

MATHIAS PESE-v-REGINA

HIGH COURT OF SOLOMON ISLANDS
(Mwanasalua, J.)

Criminal Case No. 594 of 2005

Hearing: 2, 3, ~~25~~, 16 and 17 May 2007

Ruling: 21 May 2007

L Ruschena for the Prosecution

R Cavanagh and R Tovosia for the Accused

RULING

Mwanasalua, J: **Mathias Pese** is the Accused in this trial. He has been arraigned on one count of murder and one count of abduction under sections 200 and 251 of the Penal Code (Cap.26) respectively. He has pleaded not guilty to both counts.

The Prosecution has closed its case in this trial. The Advocates for the Accused have asked me to rule that there was no case to answer and the Accused should be acquitted of the counts laid against him.

The right of the Advocates for the Accused to make a no case submission and the power of the court to consider such a submission is provided under section 269 of the Criminal Procedure Code (Cap. 6): Section 269(1) states:

"(1) When the evidence of the Witnesses for the prosecution has been concluded, and the statement or evidence (if any) of the accused person before the committing court has been given in evidence, the court, if it considers that there is no evidence that the accused or any one of several accused committed the offence, shall, after hearing, if necessary, arguments which the public prosecutor or advocate for the prosecution or defence may desire to submit, record a finding of not guilty."

I heard arguments and received written submissions from Defence and Prosecution Advocates. I now make my ruling on the no case submission by the defence.

The test in a no case submission in this jurisdiction was set by the Court of Appeal in R v. Tome, Criminal Appeal No. 4 of 2004, at p.2, when it applied the test as expounded by the High Court of Australia in Doney v. The Queen

(1990) 171 CLR 207 which says that the test is "not whether the prosecution has proved its case beyond reasonable doubt but rather whether there is evidence capable of supporting a conclusion beyond reasonable doubt that the accused is guilty." This test was again restated by the Court of Appeal in R v. Manessah Saomae, Criminal Appeal No. 03 of 2004.

The Prosecution evidence taken at its highest shows that: Palu Buake was healthy and well, but partially deaf; on the morning of 28 April 2003, he was part of a Joint Operation Group (JOG), made up of police officers and civilians which went on patrol from Kolina village to Duidui village on the Weather Coast of Guadalcanal; the JOG was ambushed with firearms by Ronni's group at a position near Isuna where a Police Post is currently located; the JOG withdrew to Kolina village when it was ambushed but Palu Buake went missing; John Alven was at Vunusa village when he heard gunshots from the direction of Isuna, and a while later saw Palu Buake being taken by a group of armed men moving towards Duidui village. He saw Mathias Pese in that group and he knew Palu Buake; at about 10am. that day, Ephraim Rongomilepo saw Palu Buake with Ronni, Robert Mou, Koroi and a person known as Doctor at Duidui village. Palu Buake was naked, his hands were tied, a wound above his right eye was bleeding and that he looked unwell; Later, Ephraim Rongomilepo saw Mathias Pese, Andrew Korua, Christopher Sade, Saele and Ronni took Palu Buake to Ngalimala Beach. They took two spades along with them; when they arrived at Ngalimala beach, Mathias Pese, Christopher Sade, Andrew Korua and Saele cut sticks of about a metre in length and assaulted Palu Buake with those sticks until Palu Buake died; Mathias Pese, Christopher Sade, Andrew Korua and Saele then dug a hole with the spades and buried the body of Palu Buake in it after Mathew Raisavi said a burial prayer; Ephraim Rongomilepo also took part in the burial of Palu Buake because Palu Buake was his nephew and that Andrew Korua and Saele threatened to shoot him if he did not help them with the burial.

There is evidence that Mathias Pese assaulted Palu Buake with a big stick of about a metre in length. He must have known that beating Palu Buake with that stick would probably cause the death of or grievous bodily harm to Palu Buake. There is evidence that Mathias Pese was part of the group of men who took Palu Buake from Isuna to Ngalimala by force, without his consent and without lawful excuse.

It is not relevant that I should consider the issues regarding the inconsistencies in the evidence and the credibility of witnesses at this stage. That will be done later after I hear final submissions from the Prosecution and the Defence Advocates. There is evidence capable of supporting a conclusion beyond reasonable doubt that Mathias Pese is guilty of murder and abduction.

The application by the defence to acquit the Accused on the basis that there is no case to answer is dismissed. I order accordingly. The accused has a case to answer.

Francis Mwanosalua
Puisne Judge