

REGINA -V- MOSES HAITALEMAE, SIMON AWA, EDWIN WATEINAOMAE WAHU AND SANIEL AWA

HIGH COURT OF SOLOMON ISLANDS
(F.O.KABUI, J.)

Criminal Case No. 210 of 2001

Date of Hearing: 15th, 16th and 17th May 2002

Date of Ruling: 19th November 2002

DPP in person for the Crown

Mr I. Kako for the 1st and 4th Accused

Mr P. Lavery for the 2nd and 3rd Accused

RULING

(Kabui, J): Accused 2, Simon Awa "the accused", has challenged the admissibility of the Caution Statement he made to the Police on 5th April 2001 at Auki Police Station. He alleges that he made that statement without his free will. He gave evidence in Court about what happened to him at Auki Police Station. He said he was arrested at his village on 1st April 2001 and taken to Maka Police Station and then taken to Auki from there. He arrived at Auki and placed in Police custody. He remained in custody for one week before the Police interviewed him. He said he did not recall the date of the interview but did recall being taken by Police Officer Timothy Apeasi from his cell to the interview room. In that room he sat on a chair. Apart from Police Officer Timothy Apeasi, a female officer was also in that same room. The interview began with Timothy Apeasi asking him to tell his story. He told his story and then was told to sign it as the true record of his story. Timothy Apeasi had recorded his story. He said he had not been cautioned. He said the female officer signed his statement as well as Timothy Apeasi the recording officer. He said Timothy Apeasi then read his story back to him. After that Sergeant Faufaka came into the interview room and asked for the statement. Sergeant Faufaka looked through it and then slapped him on the left cheek saying he should not be lying or else he would be panel-beaten. Sergeant Faufaka also threw a chair in the interview room in his presence. Sergeant Faufaka then told Timothy Apeasi not to accept the accused's statement. He said he was taken to another room where he gave another statement. He said he was cautioned. He said Sergeant Faufaka had told Timothy Apeasi to change the story before he left the room. He said he signed the caution statement though it was different from the first one. He said he was afraid to argue. The Prosecution called three witnesses. They were Sergeant Faufaka the officer in charge of the investigation, Timothy Apeasi, the recording officer and Jennifer Labute'e, the witnessing officer at the interview. Sergeant Faufaka said in evidence that he had told Timothy Apeasi to interview the accused. He said the interview took place in the afternoon but he could not recall the date. He said he was in the interview room for less

than 3 minutes and then left. He denied the allegation made by the accused against him. Under cross-examination by Mr Lavery, he said that being the officer in charge of the case it was his duty to see that the case reach the Court quickly. He denied being angry if the accused was not telling the truth as being suggested by Mr. Lavery. He said he was neutral and not under pressure as suggested by Mr. Lavery. He denied the allegation made against him by the accused. Timothy Apeasi described what took place. He said the interview commenced at 1:00 pm on 5th April 2001 in the CID Office in the presence of himself and Jennifer Labute'e. He, Jennifer Labute'e and the accused were all seated at a table in the CID room when he conducted the interview. He said he cautioned the accused. That is to say, he told the accused that he could remain silent or could tell his story at his will but if he chose to tell his story his story would be written down and could be used against him in a court of law. He said the accused did tell his story and he recorded it down as the accused was speaking. He said he read it back to him. After that the accused signed it and then counter-signed by himself and Jennifer Labute'e. He said the accused did not alter the caution statement nor refuse to sign it. He also denied the allegation made by the accused against himself and Sergeant Faufaka. Under cross-examination by Mr. Lavery, Timothy Apeasi recalled the interview was conducted on 5th April 2001. He said the first page of the caution statement was already typed out. He said this was normal practice. He confirmed that he recorded only one statement from the accused. He said he had not discussed the case with Sergeant Faufaka before he conducted the interview. He denied that Sergeant Faufaka was unhappy with the accused's statement and so directed that another statement be taken from the accused. He denied the allegation made against Sergeant Faufaka. Special Constable Jennifer Labute'e said in evidence that Sergeant Faufaka was in the CID room at 12:30 but left for lunch. She said the interview commenced at 1:00 pm on 5th April 2001 and finished at 1:50 pm the same day. She denied the allegation made by the accused. Under cross-examination by Mr. Lavery, she said the accused made only one statement. She said she was in the CID room in the morning as well as in the afternoon. She said she was still in the CID room when Sergeant Faufaka left at 12.30 for lunch. She said the accused had not come to the CID room until 1:00 pm. She said Sergeant Faufaka came into the CID room only once. She denied the allegation the accused made against Sergeant Faufaka. On being re-examined by the Director of Public Prosecutor, she said Sergeant Faufaka returned from lunch at about 1:50 pm. She said Sergeant Faufaka then told Timothy Apeasi to record a statement from the accused and left the CID room.

The Law

The law on this subject is well known in this jurisdiction. The burden of proof is upon the Prosecution to prove beyond reasonable doubt that the caution statement made by the accused, which is challenged, was so made voluntarily by the accused. (**See Regina v. Nelson Keaviri, Julius Palmer Mare Kilatu, Keto Hebala and Zomoro**)¹ and the cases cited therein by Muria, C. J. and **Regina v. Ben Tungale, Brown Beu, Nelson**

¹ (*See Regina v. Nelson Keaviri, Julius Palmer Mare Kilatu, Keto Hebala and Zomoro*) (Criminal Case No.20 of 1995)

Oma, James Sala, Louis Lipa, Charles Meaio and John Teti² where Awich, J. cited English authorities on the subject). The Court has discretion to reject a caution statement, which falls foul of the Judges' Rules. What the judge should do in cases such as this is to treat the Judges' Rules as doing no more than being Rules prescribing in a general way a standard of propriety (See *R. v. Lee*)³. There the High Court of Australia said,

...“ As has already been pointed out, the protection afforded by the rule that a statement must be voluntary goes so far that it is only reasonable to require that some substantial reason should be shown to justify a discretionary rejection of a voluntary admission. The rules may be regarded in a general way as prescribing a standard of propriety, and it is in this sense that what may be called the spirit of the rules should be regarded. But it cannot be denied that they do not in every respect afford a very satisfactory standard. Their language is in some cases imperative and in others merely advisory: sometimes the word “must” is used: sometimes the word “should”, and the tendency to take them as a standard can easily develop into a tendency to apply rejection of evidence as in some sort a sanction for a failure by a police officer to obey the rules of his own organization, a matter which is of course entirely for the executive. It is indeed, we think, a mistake to approach the matter by asking as separate questions, first, whether the Police officer concerned has acted improperly, and if he has, then whether it would be unfair to reject the accused's statement. It is better to ask whether, having regard to the conduct of the Police and all the circumstances of the case, it would be unfair to use his own statement against the accused”....

The Court then cited the judgment by Street, J. in *R. v. Jeffries*⁴ (1947) 47 S. R. (NSW) 284 as the correct exposition of the whole matter. At pages 311-312 of that judgment, Street, J. said,

...“It is a question of degree in each case, and it is for the presiding Judge to determine, in the light of all the circumstances, whether the statements or admission of the accused have been extracted from him under conditions which render it unjust to allow his own words to be given in evidence against him. The obligation resting upon Police officers is to put all questions fairly and to refrain from anything in the nature of threat, or any attempt to extort an admission. But it is in the interests of the community that all crimes should be fully investigated with the object of bringing malefactors to justice, and such investigations must not be hampered. The object is to clear the innocent as well as establish the guilt of the offender. They must be aimed at the ascertainment of the truth, and must not be carried out with the idea of manufacturing evidence or extorting some admission and thereby securing a conviction. Upon the particular circumstances of each case depends the answer to the question as to the admissibility of such evidence”...

² *Regina v. Ben Tungale, Brown Beu, Nelson Oma, James Sala, Louis Lipa, Charles Meaio and John Teti* (Criminal Case No. 12 of 1997)

³ (*See R. v. Lee*) (1950) 82 C. L. R. 133 at 154

⁴ *R. v. Jeffries* (1947) 47 S. R. (NSW) 284

Assessment of the Evidence

This case is to be decided on the evidence of the accused as against the evidence of three Police Officers. It is really deciding which side was telling the truth. The accused's allegation of assault against him by Sergeant Faufaka is the mainstay of his case. The throwing of the chair by Sergeant Faufaka was more or less supplementary to the assault. However, the combined effect of these two events, according to the accused, was to instill fear in him so as to make him sign a caution statement which was incriminating but which was acceptable to Sergeant Faufaka. Both Timothy Apaesi and Jennifer Labute'e were adamant under cross-examination by Mr. Lavery that the accused made only one caution statement and not two as alleged by the accused. They both said that the caution statement was taken after the interview commenced at 1:00 pm on 5th April 2001 in the CID room. They both said the interview was carried out upon the instruction of Sergeant Faufaka. According to Jennifer Labute'e, the instruction to do this came from Sergeant Faufaka prior to the interview before he went for lunch. However, under cross-examination she said Sergeant Faufaka returned at 1pm after lunch. Again, under cross-examination she said that Sergeant Faufaka entered the CID office only once, which would suggest that he resumed duty at 1pm. In response to re-examination by the Director of Public Prosecutions, she said Sergeant Faufaka returned at 12:50 pm. These answers are contradictory. Jennifer Labute'e was rather confused about time. Accordingly to her evidence, Sergeant Faufaka seemed to have given the instruction to Timothy Apeasi at 12:30 before he left for lunch. Then he called back after lunch and repeated the instruction to Apeasi in the CID room. However, she was certain that Sergeant Faufaka left for lunch at about 12.30. She was also certain that Sergeant Faufaka returned to work at about 12.50pm to 1pm. There is really no dispute that the accused was brought to the CID room at about 1pm. It is therefore possible that Sergeant Faufaka might have called in the CID office again after lunch. Sergeant Faufaka admitted this fact. Timothy Apeasi brought the accused to the CID office only at 1:00 pm from the remand cell. If an assault was committed on the accused by Sergeant Faufaka, it must have been at 1:00 pm or thereabout. It could not have been at 12:30 pm or 12:50 pm because the accused was still in his cell at those times according to Jennifer Labute'e's evidence. Sergeant Faufaka said in evidence that he was in the CID office for less than 3 minutes and then left. He said he was not present when Timothy Apaesi was conducting the interview. He denied directing Timothy Apaesi to put aside a first statement and taking a fresh statement from the accused. Timothy Apaesi and Jennifer Labute'e confirmed this. The Prosecution witnesses also denied the allegation by the accused that Sergeant Faufaka assaulted him. If I believe the Prosecution witnesses the allegation made by the accused must necessarily be an invention by the accused. I had observed the accused in the witness box giving his evidence. He appeared to me to be a smooth-talker. I do not believe him. He did not indicate which part or parts of his caution statement were changed as a result his fear. He simply said he gave up and allowed the second statement to proceed as intended by Sergeant Faufaka. He said he signed it. He however did not attempt to reveal Sergeant Faufaka's conduct after the event to any of his

relatives who often visited him in his cell to give him food. He did not call any of them to confirm his story. Only the accused can say why he did not do this. My view is that what the accused alleged against Sergeant Faufaka did not happen. The Prosecution has therefore proved beyond reasonable doubt that the accused did give his caution statement to the Police on 5th April 2001 on his own free will. I have no doubt in my mind about this. The accused's caution statement can therefore be admitted in evidence.

F. O. Kabui
Judge