

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

C.A: 8/92

BETWEEN: FAOFUA KOKO of Tafaigata Prison,
Prisoner

APPELLANT

A N D: THE POLICE of Apia

RESPONDENT

Counsel: M. Edwards for Respondent
T.K. Enari for Appellant

Date of Hearing: 20 Oct 1992

Date of Decision: 22 Oct 1992

DECISION OF SAPOLU, CJ

There are two grounds on which the appellant, Faofua Koko, relies in his application for leave to appeal to the Court of Appeal against his conviction on the 22nd day of October 1992 on a charge of murder tried in the Supreme Court before assessors.

The first ground is that the Court interpreter mistranslated the words "a reasonable Samoan" used by the Court when directing the assessors on the defence of provocation. Counsel for the appellant says that the translation of the words "a reasonable Samoan" as meaning "o se tamalii Samoa ua lelei atoatoa lona faiai" was too high a standard as required by those words in their English meaning. Counsel for the appellant contends that the Samoan translation given by the Court interpreter means in English "a Samoan high chief whose brain is in excellent condition".

I refrain from expressing any view on the correct Samoan translation of the words "a reasonable Samoan" as this is the very question the appellant wants the Court of Appeal to decide. I realise that there may be some problems for non Samoan speaking Judges to decide on the correct Samoan translation of the words "a reasonable Samoan". However I would prefer to leave this matter to the Court of Appeal for its decision and/or ^{direction} discretion as I was the presiding judge at the trial of the appellant.

As to the second ground of the motion for leave to appeal, the appellant in his submissions says his counsel was prohibited from asking questions to witnesses about the defence of self defence. He says that when his counsel was warned about embarking too far on questions relating to the character of the deceased, the Court was in effect prohibiting his counsel from asking questions as to self defence.

I cannot see what evidence of self defence the appellant expected his counsel to obtain from witnesses by questioning them about the character of the deceased. In the first place it was not the deceased who was standing trial. Secondly, the evidence placed before the Court and assessors show that there ^{was} no attack or threat of an attack from the deceased towards the appellant or his co-accused when they launched on an assault against the deceased. There is also nothing in the evidence to show that the deceased whether by words or conduct was making any threat against the appellant or his co-accused at the time he was assaulted. In these circumstances, the Court decided not to leave self defence as a defence to the assessors as there was no evidential basis for such defence. The appellant has also failed in his motion for leave to appeal to point to any evidence of self-defence.

Accordingly I make the following orders:

- (1) Leave to appeal is granted in respect of the first ground of the motion.

- (2) Leave to appeal is refused in respect of the second ground of the motion.
- (3) The appellant is to pay \$200 within seven days as security for costs of the appeal.
- (4) As the appellant is presently serving very lengthy term of imprisonment on other separate offences there is no point in granting bail. Bail is therefore not granted.

T. E. M. Jackson
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CHIEF JUSTICE