IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

MISC. 15977 & 15978

BETWEEN: POLICE

Respondent

A N D: ERNST SU'A NELSON of Apia

First Appellant

A N D: CEDRIC LEI SAM alias SETI LEI SAM of Taufusi

Second Appellant

Counsel: C.J. Nelson for First Appellant
R.S. Toailoa for Second Appellant
M.B. Edwards for Respondent

Date of Hearing: 17 March 1994

Date of Decision: 5 April 1994

DECISION OF SAPOLU, CJ

After several adjournments of these appeals by the first and second appellants, the appeals were finally heard on 17 March 1994.

As this Court has decided to allow both appeals against convictions by the two appellants and order a new trial it will be unnecessary to go into the facts. Suffice to say that both appellants were separately charged in the Magistrates Court with causing actual bodily harm without lawful justification under section 80 of the Crimes of Ordinance 1961. This offence carries a maximum penalty of two years imprisonment. The charges allege that the incidents with which the appellants were charged took place at Matafele on 21 September 1992. Both appellants were convicted in the

Magistrates Court of actual bodily harm with the first appellant being sentenced to six months imprisonment and the second appellant to eight months imprisonment.

Both have appealed to this Court against their respective convictions on the ground that their convictions are against the weight of evidence, and against their respective sentences as being excessive in view of all the circumstances of the case. At the hearing of these appeals, one of the grounds at the forefront of both counsel for the appellants' submissions is that there is no record of the judgment and sentences imposed by the trial Magistrate. They argued that this has severely handicapped the appellants in pursuing their appeals.

Since my decision was reserved on these appeals, the Court of Appeal has come down with a decision on a criminal appeal against conviction and sentence where there is also an absence of a record of the reasons why the trial Judge entered convictions against the appellant. This is the appeal in the case of **Utumapu Sui v Police**, C.A. 16/93 where Jeffries J in delivering the judgment of the Court of appeal says :

> "The appeal against conviction is on the basis that it
> "was unreasonable in all the circumstances and against
> "the weight of evidence. We find it impossible to
> "embark on the hearing of an appeal against convictions
> "in which prison sentences followed without the record
> "of reasons why the trial Judge entered the convictions.
> "It would be unfair to the appellant himself to hear the
> "appeal and likewise unfair to the prosecution. The

"Court's hands are tied when there is no judgment available
"to be examined. The whole purpose of an appeal system is
"to find out the reasons why in the lower Court the decision
"was made and to decide whether there was any error.
"Without those reasons we could not embark upon hearing the
"appeal.
"Therefore the only order the Court can make in these circum-
"stances is to quash the three convictions and return the
"case to the lower Court for a new trial; and in case it can
"be of assistance we emphasize that an appeal system only
"works properly and fairly when reasons for decisions are
"made in Courts".

Now this decision of the Court of Appeal was delivered on 29 March 1994 and it applies to the present appeals. That decision emphasizes that on an appeal against a criminal conviction where a prison sentence follows, the absence of a record of the reasons for the conviction will necessarily result in the conviction being quashed and a new trial ordered. I adopt what the Court of Appeal has said in respect of the present appeals. The convictions in respect of both appellants are therefore quashed and the case is returned to the Magistrates Court for a new trial. The bail conditions in respect of both appellants are to continue.

Before leaving the present case, I must say that I have not overlooked the other grounds advanced by counsel in support of these appeals. In particular, but not exclusively, is the question of identification. Briefly, as these appeals are going back to the Magistrates Court for a new trial, dock identification is not inadmissible. Such a

method of identification is permissible but the question is what weight, if any, should be attached to dock identification in the light of all relevant identification circumstances. Clearly the trial Magistrate must have been satisfied from the dock identification of the appellants by prosecution witnesses because of the convictions he entered. But whether that satisfaction on the part of the trial Magistrate is erroneous or not is most difficult to decide in the absence of any record of his reasons for entering the convictions. It must be added that this Court does not have the advantage the trial Magistrate had of seeing the witnesses and observing their demeanour. The demeanour of a witness can be a valuable aid in assessing his or her reliability and credibility.

I prefer to say no more except that the aforesaid decision of the Court of Appeal is decisively in favour of allowing both appeals in terms already mentioned herein.

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CHIEF JUSTICE