

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

Self defence
S15 (2) - p3

BETWEEN: POLICE

Informant

A N D: TA'ALOGA SPILATA
of Siusega and Neiafu

Defendant

Counsel: G Latu and M Tuatagaloa for the prosecution
R T Faaiuso for the defendant

Hearing Date: 2 July 1998

ORAL DECISION OF MORAN J

The defendant Taaloga is charged with causing grievous bodily harm to Fatuvale.

On Sunday 18 May 1997, Fatuvale and others had been on a drinking binge which had run for some days. He and his friends were drunk on Sunday morning when they invited the defendant to share some drinks.

He accepted that invitation and he had four spirit drinks before returning home. While enjoying these drinks he got into an argument with one of the young men

present over a woman and as a result of that there was some violence in which the defendant was punched.

Late in the afternoon the defendant went to the shop to buy some cigarettes. He took with him a knife with which he was cleaning his nails. That knife is almost one foot in length and its blade accounts for six to seven inches of that length. When progressing from one shop to another, he was accosted by a couple of young men who had been at the party that morning who invited him and his cousin to fight.

The defendant declined the invitation and he and his cousin went on unmolested. Later, when returning from the shop, they were again accosted by the same two young men who challenged them to a fight, and some violence then ensued.

One of these young men Keleni, began to fight with the defendant's cousin Tana. This occurred despite the efforts of the defendant to try to stop it. In the course of this encounter the complainant Fatuvale arrived on the scene and persuaded the defendant's cousin Tana to cease hostilities. He called him "bro" and extended his hand in friendship. Tana shook Fatuvale by the hand whereupon Fatuvale punched Tana, and it was all on again.

Keleni then joined in the fight and recommenced fighting with Tana. The defendant pulled Fatuvale away pulling him backwards whereupon Fatuvale turned around and grabbed the defendant by the neck. He held him by the throat with one

hand and tried to punch him with the other. The defendant avoided most of these blows by moving his head.

The defendant says that at this point of time he saw some young men approach him in a hostile manner. These young men were strangers to him and as they approached, they reached down to pick up stones the size of a fist.

Of all the people present who have given evidence in Court, the defendant is the only one who saw these people approaching. Furthermore, when interviewed by the police, he omitted to say that it was the approach of young men reaching for large stones that caused him to be afraid.

One therefore views with some scepticism his evidence that he saw young men coming with stones. However, given that of all the witnesses that I have heard, he was the only one who, at the time of the incident, had any degree of sobriety, I cannot discount the reasonable possibility that his evidence is true.

He says that he then reached into his pocket for the knife, took it out and stabbed Fatuvale in the side behind the mid axillary line; that is to say, stabbed him more towards the back of his side, and in so doing, penetrated Fatuvale's lung cavity and caused him a life threatening injury. Thereupon the defendant ran away.

The defendant invokes the defence of self defence and in particular the provisions of s15 Crimes Ordinance 1961. It is appropriate for him to invoke that

section rather than s16, because he did nothing to provoke the assault upon him by Fatuvale.

To speak of the defence of self defence, is something of a misnomer because that suggests some burden of proof upon the defendant to prove that he was acting in self defence.

That is not the law. Once there is some evidential foundation for self defence, then it is for the prosecution to prove beyond reasonable doubt that the defendant was not acting in self defence.

s15(1) provides for justification by self defence in circumstances where a defendant does not mean to cause grievous bodily harm.

In the present case I am satisfied beyond reasonable doubt that the defendant did intend to cause grievous bodily harm to Fatuvale. That is an inference which can confidently be drawn from the manner in which he struck the blow to Fatuvale's body and the size of the knife that he used.

Recourse must therefore be had to s15(2) which allows for justification by self defence in circumstances where grievous bodily harm is caused if:

- (a) it is caused under reasonable apprehension of death or grievous bodily

harm from the violence with which the assault was originally made or with which the assailant pursues his purpose and;

(b) he believes on reasonable grounds that he cannot otherwise preserve himself from death or grievous bodily harm.

On the face of it paragraph (a) would seem to require apprehension of grievous bodily harm from the violence being perpetrated by Fatuvale and would not permit of reasonable apprehension of grievous bodily harm from young men approaching bearing large stones.

I cannot accept that self defence is unavailable if the defendant caused grievous bodily harm to Fatuvale under reasonable apprehension of grievous bodily harm from people other than Fatuvale.

In the present case, the assault upon Fatuvale is justified if the defendant caused grievous bodily harm to Fatuvale, under reasonable apprehension of grievous bodily harm from violence with which assailants other than Fatuvale or assailants including Fatuvale, pursued their purpose. If Fatuvale was holding him so he could not get away and other assailants attacked with large stones, and those other assailants caused the defendant to labour under the reasonable apprehension of grievous bodily harm from the people with stones, then the defendant was justified in inflicting violence upon Fatuvale in order to get away from those other people.

I cannot exclude the reasonable possibility that the defendant was labouring under the reasonable apprehension of grievous bodily harm from violence from young men approaching with stones.

That leads on to the second leg of s15(2), namely, whether it reasonably possible that the defendant believed, on reasonable grounds, that he could not otherwise preserve himself from grievous bodily harm, that is to say, he believed that he could not preserve himself by doing anything other than stabbing Fatuvale with the knife.

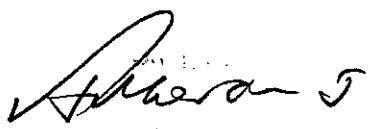
If there is a reasonable possibility that he held such a belief, then he has to be given the benefit of the doubt. But the grounds for that belief have to be reasonable. That is to say reasonable when judged objectively from my point of view, not subjectively from the defendant's point of view.

I do not accept that the defendant had reasonable grounds for any belief he may have held that he could not preserve himself from grievous bodily harm other than by stabbing Fatuvale.

He and Fatuvale are young men of roughly the same size. The defendant has indicated that he was held by the throat. I do not accept that he could not simply have broken free and run away without resorting to the use of a knife.

If he believed that he had to stab Fatuvale in order to preserve himself from grievous bodily harm, then he had no reasonable grounds for such belief.

That being so self defence fails and, I am satisfied beyond reasonable doubt that the grievous bodily harm that the defendant caused to Fatuvale was not justified by self defence and he is therefore convicted.



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Moran J