguided loyalty to her mistress. I have no doubt that she was the defendant's close confidante. On her evidence alone and uncorroborated, I could not and would not be satisfied beyond reasonable doubt of the defendant's guilt. But the

fact that I cannot rely on the evidence of this witness does not put an end to this matter. I have heard the evidence of two other witnesses, Tui and Berri. I am sure beyond reasonable doubt that Tui was telling the truth in this case. Irrespective of corroboration evidence, I would be prepared to act on his testimony alone. I said that I found Berri to be a loathsome man. In spite of that, I am sure beyond reasonable doubt that he was telling the truth in this case and as with Berri, irrespective of corroboration or not, I would be prepared to act on his evidence alone. On each of their evidence, therefore, I am satisfied beyond reasonable doubt that Luciana Marie-Picchi is guilty as charged.'

The Appellant's first complaint is that the Learned Trial Judge failed to address significant and relevant grounds advanced by the Defence adequately and fairly. In particular to adjudicate upon the defendant's case and to consider whether the defence had established a reasonable doubt.

Intricately associated with that ground is the assertion that the trial judge did not direct himself properly and sufficiently on credibility as an essential ingredient in the consideration of the evidence of the three accomplices. In particular it is submitted that he failed to take into account or reconcile the consequences of their own untruthfulness, omissions, inconsistencies and refusal to answer proper questions.

It is important to assess the structure and form of the total judgment in its entirety.

To begin there is what is accepted by the Appellant to be a fair and reasonable summation of the prosecution's theory of the case. This is followed by a similarly adequate and proper consideration of the defence case. It is therefore clear that the learned trial judge appreciated what was being advanced, what was uncontentious and what needed to be determined.

He then sets out what he described as directions of law. In the preface thereto he noted:

> "*I am both, the judge of law and the judge of facts. As the judge of law, I have the duty to direct myself on the law in such a way that it would be clear to the parties what law I have applied to the case, and so that if I have misdirected myself on any points of law, the parties may use it later in order to appeal my decision. As the judge of facts, I have the duty to apply the law as I have stated it to be, to the facts in the case, before returning a verdict. I also have the duty to sum up the facts in such a way that it can leave no doubt that I have applied my mind to the proper facts in the case and that I have considered and weighed up the evidence with care before coming to my verdict.*"

A crucial issue in this case is the meaning to be attributed to the final words "*considered and weighed up the evidence with care*".

Mr Baxter-Wright contends that if one looks at the statutory frame work in this jurisdiction, and the history of its development, there is no obligation

upon a trial judge to reveal or expose the reasoning process which has lead the judge to a final conclusion with regard to the facts.

Counsel drew to our attention the provisions in the Criminal Procedure Code (CPC) at the time of Independence when judges in criminal matters of this sort sat with assessors . Sections 177 to 181 set out the frame work including the duty upon a judge with regard to a summing up and the Judge's inter-relationship with the assessors.

Apparently in 1984 there was an amendment to this provision. For reasons which were not apparent it did not come into force until April 1989. That involved a change in the obligation under section 178 of the Code from a mandatory requirement on the judge to sum-up the evidence to the assessors and direct them upon issues of law, to a regime in which the judge had a discretion as to whether to sum-up the evidence for the Prosecution and the Defence and seek an opinion orally on all matters. Following that the Judge would give a decision which need not conform with the opinion of the assessors.

This approach was relatively short lived for in June 1989 the current provisions were enacted. The relevant law now requires.

> *Section 171 " the judge shall then consider his verdict upon each count of the information against each accused person in the case and may retire or adjourn the proceedings for this purpose,*
>
> *Section171 A. Upon reaching a verdict upon each count of the information against each person accused the judge shall deliver*

the same in open court and the accused person shall be acquitted or convicted accordingly".

It was Mr Baxter-Wright's submission that when that legislative framework is considered, particularly as against it's historical development, a judge has no obligation to do anything other then deliver a verdict. The Judge is not required to give reasons or provide any exposure of the reasoning process which has lead to the decision.

The position of the appellant is diametrically opposed to this. The submission is that any professional judge when having to determine questions of fact cannot simply adopt the formula of asserting that having heard and seen the witnesses the Judge is satisfied of a particular factual scenario. Mr Finnigan submits that in a general way the Judge must identify the relevant and critical material and make findings thereon.

Reference was made to some important extra judicial writing on the topic including the views of Justice Michael Kirby (now of the High Court of Australia) writing when he was President of the Court of Appeal of the Supreme Court of New South Wales in (1990) 64 ALJ 641 and the views of the former Chief Justice of Australia, the Honourable Sir Harry Gibbs in (1993) 67 ALJ 494.

In this country in *Timakata -v the Attorney General (1992) 2 Vanuatu Law Report 575,* the learned Chief Justice said at 603 :-

"Whenever substantial justice requires reasons to be given, particularly when an individual's livelihood is at stake or a right of

property is sought to be taken from him, or it is sought to deprive him of his liberty, or his residential status, then reasons must be given, certainly when requested, unless it be so obvious as to be superfluous. I agree entirely with the submission on behalf of the petitioner, that the provision of reasons is undoubtedly a protection against potential arbitrary executive action and that in the above circumstances a failure to give reasons would be a denial of the protection of the law and has a tendency to frustrate judicial review..... The rules of natural justice alone may not require, as a rule in all circumstances, the statement of reasons is to be provided, but natural justice is but a part of these 'Fundamental Rights' safeguarded by art. 5(1) of the Constitution, which in my opinion affords a greater protection to the individual than simply the rules of natural justice."[Emphasis added]

This case was subject to an appeal reported as *AG -v- Timakata 1993 2 VLR 679* but nothing therein detracted from the important statement of principle contained in the decision at first instance.

The Chief Justice's discussion of the need for a reasoned judgment in the constitutional context is consistent with authority in Common Law jurisdictions. We note a similar approach in the High Court of Australia in *Public Service Board of NSW -v- Osmond (1996) 159 CLR 656*. To like affect in the United Kingdom, *Rv Crown Court at Harrow ex parte Dave [1994] 1 All ER 315* and of particular relevance within the current context the decision of the Court of Appeal of Jamaica in *R -v- Simpson; R -v- Powell 1993 3LRC 631*. Downer JA said at 634:

"It is against this background of the requirement (in jury cases) of a warning in clear terms that the duties of a Supreme Court Judge conducting a trial as judge of law and fact in the High Court Division of the Gunn Court, must be determined. That he must give reasons for his decisions is not in dispute. Just as the reasons delivered by a judge in civil proceedings differ from his summing up to the jury, modifications also apply in the reasons for judgement in criminal proceedings. Merely to utter the warning and yet fail to show that the caution has been applied to the analysis of the evidence, will result in a judgement of guilty being set aside"

Later at 683 the learned judge spoke of the importance of *"careful reasons which cover ..... the relevant issues of laws raised by the evidence."*

We are satisfied that the submission advanced by Mr Finnigan is both desirable and necessary, as the circumstances of this case so clearly demonstrates.

What the trial judge did in the instant case, after the summary of the Prosecution and Defence cases as discussed, was to set out relevant legal principles. There can be no criticism thereof. He properly enunciated the law about the burden of proof, the standard of proof and the elements of the offence of pre-meditated intentional homicide. He talked correctly about the law on accomplices and the position of corroboration. There was a discussion on motive, and on credibility. None of these can be

criticised. This is all a fair, correct and applicable resume of the relevant legal principles and approaches.

There then follows 112 pages of single space typing which is a summary of all evidence given. We can only applaud the enormous care with which the judge made a handwritten note of all the evidence presented between the 10th of October 1995 and 23rd November 1995. Although there has been some argument about some minor emphasises it is abundantly plain that these 112 pages are a remarkable summation of all that was said in evidence in chief, cross-examination, re-examination and answers to questions seeking clarification from the Bench.

In the course of this, the judge on a number of occasions indicated questions or issues which required attention. He discussed matters which he found were capable of amounting to corroboration. He posed theoretical or rhetorical questions. He cross referenced issues to which attention needed to be given.

What he did not do, except on a few occasions, was in fact to answer those questions, resolve the ambiguities or determine the truth where inconsistencies were exposed. That failure to demonstrate the basis upon which he answered these questions he posed, and provide an identification of which evidence he accepted and which he rejected, is the crux of the complaint.

As is apparent from the final passage of the judgment quoted above, there is no reference at all in it to the evidence of the appellant. We have

already noted that a conviction could only be entered if her evidence could not reasonably be true. It appears to us fundamental that having taken some 42 pages (which is more than a third of the total evidence) to record all that was said by the Appellant, the judge needed to indicate why he was rejecting her evidence. On important evidential matter when he did resolve a headlong conflict with regard to the 23rd November roundabout meeting the existence of which Mrs Picchi had denied, the Judge accepted her position. He needed to record the view he had formed of those other parts of the evidence which it was reasonable for the defence to contend supported her total denial of knowledge or involvement.

Because the appeal must succeed, (but for reasons which we will elaborate later that there must be an order for a new trial,) it is not appropriate for an Appeal Court to enter into any detailed analysis of the evidence. However we record that among the matters which were supportive of her position, and upon which no adequate resolution is contained in the record, there is the evidence of Mrs Hannam. On its face it was consistent with the possibility that the deceased was murdered near the cliff top and not in his house. About her evidence, the learned trial judge made some generalised comments about wind direction. In our judgment this was material which required a more sustained rejection than it received, if it was to be disregarded as having no probative value.

Similarly there is the evidence of Sergeant John Mc Donald, the scene of crime officer who came to Vanuatu from Canberra on 3rd December 1994 to assist the Vanuatu Police in the investigation of the death of Franco Picchi. His evidence was that one would have expected from what was

described by Tui and Berri, lots of blood on the floor and blood to fly on the walls, ceiling and nearby furniture. There was nothing of significance like this found in the house. Again this required fuller consideration. This evidence was consistent with the position of the appellant that nothing happened at the house. It is difficult to believe that a thorough clean up could have been done immediately so that all signs would vanish.

Of a rather more controversial nature was the evidence given by Samuel Toara and Jack Ross who were employees of the Imperial Night Club. We immediately acknowledge that the judge in his review of the evidence noted that these witnesses were unsatisfactory and unreliable. It is not appropriate that we analyse in detail their evidence. However we note that each of them gave to the police statements at an early stage in the investigation. They made subsequent statement when approached by the prosecuting authorities at a point in the trial when it was clear that the defence would rely substantially upon their evidence to establish the fact that Franco Picchi was alive after mid night on the 28th November. The fact that the authorities failed to go back and discuss their recollection at a much earlier stage is both regrettable and reprehensible. But the uncontroverted evidence is that at least in one case, a police officer made assertions to at least one witness that was palpably untrue, before the witness changed his story. This episode demanded much more than a dismissive rejection of their evidence. The trial Judge's advantage in having heard and seen them is enormous but there was more to this point which had to be analysed.

The evidence of the house guest Marcello, dealing with the possibility of a continuing sexual relationship between Tui and the Appellant, cannot be easily ignored. There is not only the question of whether he could be oblivious to a daily visitor to the house, but his narrative about Sunday outings also supports the appellant's case.

We do not ignore or minimise the great advantage which the trial judge had in having heard and seen Mrs Picchi give evidence. He was entitled to reject her evidence in its entirety but he needed to explain and articulate his reasons for doing so. He needed to reach conclusions with regard to those matters of evidence which would have been consistent with and supportive of her contention before he could reach that position.

We turn to the second, but associated question of whether the Chief Justice was able to reach the conclusions that he did in respect of the evidence of Tui and Berri.

As far as Serah was concerned he held that she had not told all that she knew and although this was out of a misguided sense of loyalty, he found that she had lied. He said that on her evidence alone and uncorroborated he could not and would not have been satisfied beyond reasonable doubt of Mrs Picchi's guilt.

Tui, he described as being poor at remembering dates and perhaps having a tendency to exaggerate. Berri he described as a loathsome man. He accepted that there were conflicts in each of their accounts. Notwithstanding he concluded that the men were each telling the truth and

that their evidence alone taken independently and without any corroboration was sufficient proof beyond reasonable doubt.

No complaint has been made or could have been made about the legal principles enunciated or their application. The thrust of the Appellant's case again is the failure by the trial judge to resolve important inconsistencies and conflicts within factual scenarios, and to articulate and expose the reasoning which led him to his conclusion.

The contradictions between Tui and Berri appear at least on their face, to be sufficiently substantial as to require greater discussion. The Prosecution in this case (in what we are told, is common practice,) had these two men go back to the house at Tassiriki months after the night of Mr Picchi's death, to act out for a photographer their own involvement. We think this is a dangerous practise particularly when it introduces into a case matters which are clearly not remembered or are otherwise in dispute. But if one looks at the photographs in this case, those of Tui and those of Berri on an issue as simple as whether Mr Picchi was dragged by the head or dragged by the feet across the room into the bathroom are diametrically opposed.

A number of other important matters contained in the evidence of one conflicts substantially with what was said by the other.

A further area which required discussion and explanation, is the fact that Tui in his evidence contended that there had been a meeting on 23 November 1994 at Tagabe roundabout between Tui, Berri and the Appellant. As noted above Mrs Picchi totally denied such meeting. Berri in

his evidence claimed that the first time that he had ever met Mrs Luciana Picchi was on the night of 28 November 1994, when he went to the house and that there had been no prior meetings. The Judge in the course of his summation accepted that there had been no prior meeting. We are unable to see how the inconsistency between Tui and Berri can simply be ignored on the point. There may well be convincing reasons for their differences of recollection but the problem had to be tackled.

Tui and Berri spoke of the noise which accompanied the killing. The judgment contains no references to the fact that the neighbour Roy Ernest (who said that in the normal course of events he could hear conversation and arguments coming from the Picchi's home) heard nothing. Similarly his dog which apparently barks at every Ni-Vanuatu who comes around made no noise on that particular night. The reasons for rejecting this evidence as lacking any probative value had to be stated.

Because there must be a retrial, it is not appropriate that we express even a preliminary view with regard to the important evidence given by the doctors. The Judge accepted their evidence which he found was basically consistent one with the other. He specifically held that when there were conflict, he preferred the evidence from Professor Koelmyer (called on behalf of the Appellant) on the nature of the injuries and the means by which they must have been inflicted.

The learned trial judge provided a very lengthy reporting of what was said by the medical witnesses and eventually noted

"The important point to remember is whether the forensic evidence given in this Court, whoever it may come from, is consistent with those who say they killed him or so inconsistent that they could not have done so in the manner that they say they did. For my own part I see nothing in the forensic evidence given in this Court which is remarkably inconsistent with that evidence".

A great deal of this appeal hearing was taken up with analysis of the medical evidence. We have not been persuaded that the summation quoted above is an accurate assessment of the evidence as explained to us. There are substantial issues where the evidence would suggest weapons other than nalnals must have been used. Many of the injuries described by the doctors they said could not have occurred in the manner contended for by Tui and/or Berri. There are no apparent injuries consistent with some of the most severe attacks which Tui and Berri say they delivered. Again this may be explicable but the reasoning process must be exposed.

Accordingly we are of the view that because there is not an articulation of the reasons for excluding the evidence of Mrs Picchi, and by implication the evidence which supported her, and because we do not understand the basis upon which the evidence of Tui and Berri was held to be convincing, persuasive and reliable as against other material, (and in the light of the inconsistency between the two of them) we are clear that the conviction cannot stand.

Mr Finnigan's submission was that if we reached that view the Court should enter an acquittal as the court has jurisdiction to do. He submitted that the Prosecution case can not be improved on a retrial and that

difficulties inherent within the case will not go away. That may well be so, but as Mr Finnigan was forced to accept in the course of the hearing, it was open to a Judge to act on the uncorroborated evidence of a person who is an accomplice. The fact that he did not find any corroboration, (notwithstanding the fact that he did identify a number of matters which he considered could amount to corroboration,) does not alter with that situation. The advantage of hearing and seeing all the persons alleged to be involved, and all the surrounding witnesses including the experts, cannot be underestimated. The charge is a serious one. The circumstances have particular gravity. There is powerful evidence about pre and post death payments made by the appellant which require careful and full weighing. In our judgement it would be contrary to the interest of Justice for this Court (not having had the advantage of hearing and seeing witnesses) to conclude a proceeding in which credibility is critical.

It should not be thought that we are suggesting that a lengthy exposition is required in a Judgement. We are not concerned about the length or the detail. What is fundamental is an isolation of the critical points, a succinct determination of any conflicts and a reasonable summation of the analytical process involved. It is a case of how and why the verdict not merely a recording of what was said.

Mr Finnigan also contended that members of the Vanuatu Police misconducted themselves. Certainly there was uncontroverted evidence that one officer had stolen money from the deceased's body. There are other allegations made by Mr Finnigan about the nature and extent of the investigation. We accept that there may be occasions when Prosecution

behaviour is so outrageous that an accused person should not be put in jeopardy in respect of their own activities because of it. If however it is possible for a fair just and impartial trial to be conducted into the act and omissions of an alleged offender, and the acts and omissions of the police or prosecutors dealt with separately, we are not satisfied that on a murder charge the approach of ignoring possible criminal conduct because of prosecution misconduct, will normally be appropriate.

A sustained argument was advanced on the basis of apparent bias on the part of the trial judge. There was no submission of actual bias but rather only of whether there would be a reasonable apprehension on the part of an informed and fair minded observer of the absence of an impartial objective and independent tribunal. Although there are some differences in the language used the concept is clear. It is discussed in the House of Lords in *Rv Gough (1993) 2 All ER 74* by the High Court of Australia in *Rv Webb (1994) 181 CLR 41* and by the Court of Appeal in New Zealand in *Auckland Casino Ltd in Auckland Control Authority (1995) 1NZLR 142.*

In this case we have determined that there must be a retrial. It is neither necessary nor helpful for us to enter into any detailed discussion of the various allegations made which we were not persuaded taken either individually or collectively, demonstrated in a serious way apparent bias. There is one suggestion only which should be mentioned. It was raised in a most unothordox manner in this case. It suggested that the learned trial judge might have initiated some inquiry of an international law enforcement agency about Mr and Mrs Picchi at the time of the death.

While in no way wishing to countenance or encourage the means by which this evidence was placed before the Court, we should record our anxiety at the possibility that a judicial officer may have had any direct or indirect involvement in inquiring into or investigating a case which that judge subsequently heard.

The hallmark of an independent legal system is the non involvement of the judge in any investigative process. We accept that there will sometimes be occasions, particularly in a smaller jurisdiction, where a judge may be required and expected to undertake roles which are outside those traditionally undertaken by Judges. If that arises it means that the Judge should not have any further involvement in the case. Any accused person is entitled to be tried before an independent, impartial and objective judge who brings to the adjudicative task no information and no appreciation or view of any fact which is in issue in the case. The Judge must decide a case solely upon the basis of evidence presented in Court, in the presence of the accused and with the ability for the accused to challenge and scrutinise that material. Where for any reason a Judge has a pre involvement in a case then, unless it is revealed and there is the clear consent of an accused to the Judge continuing, the Judge should not take any further step in that case and certainly not make the ultimate adjudication.

There was also an appeal against sentence about which it is not necessary to reach any concluded view upon as we are vacating the conviction

Strident criticism was made of the fact that the conviction having been entered on one day, the Judge was unwilling to allow time for senior counsel who had left Vanuatu to return. Associated with that was a request for the counsel for Mrs Picchi to obtain evidence about her psychological condition.

We had the real advantage of sustained and impressive evidence from Mrs Blackwell. The issue of whether the Battered Wife Syndrome can have application in a case where there is denial has not been determined in any case to which we were referred. The expert's evidence suggested that from a scientific point of view a person who is afflicted by this syndrome could be in denial but on sentencing the Court should take that condition into account. Mr Finnigan did not suggest that the evidence in this case was a defence per se. It was presented to address the personal aspect of the appellant and her position on sentencing.

We merely note that the conclusion reached by the trial judge about Mrs Picchi and the likelihood of her being a danger to others in the future, is totally at variance with the expert's testimony which the judge denied himself the advantage of hearing. We cannot understand why the request for a delay in sentencing for a few days was not acceded to. It was not unreasonable for Mr Finnigan to have left the country when it was not known how long it would be before a Judgement was delivered. The application to wait a day or two for his return with relevant expert evidence appears to us to have been reasonable in all the circumstances.

The force of this additional material and the effect of it on sentencing is a factor which will need to be weighed if after another trial there is a conviction.

We accordingly allow the appeal against conviction and return the matter to the Supreme Court where Mrs Picchi can be re tried. It is of course open to the prosecuting authorities, in light of their assessment particularly of the medical evidence, to decide not to offer evidence. We are clear that it is a matter for the prosecuting authorities and not a case for an Appeal Court to enter an acquittal.

DATED at Port Vila this day of November 1996.

Justice ROBERTSON
Judge of Appeal

Justice DILLON
Judge of Appeal

Justice MUHAMMAD
Judge of Appeal

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COUR D'APPEL
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