

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

CRIM. NO. S.105/96

BETWEEN: THE POLICE

Informant

A N D: IOANE VILIAMU ETEUATI aka IOANE
VILIAMU TUPAI ETEUATI of Lano
Savaii and Tulaele

Defendant

Counsel: G Latu for prosecution
K Ainuu for accused

Hearing: 22 January 1997

Ruling: 24 January 1997

RULING OF SAPOU, CJ

The accused is charged that at Tulaele on 30 April 1996 he had sexual intercourse with the victim a girl over 12 years and under 16 years of age not being his wife.

In the course of the evidence adduced by the prosecution at the trial, counsel for the accused challenged the admissibility of the caution statement made by the accused to the police investigating officer corporal Lomano Paulo. Evidence was given by both the investigating officer and the accused during the voir dire that was held. Submissions were also heard from both counsel.

It became clear during the voir dire that the issue in dispute was whether

there had been a violation of the accused's right to counsel as provided in Article 6(3) of the Constitution when the police investigating officer obtained the accused's caution statement. Article 6(3) provides :

"Every person who is arrested shall be informed promptly of the grounds of his arrest and of any charge against him and shall be allowed to consult a legal practitioner of his own choice without delay".

The police investigating officer, corporal Lomano Paulo, testified that he was in charge of the police Criminal Investigating Branch (CIB) on 30 April 1996 when the victim's father reported to the police in the evening that his daughter was missing from school that day and he wanted the police to find his daughter. Based on information given by the victim's father, corporal Lomano sent a police vehicle to the house of the accused's family at Tulaele where the police picked up the accused and brought him to the Apia CIB. According to corporal Lomano the accused was brought into the CIB between 7.00pm and 8.00pm. At that time he was looking for other evidence. He told the accused of the nature of the complaint and he admitted to having had sexual intercourse with the victim. At about 11.30pm when the accused appeared tired, the interview was stopped and the accused was allowed to sleep in a room in the CIB. Food was also provided for the accused at that time. When the accused woke up the following morning the interview continued. Corporal Lomano also stated that he never told the accused he was not free to go and as far as he was concerned the accused was free to leave the CIB office if he had wanted to.

When the investigating officer made up his mind in the course of the continued interview that he had sufficient evidence with which to charge the accused, he then gave him the usual caution and informed the accused of his right

to consult counsel of his choice. According to corporal Lomano the accused replied that he wished to have a lawyer but not then as he had no money to pay for a lawyer. So he did not give a list of lawyers to the accused as he did not want a lawyer at that time. The accused then made his statement whose admissibility has been challenged. That statement contains several admissions of sexual intercourse having occurred between the accused and the victim on a number of different occasions including 30 April 1996 when two further acts of sexual intercourse took place between the accused and the victim. Corporal Lomano also stated that the accused freely and voluntarily gave his statement and at no time requested a lawyer.

The accused in his evidence denied that he told the police investigating officer he wanted to have counsel but not at that time as he had no money to pay for a lawyer. According to the accused, he only told the investigating officer he wanted a lawyer but had no money to pay for one. He never said he did not want a lawyer at that time. I have considered this conflict between the accused and the investigating officer's evidence together with my own observations of their respective demeanours in the witness stand. My decision is to accept the evidence of the investigating officer.

The centre of the dispute between counsel is whether or not the action of corporal Lomano in continuing his interview of the accused and thereby obtaining a statement from him after he had said that he wanted to consult a lawyer but not then as he had no money to pay for a lawyer was in violation of the accused's right to counsel as provided in Article 6(3). Counsel for the accused relied on a passage in the judgment to be reported of the Court of Appeal in *Attorney General v Semi Tupai Ueti, C.A. 24/93; 5 May 1994* where Cooke P in delivering the

judgment of the Court of Appeal stated :

"Plainly the information, to be of value and to give due effect to the constitutional provision, should be conveyed before any statement is taken. And it should be made clear that, if the person arrested wishes to consult a lawyer, any questioning will be deferred for a reasonable time to enable the person to obtain legal advice. For, if the right to counsel is to be effective, the police must refrain from eliciting evidence until the accused has had a reasonable opportunity to consult counsel : *R v Taylor [1993] 1 N.Z.L.R. 647*. What is a reasonable time will be a question of fact depending on all the circumstances : *R v Etheridge (1992) 9 C.R.N.Z. 268*".

It was then submitted on behalf of the accused that from the answer given by the accused to the investigating officer that he wanted to consult counsel, the investigating officer should have refrained from any further questioning of the accused and allow him to consult counsel of his own choice. Counsel for the accused further submitted that the only reason why the accused did not wish to have counsel at the time he was informed of his right to counsel was because he had no money to pay for a lawyer but the accused's answer considered as a whole conveyed the clear impression that he wanted to consult counsel.

Counsel for the prosecution on the other hand submitted that the answer given by the accused to the investigating officer meant that he did not wish to have counsel at the time of the interview. The accused's answer to the investigating officer being that he wanted to consult a lawyer *but not then* as he had no money to pay for a lawyer.

In my view given the answer by the accused to the investigating officer, and the fact that he had already orally admitted to the investigating officer that he had sexual intercourse with the victim, the inference must be that the

accused was willing to make a statement at that stage without legal advice. There was also no evidence that the accused did not appreciate the nature of his right. Therefore on the evidence, I conclude that the claim that there has been a violation of Article 6(3) has been negatived. In view of that conclusion it would not be necessary to go further and consider the submission based on waiver from counsel for the prosecution.

I therefore conclude that the caution statement is admissible.

T M Sapaku

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CHIEF JUSTICE