

COPY

IN THE SUPREME COURT OF THE)
TERRITORY OF PAPUA AND NEW GUINEA }

REGINA v. BOGINA, DASIGA, BAUA and WERO

REASONS

Mann,
C.J.

Popon-
detta
9/8/61.

Although it is a serious offence and one very dangerous to society, for persons to set up false Courts and impose punishments on others without the authority of law, I think it is clear that these accused have already suffered more than any punishment that their actions would merit. Baua and Wero played only minor parts.

- (1) Bogina and Dasiga, senior relatives of the girls had responsibilities for their proper protection and to restrain them from behaviour of which they would disapprove. They acted in good faith, on reasonable grounds and with the concurrence of their people.
- (2) The Government Patrol Post in the area was unmanned, leaving them with inadequate guidance and advice.
- (3) The Courts, in all jurisdictions, are grossly understaffed and inadequately provided for. Three of the accused have been kept waiting five months for trial in this Court, adding emphasis, if it be needed, to the shortage of Court facilities.
- (4) These men are members of an Agricultural Committee, officially set up with powers of control and responsibilities which could easily be misunderstood by the accused. Two of the men were Mission Catechists and they commonly exercise various kinds of restraint over people. Responsibilities of this kind would readily lead men like the accused to perform without lawful authority powers which they deemed essential for the protection of their people.
- (5) There have been many cases in the Territory where men occupying positions of the kind occupied by these men have been officially allowed or directed to settle disputes.
- (6) The accused must understand that they cannot exercise arbitrary authority, and it is a serious offence for them to do so. If they feel the need for better Court facilities they must make urgent representations to the Government. They cannot take the law into their own hands. I do not blame them for what they did on this occasion, although at least one of their decisions appears to have been plainly wrong.

Having regard to the time they have been kept in custody, they will now be discharged on the rising of the Court.