

DAVID FILIA .V. REGINA**High Court of Solomon Islands
(Palmer CJ.)****Criminal Case Number 311-03****Date of Hearing: 4 November 2005****Date of Judgement: 17 November 2005****M. McColm for the Crown
M. Anders for the Applicant**

Palmer CJ.: The Applicant, David Filia is charged with the killing of Martin Papaina at Auki on 15 February 2003. He was arrested and charged on 10 August 2003. He has been in remand since to this day, which is now some two years three months in custody. The delay in the hearing of his trial however has not been for want of a hearing date provided by this court. Following his commitment on 20 November 2003 and filing of information on 26 November 2003 his case came for call-over before this court on 13 August 2004 and a trial date fixed for 11-15 October 2004. On the trial date however, the prosecutor in that case informed the court that a possible reduction in the charge was being considered and applied for adjournment. The learned trial judge reluctantly agreed. That application for adjournment by prosecution was the beginning and subsequent cause of the delays in the hearing of this case to date. When the learned Director of Public Prosecutions realised that such an application had been made without his consent he reviewed the file and concluded that it did not justify a lesser charge of manslaughter and said so. This resulted in an application by the Applicant for permanent stay of the matter and resulted in further delays to the listing of this case. That application for permanent stay was heard on 5 May 2005 but dismissed by the court¹.

The main ground relied on for bail as amounting to exceptional circumstances in this case was primarily the delay in the hearing of this case attributable to institutional delay caused by the inappropriate assurances given by the Prosecutor in October 2004 that a lesser charge was being considered. This case however has now been given a new hearing date fixed for 24 April 2006 – 5 May 2006. This means by the time his case comes for trial he would have spent a total of two years and 8 months in custody.

Despite that delay and the fact that since the vacation of the first trial date in October 2004, the subsequent delay can be attributed primarily to the tardiness in which his case had been handled by Prosecution, these all have to be balanced with all other relevant factors on any bail application.

Seriousness of the offence

Murder is the most serious offence in our Penal Code and carries a mandatory life sentence. The temptation to abscond in such situations is real; hence it is rare for bail to be given in murder cases unless exceptional circumstances are shown. The facts which

¹ David Filia v. Regina HCSI-CRC 311-03, 9 May 2005, per Kabui J.

prosecution will be relying on in this case show that the circumstances in which the offence was committed were quite serious. The attack appears to have been unexpected and unprovoked, fueled it seems by anger that the security guards including the deceased had spread some rumours about the accused. Whether the deceased and the other security guards had opportunity to explain or were aware of the motive for the attack is not clear on the material. The witness statements however indicate the attack was unexpected and took the security guards by surprise. Witness statements allege the accused climbed up the ladder of the Arania Building at Auki to the upper floor corridor where the security guards, including the deceased were resting and without warning started attacking them. The accused was under the influence of liquor at that time it was alleged and could not be remonstrated with. Two of the guards managed to escape but not the deceased. It is alleged there was a struggle wherein he was pushed or lifted and thrown over the railings of the building and falling some 12-15 feet to the ground. This caused serious injuries which he never recovered from and died some six weeks later.

All the statements from direct key witnesses of the event described the accused pushing or lifting the deceased over the side railings of the building. Strength of prosecution case cannot be said to be weak. In the statement of Nixon Daumola for instance recorded on the very next day (16 February 2003) of the incident, states at page 2:

"Both David Filea and Martin were struggling for more than five (5) minutes.

Finally I saw David Filea pushed Martin Papaina (deceased) over board and fell down to the ground. The height from the top stairs to the ground level is more than 12 feet."

In an additional statement taken on 18 August 2003 he reiterates:

"I was still standing with the other two men when I saw the suspect grabbing the victim - Martin and lifted him up to the rail at the end corner of the Arania Building. The suspect in his struggle with the victim or deceased managed to overpower him and lifted the legs and pushed him over the rail and the deceased fell to the ground backwards. I could see clearly what the suspect had done to the victim or deceased because I was standing at the other end of the same building. Also the lights of the bottle shop and other nearby buildings were bright."

The statement of Billy Tisa taken on 1 September 2003, one of the persons accompanying the accused that evening also directly implicates him.

"We were arguing along the corridor about 5 metres from where Mr. David Filea was fighting with the old man. Then I saw Davig Filea lifting the old man with his arms locked and threw him to the ground."

The statements of John Mae and Frank Misi also implicate the accused as the person responsible for what happened to the deceased. There was no suggestion that the deceased fell accidentally over the rails. The clear case for prosecution is that the deceased was pushed over or lifted up and thrown over by the accused. The case for prosecution in terms of statements from witnesses who were at the scene is both clear and direct and makes their case at this point of time to be strong. The likelihood of a

conviction is real and probable outcome of a life sentence not remote. The risk of absconding in the circumstances is real as well as the possibility of interference of witnesses.

But even if a lesser charge of manslaughter may be the verdict after trial, it cannot be said that the period of time spent in custody would have been wasted or longer than what would be the normal outcomes of such sentences. I am not satisfied any much lesser sentence would have been contemplated even for a guilty plea for a manslaughter charge. Any delays therefore would work to his favour at the end of the day in any event.

I would have contemplated bail in circumstances where a lesser sentence of imprisonment may have been contemplated; not in this case as the circumstances and facts stand in the allegations of prosecution.

I also note that some of the witnesses in this case were actually together with the accused at the time of the commission of the offence and possibility of interference in terms of vulnerability of witnesses is real.

Despite therefore the existence of delay due not to the accused but to the way prosecution had handled this case, at the end of the day I am not satisfied it sufficiently tilts the scale in favour of bail and as amounting to exceptional circumstances.

Bail is denied.

The Court.