

THE HIGH COURT OF WESTERN SAMOAHELD AT APIAS. 69/93BETWEEN: THE POLICEInformantA N D: VILIAMI LIU of VaipunaDefendant

Counsel: M. Bailey for prosecution  
T. Malifa for accused

Hearing: 18 October 1994

Decision: 21 October 1994

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DECISION OF SAPOLU, CJ

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The accused is charged that on the 28th day of December 1993 at Vaipuna he wilfully and without lawful justification caused grievous bodily harm to the victim. At the conclusion of the evidence counsel for the accused applied to dismiss the charge as the evidence shows that this incident did not occur on the 28th of December 1993 but between 2.00am and 3.00am in the early hours of the 29th of December 1993. Counsel for the prosecution then applied to amend the date in the charge from the 28th of December to the 29th of December. I reserved my judgment together with my ruling on both applications by counsel.

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I have now decided to allow the amendment sought by counsel for the prosecution which is a minor amendment, and substitute "28th" with "29th" in the charge.

That brings me to the evidence in this case. Essentially the evidence for the prosecution is that on the night of the 28th of December 1993, the victim was watching a party at Vaipuna from the road. The accused and about three other boys were drinking beer on the same road under a street light. It was a bright moonlit night. It must have been about 2.00am in the morning when Aukuso, one of the boys who was drinking with the accused starting swearing. The victim who is a matai of the village then approached Aukuso who expressed his displeasure to Aukuso for swearing. One of the victim's sons then tried to bring Aukuso to the victim until a scuffle ensued between Aukuso and the victim. The victim in his evidence says that when Aukuso fell down, he knelt down beside Aukuso and as he was standing up again someone punched him from behind with what he assumed was a stone. This punch caused a lacerated wound on his left upper eyelid and damaged his left eye. Almost immediately the accused passed in front of him and fled.

The witness Simeone Penu Mose, a son of the victim gave evidence that he was at the scene of this incident and he saw the accused picked up a stone and approached the victim who at that

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time was wrestling with Aukuso. He then saw the accused punched the victim sideways from behind and then threw off the stone and tried to flee but he caught up with the accused and fought with him. After the incident the victim was taken to his house where a wet piece of cloth was placed over his injured left eye. Before 8.00am the same morning the victim was taken to the Apia National Hospital where he was referred to the eye specialist for treatment and was admitted as in-patient.

According to the eye specialist, there was an irregular lacerated wound on the upper cornea of the victim's left eye and the left eye ball was also protruding out by 2 millimetres with a perforated injury. The left eye was also totally blind. On the 30th of December 1993 an operation was done to remove the victim's left eye in order to save the right eye from being affected. A second operation was done on the 10th of January 1994 to improve the healing process to the damaged eye. The victim now has an artificial left eye which is totally blind.

The eye specialist also gave as his opinion that the injury to the victim's left eye must have been caused by a hard blunt object like a stone applied with great force. He based this opinion on the nature of the injury as well as the irregular surface of the lacerated wound. He also said that the eyeball is a tough organ

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and it requires great force to perforate the eyeball.

The evidence by the accused is essentially a denial that he did not punch the victim and he never picked up a stone as alleged by the witness Simeone. He says that he was drunk and he was trying to restrain Aukuso and the victim from scuffling. The evidence by Aukuso who was called for the defence does not mention any punch thrown by the accused at the victim.

I must say that I disbelieve the evidence by the accused that he did not punch the victim. I accept the evidence of the witness Simeone that he saw the accused picked up a stone, approached the victim from behind and punched him sideways on the left eye. The evidence by the victim, which I also accept is that almost immediately after he was punched from behind he observed the victim passed in front of him and fled. I find as a fact that it was the accused who punched the victim with a stone on the left eye.

Coming now to the ingredients of the charge, I am satisfied that the infliction of the injury to the victim's left eye was done by a wilful act from the accused. That injury as it appears from the medical evidence is undoubtedly really serious and therefore constitute grievous bodily harm. I also find that there was no lawful justification for the accused's behaviour.

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In all I find the ingredients of the charge to have been proved beyond reasonable doubt.

*F. M. S. John*  
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CHIEF JUSTICE