

REGINA -v- ALBERT AUGUSTINE

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

Criminal Case No.251 of 2004.

Date of Hearing: 19th July 2004
Date of Ruling: 23rd July 2004

C. Ryan for the Crown.
L. Kershaw for the Accused.

RULING

Kabui, J. This is an application for bail by Albert Augustine also known as Albert Ray, the accused, filed on 24th June 2004. The accused is currently in custody at Rove Prison waiting to appear in the Central Magistrate Court on 22nd July 2004. The charge against the accused is the murder of William Suia, an act committed on 16th October 2002. There are also two lesser charges of assault causing actual bodily harm, committed against Benjamin Ngaovaka and the deceased, William Suia.

The brief facts.

The accused was a member of a group of men who assaulted the deceased for a period of time lasting an hour or more according to one eye witness. The deceased was alleged to have been a supporter of Harold Keke in the weather coast area of Guadalcanal. The deceased had surrendered his gun and was ready to give himself up to the Police when he met his death. The blows delivered to the body of the deceased when alive were punches, rifle butts and kicks. The accused punched the deceased on the right side of the body apart from threatening the deceased with his kitchen knife pulled out of his pocket. The assault on the deceased began at Ghaliatu village and continued until arrival at Malagheti village where the deceased collapsed and died. The accused was one of those who buried the deceased. The remains of the deceased had been exhumed and the cause of his death was said to be due to massive internal bleeding caused by the rupture of the spleen as a result of blunt force trauma to the left flank of the body.

The case for the accused.

Counsel for the accused, Miss Kershaw, had put the accused's case as being one that passed the special circumstances test. Counsel admitted the fact that the accused had been bailed before by the Magistrate Court in Honiara but breached one of the bail conditions preventing him from leaving Honiara or returning to the weather coast area of Guadalcanal. However, Counsel pointed out that the accused did what he did because his uncle with whom he was residing returned to the weather coast and he had no one to look after him. The accused went to the Police and they told him to contact the Public Solicitor's Office, which he did but was told that his Solicitor was not available. The accused rang the number given to him by RAMSI investigators but could not reach them. On hearing that RAMSI officers were visiting Malagheti village, he walked to that village and told Detective Constable Kabitana and RAMSI officer, Steve Simkin why he left Honiara. He then returned to Honiara with the Police. He again appeared in the Central Magistrate Court and was granted bail. One of the bail conditions was to reside with

Father Daniel at Visale. That bail condition was later altered to residing with his relative Lemmeck Den at Aruligo. The accused was then charged with the murder of the deceased and was remanded in custody to appear in the Magistrate's Court at a later date. Counsel also stressed that fact that the accused was a young person with no previous conviction and being in custody away from his relatives and amongst adult inmates in the Rove Prison would not be an environment conducive to a young person from a village setting and contrary to his wish to resume schooling, if possible.

The case for the Prosecution.

The Prosecution's case was that there was the inherent risk of the accused absconding and the possibility of contacting the other persons suspected of committing or being investigated for the same offence and together could interfere with witnesses. Also, the facts presented by the accused in his affidavit filed did not present a special or unusual circumstances scenario for consideration by the Court.

The decision of the Court.

The burden of proving special or unusual circumstances is upon the accused. The accused must show by evidence that his case presents special or unusual circumstances. Counsel for the accused did not give any guidance on this point in terms of case authority in this jurisdiction or elsewhere. One case that comes to mind in this jurisdiction in this respect is **Regina v. John Robu, Henry Faramasi, Lency Maenu'u and Peter Ka'abe**, Criminal Case No.28 of 1998. In that case, the accused had been charged with murder of the deceased and had been remanded in custody at the Rove Prison awaiting trial in the High Court. Whilst in custody, the June 5 coup in 2000 took place in Honiara. The Rove Prison was taken over by members of MEF resulting in the removal of the Superintendent of Prisons. Apart from that, the prison officers had also lost control of the Prison and the inmates inside the Rove Prison. The situation had become potentially explosive with brawls occurring between ethnic groups. In fact, one of the accused had been threatened with a knife by a prison officer. Some inmates had escaped but had been recaptured. It was stated in evidence that a mass break-out could not be ruled out, which eventually was the case. In His Lordship's ruling on 14th June 2000 at page 2, Palmer, J. (as he then was) said-

“...I commend Counsels for their honesty and sincerity before me in this application. I note that it had not been easy for them to come to this Court and make this application, knowing full well, that in normal circumstances such application would have been thrown out before they could be given a hearing. They have nevertheless come to Court, balancing the duty owed to their clients, with the duty owed to Court, to assist it reach a fair, just and correct decision in law...”

These remarks clearly demonstrated that that case did present special or unusual circumstances which called for bail to be granted with conditions and indeed bail was granted with conditions. Another situation warranting bail may be where the accused in a murder case is so ill that the prison authorities are not able to treat and care for the accused in the prison facilities and the accused wants to be looked after by his or her family whilst receiving medical treatment in a nearby hospital etc. There may well be other situations falling within the special or unusual circumstances scenario.

Clearly, the circumstances set out in the affidavit filed by the accused justifying his application for bail cannot be described as presenting special or unusual circumstances in any way than being an ordinary case for wanting bail to be granted. Murder is a serious offence. Although the accused was not the only person who assaulted the deceased, he was one of them and may be charged

jointly with the others when those others are arrested and charged with the commission of the same offence. There is evidence to connect the accused with the murder together with the admission the accused made under caution on 26th March 2004. Conviction is likely to be entered against the accused if the accused is committed for trial in the High Court and pleads guilty or convicted after trial. There is a prima facie case against the accused on the evidence before the Court. The risk of absconding or interfering with witnesses cannot be overlooked by the Court. The possibility does exist. What is there to tip the scale in favour of the accused may I ask? Much had been said by the Counsel acting for the accused about the positive side of the accused's conduct following the breach of the "residence condition" and returning to Honiara with the Police. The difference though is that at that time the accused was being charged only with assault causing actual bodily harm. Although the accused had demonstrated some element of honesty in his previous conduct before the murder charge was laid against him, that matter alone cannot be sufficient to convince me to grant bail. I have noticed that Mr. Francis, the first surety had to return to the weather coast, followed by the accused in breach of one of the conditions of the accused's bail conditions. The second surety was Father Daniel who was later replaced by Lemmeck Den. The present proposed surety is Mr. Sele of Aruligo. The situation with sureties is rather flux in that surety regularly changes from one to another. This, to my mind, shows that there is really no one to act permanently as surety for the accused. This does not surprise me at all because Aruligo for most people from the weather coast is only a transit point to and from the weather coast. Aruligo is the only weather coast community west of Honiara which is close to Honiara. Apart from the first settlers, the others from the weather coast do not live there permanently. I have to be convinced that Mr. Sele, the accused's uncle can really act as a surety. Mr. Sele, though was present in Court was not called to tell me about himself and whether he was willing to act as surety for the accused. I was therefore left in doubt about Mr. Sele's suitability and credibility as a citizen who could act as a good surety. In balancing the interest of the community or the public interest for that matter against the liberty of the accused, the interest of the community or public interest must prevail. I therefore refuse to grant bail. The other matter raised in the accused's favour was that he was a young person under the Juvenile Act (Cap.14) (the Act) and therefore a different regime would apply to the accused. I would agree that the accused is a young person, though without a birth certificate. Section 5 of the Act does in my view envisage detention of a young person if the charge against that young person concerns a grave crime such as murder under the Schedule to the Act. Section 8(1) of the Act however makes it an obligation for the Court, in the case of remand or committing for trial, to commit the young person into a place of detention or to the care or custody of any person named in the commitment to be detained or cared for during the period of remand or until trial. There being no place of detention for young persons in Solomon Islands, the obvious remaining alternative is custody of any suitable person. Section 8 of the Act is in my view not about bail. It is about detention of young persons even when bail is refused. The court in section 8 being a remand or committing court must necessarily mean the Magistrate Court for the purpose of that section. Even if bail is refused by me, the accused may press for detention elsewhere than at Rove Prison on the basis that he is a young person under the Act. The High Court does not seem to have jurisdiction to order detention under this section. His uncle Mr. Sele who resides at Aruligo may well be a suitable person into whose custody the accused will be placed or someone else may qualify for the purpose of section 8. Whilst section 8 of the Act would appear to be bail in disguise, I do not think so because section 8 appears to be mandatory in the case of young persons whereas bail is general and discretionary. Apart from this issue, the order of the Court is that the application for bail is refused.

F.O. Kabui
Puisne Judge