

[HIGH COURT OF SOLOMON ISLANDS]

RONLY OETA AND ALLAN MAELALIA -v- REGINAM

Honiara: Brown J

Criminal Appeal Case No. 294 of 2003

Date of Hearing: 27th November 2003Date of Judgment: 04th December 2003

Christopher Ryan for the DPP
 The Public Solicitor for the Applicant Oeta
 Ishmael Kako for the Applicant Maelalia

Criminal Law - bail - principles when considering application - need to extend principles to take account of "ethnicity" and "police culture"

These two applicants have been charged with the murder of Sir Frederick Soaki, a Tikopian early in 2003 at Auki, Malaita where both were stationed as police with one Edmund Sae. Edmund Sae has a warrant outstanding for his arrest on account of the killing, and his escape from lawful custody while in Rove Prison.

Cases cited Karawaisi Taisia v. DPP (unreported crc266/2001 dated 9 October 2001 by Kabui, PJ).

Legislation: Criminal Procedure Code (cap. 7) s. 106.

Application for bail

Brown J: Whether or not it is probable that the accused will appear in Court at the trial date is not the only consideration for this court. The legislative powers of the court in relation to bail are found in the Criminal Procedure Act 106.

Other matters for consideration have been adopted from overseas jurisdictions. Of course the principles have become part of our adopted law by virtue of Constitution Schedule 3 (2). (Adoption of principles and rules of the common law and equity).

My brother judge Kabui impliedly acknowledged the legacy when he referred to Archbold, Criminal Pleading, Evidence & Practice, 36th edit in the case of Karawaisi Taisia v. DPP (unreported CRC 266/2001, dated 9 October 2001). It must be remembered, however, that Great Britain at the time of our Independence in 1978 was principally a homogeneous society where ethnic diversity had not the same impact as here. In the Solomon Islands the ethnological differences from Island group to Island group are a source of pride and differentiation. I venture to

suggest, in England in 1978, whatever your background, bail application would reflect the principles embodied by Archbold and replicated in our courts.

But our very ethnicity must call for consideration of that factor on a bail application.

The Crown, in opposing bail, read an affidavit of Detective Superintendent Salathiel Sau the Officer in charge of the investigation into the execution style killing of the late Sir Frederick Soaki. In cross examination by Counsel for the applicant Maelalia when seeking to elicit the basis of the Superintendents fear expressed in his affidavit that Maelalia would intimidate prosecution witnesses, he said "*They are onetoks. The people of Malaita. If Edmund (Sae) heard they were released (on bail) then he may come back to them. No body will know*".

The Superintendent clearly brings into issue-

- (a) the ethnicity of the applicant and witnesses
- (b) the fact that the other suspect Sae is also a Malaitan
- (c) the possibility of a secret liaison (by virtue of their ethnicity)

He said, as further evidence of this ethnicity, Allan Maelalia would only surrender to one of his own, his cousin/brother Dect. Inspector Robert Madeo. The allegation that prior to the surrender, Maelalia threatened to shoot anyone trying to arrest him appears hearsay, but Sae had been arrested after negotiations so that the applicants affidavit wherein he says he accompanied his cousin brother to Honiara when requested, after the arrest of Sae does reflect that ethnicity. Maelalia was at his house in the village at Malaita at the time. Sir Frederick Soaki a Tikopian was not a Malaitan. Tensions were high in Honiara.

It would be naïve to ignore the ethnic tension created by this killing of Sir Frederick, especially when individual's actions are seen in this context of ethnicity. To say as Mr Averre does, that despite assertions by the Superintendent of fear, firearms, and intimidation there is nothing material to suggest these fears may be realized, tends some what to downplay the "ethnic troubles" and strict conditions cannot address this factor. Malaitan culture is indivisible from Malaitan obligation.

Strict conditions suggested include particular residency, with his Malaitan in-laws in Honiara. Those mentioned are policeman

It is common knowledge that the culture of the police has given public cause for complaint about their predisposition to offend. Part of RAMSI's brief has been to address this issue. Involved in the "*company culture*" or "*police culture*" has been a strong Malaitan influence. I am consequently not reassured by the fact that the surety, Constable John Maelalia or Inspector Robert Madeo are willing to house the applicant, both are part of the "*police culture*" with consequent obligations and "*pacts*".

One only has to realize that Edmund Sae escaped from custody in Rove Prison and was able to seek and obtain sanctuary in Malaita to take cognizance of Superintendent Sau's reference, under cross examination, explaining Maelalia's

statement when arrested. He said to the Superintendent that he too would have to be arrested. That "bond" the Superintendent said was because both Sae and Maelalia were posted to Auki Police Station. Both were Malaitan, both police.

So far as Ronnie Oeta is concerned Mr. Averre pointed to the nature of the evidence and allegations of one Justine Ma'asia a Special Constable of Rufoki village, West Fataleka, Malaita. Rather more the manner of the evidence given by Ma'asia, for Mr. Averre points to the possibility of the witness compromising himself (which I need not address) and the apparent change in his respective statements. Mr Averre argued that such "change" if that be the word, gives rise to the "exceptional circumstances" so necessary to find, in a bail application involving murder.

The second statement began

"I would like to make some correct stories in relation to this murder case to the late Sir Frederick Soaki. I am sorry to say that in my first statement which I gave to the Police was not fully correct because I am in fear to give my true stories to the Police because the suspect was not yet been arrested."

It is not clear whether Ma'asia is talking about Sae or Maelalia, although Maelalia was arrested on the 7 April so since the statement was made on 8 March 2003, one can presume "the suspect" was Sae. Of course, if there is shown to be discrepancies in the two statements, then they are a matter for the trial judge and what weight if any, he places on them. But for the purposes of this application, I am not satisfied any supposed variations or omissions in story from one statement to the next can be treated as "special circumstances" for this bail application. It does not appear to me to be within the normally accepted "circumstances" for it has been explained by the witness's introductory comments.

If any thing, the introductory comments give weight to my proposed need to recognize a "police culture" in these types of enquiries.

I propose, then to include the obvious national cultural imperative to recognize "ethnicity" as a factor in those types of bail applications. As well, since both applicants are Police Constables, I propose to accept that the "police culture" exists. Both then must be factors to consider when determining the difficult question of bail.

The Prosecution alludes to both of these factors in his summarizing up.

Malaitan witnesses -

Sae at large and dangerous

Bond between him and Sae

Two fold attraction

Sae expect to make contact.

Fears are real

Fears held are real.

I am not satisfied that restrictive condition could be imposed, on these two, in terms suggested that would allay the real fears of Superintendent Sau that if granted bail;

2.
 - iii. I fear that they will join up with Edmund Sae and commit further the offences together.
 - iv. That Sae together with each of the applicants have access to firearms.
 - v. That Sae is a suspect in the murder of Saeni Orea, committed after Sae's escape from Prison.
 - vi. That the applicants would intimidate prosecution witnesses who are from Malaita and well known to each of the applicants.

These fears arise from the fact of the applicant's ethnicity and the "police culture" reflected by Ma'asia, given in his 2nd statement.

"Sergeant Edmund Sae has told us that he is from Tikopia and he will kill him on behalf of SC's"

and later.

"I am very honest indeed that I do not have any plans to kill Sir Frederick Soaki. I am very afraid of Sgt Sae to refuse his requests of following his orders. I denied of having any knowledge of killing to Sir Frederick Soaki. I was not drunk at the time. I thought we might not end up in this way. I beg to forgive me for not follow the evil deeds and I did".

The combination of the two factors, the ethnicity and police culture, viewed in this way, satisfies me that bail should be refused. If one is to "drill down" through those adopted principles which the court should consider on bail applications, particularly consideration of the possible tampering with witnesses, the relationship with the proposed sureties, the possibility of absconding whilst on bail; then the applicants ethnicity; their police employment; are relevant factors for the court. (Of course ethnicity and police culture should not be confused with "custom" referred to in Schedule 3(3) of the Constitution).

No special circumstances have been shown to exist, justifying the grant of bail.

For the reasons that I have given I am satisfied about the apprehensions of the Superintendent.

Bail refused in both cases.

J.R. Brown
Puisne Judge

Director of Public Prosecutions for the Crown
The Public Solicitor for both Applicants.