

REGINA -v- KONG MING KHOO

High Court of Solomon Islands

(Commissioner: R. D. Chetwynd)

Criminal Case No. 15 of 1991

Hearing: 1st and 2nd October 1991

Judgment: 3 October 1991

F. Mwanasalua, DPP for prosecution

L. Taffe for the Defendant

**MR CHETWYND:** The Defendant has been charged with soliciting to murder. The particulars are that between 30th April 1991 and 16th May 1991, in Honiara, Kong Ming Khoo solicited George Fakarangi to murder Anthony Bara.

There is no argument that solicit carries anything but its natural English meaning. Thus, put at its simplest, the prosecution must prove that the Defendant tried to persuade George Fakarangi to kill Anthony Bara. The law was accurately put by Mr Mwanasalua in closing and Mr Taffe has conceded that, in general terms, he has no argument with the prosecution on the law.

I can also say that certain facts are agreed as well. These are; that the Defendant was a remand prisoner at Rove Prison; that George Fakarangi was a Prison Officer at the same prison; that a sum of \$200 was passed to George Fakarangi on 30th April and that a sum of \$5,000 plus a hyperdermic syringe, hyperdermic needle, ordinary needle and tube of supa-glue was handed to George Fakarangi by the Defendant's brother on 16th May 1991.

That is as far as any agreement goes. The Defendant relates a totally different version of events from the main prosecution witness, George Fakarangi.

The Defendant, Mr Khoo, says that he did give money to Fakarangi for favours, or for being given extra privileges. His evidence also indicates that more than money changed hands for these favours. At one stage during his remand the Defendant became very depressed and contemplated suicide. The second payment of \$5000 was made to ensure, amongst other things, that the Defendant had the means to commit suicide. It was part of an agreement between the Defendant and Fakarangi whereby the Defendant would pay \$5000 per week as a bribe to ensure his special privileges continued during the remand.

Fakarangi's evidence puts a different complexion on the "agreed" facts. He says the \$200 was unsolicited and that the \$5,000 was part payment of a bribe for him to kill Anthony Bara, another prisoner and the Defendant's co-accused in other serious charges.

I hasten to add that there are other differences in the evidence of these two men and I have merely related the main differences in so far as they relate to the charge of soliciting to murder.

I have to say that I do not accept all of the Defendant's evidence. To suggest that he would pay \$5,000 per week to maintain his privileges stretches the bounds of credulity. Clearly, from the evidence Mr Khoo was quite prepared to bribe people to achieve what he wanted. Quite clearly the sum of \$20,000 or \$30,000 he intended to pay over was for something more than the preservation of the privileged position in the remand wing. The suspicion must be that it was for the murder or intimidation of Anthony Bara. There is no doubt that despite what the Defendant says he was concerned that Bara would give evidence against him.

As I am rightly reminded by Mr Taffe I am not entitled to reach a decision on mere suspicions. The prosecution must prove beyond reasonable doubt the particulars of the charge. The main evidence from the prosecution was by Sgt. George Fakarangi.

I have to say that I did not accept all his evidence either. The evidence I heard showed that this witness had made several statements to the Police. He embellished each one with more details. His reason for this was that he had a lot on his mind and there was too much to remember. I cannot accept that. These were not insignificant details he was adding. The impression is that he was not being wholly truthful with the Police. I believe that his subsequent statement about supa-glue and injecting food with poison was invention to cover the discovery of what was in the package handed to him by the Defendant's brother. I believe he was accepting bribes, realised the seriousness of his position and tried to protect himself. It should also be remembered that he did not report the bribe of \$200 for several days. He says that he didn't because he was not sure he was being bribed. If the \$200 was unsolicited as he says he must have realised it was a bribe and he should have reported it immediately.

I have to decide this case on evidence which is tainted from both sides. I cannot believe all that Fakarangi tells the Court and I cannot believe all I am told by the Defendant.

As I have said the prosecution must prove it's case, not the Defendant. He is presumed innocent until it is proved beyond reasonable doubt that he committed the crime alleged. It boils down to credibility. My difficulty is that the only credible evidence comes from witnesses who can say nothing from first hand knowledge of the actus reus of the crime alleged.

As I have said I can have suspicions as why such a large sum of money was paid over and promised. There can be no doubt that a large sum of money was paid over. That fact alone does not constitute the offence alleged. The prosecution must prove that the Defendant actually tried to enlist the help of Sgt Fakarangi to murder Anthony Bara.

There are other credible reasons why the money could have been paid over. I say credible but not necessarily likely. But the doubt left in my mind by the credibility of Sgt Fakarangi must be exercised in favour of the Defendant. I must find then that the evidence of Sgt Fakarangi is so seriously tainted that I cannot rely on it. As I cannot rely on it there must be reasonable doubt as to the Defendant's guilt and I must acquit him.

(R. D. Chetwynd)

COMMISSIONER OF HIGH COURT