

BETWEEN: EVA ALBERT

AND: PUBLIC PROSECUTOR

Coram: Mr. Justice Frederick G. Cooke, Chief Justice.

Mr. F. Coté, Public Prosecutor.

Mr. D. Hudson, Defence Counsel.

Miss J. Walsh, Chief Registrar.

The accused was charged with two offences -

1. That on or about the 27th of January 1982, at Liqueil Village, on the island of Toga (Torres), did by an unlawful act, intentionally cause the death of her new-born baby, contrary to section 106(b) of the Penal Code

and

2. That between the 1st of January and the 31st of December 1981, at Liqueil Village, on the island of Toga (Torres), did have sexual intercourse with her brother, Joseph Albert, an offence contrary to section 17 of Joint Regulation No. 12 of 1962 and section 95(2) of the Penal Code.

The accused pleaded not guilty to the first charge and guilty to the second charge.

Regarding the first charge the Court heard, the evidence of Dr. Fiona Douglas the Medical Superintendent of the Hospital at Santo, who stated she had been present at the birth of babies.

The intention was to try and ensure that the baby lived and continues to live. She said - "Sometimes when a baby is born there is no sign of life i.e. no heart beat, no breathing effect, it is completely floppy, it makes no response to any stimulus and it is either blue or white in colour."

Further She said, "Sometimes all resuscitation in terms of artificial ventilation, cardiac massage are of no avail and successful breathing and heart beat is never established. Sometimes these measures are successful and the baby is normal in due course. I have never succeeded in predicting whether babies will recover or not. Long and difficult labours, babies in the womb too long and health of the mother all influence survival or otherwise of the child."

The Public Prosecutor asked the Doctor to read the third paragraph of the statement made by the accused (which the Defence Counsel admitted) and began

"Now when I had the child I did not hear her voice at all.

I gave birth on the 27th of January 1982, in the night. When the first fowl had sung, as it was past mid-night, I walked to the toilet, she fell down

then I took a piece of bamboo and cut the rope (umbilical cord) which is connected with the child, then I took the child, I held it with one hand. I carried it and threw it to where they throw rubbish. I removed some ground and I then threw my baby into it and then I buried it. The baby did not cry when she came out of my belly, but when she was out, she moved a bit, then I took it and buried it."

The Public Prosecutor posed a question to the Doctor, as follows -

"Assuming that is the only indications that the baby was alive or dead, (referring to the statement) are you in a position to say whether the child was born dead or alive.?"

The Doctor replied -

"On that evidence I am not. The fact that the baby moved is no indication that the child was alive."

She went on to say -

"I have seen both new born babies move and yet never, despite resuscitation show any signs of being able to breathe or live or have a heart beat, also I have observed the case where an adult has died of any cause - there may be movement ten minutes after the person has died. Movement is often of a type of spasm and may be quite violent."

The Public Prosecutor further asked the Doctor -

"The other fact that the baby did not cry, can that be an indication whether the baby was alive or dead.?"

The Doctor replied -

"No, not on it's own. Sometimes crying is a sufficient mechanism for aerating the lungs but some babies never cry strongly enough at birth but they breathe quite normally."

The final question posed by the Public Prosecutor was -

"On the evidence is it possible to indicate whether the child had become a person capable of being killed when it had completely proceeded in a living state from the body of it's mother.?"

The Doctor stated that it was not possible from the evidence to give a positive answer.

As no further evidence was forthcoming by the Prosecution, it was clear that the Prosecution had not proved their case against the accused and I accordingly acquitted her of that charge.

On the second charge, we accepted her plea and convicted her.

Mr. Hudson stated in mitigation that the same facts applied as they did to the case against Joseph Albert. The accused had tried to leave the island but was prevented by doing so by the Chief. She had no schooling and worked in the village gardens. She regularly attended the Anglican Church on the island.

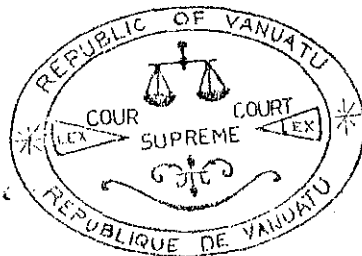
The assessors and myself considered that, firstly, as no facilities were available at the jail for women and secondly much blame for the events that happened can be attributed to certain people on the island of Toga, a custodial sentence would not be appropriate in this case.

We ordered that the accused stay with her brother or sister in Santo for two years but may return to Toga if married to some person not from Toga - she is free to accept work in Santo.

Secondly that, if she commits any other offence within two years from to-days date, she is to appear for sentence, if called upon to do so, (Section 42 (1) of the Penal Code).

Frederick G. Cooke
FREDERICK G. COOKE.

CHIEF JUSTICE



Dated this 5th day of April, 1982.