

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

S. 462/93

BETWEEN: THE POLICE

Informant

A N D: SEMI TUPAI of Manase

Defendant

Counsel: K. Latu for Informant
P. Fepuleai for Defendant

Hearing: 15 December 1993

Ruling: 15 December 1993

RULING ON THE VOIR DIRE OF SAPOLU, CJ

The accused in this case made two caution statements to Cpl Sefo Kelekolio. The first of these two statements was made on the 1st of August 1993 and the second statement was made on the 6th of August 1993.

As to the first caution statement, the accused was interviewed by Cpl Sefo Kelekolio at Tuasivi Police Station and was then cautioned that he was not obliged to make a statement unless he wished to do so, and that anything he might say would be taken down in writing and may be used as evidence.

After that caution was administered, Cpl Kelekolio then informed the accused that he had a right to a solicitor. The accused replied that he wanted a solicitor but at some other time.

Then on the 6th of August according to the evidence of Cpl Kelekolio, the accused was again interviewed and a second caution statement obtained from him. At that time the victim in this case had passed away and the accused was again asked if he wanted to contact a solicitor and he said that he wanted Mr Fepuleai. The police corporal says that, when he told the accused that he had a right to a solicitor, what he actually said was, "do you want to contact a solicitor". I need not refer to the whole of the evidence again but it appears to me that in relation to the second caution statement, the police officer after receiving the reply from the accused that he wanted to contact a solicitor and the accused mentioned Mr Fepuleai's name, continued on with the interview and obtained the second caution statement from the accused.

Now Article 6(3) of the Constitution 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". Section 9(1) of the Criminal Procedure Act 1972 then provides in so far as it is relevant, that is, "It is the duty of every one arresting any other person to comply with the provisions of clauses (3) and (4) of Article 6 of the Constitution....relating to promptly informing the person arrested of the grounds of his arrest....and allowing him to consult a legal practitioner of his own choice without delay".

It would appear to the Court that when the accused was interviewed for the second time on August the 6th and he indicated to the investigation police officer that he wanted Mr Fepuleai, the interview must have stopped

there and then. The accused should then have been to contact Mr Fepuleai without delay. But that did not happen as the interview continued.

I accept Mr Fepuleai's submission that Cpl Kelekolio should have stopped the interview and allowed the accused to contact Mr Fepuleai without delay instead of carrying on with the interview. If he had allowed the accused to contact Mr Fepuleai without delay and the accused said that he did not want to consult Mr Fepuleai immediately, then perhaps very considerations would have applied. But there was no opportunity allowed to the defendant to consult Mr Fepuleai, a lawyer of his own choice, without delay.

I am of the view that the manner in which the second caution statement was obtained in this case is clearly in breach of Article 6(3) of the Constitution and therefore that statement must be excluded.

As to the first caution statement, what the police officer told the accused that he has a right to consult a solicitor is somewhat ambiguous. What Article 6(3) of the Constitution says is that "a 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".

It appears to the Court that the manner in which the right was put to the accused did not clearly bring home to the accused that he had a right to consult a legal practitioner of his own choice without delay. He was merely told that you have a right to contact a lawyer. That could have been interpreted by the accused to mean that he had

a right to contact a solicitor but at some other time. That is why I think the right was not clearly brought home to the accused. It is pointless and insufficient in my view to tell the accused at an interview that you have a right to a solicitor and then leave it there because that is ambiguous and vague and could be easily misunderstood by the accused. It would have been best that the accused was told that he had a right to be allowed to consult a lawyer or solicitor of his own choice without delay. There will be no point in cautioning an accused that he has a right to consult a solicitor if the person who arrests the accused does not explain to him what the right involves. The right is pointless if it is not understood by the accused.

In response to a question from the defence, the police officer said that what he actually told the accused was that he had a right to contact a solicitor but as I have said, those words in my view do not sufficiently bring home to the accused the nature of the right that he has.

It also appears to the Court from evidence that the answer by the accused that he wanted to have a solicitor but at some other time was in reply to the vague statement by the police corporal that he had a right to contact a solicitor. That was not followed on by any question from the interviewing police officer as to when that other time will be. It appears that immediately after the answer given by the accused, the interview resumed and the second statement was eventually obtained from him.

In this case there is no dispute that the accused was under arrest when twice interviewed by the police corporal. I have come to the view that the first caution statement should also be excluded.

T. F. M. S. J. L.
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CHIEF JUSTICE