
**REGINAM
VS.
BEN TOFOLA**

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**HIGH COURT OF SOLOMON ISLANDS
(PALMER J)**

Criminal Case No. 20 of 1992

**Hearing: 3rd and 4th September, 1995
13th October and 20th October 1995**

Judgment: 21st December, 1995

***DPP for Prosecution
J. Remobatu for Defendant***

Palmer J: The accused, Ben Tofola, has been charged with the murder of a 9 year old boy, Dudley Beni, on 11 March 1992, at Oloa Tambu site, North East Malaita. The Prosecution allege that the accused was with Rurugeni Nanau (*a co-accused who has been convicted of the same murder in an earlier trial*), and participated in the killing of the said child.

The Prosecution Case

There are no eye witnesses to the murder charge. The crucial prosecution evidence is the confessional statement of the accused. A *voire dire* hearing challenging the admissibility of the confessional statement of the accused has been held, and a ruling delivered by this Court on the 22nd August, 1995, in which it was held by the Court that the confessional statement had been voluntarily made and was admissible. The Prosecution rely on that confessional statement as conclusive evidence against the accused of his participation and involvement in the killing of the said child.

The Defence Case

The defence case is two-fold. First, that the confessional statement is false, and that therefore it should not be relied on. Secondly, the accused was never with Rurugeni (*the co-accused*), and that he had been wrongly implicated by Rurugeni in his confessional statement. Rather, he was at his village through-out the period it was alleged that he was involved in the killing, and that he has sought to call witnesses to support his claim.

The Burden of Proof

Right at the out-set, I remind myself that the burden of proof in this case is on the Prosecution to prove beyond reasonable doubt that the accused was involved in the said killing of the said child. This in essence must necessarily mean that I must be satisfied so that I am sure that what the accused has said in his confessional statement is correct and true and to be relied on. If there is a reasonable doubt in my mind, then it must go in favour of the accused.

The evidence -

(1) the accused.

The accused says under oath that on the morning of the 11th March, 1992, he had gone out with a chain-saw gang to cut some trees. The persons he was working with were, Severino, Waita and Joe Fred. They started work at about 7.00 - 8.00 am that morning. At about 11.30 am. they were told about a fight between the Saltwater people and the Bush people at a place called Gounatolo, near the Clinic there. The accused was related to the Bush people. As a result of that report, they decided to stop work. They then returned to their village and stayed there until 3.00 pm in the afternoon.

It is pertinent to point out here that the evidence concerning the time period between 11.30 am to 3.00 pm is crucial to the prosecution case because it is during that period in which the alleged murder was supposed to have taken place.

The accused stated in his evidence before the Court that at about 3.00 pm, a person called Severino and himself went to Gounatolo to look for his oldman, Michael Meke and to bring him back. He says they walked through a bush track and arrived at the Clinic at about 4.20 pm. They met his oldman and told him to return because of the trouble that had occurred there that morning and that it was not safe for him to stay. Another person by the name of Ofotalau however, offered to take his oldman by canoe, and told him to return by the same bush track that they had come by. He says that they arrived at their village at about 5.30 pm. He then heard about the missing child.

The accused denies seeing Rurugeni that day. He says that he spent that time from 11.30 am - 3.00 pm at his parent's house, with other women, girls and small children. In support of his claim he called two other witnesses in support. Both were persons who had been working with him that morning with the chainsaw.

(2) Severino Rofeta.

Severino Rofeta's evidence is fairly similar to the accuseds. He confirmed that they started work with their chainsaw between 7.00 am. to 8.00 am., and stopped at about 11.00 -12.00 noon. After they returned home and stayed cleaning their chainsaw, until about 3.00 p.m. He then accompanied the accused to go to the Gounatolo Clinic.

Under cross-examination he reiterated that the accused remained with him throughout the period of 11.00 am. to 3.00 p.m.

under cross-examination he also confirmed that there was a place called AENAKWATO, and that it was close to a tambu site called Oloa. This admission is significant to some extent as will be later seen when the confessional statement of the accused is considered in detail.

Another matter of significance worth noting concerning this witnesses evidence is that he confirmed under cross-examination having made to Police on the 23rd of April, 1992 (*about 1½ months after the child had been murdered*), a prior inconsistent statement.

(3) Joe Fred.

The evidence of this witness is also similar. He says that he was present that morning when they worked using their chainsaw. After they had stopped they returned to their village. He says that the accused remained with them throughout that time from about 11.00 am to 3.00 p.m in the afternoon. He confirmed that it was him who had sent the accused and Severino Rofeta to Gounatolo Clinic at about 3.00 p.m.

Under cross-examination, he reiterated that the accused was with them throughout the period of 11.00 am. to 3.00 p.m. He also confirmed that they stopped work at about 11.00 am. when they heard about the big fight at Gounatolo Clinic. He says that they were worried about the safety of their oldmen at that time when they heard the fight. He was then asked why he did not send Rofeta and the accused straightaway if he was worried and rather waited until about 3.00 p.m. His answer was that he thought that they would have been back but when they did not come, he then decided to send Rofeta and the accused.

(4) Rurugeni - Co-accused.

Another witness called by the accused was the co-accused himself, Rurugeni, who gave evidence under oath. This witness had been convicted by this Court in an earlier trial and sentenced to life imprisonment for the murder of the same victim. His conviction was based largely on his confessional statement, which the Court accepted as revealing the truth of what had happened to the victim. There was however, also clear evidence which placed this witness at the scene of the murder and in the company of the said child, prior to the discovery of the death of the child. He was the person who took the child away from the father of the child, and did not return with the child thereafter. He was then later located by Police based on the descriptions of Police witnesses and later identified by the same Police witnesses on an identification parade arranged.

It is also of significance that at his trial, this witness did not give evidence under oath. However, he had willingly offered to give evidence on oath in support of this accused's case that the accused was not present at the scene of the murder, and was not involved in it.

Rururgeni's evidence is that the killing of the child was his own, right from the beginning to end. The accused was never involved at any time at all. The first query which can be raised is, if that was so, then why did he make mention of the accused in his statement to the Police of the 21st April 1992. That statement of his contradicted what he said on oath before this Court.

With respect to what this witness had said on oath, I must bear in mind that he had made a prior inconsistent confessional statement and on which his conviction had been based. His credibility accordingly had been tainted and I take that into account in assessing how much weight should be attached to what he had said on oath before this Court.

The evidence of the Prosecution

As earlier pointed out, the crucial evidence of the prosecution rests on the confessional statement of the accused. It is important therefore to examine closely the contents of that statement.

The accused said that on that morning of the 11th March 1992, he went to do some work using a chainsaw with Severino Rofeta. This was about 8.00 am. He says that they cut one ngali nut tree and finished at about 11.00 hours. So far, his statement is consistent in most respects with the oral evidence given by him. The additional matters mentioned in his evidence are:

- (i) additional names of the persons who worked with him that morning - Waita and Joe Fred,
- (ii) the time on which they commenced work was given as 7.00 am, not 8.00 am,
- (iii) the time when they finished work was given as at about 11.30 am.
- (iv) the reason given for stopping work was that they were told about a fight which had occurred at Gounatolo Clinic involving their people.

The above additional matters mentioned in his oral evidence in my respectful view however, do not detract from the essence of what was conveyed in that statement of the accused. Also the evidence of Severino Rofeta and Joe Fred is consistent with that part of the statement. These all confirm in my view that the first part of the statement of the accused was correct and true.

The next part in the statement of the accused then departs markedly from his oral evidence. He says that at about 11.45 hours he left his village at Fulilabata to go and climb for a type of parrot (bird) at Aenakwato, near the Oloa Tambu site. This is where the evidence of Severiono Rofeta confirming the existence of a place called Aenakwato and its location near the Oloa tambu site, significant. It confirms at least that the mention of such a place in the statement of the accused was true. But also in the oral evidence of the accused, he confirmed that parrot birds usually stay at a tree near the Oloa tambu site. He says too that when they were searching for the child there, he could hear the birds making noise. These evidence are significant because they do support very strongly the possibility that the statement of the accused regarding those places and birds and his reasons as correct and true. There is a place called Aenakwato, that is near Oloa tambu site, and that the type of parrot mentioned in the statement of the accused can be found there. So when the accused said that he went there to climb that bird, the probability that it is true, is very high.

The statement of the accused then continues that he took his knife and small bush basket and set off. He says on reaching a bush leaf hut, he met his 'brother' Rurugeni. It was at that meeting that they formed the plan together to go down to the coast and to kill any Saltwater people that they might come across. The reason given was that a lot of insult had been said against them and that it was extremely offensive. More will be said on this later. They then went down together to the garden of the Saltwater people.

The gardens of the Saltwater people referred to was in fact the garden of Barnabus Siale, the father of the deceased victim. Under cross-examination, Rurugeni was asked how he got to the said garden. In his response, he said that he walked there. He also said that it was his first time to go to that garden. He was then asked an important question following on from that as to how then did he know about that garden. His answer with respect was unimpressive. He simply said that he just went and reached that garden. This answer of Rurugeni is significant because according to the confessional statement of the accused, it appears that it was the accused who was familiar with that area. If it was Rurugeni's first time to reach that place, then it would only be proper for the accused to show him where to go.

Another matter raised in cross-examination was that Rurugeni stated that he did not recognise Barnabas Siale. He also stated that he did not know Siale's son. In comparison, in the confessional statement of the accused, he stated that it was Rurugeni who went on to the garden whilst he waited at a spot where they used to make gardens previously. Their plan it seems was for Rurugeni to try and trick one of the children into following them into the bush so that they can then kill that child. The actions of Rurugeni and the accused as described in the statement of the accused is consistent with the oral evidence of Rurugeni that he was new to that place and that he did not know Barnabas Siale and his sons. On the other hand the accused had expressly stated in evidence before the court that he knew Barnabas Siale and that he was familiar with that place. It is only logical therefore that the accused would hide so that he is not seen by Barnabas Siale. The existence of such a plan is

also consistent with the evidence of Barnabas Siale in which he stated on oath that the person who came to see him at the garden introduced himself as a Mr Tagini; which was not the real name of Rurugeni.

In his evidence on oath, Barnabas Siale also pointed out that that person asked him for his two sons to accompany him to go and get some fire from a nearby area. Trustingly, he allowed his son, to accompany that person. This evidence is also consistent with what was stated by the accused in his statement regarding the plan to kill someone; in particular, where he said that before Rurugeni left him for the garden, he told him that he would go and bring any child back with him.

In his statement, the accused also stated that he waited for sometime before Rurugeni arrived back with a child. This is consistent with the time period in which Rurugeni left and then arrived back. In the undisputed evidence of Barnabas Siale, he stated that Rurugeni took his two sons with him first down to his coconut plantation to get some green coconuts before going later to get some fire.

The accused also stated in his statement that when Rurugeni brought the child back, he whispered in his ear that he had brought back a relative of theirs. He says that that was the only time when he was thinking clearly, but then Rurugeni told him that it did not matter, and that they should let their parents sort it out. Again, there is much consistency here, with Rurugeni stating clearly on oath that he did not know or recognise Barnabas Siale and or any of his sons. He would not have been in a position therefore to know whether the child he was taking with him was a relative or not.

The accused then went on to describe in detail what transpired thereafter. He says that they led the child up a bush road. Now, this is quite significant. Rurugeni had expressly stated under cross-examination that it was his first time to go to that area. Secondly, under persistent questioning from Mr Mwanosalua about the existence of a road, Rurugeni stated that when he took the child from his father, he did not follow any bush road. They just walked through the bush. He said that there was no bush road from the garden to the place where they went to get some fire, and also that there was no road from the spot where they went to collect some fire to the spot where he killed that boy.

In contrast, the evidence of Barnabas Siale is that the place where they had gone or supposed to go to collect fire was a place which would appear to be frequented by people because that was a spot where people would go to crack ngali nuts. It is more probable than not in my view that there would have been a bush road or path to that spot from his garden. Also it is significant in my view that the spot where the body of that child was located was not far from a bush road. In his evidence under oath, Station Sgt. Angisia stated that the dead body was seen by the accused close to the bush road that they were walking along. He pointed out that the dead body was located at the bottom of a tree on quite a steep slope. He also pointed out that the body had been prevented from slipping further into the bushes below where it would then have been quite difficult for the body to be seen. The

impression given was that the spot where the child had been killed was not easily accessible unless the bush roads had been used.

The accused himself also stated that there was a bush track from Barnabas Siale's garden to the spot or near the spot where the dead body was found. He stated that the heathen usually follow that bush track when they go to do their sacrifices or when they go hunting.

The evidence of Rurugeni therefore that he did not follow any bush road to the spot where he killed that child couldn't be true.

From the bush road, the accused stated that they then took the child along a bush track which led towards the Oloa tambu site. This is consistent with the description of evidence adduced as to the location of where the dead body was found; that is near the road leading to that tambu site. It was the same bush track followed by the police search party on Friday 13 March 1992, when they discovered the dead body of the child.

There is also mention of a place called Gwaudede in the statement of the accused, but it was never raised in evidence as to the existence of such a spot. I do note that it would appear to be more of an oversight than anything else.

The accused then says that they took the child towards the Oloa tambu site and then Rurugeni lied to the child to go and dig for some Megapode bird eggs. He says that he was asked for the third time there by Rurugeni whether they should kill the child, but he told him not to. The statement regarding digging for Megapode eggs is quite significant because under cross-examination the accused confirmed that the spot or place where the Megapode bird lays its eggs is near the Oloa tambu site. He says in evidence that the spot where those birds would lay their eggs is not far from the spot where the body was found. He added that those birds usually lay their eggs at the bottom of a dead tree. He also confirmed in cross-examination that there was a bush track going past that spot to the spot where the body was found and explained that it was a track which the heathen usually follow when they go to do their sacrifice. He also clarified that there was a bush track which led from Barnabas Siale's garden past the spot where the Megapode bird lays its eggs and then past the spot where the body was found. Under re-examination he confirmed that there was a small road which goes towards the spot where the Megapode lays its eggs.

In answer to a question from the Court, the accused explained that the spot where the Megapode bird lays its eggs and the spot where the body was found were along the same elevation on the side of the hill. The distance he estimated was roughly from the main road to the courtroom; which would be about 30-40 metres.

In his evidence before this Court, Station Sgt. Angisia also confirmed that there were signs of that bird laying its eggs around that area.

There is clear evidence therefore which goes to show or confirm the statement of the accused as correct, concerning his description of the area or spot where the Megapode bird lays its eggs.

The accused then goes on to say in his statement that from that spot they then moved on to the side of the Oloa tambu site. It was there that they killed the child. To a certain extent there is indirect evidence from Rurugeni which would confirm what the accused had stated regarding the spot where the child was killed. Rurugeni stated that after he had killed the child he left him there. The spot where the body was found therefore would have been the same spot where the child would have been killed according to their version. The evidence of Station Sgt. Angisia in my view confirms this. Under cross-examination he stated that at that spot where the body was found he saw evidence of a tree being cut and blood spread all over that place. Under re-examination he confirmed that there were blood stains on dead leaves on the ground, one tree had been cut, and gave the impression he says of someone having stood there. He says that he also saw footprints there, and disturbance on the ground like someone rubbing their feet on the ground.

The above evidence in my view is consistent with the version given by the accused in his statement regarding the spot where the child was killed, and found. The above evidence also ruled out the possibility that the child may have been killed somewhere else and then dumped at that spot. Had that been established on the evidence then it would have been contrary to or inconsistent with the version of the accused's statement.

The accused also states that at that spot where they killed the child they heard the child's father calling for the child. Rurugeni then spoke to the child to listen carefully to his father, before cutting the boy with his bush knife.

Under cross-examination, the accused explained that there was a tambu place called Oloa, where they used to sacrifice pigs for devils. He says that this was at the top of the hill above Barnabas Siale's garden. At least twice he repeated that if someone shouts loudly either from the tambu site or Siale's garden, they would be heard. Angisia's evidence would also be consistent with that evidence. He says that the distance is like from the SIPEU Building near the Town Ground to the Court Building, a distance of about 200 to 300 metres.

It is fairly clear therefore that a person looking for his child and shouting at the top of his voice would easily be heard at the area where the child was killed. In the oral evidence of the father, there is no mention of him shouting for his child. However, I do not think that omission was deliberate. A person looking for his son after finding out that he was nowhere to be seen at the site where he had originally was supposed to go, would naturally be calling out for his son.

Rurugeni was asked under cross-examination if he could hear anyone shouting from Siale's garden. Although he denied hearing anyone shouting and in particular what the accused had said took place in his statement, his responses were not convincing. I am satisfied that that part of the statement of the accused is not inconsistent with what might have happened that day. The timing at which the killing of the child occurred and the possible time at which the father of the child started looking for the child and shouting for him would be about right. What is important to note is that there appears to be no glaring discrepancy of the time at which those two incidents might have occurred.

The next part in the statement of the accused refers to his description of the actual killing of the child. He says that Rurugeni cut the right side of the neck of the child first. The second time he cut the child was when he was falling down, so he cut the back of his head. The accused then cut the left neck of that child and stabbed his neck with the knife.

Rurugeni's evidence on this is that he cut the neck of the child on his left side and not the right as put to him under cross-examination. He also said that he cut the child only once. However, when it was put to him that the accused had said that he had cut the child twice, he eventually said that it might be true.

In the oral evidence of the accused under cross-examination he said that when he held the child he saw that the child's neck had been cut on the right and left sides. Sgt. Angisia also described wounds surrounding both sides of the neck. The evidence of the wounds is more consistent with the descriptions contained in the statement of the accused than the oral evidence of Rurugeni. This brings me to consider the state of the medical evidence.

The Medical Evidence

There is a post-mortem report dated 13 March in the file of the Court. I have noticed however, that this report was not formally tendered to the Court as an exhibit by the learned Director of Public Prosecution. Strictly therefore, it should not have been considered by this Court as part of the Court Exhibits. However, the omission in my view was not deliberate and may have been caused by the protracted hearing of this case with long delays in-between the *voire-dire* hearing and the continuation of the main trial after the *voire-dire*; not the fault of anyone person. I have thought about the question of whether the report can be taken judicial notice of. There are four main considerations which in my view favours the admission of that report by way of the court taking judicial notice of it. First, its relevance to the case. Secondly, it was admitted in the previous trial without contention. Thirdly, the relevant parts of that report relate purely to the physical observations of the three major wounds on the dead body. It does not entail any expert opinion on anything, in particular the cause of death; that is not in issue in my view. The deceased most probably died from the severe wounds inflicted to the neck and head as described in that report. Fourthly, even if that medical report would have been excluded, it would not have made any difference to the final

outcome as to the question whether the confessional statement of the accused is correct, truthful and to be relied on. The consistency in the statement of the accused with other evidence is such that it can only point to a clear conclusion.

The post-mortem according to the report was carried out two days after the child was reported to have gone missing. It was carried out at 4.30 pm at Kilu'ufi Hospital, Auki, by Dr. Graham A. MacBride-Stewart. The report refers to three major wounds as follows:

“Wound A. This was a very deep laceration on the left side of the neck. It stretched from the top of the sternum through the anterior and posterior triangles of the neck and to the mid-line of the neck at the level of the seventh cervical vertebra. This laceration exposed the deep structures of the neck including the spinal column.

Wound B. This was on the right side of the neck. This started at the top of the sternum and went through the anterior and posterior triangles and reached the medial of the spine of the scapular. This wound met that of *Wound A* anteriorly exposing all the deep structures of the neck including the trachea.

Wound C. This was on the same side as *Wound A* in the same direction but at a higher level. This had cut through the bone of the skull in the left occipital region detaching a large piece of bone. The cranial contents were exposed.”

The above physical descriptions of the wounds by the learned Doctor is much more consistent with the descriptions by the accused in his confessional statement as to how those wounds had been inflicted on the child, than the descriptions on oath of Rurugeni, who said that it was only himself who had killed the child with one blow.

The statement of the accused then makes reference to the garden of a person called Agialata. No evidence has been adduced by Prosecution to prove the existence of such a garden, but I would have thought that that should have been done as well; especially where the crucial evidence is based on the statement of the accused. However, it is more unlikely that a false statement would contain or be able to identify the name of a persons garden in that area. Also there is a specific reference to a Mr Ega'a's house at Fulilabata village and specific names of four people that he saw when he arrived back at the village. One of those was the witness which he called in support of his alibi evidence, namely, Fred Diau (Joe Fred). He says that he then stayed at his place until about 3.00 pm when he was then asked to go to Gounatolo as also mentioned in his oral evidence. The above information in my view can only be provided by someone who had a personal and intimate knowledge of the people in his village and the surrounding place. It couldn't have been obtained from Rurugeni who was not

familiar with that place, as he comes from a different village which is quite far from the accused's village. Any of the Police Officers couldn't be in a position to provide such information either.

The statement of the accused then goes on to provide a list for the reasons why the killing of the child was done. The first reason given was that the people of Saua Island had sworn at the "devil" (*ancestors*) of Laugane, during the time when there was a fight at Tofafo. The details provided here can only come from the personal knowledge of the accused.

Under cross-examination, the accused agreed that there had been some swearing done in the past by the Saltwater people. That swearing was against the "devils" (*ancestors*) and wives. He also agreed that that kind of swearing would result in compensation being demanded and if not paid then it would result in a fight.

The second reason given was that the Saltwater people had chased his mother, Mrs Maota, in the bush and resulted in the death of her child. This is a matter within the personal knowledge of the accused.

The third reason given was that they had cut down their coconuts. Under cross-examination, the accused confirmed that the Saltwater people had cut their coconuts at their land. He agreed that it was a bad thing that had been done and that it caused bad feelings between them. This was confirmed by Rurugeni in his evidence. Under cross-examination he confirmed that Barnabas Siale had cut some coconut trees at their land. He says that they asked Barnabas Siale to pay compensation but he refused and they were angry with Barnabas Siale.

The fourth reason refers to gardening being done at a land called Kwato, by Barnabas Siale despite having been told to stop. Rurugeni also confirmed this in his evidence.

The fifth to the eighth reasons are matters which can only come from the personal knowledge of the accused.

All of these go to support the accuracy, and truthfulness of the accused's statement and as to its reliability.

Conclusions on the Defence evidence.

Severino Rofeta's evidence should not be relied on. He is unimpressive as a witness and in my view unconvincing. In the witness box he appeared fearful, which led to the learned DPP asking him if he was frightened of anyone in court. He had clearly admitted having made a prior inconsistent statement to the Police and which in my respectful view destroys or substantially reduces his credibility. His explanation was simply that between 11.00 am. to about 3.00 p.m., they were

cleaning the chainsaw and the accused was with him during that time. With respect however, I do not believe him.

I have also observed Joe Fred carefully, whilst giving his evidence, but I have not been impressed with him as a witness. He gives the impression of simply asserting that the accused was with him between about 11.00 am to 3.00 pm because someone told him to say so. Much time seems to have been given to explaining the happenings between 3.00 pm to about 6.00 pm. Unfortunately, the events which took place during that time are immaterial.

In the confessional statement of the accused however, he did not go into detail about what happened after about 3.00 pm. He did say however, in his statement that he was told to go to Gounatolo by Fred Diau (Joe Fred) and S. Rofeta accompanied him at that time. This is consistent with what was given in oral evidence. Most likely therefore, what went on before 3.00 pm as described by him in his statement should also be true. I do not believe Joe Fred's evidence and reject his claim that the accused was with him, as not true.

Rurugeni's oral evidence that he committed the murder single handedly, I also reject. He had made a prior inconsistent statement to the Police and during the previous trial with Ben Tofala he had chosen not to give evidence. Only after he had been convicted had he decided to give evidence in support of Ben Tofala. I simply do not believe his evidence that he did everything on his own. He admitted under cross-examination that he was new to that place and yet seemed to know his way around. He gave some confused answers as to the location of the garden of Barnabas Siale and the various bush roads around that place. Under cross-examination he said that he followed a road to Barnabas Siale's garden. He then stated that it was his first time there. When he was asked how he came to know about that garden, he said that he just went there and reached it.

When he was asked about any roads there from the garden to the place where he got fire and then to the place where the child was killed, he said that there was no bush track or road and that they simply walked through the bush. The evidence of Ben Tofola, however is to the contrary. There were bush tracks there and it is clear that these were followed; in particular the place where the child was killed couldn't be easily accessed unless the bush track was followed, because of its location, on a slope and thick bushes around. I find Rurugeni unimpressive as a witness, and I simply do not believe his evidence that he was alone. Deceit was clearly the wholemark of his scheme from beginning to end, and his credibility so tarnished to the extent that it is extremely difficult to rely on such evidence which has been so tainted. I reject his evidence.

The accused's oral evidence has been analysed in detail together with his confessional statement. I do not believe his assertion that he did not go anywhere. The detailed account of what happened from 3.00 - 6.00 pm that evening can only be described in my respectful view as a red herring, the objective of which is to try and distract attention or focus, from the confessional statement, which

gave very clear and precise account as to what took place between about 11.45 am to 3.00 pm in the afternoon.

I am fully satisfied so that I am sure about the accuracy of the confessional statement of the accused. I have carefully weighed the evidence of the accused, and his witnesses but have not been satisfied to the extent that there is a reasonable doubt in my mind that the confessional statement was inaccurate, inconsistent and untruthful, or that it never had the ring of truth, or couldn't possibly have happened. To the contrary, there is a lot of consistency in that statement with a number of specific things said in the evidence of the accused, Rurugeni and the other two defence witnesses, which point consistently to its accuracy and truthfulness. I am satisfied beyond reasonable doubt about the accuracy and truthfulness of the accused's statement.

Finally, there is also relevant evidence provided by Station Sgt. Angisia on the discovery of the child's dead body. He says that on the 13th of March, 1992, the child's dead body was discovered by the accused. He says that it was the accused who pointed out to him where the dead body may be found. When the accused called him over, he was standing some way away from the bush road. The accused then told him to look over to where he was pointing. Under cross-examination he pointed out that to see the body from where the accused was standing was almost impossible. One has to either stand on tip-toes or to go down physically before one can see the body. This evidence of Station Sgt. Angisia does have some significance when it is compared with what the accused said in his oral evidence. The accused denied on oath showing the dead body to Station Sgt. Angisia. He said that they all saw the dead body together. Now, why would the accused want to deny what Station Sgt. Angisia had said on oath if what Angisia had said was the truth, *(which I am satisfied is)*?

If the accused was as innocent as he pretends to be, then there wouldn't be any cause for alarm or concern about having seen the dead body first and then showing it to Angisia. He was searching for the child anyway, so what. If what Angisia said however was correct, that the dead body couldn't be seen unless one stood on tip toes or go physically to the spot and that the accused was in fact a participant in that murder, then there is good reason to lie. On the other hand, there is no logical reason why Angisia should lie about the discovery of the dead body at that time; especially when at that time, Ben Tofola was not even a suspect as yet.

There is also another inconsistency in the behaviour of the accused as alleged by him at the scene of the body. In his evidence, Angisia said that the accused looked very frightened. He also said that he prepared the bush stretcher with other Police Officers for carrying the body of the deceased. The accused did not help in anyway. Instead he went up a hill with other members of the Irobuli Community. On the other hand, the oral evidence of the accused painted a different picture. His version was that he helped to prepare the bush stretcher and helped to carry the child's body to the shore. Again it seems to me that if what Sgt. Angisia said was the truth *(which I accept)*, then the accused would obviously have a reason to lie, to give the impression of innocence.

Weighing all the relevant evidence together, I come to the inevitable conclusion beyond reasonable doubt that the accused was a participant in the killing of the said child.

The Law.

Murder is defined as: *"Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder and shall be sentenced to imprisonment for life". (Section 193 Penal Code).*

Section 22 of the Penal Code refers to the commission of an offence by joint offenders.

"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence".

In this case, there is clear evidence in the statement of the accused that a common intention to prosecute an unlawful purpose was formed by the accused and Rurugeni.

"Me kasim one fala bush leaf hut there nao me meetim brother blong me Mr Rurugeni. Long time ia nao me tufala talk, talk so Rurugeni hem say olosem iu me two fala go down if lookim any one long ologeta Saltwater people you me two fala killem because ologeta things ologeta tellem againstem you me hem staka and hem big too much."

The common intention was then carried out together.

"From here nomoa me tu fala go down nao long garden blong ologeta Saltwater people".

Rurugeni then went on to the garden whilst the accused hid nearby. Sometime later, Rurugeni brought back the victim. They then lead the child away from the garden to the spot where the killing actually took place.

Section 21(a) and (b) of the Penal Code would also cover adequately, the position of the accused.

The evidence is clear and conclusive and I am satisfied beyond reasonable doubt that prosecution have discharged the onus of proof vested on them. I find the accused guilty of murder and he is convicted of the same.

ALBERT R. PALMER
A. R. PALMER
JUDGE