

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

Self defence
S15(2) - p 3

BETWEEN: POLICE

Informant

A N D: FETAAI TUTOGI
of Magiagi and Vaoala

Defendant

Counsel: G B Powell and A Volentras for the Informant
A J Hutchinson for the Defendant

Hearing Date: 7 July 1998

ORAL DECISION OF MORAN J

Fetaai Tutogi is charged with causing grievous bodily harm to Lauvao Mika.

To prove the charge the prosecution must establish beyond reasonable doubt that Fetaai caused grievous bodily harm to Mika. That means that he caused him some serious harm or injury.

The prosecution must also prove that he did so wilfully. That is to say the prosecution has to prove that he intended to cause grievous bodily harm. And finally, the prosecution must prove beyond reasonable doubt that he did so without lawful justification.

In the context of this trial, the prosecution must prove beyond reasonable doubt that the defendant's causing grievous bodily harm to Mika was not justified by self defence.

On 13 October last, Mika was drunk and aggressive. He was throwing his weight around and trying to pick a fight. In particular, he was trying to pick a fight with the defendant Fetaai because he was a stranger in Mika's village, whom Mika did not like. Having exchanged unpleasantries with Fetaai, Mika approached him and punched him to the chest and threw another punch which missed. He then reached for a beer bottle which was on a post beside Fetaai and threatened to strike Fetaai with it.

Fetaai punched Mika and dropped him.

Mika got up swearing and was restrained by two boys who took him away a short distance. Mika insisted on returning to fight with Fetaai. He broke away from the boys who were restraining him and walked quickly towards Fetaai swearing at him. He cursed him and threatened to kill him. He again threw a couple of punches at Fetaai one of which struck him and Fetaai punched him back and again dropped him.

This time as Mika went down, Fetaai kicked him in the head. He wanted to kick him in the mouth but missed and kicked him in the side of the head. The kick knocked Mika unconscious.

Mika suffered a dislocated neck and he is now paralysed permanently from the neck down. It is not entirely clear whether his neck was broken by the punch or by the kick or by his head coming into contact with the ground.

What is clear is that it was the defendant Fetaai who caused that injury. Fetaai told me that he kicked Mika to make him sleep so that he would not wake up again and disturb the party. He was scared that if he did not put him to sleep, he might go away and get a gun.

Unfortunately, Mika was then picked up and transferred to the hospital in circumstances where he really should have been left on the ground and not moved. However the people who took him to hospital cannot be blamed because they did not know that he had a broken neck.

There can be no question that Fetaai caused grievous bodily harm to Mika. He did that wilfully because he intended to knock him unconscious.

The issue is whether he was justified in doing that in the defence of himself.

s15(2) of the Crimes Ordinance provides that everyone is justified in repelling force by force, even though he causes grievous bodily harm, if he causes it under reasonable apprehension of grievous bodily harm and he believes on reasonable grounds that he cannot otherwise preserve himself.

I cannot discount the reasonable possibility that Fetaai was under the reasonable apprehension of grievous bodily harm from Mika. Neither can I discount the reasonable possibility that Fetaai believed that he could not otherwise preserve himself from that grievous bodily harm, other than by kicking Mika unconscious.

In both respects, Fetaai is entitled to the benefit of the doubt because the prosecution has to prove its case beyond reasonable doubt.

That does not end the matter, however, because any belief that Fetaai might have had that he could not preserve himself other than by kicking Mika unconscious, must be reasonable.

That belief must be held on reasonable grounds when judged objectively by me. I hold that any such belief that Fetaai might have had was not based on reasonable grounds.

He had already demonstrated that he was a match for Mika. He had dropped him not once but twice with punches. It was not reasonable for him to believe that to protect himself from further harm he had to kick Mika unconscious.

I am satisfied beyond reasonable doubt that Fetaai's assault on Mika was not justified by self defence. The charge is proven and he is convicted. No verdict is required in relation to the alternative charge of assault.



Moran J