THE COURT OF APPEAL OF SOLOMON ISLANDS

NATURE OF JURISDICTION:	Appeal from a judgment of The High Court of Solomon Islands (Palmer J.)
COURT FILE NO.:	Criminal Appeal Case No. 4 of 1996
DATE OF HEARING:	23 April 1997
DATE OF JUDGMENT:	
THE COURT:	KAPI, (Ag) P., Williams JA, Goldsbrough JA
PARTIES:	JOEL NANANGO
	V
	REGINAM
ADVOCATES:	
Appellant:	Mr. A. Radclyffe
Respondent:	DPP
KEY WORDS:	Caution statement - Admissibility - Judges' Rules
EX TEMPORE/RESERVED:	Reserved
ALLOWED/DISMISSED:	Dismissed
PAGES:	1 - 5

IN THE SOLOMON ISLANDS

COURT OF APPEAL

Criminal Appeal Case No. 4 of 1996
(High Court Criminal Case No. 430 of 1996)

Kapi P (Ag)
Williams JA
Goldsbrough JA

Date and Place of hearing: 23 April 1997

Date of delivery of Judgment:

BETWEEN

JOEL NANANGO
Appellant

AND

REGINAM
Respondent

Judgment of the Court

The appellant was convicted before the High Court on 12 December 1996 of murder contrary to section 193 of the *Penal Code*. By notice of appeal dated 17 December 1996 he appeals against conviction on the grounds set out in that notice.

The first three grounds of appeal, as set out in the notice of appeal, concern the admissibility into evidence of the appellant's statement under caution made to the police on 31 May 1996. The admissibility of the statement was canvassed before the learned trial judge and ruled upon on 13 November 1996. In brief, the appellant contends that the form of caution used by the police was defective in that the police did not communicate the right to remain silent and that, since the interview took the form of questions and answers, both the

questions and the answers should have been recorded whereas only the answers received appear in the statement.

The Judge's Rules of the English High Court, once applied in the Solomon Islands, were replaced by rules issued by Daly CJ in the early 1980's. These rules are essentially the same as the English rules but have the added advantage of Pidgin translations of the various cautionary statements. The relevant caution contains the important element of the right to remain silent which, it is contended for the appellant, was missing in this case. Whilst the learned trial jduge did not entirely agree with this, he did find that "the caution may not have been accurate" and resort was made to considering the court's discretion and to whether to admit the statement. His Lordship applied the appropriate test and came to the conclusion that the statement should be admitted.

Whilst the learned trial judge made no reference to the Solomon Islands rules on interviews he did refer to the former English position and did consider the implication of failing to inform the accused of the right to silence. Having applied the correct test, albeit without specific reference to the Solomon Islands rules, we cannot find any ground for interfering with the exercise of this discretion.

There remains the question of the lack of recording of questions. This has the potential of creating injustice, but no actual injustice was caused in the instant case. There is no substantial challenge to the effect of the statement as recorded. No question of unfairness arise from this consideration.

To avoid any recurrence of this situation, consideration should be given by the Chief Justice to republishing the Solomon Island Rules as published by Daly CJ, modifying where appropriate the pidgin used to take account of current usage.

The next ground of appeal (expressed at grounds 4 to 6 of the appeal) is that of the weight to be attached to certain evidence. Whilst discrepancies exist in the evidence adduced, none of these discrepancies brought to the attention of this court for consideration go to the admitted fact that there were only three people in the room at the time of the infliction of the fatal wound, and that only the accused was in a position to have inflicted that wound.

Reference was also made to the evidence of the accused's demeanour after the incident with the knife as observed by two prosecution witnesses. Each gives an account of the accused's disposition at the time they encountered him, each independently and at different times. The learned trial judge clearly had similar submissions before him and deals with the point in his judgement. We do not find that the learned trial judge did any other than consider the evidence presented before him and attach the weight he deemed appropriate to it. We cannot find any error by the trial judge in this regard. Such is the function of a trial judge, and not the appellate tribunal save in exceptional cases. This is not such an exceptional case.

Ground 7 in the notice of appeal contends that the learned trial judge made an assumption that the admissions made by the appellant with regard to his stabbing of the deceased were evidence of malice aforethought. This is not supported by the judgement in the lower court. From that judgement it is clear that the admissions merely go to confirming the trial judges' conclusion that the fatal wound was indeed inflicted by the appellant.

The evidence of intention to cause death or grievous bodily harm (ground 8) is considered by the learned trial judge at page 16 and onward of the judgement. In the course of determining certain findings the phrase "most likely" appears and this is a further ground of appeal. Whilst the court agrees that a criminal conviction based on findings in such a manner to essential elements could not be supported, it is not incorrect when considering the matter as a whole to make various ancillary findings and express them in this way. It is not fatal, for example, to this conviction that the trial judge concluded (at page 8 of his judgement) "most likely she was stabbed in the heat of the argument." Whether she was stabbed in the heat of the moment or not does not affect the conclusive finding that it was the accused who stabbed her, and the same principle applies in relation to the finding as regards which knife was used.

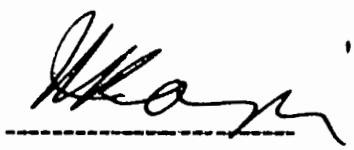
The rejection of the defence of accident (ground 10) can be dealt with shortly with reference to the accused's cautioned statement where he says "I held up the knife with my right hand and I stabbed my wife", in the same statement where the accused make the only assertion of accident. The learned trial judge quite correctly dealt with this at page 18 of his judgement, and we cannot find any error in this regard.

The final ground of appeal relates to the findings of the trial judge with regard to provocation, dealt with from page 19 of the judgement and on. It is accepted by the appellant that the learned judge applied the correct test to this issue. It is accepted that in applying that test, the trial judge applied it in an appropriate way. His findings were findings that were open to him based on the evidence presented. Consideration of the judgement shows that not only were the appropriate tests applied but they were correctly applied. It is

not the function of an appellate court to override a finding properly open to a trial judge. It is common ground in this appeal that the correct tests were applied and that the findings were findings open to the trial court. Taking into account the advantages the trial judge has over the appellate court in having heard the evidence and seen the witnesses, even were it so minded to replace that finding it is well established that an appellate court should not do so.

The appeal is accordingly dismissed.

By The Court



(Acting President)

Delivered in open Court on Tuesday
20 May 1997 by Justice S. Smyth-K
for the Court of Appeal.