

POLICE v LITIA FUATAGA ET AL

Supreme Court Apia
21, 22 April 1970
Donne ACJ

CRIMINAL LAW (Trials) - Motion for severance of trial - Four accused charged jointly with murder - Exceptional circumstances making joint trial against the interests of justice - Constitutional right of accused to fair trial: vide The Constitution of the Independent State of Western Samoa, Article 9, Clause (4)(c).

Held: Where several accused persons are charged jointly with murder in circumstances involving a joint adventure and near-conspiracy, and where there are insufficient counsel to represent each accused, it is in the interests of justice to grant a motion for separate trials: Police v Iere Muagutu Potea and Mia Muagutu Potea [1959-1969] WSLR 225, R. v Gillies and Jorgensen [1964] NZLR 709 referred to.

MOTION for separate trials granted.

Slade for Police.

Loe for accused Mate Brown and To'afā Matua'iala.

Clarke for accused Litia Fuataga and Mealoi Fuataga.

Cur adv vult

DONNE ACJ. The above defendants are jointly charged with the murder of Matavai Lafi on 20 March, 1969. Counsel for the accused have applied on behalf of their respective clients for separate trials. Counsel for the informant opposes the applications. The arguments in support thereof by both counsel are substantially the same. It is submitted that the accused will be prejudiced in that there are confessions by some inculpatng the others, and further, that the evidence is such that it would be a difficult task for the Assessors to extricate the relevant matters and avoid being confused by these confessions, and that such confusion could result in a wrong conclusion by them as to the guilt or innocence of the accused. Furthermore, Mr Loe informed me that in view of an apparent conflict of interests he will be unable to represent both of his clients in a joint trial, and that in such event he would represent To'afā Matua'iala. Mr Clarke similarly informed me that he, too, would be faced with a similar problem in respect of a joint trial. But at this stage he was not certain for whom he would act. Counsel consequently submitted that since by virtue of the Constitution of Western Samoa Article 9(4)(c), "the accused has the right to legal assistance", unless such assistance were available for each accused at a joint trial, severance should be ordered. I then instructed the Registrar to enquire from other solicitors in Apia as to whether or not they would be available to represent any of the accused. As a result, the Public Trustee, Mr Apa, has agreed to make his services available. There are now three counsel to represent the four accused.

Mr Loe further submitted that in the case of To'afā Matua'iala, since he had been involved in a charge of murder of one Nato in respect of

which he was acquitted, his being involved in a joint trial may be prejudicial since Nato's murder could possibly be raised therein. In my view, there is no substance to this submission since obviously on objection a proper direction by the Court would be made to ensure that the situation envisaged could not arise.

I have carefully perused the copies of the statements made by witnesses to the Police, and the alleged confessions and/or statements of the accused, all of which have been made available to counsel for the accused in accordance with the procedure adopted in Western Samoa.

The indications from these statements is that the essence of the informant's case against all the accused is that they were engaged on what could be called "a joint adventure and near conspiracy" to murder the man Matavai, who they considered had disobeyed the matai Fuataga's order to leave the village of Lalomanu. The actions of the accused in this case are in my view so closely related and intermingled that prima facie the interests of justice would require that they be jointly charged and jointly tried. This was the view taken by Spring, CJ. in Police v. Iere Muagutu Potea and Mia Muagutu Potea [1959-1969] WSLR 225, a decision of this Court delivered on 7 May, 1969 dealing with a similar application relating to a joint murder trial. As the learned Chief Justice pointed out in his Judgment:-

It was argued that the accused if jointly charged may be prejudiced in their defence if evidence against one was admitted which was not admissible against the other. It is not uncommon to meet with this position in a joint trial and I agree that the trial Judge will be obliged to direct the assessors in his summing up so that they are not adversely influenced against either of the accused by the reception of evidence which is admissible only against one of the accused, but, as Lord Porter said in Youth v. The King [1945] W.N. 27, "The practice in this country had always been in a joint trial to admit such evidence, leaving it to the presiding Judge to warn the jury that the evidence must not be used to strengthen the case against, or lead to the conviction of, a prisoner against whom it was not admissible".

Again too, in R. v. Gillies and Jorgensen [1964] N.Z.L.R. 709 (C.A.) Turner J. delivering the decision of the New Zealand Court of Appeal at pp. 714-5 says:-

This was a case of joint adventure and near-conspiracy. As Devlin J. observed in R. v. Miller [1952] 2 All E.R. 667, 670 the principle in this sort of case is that justice ordinarily requires that the whole matter be tried as one case, and that it will need very exceptional circumstances before it is split up into two separate trials. Those cases must be rare indeed, in which fellow-conspirators or joint-adventurers can properly, in the interests of justice, be granted a separate trial. We do not think that this is a case where any miscarriage of justice is shown to have taken place, or to have been likely to occur, by reason of the course upon which Gresson J. in his discretion decided, and for these reasons we disallow this ground of appeal.

There would therefore appear to be every reason why the trial should proceed as a joint trial. There is, however, one substantial practical difficulty. There are available to represent the four accused only three counsel and as already mentioned, conflict of interests prevent any one counsel representing more than one accused. Now, the Constitution of the Independent State of Western Samoa guarantees every person's right to a fair trial, and Article 9(4) (c) provides:-

Every person charged with an offence has the following minimum rights.

- (c) To defend himself in person or through legal assistance of his own choosing and, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of

justice so require:

I have been informed on behalf of the accused that they each require legal assistance, and I unhesitatingly find that in a serious case such as this, it is in the interests of justice that each should receive legal assistance. Since, for the reason above given, I consider it is not practicable that the four accused should face a joint trial, I have decided in justice there should be a severance. I accordingly do order as follows:-

- (a) That the accused Mate Brown and Litia Fuataga shall be charged and tried jointly, such trial to commence on the 4th day of May, 1970.
- (b) The accused Mealoi Fuataga and To'afā Matua'iala shall be charged and tried jointly, such trial should be set down for hearing on the 22nd day of June, 1970.

The question of legal representation should now be resolved and I leave it to the three counsel concerned to confer on this and require them to advise me as to such assignment as may be necessary.