

IN THE HIGH COURT
OF SOLOMON ISLANDS

(Goldsbrough J)

Regina

represented by Mr. Fitzpatrick

v

Cornelius Galasa

represented by Mr. Khan

John Matapaza

represented by Squier

Rex Aisa

represented by Mr. Kari

Sugaray Bennett

represented by Ms. Manning

Francis Kutono

represented by Ms. Manning

Date of Hearing: 15 May 2007 - 28 June 2007

Date of Judgment: 20 July 2007

1. The incident giving rise to the criminal charges on which these three accused stand before the court occurred in a workshop in an area known as KHY in Gizo, Western Province. It happened in the early hours of 11 June 2000 and it is clear and not in dispute that during the incident Bobby Sae Nare met his death and John Memea Amangongo and Graciano Aru were assaulted and sustained injuries. This forms the basis of the murder, assault and wounding charges. At least some of the group that was responsible for the attacks upon their victims were armed. Again, that is not in dispute. This gives rise to the going armed charge. Two charges of abduction are based on the victims John Memea Amangongo and Graciano Aru being moved from inside the workshop where they were found by their assailants and taken outside of the workshop where assaults are said to have taken place. That movement from inside to outside of the workshop is again not a matter in dispute.
2. Bobby Sae Nare, the deceased, had been seen around Gizo town with a replica or toy pistol. There is evidence that he had been seen at a dance on the Friday evening following his death with that pistol and that on the night of his death he had earlier had the pistol with him. That pistol was exhibited through a friend of his who had taken custody of it from Bobby Sae Nare early in the evening. There is evidence that the group of intruders into the workshop were looking for guns. There is evidence that Bobby Sae Nare had been seen by people connected with the group at that dance.
3. That Bobby Sae Nare died of a gunshot wound is not disputed. That the gunshot was inflicted on him inside the workshop is not in dispute. There was only one gunshot and so the basis of the charge against what was initially five accused is that they acted together attracting joint criminal liability. Nor is it in

dispute that others, not before this court, (some of whom are now deceased) formed part of the group. Indeed there is suggestion that one of the other persons now deceased actually fired the gun which led directly to the death of Bobby Sae Nare.

4. The dispute that the court has heard about is whether these accused who formed part of a group acting in concert, whether they were present at the time of the shooting and subsequent assaults and whether they were indeed acting in concert.
5. It is the case for John Matapaza that he was not there, but at home in bed. It is similarly the case for Sugaray Bennett. Cornelius Galasa gave no evidence and made no statement from the dock, nor did he produce evidence of alibi but it is clear from the course of the trial that he admits to being on this scene at least following the second part when the police came on the scene. He was also present, and again this is not disputed, when the police talked to a group of men at premises known as PT109.
6. A group of young people began their Saturday evening gathered at a public place in Gizo and where there seen by many. They were talking, drinking and smoking. Some may have smoked more than tobacco and the amount of alcohol consumed cannot now be demonstrated. There is evidence to suggest that the deceased felt he needed to eat something, and various witnesses suggested that they felt his state would be improved by eating something.
7. The deceased and a friend went off to the workshop in KHY area where they were entitled to go with the intention of preparing some food. Others from the group joined them later and by the time they were disturbed in their sleep by a group of armed men some of them had already left. When the armed intruders arrived of the original group inside the workshop the remaining people were the deceased and the two assault victims, Freda Silau and Clarrinda Viva.
8. Submissions of no case were made in respect of all the original five accused at the close of the prosecution case. That resulted in one of the accused who had not been referred to at all by any of the witnesses being discharged, another who had been identified as being present and armed in evidence from one witness in chief (although not by others) being weakened in cross examination – “I might be wrong” – and further weakened in re-examination when the witness acknowledged that this individual was “always with these people” on other occasions and that he might have jumped to a wrong conclusion on this occasion.
9. I have made reference to this previous finding in some detail to illustrate the nature of some of the evidence presented in this trial and the warnings that spring to mind because of it. It is clear that this people who witnessed this event and were indeed part of it to the extent that they were victims may not have been at their most alert and retentive of detail as other people in different circumstances might have been. This gave rise certainly to inconsistencies within the evidence and at times direct contradictions. Such evidence should

and has made the court alert to the danger of relying upon it to convict an accused without particularly mindful consideration.

10. I have also made reference to it because I find that the evidence upon which I determined that there was a case to answer at that stage is not sufficient to support convictions as against John Matapaza and Sugaray Bennett. When I come to determine the weight that can be accorded that evidence it is not in my view sufficient to support a finding of guilt beyond reasonable doubt. This serves to illustrate the point that in determining a case to answer submission a court is not required to determine the weight to be given to evidence but to determine whether there has been presented evidence capable, if accepted, of supporting a conviction. I believe this to be a useful example of the application of the test outlined in *Galbraith*¹, a decision more than once referred to and approved by the Court of Appeal of Solomon Islands.
11. The evidence that in my view does not support a conviction as against Sugaray Bennett is that of Clarrinda Viva which might have supported a finding that he was there but not armed. That must be weighed against the repeated references to the armed group comprising men of dark complexion only which certainly cannot be applied to describe Mr. Bennett. That being the principal evidence of the involvement of Mr. Bennett, he is entitled to be acquitted and discharged.
12. The evidence against Mr. Matapaza in principle comes from Freda Silau who maintains that she saw him outside when the two men were assaulted. When she saw him, she maintains he was armed with a gun. There was otherwise evidence of association similar to that evidence described above in respect of the earlier discharged accused. Freda Silau was by her own admission affected by drugs and alcohol earlier in the night and was awoken sharply by a blow to her chest from sleeping by the armed group. Her evidence in my view must be taken in the light of those difficulties and considered with its various inconsistencies and vagary, nor is it supported in this part by other evidence.
13. That the court determines that such evidence cannot support a conviction is not to say that the evidence is rejected as not being true. It is simply to say that alone it is not enough material on which a finding beyond reasonable doubt can be supported. There is not in this case any suggestion that witnesses are telling lies, more that they are telling a story which is inaccurate and which, although they believe it to be true, has over time become embellished. Take, for example, the description by one witness as to the actual shooting of the deceased Bobby Sae Nare. That picture, graphic as it is, is not supported by the evidence that in the absence of a finding of shoot on the victim, he was not shot by a gun held against his chin. The court is therefore conscious of the need for caution in determining guilt on the basis of such evidence.
14. Equally the court is conscious of the need for care in determining whether evidence identifying the accused is reliable. Although, in my view, this is not a

¹ (1981) 73 Cr. App. R. 124

case were fleeting glances can lead to mistaken identification, I bear in mind the *Turnbul*² guidelines referred to by all counsel in the trial.

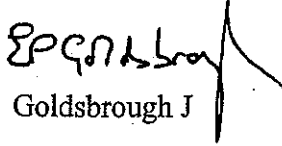
15. Turning to Cornelius Galasa, the evidence against him comes not only from those in the workshop when the gunshot killed Bobby Sae Nare but from police officers outside on their arrival and from police officers attending the premises PT 109. Direct evidence that he was with the armed group inside the workshop comes from Freda Silau, Clarrinda Viva, Graciano Aru, and John Memea Amangongo. Evidence that he was with the armed group outside of the workshop comes from the police officers who arrived on the scene and evidence that he was at PT 109 and commented on the events inside the workshop again comes from police, and evidence that he was part of the group that arrived armed in a boat before the shooting comes from others.
16. In this, the position of Mr. Galasa differs from that of his co-accused. Against them only individuals identified them as being present and, maybe, armed. As against Mr. Galasa it was not just one of the group from inside the workshop that gave evidence that he was there. In those circumstances the court is not relying upon what might be unreliable evidence of a sole witness contradicted in the sense that other people there did not corroborate it. Whilst the court must be and is alive to the possibility of all witnesses making the same mistake, the position of Mr. Galasa differs from that of his co-accused.
17. Whilst quite rightly inconsistencies in the evidence have been drawn to the attention of the court, I do not consider that the inconsistencies which do exist amount to any more than that which can rightly be expected of witnesses relating the story of events seven years ago.
18. I have not overlooked the question raised that witnesses could be wrong about the presence of Cornelius Galasa, just as I did not overlook the evidence against others when witnesses agreed that they may be wrong. But given the nature of the evidence and the surrounding circumstances I can safely conclude that sufficient evidence exists for me to find that he was indeed the person described by the witnesses and did indeed take part in the attack on these victims.
19. I particularly note the intervention of Cornelius Galasa when the group appeared to be displaying aggression towards a police officer arriving on the scene. I note that is the basis for the suggestion that Mr. Galasa was on the scene as a pacifier and not an aggressor. I agree that in these circumstances he did stop aggression towards the police. But I cannot find as a result of that that his presence, during the earlier incident that I found above, was that of a pacifier. This is not inconsistent. The aim of the group as expressed during the warehouse episode was to discover illicit arms in the hands of civilians. It was never to threaten the police. That Mr Galasa intervened and stopped aggression towards the police in my view merely goes to show that he was in a position of authority as regards those men who showed the aggression towards

² [1977] Q.B. 224

the police and that those who displayed that aggression responded to Mr Galasa's apparent authority.

20. Provincial Police Commander Ora who was intending to go into the KHY area to investigate the reported incident did not immediately do so. On his arrival at the general area he saw a group of armed men. In response to his question towards armed men he saw, he was told that their boss was now at PT 109 and so he proceeded there instead of entering the workshop. That response from the armed men of course is not evidence as against Mr. Galasa that he was indeed their boss but on the strength of it PPC Ora went to PT 109 where he found Mr Galasa and others. He had previous knowledge of Mr. Galasa and in response to PPC Ora question as to who the group leader was Mr. Galasa indeed confirmed that he was the boss.
21. Turning to the further evidence of subsequent events and conversation at PT 109 I note the varying accounts from three police officers. The conversation took place whilst they were all seated (Ora), all standing, maybe one seated (other officers) and what variously Cornelius Galasa is said to have said in response to police questions. In this regard it is the evidence of PPC Ora that I find to be the most reliable. He was the officer who led this questioning, indeed it was his responsibility as Provincial Police Commander. I note that PPC Ora's evidence is to the effect that Mr. Galasa told him that a man had died within the workshop but that his death was the result of a struggle.
22. I accept that this was the explanation given to PPC Ora. Implicit in that is that I reject the contrary suggestion from another officer that the police were not told of any death. This explanation given to PPC Ora was not a true explanation and, as I have found that Mr Galasa was there, I also find that Mr Galasa knew this not to be a true explanation to the Police Commander when he said it. That, in my view, suggests that at an early stage Mr Galasa had decided to seek to avoid responsibility for the actions of his group.
23. No one has argued before me that those who shot Bobby Sae Nare and who were part of the group lacked the intention to kill him. Going armed in these circumstances with the intent that the group had where a death occurs in these circumstances suggests to me that the principles of joint criminal liability need to be considered. The man who led that group takes responsibility just as the person who pulled the trigger and any who support his actions and voluntarily agree to be part of the group. The group were looking for arms, they found Bobby Sae Nare who the day before had been seen with a pistol, and Bobby Sae Nare ended up dead after the pistol was not found. A group in those circumstances armed with loaded weapons coming upon their target, shot by one of them, even if such a shooting had not been specifically agreed as between all of the group can be viewed as anticipating a probable consequence. More certainly the inflicting of really serious harm, if not death, is a probable consequence of a group of men, not police, setting off armed looking for a suspect who the group believes is armed himself.
24. In these circumstances Mr Galasa is found guilty of the murder of Sae Bobby Nare even if he did not shoot him himself. I find as a fact based on the

evidence of the victim, that it was Cornelius Galasa who assaulted him He is therefore also found guilty of the assault on Graciano Aru and as a party to the wounding of John Memea Amangongo, the fact of that assault not being in dispute. He is also found guilty of going armed and the two abduction charges as a result of the moving of the captives by the group from inside the workshop to outside with the requisite intent.


Goldsbrough J