

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

Confession - admissibility
- voluntariness

BETWEEN: POLICE

Informant

AND: AOTOA LEILUA
@ AOTOA TUISAUTA
of Nofolii and Saleilua,
Falealili

Defendant

Counsel: G Latu and A Volentras for prosecution
T K Enari for defendant

Hearing Date: 23 & 24 June 1998

ORAL DECISION OF MORAN J

The defendant is charged with rape, sexual intercourse is admitted. Lack of consent is denied.

The assessors have had produced to them a confessional statement made by the defendant to Corporal Feata, the admissibility of which has now belatedly been challenged. It is submitted that the confessional statement is inadmissible because I cannot be satisfied beyond reasonable doubt that it is voluntary.

There is no dispute about the legal principles to be applied here. Unless I can be satisfied beyond reasonable doubt that the statement is a voluntary one then it must be ruled inadmissible.

Sexual intercourse occurred on the evening of Friday 10 April 1998. On Tuesday 14 April 1998 a complaint was lodged with the police. On the morning of Wednesday 15 April 1998 the defendant was located at a place out near the airport and brought into Apia for interview.

Corporal Feata, who is stationed at Poutasi, came in to Apia for the express purpose of interviewing the defendant. The Corporal arrived at the Police Station at 7.00 o'clock in the morning and attended a course for about one hour. The end of that course would have roughly coincided with the arrival of the defendant at the Police Station under arrest at 8 o'clock in the morning.

The defendant was then left to cool his heels for at least about one hour and possibly two. The defendant says that he was spoken to by Corporal Feata at 9 o'clock in the morning. The Corporal says that it was sometime after 10 o'clock that he commenced the interview. What is beyond dispute is that the written statement that has been produced in evidence was commenced at 11.20 am.

If the Corporal's memory of time is to be relied upon rather than that of the defendant, then, at the very least, there was a period approaching one hour and twenty minutes during which the defendant was interviewed by Corporal Feata.

The defendant says that, when the allegation of rape was put to him, he denied it. I infer from the evidence that he has now given and the admissions that he has now made, that, when the allegations of the complainant were put to him, he admitted to consensual sexual intercourse but denied rape. He says that, over that period of an hour and twenty minutes, or, on his version, two hours and twenty minutes, he was questioned by the Corporal who plainly would not accept his statement that sexual intercourse was consensual. The defendant says that the Corporal finally became exasperated and, in effect, told him that unless he told the truth and owned up to rape, the Corporal would be very unhappy or angry.

With due respect to Corporal Feata, he is a very large man indeed, and I can well understand that the defendant would not wish to risk the wrath of a large senior police officer. The defendant says that he then, in effect, gave up trying to protest his innocence and invited the Corporal to write down whatever the Corporal wanted to hear. He says that he was induced into this course of action by a promise from the Corporal that he would look after him on sentencing and would see to it that the defendant served his sentence at the Corporal's post.

A written statement was then commenced and the opening passages contain an acknowledgment of the fact that the defendant had been advised of his right to consult a lawyer.

While I cannot find the passage in my notes of evidence, and they may well be deficient in that regard, it is certainly the case that the defendant told the Court that he

indicated to the Corporal that he did want to see a lawyer but that the Corporal said that it really did not matter because he would look after him on sentencing.

A written statement was then made which recorded the things that the defendant had told the Corporal, but the defendant would have it that it is inaccurate and false in one very material particular, namely, the allegations of forced sexual intercourse.

The written statement was then read to the defendant who wrote at the foot of it the words "ua sa'o" meaning, "it is correct". The Corporal says that, having written those words, the defendant then signed the foot of his statement.

The defendant, however, says that he did not then sign the foot of the statement, but that that signature at the foot of the statement was appended to the document the next day immediately before he was taken to Court. In that respect his evidence is corroborated by Sergeant Aleki. He says that he saw the defendant signing a document in the presence of the Corporal on the day that the defendant was taken to Court and that the document appeared to him to be a caution statement, although he conceded that he could not read the words of it at the time he made the observation.

In the face of that evidence Corporal Feata says that the Sergeant is mistaken and he is adamant that the defendant signed nothing on the morning before he was taken to Court.

As to the period of time that elapsed between the arrival of the defendant at the Police Station at 8 o'clock in the morning and the commencement of the interview at 10 o'clock in the morning (to accept the Corporal's testimony) Corporal Feata has it that he attended to other duties around the Police Station.

That evidence is surprising given that the Apia Police Station was not his post, and given that he had come to the Apia Police Station for the express purpose of interviewing the defendant. However it is beyond dispute that there was a period of delay, of at least one hour or maybe two, before the defendant was spoken to by the Corporal and I accept that during that time the Corporal went about other duties. One is left with the suspicion that he may have been allowing the defendant to stew in his own juice before being spoken to.

As to the period of an hour and twenty minutes or thereabouts, if one accepts the Corporal's evidence as to when the interview commenced, it is the Corporal's evidence that, during that period, he did not continually interview the defendant at all but rather manned the telephone which frequently interrupted the interview. He says that he did not come straight to the point of the interview but rather spoke to the defendant for some time about general matters in order no doubt to win over his confidence.

When ultimately, he came to put to the defendant the allegations of rape, he says that the defendant readily admitted sexual intercourse as outlined in his written statement and readily admitted the use of force to achieve that end. One views with some disquiet

a time span of at least more than an hour taken to arrive at a confession which the Corporal says, was readily made when the subject of the allegations was first raised.

Mr Enari submits that a more realistic view of that elapsed time would involve acceptance of the defendant's version of events leading up to the written statement rather than that of the Corporal. I have to say that there is force in that submission.

In the final analysis I don't have to decide who's telling the truth or whose evidence is to be relied upon. The issue is whether or not the prosecution has satisfied me beyond reasonable doubt, that this written statement was not made under any form of coercion. I am not so satisfied.

There was an element of coercion or duress involved in allowing the defendant to effectively stew in his own juice at the Police Station in Apia before he was spoken to at all.

When it comes to assessing the reliability of the evidence given by the Corporal on the one hand and the defendant on the other, the defendant, of course, has an interest to serve in telling lies here today, but he has a very significant ally in the form of Sergeant Aleki in the matter of when the statement was signed.

I cannot discount the reasonable possibility that, during the period of one hour and twenty minutes or perhaps longer that the Corporal spoke to the defendant, that he did not bring coercive pressure to bear upon the defendant. I am not saying that he did

but I am saying that I cannot be satisfied beyond reasonable doubt that he did not and, in the circumstances, I rule that statement is inadmissible.

Having ruled the statement to be inadmissible I have invited counsels' views as to the course that I should now take.

There are two options: One is to direct the assessors that they are to ignore the confessional statement because it is inadmissible. The other option is to declare a mistrial now so that the case has to go to a retrial.

If I direct the assessors to ignore the confessional statement and they return a verdict of "not guilty", then all will be well. If on the other hand they were to return a verdict of "guilty", then the issue will arise as to whether I should nevertheless acquit the defendant or invite Mr Enari to apply for a retrial.

In that event there would be a very strong case for the submission that the defendant should be acquitted because, as I read s100 Criminal Procedure Act, if I am of the opinion that the defendant should not be convicted then he **shall** be acquitted. No issue of retrial; he shall be acquitted. I don't think that the interests of community would be served by an acquittal in those circumstances. The appropriate course is for a retrial before assessors who have no knowledge of the confessional statement now ruled inadmissible.

Accordingly I will be directing a mistrial and the defendant will be remanded to another date for retrial.



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Moran J