

**CHARLES TAHIURU AND JOHN PERIPORO -v- REGINA**

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

Criminal Appeal Case No. 125 of 2005

Date of Hearing: 21<sup>st</sup> September 2005

Date of Judgment: 27<sup>th</sup> September 2005

*J. Chaudhi for the Crown*

*D. Tigulu for the Appellants*

### **JUDGMENT**

**Kabui, J:** The appellants in this appeal are two former police sergeants who had been found guilty of demanding with menaces by the Magistrate Court sitting in Honiara in 2004. They are Charles Tahiuuru and John Periporo. The Magistrate sentenced Periporo to imprisonment for three and half years and Tahiuuru for two years and three months respectively. Each of them has appealed against his conviction and sentence.

#### **Grounds of appeal.**

The ground of appeal against conviction is that in each case, conviction was against the weight of the evidence adduced in their trial in the Magistrate Court. The ground of appeal against sentence is that the sentence imposed in each case was manifestly excessive.

#### **Appeal against conviction and the evidence adduced by the Crown.**

The evidence adduced by the Crown in the trial is that Tahiuuru and Periporo arrived by canoe on 18<sup>th</sup> January 2001 in Narikeara village in Malaita, accompanied by several other men all carrying guns. The other men were allegedly members of the Marau Eagle Force (the MEF). The men drank beer in the night. News of their arrival had spread in that village. Lino Rahaur said that one of the men told him that they with Tahiuuru and Periporo had come to ask for compensation for some alleged wrong committed on the beach and told him to listen out for the bell. He told Rahaur that when the bell rang in the morning, Lino Rahaur should make his way to the meeting house. Lino Rahaur, when he heard the bell, did make his way to the meeting house where the villagers had gathered. Periporo then spoke, saying that they had come for three things, namely, to take away Martin Amehana and Emmanuel Kōna, to remove Lino Rahaur's hunting rifle and to demand compensation. Periporo said that \$2,000.00 must be paid within one hour. Lino Rahaur then asked

for time to pay. He collected the money and paid Periporo \$2,000.00. He said he paid the money because he was afraid of their guns and he did not want them to take away Martin Amehana and Emmanuel Kona. He said the whole village was scared of them. Martin Amehana's evidence was that Periporo told them that \$1000.00 were for the unauthorized use of MEF's name by Martin Amehana to commit offences and the other \$1000.00 was for damage done to a house and swearing. He said Periporo demanded that \$2,000.00 must be paid within one hour.

Stephen Norahoasi said the men stayed in his house and put their guns in the house. He said they drank beer that night and remained till morning. He said that in the night, the men spoke of burning the houses. He said everyone in the village was afraid of the men. Peter Raike said that he contributed to the collection of the compensation payment because he was afraid. He said Periporo was drunk and cross at that time.

Periporo in his defence said that he did not demand the \$2,000.00 with menaces or use any force to secure the payment of the compensation. Tahuru elected not to speak and remained silent.

### **What does the law say about demanding with menaces or by force?**

I think it is relevant to cite section 295 of the Penal Code to see what it says. The section states-

**“Any person who with menaces or by force demands of any person anything capable of being stolen is guilty of a felony, and shall be liable to imprisonment for five years”.**

This section is almost word for word of section 30 of the Larceny Act, 1916 of the United Kingdom except the omission of the words, “with intent to steal the same”. I think even with the omission of the above words, the element of intent has been retained by implication in section 295 above because taking anything with menaces or by force without a claim of right is nothing less than stealing it. The Magistrate did not receive any evidence about any claim of right under custom for the purpose of the trial. That point does not arise here.

The law says that the menaces employed in the demand do not always have to involve demand by express demand or threat. It can be a request provided the behaviour of the person making the request and the circumstances in which the request is being made are such that an ordinary reasonable man would understand that the demand is for money being made on him and is accompanied by menaces. It does not matter that the menaces are direct or veiled so long as they affect the balance of the ordinary mind to be upset, the

offence is committed. (See **R v. Hans Paul Studer** (1916) 11 Cr. App. R. 307 and **R. v. Collister & Warhurst** (1955) 39 Cr. App. R. 100).

### **The conviction of Tahiuuru and Periporo was justified on the Magistrate's finding?**

The Magistrate was entitled to disbelieve the evidence of Periporo and the other defence witness. He was the trial Magistrate. He was in the best position to have observed the Crown witnesses give their evidence and would have assessed the behaviour of each witness. He believed the story told by the Crown witnesses and rejected the version of facts adduced by the defence. I cannot substitute myself for the trial Magistrate. I cannot therefore interfere with his finding as to the credibility of the Crown witnesses as against the defence case.

The evidence against Tahiuuru and Periporo is undisputed as to the demanding of compensation. What is in dispute though is whether or not the demand was accompanied with menaces with the intention of stealing the money being demanded. Both Tahiuuru and Periporo denied using any form of menaces with the intention to stealing money from Lino Rahauro. The fact was that Lino Rahauro's son Martin Amehana had been using his father's hunting rifle to cause disturbance in the village. There had also been swearing at two village women and a breaking and entering of a local store in the village. Tahiuuru and Periporo had gone to the village to arrest Martin Amehana and Emmanuel Kona in relation to those matters. In fact, no arrests had been made.

Demanding compensation in custom cannot be a claim of right to property under section 8 of the Penal Code because a claim for compensation is the atonement for a custom wrong. It is obtained by talking and agreeing between the parties in the dispute. Atonement payment is sometimes obtained by using harsh words if the guilty party is not co-operating or deliberately stalling the talking to avoid liability. The party demanding payment of atonement does not have a claim of right to ownership of anything until the atonement in kind is handed over to him. A claim of right under section 8 of the Penal Code therefore does not have a place in the custom practice of atonement. The term "**compensation**" is misleading because it implies commercial value as being a part of the atonement and it increases with time and the cost of living standard index. There is no standard measure for the amount of atonement to be paid in any particular circumstance. It all depends on the negotiation and agreement of the parties involved. It varies from case to case and community to community. Menaces and force are not supposed to be used but at times harsh exchange of words do occur to persuade the offending party to comply within a reasonable time.

Clearly, Periporo did not have a right of claim to anything at the time he demanded payment of the \$2,000.00. Atonement for the unauthorized use of the name of the Marau Eagle Force is not a custom wrong and attracts no act of atonement. It was a creation of Tahiuuru and Periporo. Swearing at the two village women is a custom wrong and could be a criminal offence also. However, the manner in which the \$2,000.00 payment was extracted from Lino Rauhauro was not and could not be justified under custom. Lino Rauhauro had said in evidence that he paid the money out of fear when Periporo demanded it.

Tahiuuru did not demand the payment of \$2,000.00 but he was present with Periporo when Periporo was making the demand. He was part of that decision to demand payment. Both of them had brought with them members of the Marau Eagle Force to give them backing and to show that they meant business. It is irrelevant for Tahiuuru and Periporo to justify their action by explaining that they went to the village to sort out events that happened there. It is their menacing behaviour which caused Lino Rauhauro to hand over \$2,000.00 that matters. It caused fear in the mind of Lino Rauhauro and others feeling sorry for him, contributed towards that sum of \$2,000.00.

It is also irrelevant for them to raise the application of the Amnesty Act, 2001 because the offence they committed had nothing to do with any operations against the Isatambu Freedom Movement before 7<sup>th</sup> February 2001. The offence was committed against a civilian in a village on Malaita. Whilst it might have been necessary to carry arms when crossing the sea to Malaita and that they were police officers, they did not investigate the case they said they had gone to investigate. The fact that Periporo had told the Magistrate that he had taken statements from some women and that the file went missing was not believed by the Magistrate. Whilst their motive might have been what they said, they behaved unlike police officers. They were not in uniform and had been drinking the night before. It was not their duty as police officers to demand compensation from Lino Rauhauro in the manner they did. At least, Periporo was still intoxicated when he demanded the payment of \$2,000.00.

I do not see any reason why I should differ from the conclusion reached by the Magistrate on the evidence in finding Tahiuuru and Periporo guilty of demanding with menaces. Their appeal against conviction is dismissed.

#### **Appeal against sentence.**

The Magistrate took the view that Tahiuuru and Periporo abused their office as police officers. They took advantage of being police officers to do what they did. This was the aggravating factor although they were first offenders. I agree with the Magistrate. However, it should not be forgotten that the offence was committed when Solomon Islands was in turmoil. The Police Force was under

funded in all respects and its command structure was infiltrated with rogue police officers who had turned bad because of the failure of the Government to take control of the situation obtaining at that time. Crimes committed were not attended to due to lack of funding and private funding for certain police operations were often resorted to by the complaining side. The situation at that time was such that it was just the right recipe for the rogue police officers to side tract and did things that were not strictly expected of police officers. The fact is that they should not have done anything that was against the law. That is what the community believed and expected. The fact however was that Police leadership at that time was weak and misconduct by police officers went unnoticed, undetected, uninvestigated, and unpunished. They were victims of a bad Police Force, neglected by the Government and suffered under bad leadership and management. The fact that each of them was sentenced to imprisonment was but inevitable in the circumstances. However, I feel that the sentences were too harsh. Tahiuuru and Periporo are first offenders. They had lost their jobs. They are married with families to look after at home. They both held ranks of sergeant and losing their jobs must have been a shock to them. It is a disgrace to them. They must by now have regretted it. The sentence I would impose on Periporo is imprisonment for fifteen months and for Tahiuuru, imprisonment for ten months in substitution for the sentences passed by the Magistrate.

The orders of the Court are-

1. **The appeal against conviction is dismissed.**
2. **The appeal against sentence is allowed to the extent that-**
  - (a) **The sentence of imprisonment for three and half years in respect of Periporo is quashed and substituted with imprisonment for fifteen months;**
  - (b) **The sentence of imprisonment for three years and three months in respect of Tahiuuru is quashed and substituted with imprisonment for ten months.**

I order accordingly.

**F.O. Kabui**  
**Puisne Judge**