

PAISI MIAVANA AND JOSEPH MIAVANA & OTHERS .V. REGINA

**High Court of Solomon Islands
(Palmer CJ.)**

Date of Hearing: 17th June 2005

Date of Judgement: 28th June 2005

C. Baker for Paisi Miavana

H. Barkley for Joseph Miavana

P. Bannister and S. Balea for the Respondent

Palmer CJ.: This is a bail application by Paisi Miavana and Joseph Miavana ("**the Applicants**") who are also brothers. They were part of a group of five persons who had initially traveled by canoe to Barabarakakasa village, Choiseul Province on 5th October 2001 and which resulted in the shooting and killing of Brian Majapeso ("**the Deceased**"). One of the persons in that group, William Amalo ("**WA**") is now deceased. He was in possession of an M16 rifle that day and had fired the shot which killed the Deceased. The two Applicants accompanied WA on the beach whilst the other two remained in the boat. Those two accuseds had applied for bail separately at an earlier date and were granted bail by this court.

This case was listed to commence trial on 13th June 2005 at Gizo for two weeks. Unfortunately the Prosecutor, Mr. Bannister fell ill resulting in the trial having to be vacated. A new date has now been fixed for the trial to commence on **5th September 2005 at 9.30 am** for three weeks also at Gizo.

The Applicants rely on the following grounds for bail. They submit that there is no huge or significant difference in the case against all four accused. If two had been granted bail, then these two should also be granted bail. Mr. Barkley for Joseph Miavana ("**Joseph**") submits that the case for the two Applicants is even weaker when compared with the other two accused's case on bail because the witness statements actually contains statements to the effect that when WA returned to the canoe to collect a magazine for his rifle, the two of them handed the magazine to him and incited him with the words "*killim oloketa, oloketa any kind too much long boxing*".

It was also pointed out that the presumption of innocence must be considered in favour of the Applicants, that there are no indications to suggest that they would abscond, or possible interference with prosecution witnesses. They also live with the other two co-accuseds in a separate village altogether and so opportunity of contact with prosecution witnesses is greatly reduced.

Apart from the usual grounds for opposing bail in murder cases, Mr. Bannister for the Crown submits there is evidence which shows that the Applicants were together with WA, knew of what was happening and therefore were parties to what subsequently happened.

Summary of the Prosecution Case

The gist of the Prosecution Case is that the accuseds all assisted WA in one form or another that day, apart from accompanying him in the canoe, to

commit an unlawful purpose resulting in the killing of the Deceased as a probable consequence in the process.

The evidence which will be relied¹ on is that the accuseds accompanied by WA had intended or planned to look for Lukeson Kubeava ("**Lukeson**") that day with the intention of killing him. That when they arrived at Barabarakakasa Village, they attacked Paul Harry Pope ("**Harry**") instead, who was a cousin of Lukeson. When Harry eventually managed to escape from them, WA saw the Deceased and shot him.

The evidence from the depositions of Felix Kogomana and Harry confirmed that the Deceased was shot by WA and that both Applicants were standing with him at that time.

Apart from that evidence however, there is no other material in the statements to show that the Deceased was one of the persons being sought after by the accuseds. The statements of intended prosecution witnesses showed that the Deceased had actually appeared at the scene at that time to tell the Applicants to leave the place, when he was shot. There is no material to show that the Applicants actually detained the Deceased so that he can be shot or that they told WA or incited him to shoot the Deceased. It would seem that the Deceased was stilling talking with the Applicants when WA returned told the Applicants to stand aside and shot the Deceased. The question whether the shooting of the Deceased by WA was part and parcel of the unlawful common purpose and a probable consequence of such purpose, or whether it was a frolic on his own, is arguable and a matter which will be determined at trial.

When that is considered with what the other two accused in the canoe did and said, the strengths of the prosecution case as against the Applicants compared to the other two on bail cannot be conclusively said to differ to any great extent. It is equally arguable that what those two accuseds in the boat said to WA after giving him a fresh magazine could very well have spurred, incited or encourage WA to shoot the Deceased when he returned and saw him talking with the Applicants. There is no material even at this stage, to suggest that the Applicants said or did anything at that time that may have encouraged WA to actually make the crucial decision to shoot the Deceased. I do not accept the submission therefore that the Prosecution case is greater as against the Applicants as compared to the other two accuseds and therefore should be considered or treated differently. I find this to be the most influential factor in this application. If two of the accuseds have been released on bail and there would appear to be little difference or distinction in their involvement in relation to the murder charge, then in all fairness to the Applicants, they too should be released on bail all other requirements being equal as well.

Apart from two minor previous convictions in which Paisi Miavana had been fined in 1999, there are no other previous convictions against him which would indicate to me that there is a real likelihood of further offences being committed if released on bail. On the issue of absconding, there is also no real likelihood that any of them do so or not appear for their trials if released on bail. The other two have consistently appeared to their bail.

¹ See statement of Peter Paulson Piri (Peter Piri) dated 15th June 2005

These accuseds all come from the same village, Vudutaru Village and is separate to Barabarakakasa village where most or all of the prosecution witnesses come from. The likelihood of any interference with those witnesses therefore is greatly reduced.

Bail in murder cases is rarely granted and only under exceptional circumstances. Having considered the matters raised before me carefully, I accept the Applicants have successfully put forward justifiable cause for bail in their case as well and I grant bail on the following conditions:

1. **Each Applicant must put up a separate surety in the sum of \$500.00 who will be responsible to ensure that they appear at Gizo for their trial commencing on 5th September 2005 at 9.00 am.**
2. **On their release, they are to return to Vudutaru Village and reside there to await their trial.**
3. **They are to report to the nearest Police Station at Taro, once a month on the 15th day of each month.**
4. **They are not to make contact, communicate or interfere with any prosecution witnesses. If they have any concerns or queries they are to raise them with their lawyers.**
5. **They must stay away from Barabarakakasa village.**
6. **They must ensure that they appear at the Gizo Magistrates Court on 5th September 2005 at 9.00 am without fail.**

THE COURT