

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICITON
NUKU'ALOFA REGISTRY

NO.CR.57/00

REX

-v-

'ALAISIA MATANGI

BEFORE THE HON. CHIEF JUSTICE WARD

Counsel: Miss S Tupou for prosecution
Mr S Fifita for accused

Date of Trial: 21 August 2000

Date of Ruling: 21 August 2000

Ruling

Mr Fifita for the accused submits at the end of a trial within a trial that the statements made by the accused should not be admitted on two grounds:

1. That the police did not give the accused proper advice as to his rights because they should have actively encouraged him to seek a lawyer. Mr Fifita cites Teisina v R appeal no.3/99 as authority that there is a duty on an officer to give such encouragement. I do not accept that is authority for any such duty and neither do I consider there is any such obligation on the officer in this case. Teisina's case was about the fairness of the interview and confession. It set a requirement for fairness over and above the strict letter of the law.

In this case, the accused was 13 years old at the time of the arrest. The officer told how he asked him if he wanted to be taken in front of a magistrate and was told by the accused that he did not and he wanted to go to the police station so his statement could be recorded. At the police station he was told of his right to have a lawyer, parent or friend present and the accused said they should continue.

I do not accept there is any right for a person arrested to waive the requirements of section 22 of the Police Act. It is matter for the officer alone and he should not have offered such a choice. That would apply to any person arrested but to consider that it is an appropriate decision on such matters for a thirteen years old defies belief.

The officer agreed that he knew the accused had been living at home with his mother until shortly after the alleged offence about 6 weeks previously but had then been told by the mother that the accused did not live there anymore. The accused had been arrested that day very close to his home but the officer had again been told that he no longer lived there. Whether or not that was true, the fact remains that the officer clearly knew where the mother lived. Had he wanted to invite her to the interview, he knew exactly where she lived and that she had been at home at least a short time before. It would have been very easy to obtain her attendance and had he wanted to ensure the interview was fair, I would have expected to hear evidence from the officer that he had at least tried. However, the contrary was the case. He simply stated he did not do so and appeared to consider that was sufficient. It was not.

On that ground alone I do not consider the statements in this case were taken fairly and I shall exclude them.

2. The second ground is that the accused was subjected to physical violence by the police before the interview. The officer denied it and the matter was left as a single question in cross examination. The accused did not give evidence on the voir dire and so his side is not known. That would not normally be sufficient to establish such an allegation but, in this case the prosecution called the thief to give evidence of the theft of the money. He was put forward as a credible witness and he gave evidence of an assault by this officer. It would be impossible on such evidence to be satisfied beyond reasonable doubt that the statement was taken without duress. That would have resulted in the same order that the statements should be excluded.



A handwritten signature in cursive script, appearing to read "A. S. S. S.", is written over the seal.

NUKU'ALOFA: 21 August 2000.

CHIEF JUSTICE