

SUMMING UP.

BIA-UMEME, a male native living at the village of Kosisi on the slopes of Mount Victoria, is charged with the wilful murder of a male child named ISOIA.

The circumstances are unusual because it is a case where the body of the child has not been found. It is necessary then that there should be cogent circumstantial evidence implicating the accused. It must be proved that the victim is dead, an essential in any charge of murder. It must also be proved that the child met his death at the hands of the accused. The onus of proof is of course upon the prosecution to prove these matters.

It might be in some circumstances that where the body has not been found, some doubt of the death could arise, but to my mind in this case considering the locality, the immaturity of the child and the fact that in this wild country no trace of it has been found, it is sufficient conclusion that the child is dead.

I refused to admit the evidence of alleged admissions by the accused because of the persistent and long questioning of the accused by persons in authority, a village policeman and a Councillor. I exercised my discretion in favour of the accused.

Having excluded that evidence, I must also exclude from my mind any of the material arising therefrom, and this I do.

There remains then the evidence adduced exclusive of the confessions which is that of the two women, REMEBI (RIMEVE) SAVOI, the mother of the lost child, and her

mother, AGUIA-SASAVI. There are also other circumstances to be considered.

Firstly the question of identity. Both these women said they saw the accused carrying the child on his shoulder running along the track. The accused is a close connection of the woman, REMEBI, and although she admits she did not see his face, she recognised him. She was only a short distance away from him. There was some discrepancy in her evidence regarding clothing, but only as to the clothing accused was wearing when she saw him in his house in the village. She was quite clear that the clothing accused was wearing when she saw him carrying the child was a black rami. I am sure she recognised the accused.

With regard to the elderly woman, AGUIA, and the question of identity, there is her statement that she saw accused carrying the boy along the track. REMEBI says that her mother, as she called her, was with her when she saw the accused carrying the boy. AGUIA says she herself saw him. She also said the man was wearing a black rami, this in examination-in-chief, but when pressed in cross-examination, she said she had a doubt about the rami. It seems to me she did have a doubt because in her examination-in-chief at first she said he was wearing short pants and then changed her evidence in the next breath when she said he was wearing a black rami, an old torn black one. The women were frightened, and it is conceivable that the attention of this woman was focused on the child and the man, and not on what the man was wearing. However, she said she recognised the accused. She had known him in the village for a long time. I have no doubt she recognised the accused carrying the child.

IOHA-KIRA says he saw the accused come back to his house in the late afternoon just before dark. He was wearing a black rami. Later the two women came to

412.

IOHA-KINA and told him something.

The onus is of course on the Crown to prove the case against the accused and he does not have to prove his innocence. Now I am satisfied on the Crown case that the child is dead and I am also satisfied on the Crown case that the accused was seen carrying the child over his shoulder along the bush track towards the River Kito which was not far away. The child was not seen again. The child was last seen in the possession of the accused.

The Crown has proved certain facts from which a jury may be warranted in convicting after having been warned that the facts ^{must} lead to the one conclusion only that the person is dead.

The defence has adduced nothing to cast a doubt upon the case for the prosecution. I am satisfied without any doubt that the accused wilfully murdered the child MOIA.

I find him guilty as charged.

J.

27/8/59.

413

395