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TERRY GRENTA

HIGH COURT OF SOLOMON ISLANDS
(PALMER CJ.)

Criminal Case Number 449 of 2015

HEARING: 24 June 2024
RULING: 25 June 2024

S. Vaike for the Crown/ Appellant.
B. Ifuto'o for the Respondent.

Palmer CJ.

1. The defendant Terry Grenta was initially charged with four others (Ben Tabugau, Dudley Seko, Lee Teteo, and Nickson Manengelea), with two counts of murder contrary section 200 of the Penal Code (cap. 26). The particulars related to the death of two deceased, James Pogula and John Vavanga on the 18th May 2014 from a collision on the road at GPPOL 2.

2. It is alleged that the collision was deliberate and that after the collision the accused got out of the car and attacked the two deceased, who subsequently died as a result of the attack.

3. A *nolle prosequi* was filed against all the defendants on the 8th November 2022 and the defendants were discharged and acquitted. One of the co-accused Dudley Seko in the meantime is now deceased.

4. It was alleged that the driver of the vehicle which caused the accident was this defendant, Terry Grenta and so he was charged *in lieu* thereof with two counts of dangerous driving causing death, contrary to section 38 of the Road Transport Act also on the same date 8th November 2022.

5. He was arraigned on the next day 9th November 2022 and entered not guilty pleas to both counts.

6. The matter was further adjourned to the 11th November 2022 for hearing of an application to determine a preliminary matter raised by the Crown in relation to its key witness who had not been able to be located for trial. As a result the Crown had to seek to have the statement of this key Crown witness, Jeffery Manebosa ("**Manebosa**") dated 23 September 2014, admitted as evidence pursuant to section 118 (1) (a) and (b)(i) of the Evidence Act 2009, on the grounds of unavailability of this witness.

7. The determination of this important preliminary issue by this court will also affect the viability of Crown's case to proceed or not.

8. Section 118(1)(a) and (b)(i) provides as follows:

> "118. (1) A hearsay statement is admissible in any proceeding if –
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> (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
>
> (b) either –
>
> (i) the maker of the statement is unavailable as a witness;"

9. Under section 118(5)(d) of the Evidence Act, the Crown seeks to have their key witness Manebosa declared under that section as being "unavailable" and to have his statement admitted under subsection 118(1(a) and (b)(i).

10. Section 118(50)(d) provides as follows:

> "*(5) For the purposes of this section, a person is unavailable as a witness in a proceeding if the person –*
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> *(a) is dead; or*
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> *(b) is outside Solomon Islands and it is not reasonably practicable for him or her to be a witness; or*
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> *(c) is unfit to be a witness because of age or physical or mental condition; or*
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> *(d) cannot with reasonable diligence be identified or found; or*
>
> (e) *is not compellable to give evidence.*"

11. In support of its application the Crown submitted four sworn statements, of William Peresini, Eddie Sonia, James Melson and Hellen Bennett, filed on the 11th November 2022.

12. The grounds relied on are:

(i) The witness could not be located;

(ii) He has been deliberately avoiding police;

(iii) Members of the Royal Solomon Islands Police Force have made reasonable attempts to locate this witness but to no avail; and

(iv) The witness cannot with reasonable diligence be found.

13. In summary the four deponents all deposed to efforts taken by them and others to effect service but could not due to the difficulty of locating that witness and the location of the places that he was residing at, in remote village areas and which the serving police officers were also hesitant to travel to out of concerns for their own safety and security, noting the relationship between the people in those areas with the police was poor due to previous incidents and encounters between them.

14. The defence on the other hand, while not objecting to have the two statements admitted into evidence as an unavailable witness pursuant to section 118(5)(d) of the Evidence Act, takes issue with the issue of reliability of Manebosa's evidence, on the grounds that the witness statements being two, and contradictory, cannot be regarded as reliable under section 118(1)(a) and secondly, that the Defendant's right to cross examine the witness in the circumstances needed to be protected. They say they had not been given the opportunity to test the accuracy and veracity of the evidence of this witness through cross examination and therefore it should not be accepted as reliable.

15. The statements, one filed on the 23rd September 2014 (4 months after the incident) and the second filed on 25th May 2016 (about 1 year and 7 months later), therefore should not be accepted as reliable, and are unfair and prejudicial to the case of the defence.

16. In the first statement he gave evidence of the meeting on the evening of the 17th May 2014 in which he says the idea of having John Mark Pogula to be killed over some land issue was discussed. He says that the meeting was chaired by Henry Saea (co-accused) and this defendant was also present.

17. On the night of the collision, he claims to be in the vehicle driven by this defendant and claims to have seen the two deceased and two others walking on the right side of the road when the defendant turned the vehicle towards their direction and collided with them. The vehicle then stopped, they got out of the vehicle and assaulted those two deceased. He says when he saw that he walked off.

18. Later in the morning he heard that two of the boys had been killed and knew that they had been killed by the five men in the vehicle he was with.

19. The second statement made on 25th May 2016 denies knowledge of the events which occurred that night. He alleges that he had been "bribed" or offered to be given a pair of shoes and to be paid $5,000 if he signed a statement. He alleged that this promise was made by one John Pogula and a CID officer, he assumes is from the Reef Islands in his car. In essence he denies knowledge of the events that occurred that day.

The issue for determination – reliability of the statement "Exhibit 1".

20. The issue for determination in this case requires this court to make a ruling on the question of reliability of the statement of Jeffrey Manebosa ("Manebosa"), dated 23rd September 2014, marked as "Exhibit 1".

21. The argument for the Crown can be summarised as follows. They say that the first statement of Manebosa is reliable, as evidence had been given that the taking of that statement is reliable. It was made voluntarily, the witness was not forced, induced or promised to be given anything in return for his story. Evidence had been given that the witness was cooperative and truthful.

22. Secondly, there is evidence given under oath by this witness during the long form of preliminary hearing of one of the co-accused then, Henry Saea[1]. In his evidence given under oath he gave evidence that is consistent with that first statement.

23. With regards to the second statement taken on 25th May 2016, the Crown submits that this should be rejected on the following grounds. First, that it was made for a purpose being to try and deviate from the course of justice. This is consistent with his behaviour since, in evading police.

24. Secondly, that the details provided therein contained errors in terms of the date being referred to as in 2013. The incident occurred in 2014.

25. For those reasons the first statement should be accepted by the court as being reliable and reject the second statement.

26. On the question of lost opportunity to cross examine the witness, the Crown relies on the case of *R. v. Tran*[2] as supportive of its view on acceptance of the first statement as being reliable. At paragraph 34, the court said:

> *"I appreciate the complexity of the issue of "unfair prejudice" and I appreciate that the fact that a defendant cannot cross-examine a witness is not necessarily decisive of the issue which arises in relation to the provisions."*

27. The defence on the other hand submit that in the light of the second statement given by the witness denying completely knowledge of the events that occurred in relation to the accident, Mr. Ifuto'o submits that this rendered the first statement of the witness unreliable and cannot be accepted as reliable without the evidence of that witness being subjected to cross examination.

28. The second ground relied on is the right to a fair trial secured by section 10 of the Constitution.

    Section 10(1) provides;

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[1] CRC986 of 2014 CMC and CRC 536 of 2015 (High Court file)
[2] [2007] NSWD C 131

"10.-(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, that person shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

Counsel submits that that right to a fair hearing includes the right to cross-examine prosecution witnesses either by himself or by a legal representative of his choice. Section 10(2)(e) of the Constitution provides that:

"(2) Every person who is charged with a criminal offence –

.....

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, ..."

29. For this reason as well, Counsel submits that the reliability of the statement cannot be accepted by the court.

Decision.

30. The issue of reliability of the witness statement is a relevant issue in this case.

31. The circumstances surrounding this question in this case however is slightly different. In this case, we have two statements. It is not clear why and how a second statement was made.

32. If one looks at the second statement, it appears that it was the witness himself who decided to approach police and make a second statement.

33. It is also pertinent to note that the signatures in both statements are different. It is possible that the same person may have made them but used different signatures.

34. There is one other factual matter to note in this case. The witness did give oral evidence consistent with his first statement in a long form of preliminary enquiry in the matter of *R. v. Henry Saea*[3] in the Magistracy. The Defendant was discharged following the enquiry.

35. This application therefore to have the first statement admitted as evidence and reliable is not as straightforward as one may make out.

36. Its reliability has been impacted upon by the subsequent making of another contrary or inconsistent statement that denies the veracity of the earlier statement and also touches on the veracity of the evidence adduced in Henry Saea's case.

37. In common law, the general principle in regards to prior inconsistent statements is that once it is admitted that such a statement had been made, it goes to the credit of the witness. In the case of R. v. Soma[4], McHugh J. said:

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[3] CRC 986 of 2014.

[4] (2003) 212 CLR 299; 196 ALR 421; 140 A Crim R 152

> "*At common law, the effect of the statement was to neutralise the effect of contrary evidence given by the witness. But the statement, when admitted was not evidence of the truth of its contents.*"

38. With regards to section 118(1) of the Evidence Act, what that section seeks to do is to allow admission of what would have been a hearsay statement provided certain conditions were met, being that the circumstances relating to the making of the statement provide reasonable assurance that the statement was reliable and that the maker of the statement was unavailable as a witness.

39. The issue in this case relates to whether the circumstances surrounding the making of that first statement give assurance of its reliability.

40. Unfortunately, I am not satisfied having considered all the surrounding circumstance relating to the making of that statement, and subsequent events therewith that it cannot be said that they provide reasonable assurance that the statement is reliable.

41. If anything the circumstances rather expose the difficulties in trying to have such a statement accepted as reliable and would be prejudicial and unfair to the defence of the defendant, that he has not been afforded the opportunity to cross examine that witness and test his veracity and credibility.

42. In addition, I note that in the case of *R. v. Henry Saea*[5], in which an appeal was filed against the acquittal of the Defendant, a Notice of Discontinuance had also been filed to cease proceedings primarily on the grounds as well of lack of sufficient evidence. Bearing in mind that it was in the LFPI in that case that this same witness had given oral evidence in court but had been acquitted by the learned Magistrate.

43. In the circumstances, taking everything into account, I am satisfied the objection on the grounds of reliability is valid and to be allowed in this case. The effect of this would be to affect the prosecution case as to the question of whether there is sufficient evidence to proceed with this case or not.

44. In any event, the learned Director has filed a *Nolle Prosequi* against the Defendant in relation to the charges on 23 May 2024, and I am satisfied there is basis for it and the application should be granted herewith.

45. I thank the learned Director of Public Prosecutions for taking the time to review this case and issue a *nolle prosequi* against the charges of dangerous driving against the Defendant.

46. Accordingly, I direct that the charges against Terry Grenta should be dismissed herewith and he be acquitted of both offences of dangerous driving causing death pursuant to section 38 of the Road Transport Act.

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[5] CRC 556 of 2015 (HC).

Orders of the Court:

1. **Grant application for nolle prosequi of this case.**

2. **Direct that the defendant in this case be discharged forthwith and order that he be acquitted of the two counts of dangerous driving contrary to section 38 of the Road Transport Act.**

SIR ALBERT R. PALMER CBE

Sir Albert R. Palmer CBE
Chief Justice.