

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

CORAM: MANN C.J.

AMBUNTI

9th February, 1962.

REGINA

- v -

NAPA of ARAIO.

DECISION

The accused himself gave evidence and his account was the only one that gave any close detail of what happened. This was inevitable because he was in the best position to see and know what was happening and he was the only person in possession of all the facts.

My impression of the accused may in these circumstances prove important. I think he is a cunning old scoundrel, of low mental development but of considerable capacity to turn a situation to his own advantage. He is however in my view a typical product of the social environment in which he lives, and has apparently attained no little success in his society, as a result of his talents. He is not, therefore, in my view to be blamed for the characteristics which tend to be developed in successful men in his society.

The accused, an old man, whose appearance suggests that he is not less than 60 years old, had 3 wives, each apparently considerably younger than himself. The deceased was the third wife, described as quite young and most likely, in the circumstances, to be under 20 years of age. The accused believed that she had formed an association with another and much younger man, who lived a good distance away, and had left home with the ^{intention of} meeting this man and going away with him. She appears to have failed to find him and returned home to a very angry husband. The accused repeatedly charged the deceased with wanting to leave him for a younger man and demanded that she speak, and when she failed to do so he stabbed her hands and feet with the intention of disabling her, so that she could not leave home either on foot or by canoe. I accept MASIO's evidence as to the wounds.

Although nobody seemed much concerned about these

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wounds, they must have been quite painful, and were inflicted with a Cassowary bone dagger, which was blunt enough to cause considerable bruising and tearing of tissues in stab wounds such as described.

This disabling was enough to explain why the deceased needed to rest for a period up to 24 hours before her death, and her inferior status, sense of guilt and lack of better means for protection or escape from her husband would be adequate to explain her preference for spending that time in her sleeping bag, quite apart from the fact that in her condition, her mosquito-proof bag would save her much pain.

If this were to be taken as the reason for the deceased taking to her bed, the natural inference would be that she remained alive and well, though in pain, up to the time of her death.

There are several alternatives: -

- (a) That she was suffering from an illness involving headaches and fever, recurrently attacking her and causing about 2 days' indisposition whenever it occurred.
- (b) That she was "poisoned".
- (c) That she died as a result of supervening infection from the wounds inflicted by the accused, or,
- (d) As a result of a spleen rupture or similar mishap inflicted unintentionally by the accused when he disabled her, or earlier.

There was no medical evidence to establish objectively the cause of death. It is, therefore, not a question of whether these alternatives are proved; it is a question of whether, in the absence of medical guidance and information, and in the light of the evidence, I should reject them, having regard to the onus of proof.

It seems probable that the deceased was in fact suffering from chronic or recurring malaria or some similar chronic disease. There is reasonably reliable evidence of this, and nothing to contradict it. I must find, therefore, that she probably was ill with chronic malaria and that in consequence, and in addition, she was a probable risk for a ruptured spleen, in the event of a violent and painful attack from her husband.

I reject the idea that she was "poisoned". It was put in two ways - as a result of eating a poisonous vine in the bush or as a result of sorcery. Two men suggested this. The younger,

NERU, suggests the poisonous vine, and the old man, the accused, attributes the death to sorcery. I think that these two stories reflect two attempted rationalisations designed to exculpate the accused, possibly illustrating the ambiguity of the word "poison" as used by different generations. It seems to me that death occurred too early to be accounted for by supervening infections, since it appears to have occurred within 24 hours of the wounding, and so, although the wounds might easily have been infected, I think that the state of the deceased was not materially affected by such a cause.

The possibility of spleen rupture is not directly supported by the evidence but since it might reduce the present charge to Manslaughter or assault, it must be considered. I must assume that it would be possible for a rupture to produce such a slow loss of blood, that the patient would survive for 24 hours, becoming weaker in the process. In this case it is unlikely to be the sole cause of indisposition on the little that is known of her symptoms. Nevertheless, I cannot exclude it as a probability in the known circumstances. I conclude, therefore, that I should approach the real issue, as to cause of death, on the assumption that in the period shortly prior to death she was very ill and in pain, and was probably suffering from malaria with a high fever and internal haemorrhage. Was she still alive when the accused stabbed her with the intention, as I find, to kill her?

A more or less independent witness, whose evidence, like that of all witnesses in this case, must be treated with great caution, says that he saw movement in the morning. The accused admits she was alive at midnight.

When he pulled her out of the sleeping bag, the accused thought she was alive, and stabbed her, according to him, first to see whether she was alive. He said she did not move, and this showed that she was dead.

I think that several other witnesses were affected by this theory and thought that the first blow was tentative and the second in the throat in real earnest. The accused is quite inconsistent in his various statements about this.

There is reliable evidence that the deceased uttered a soft moaning sound, albeit audible over a considerable distance. This is support for the Crown case but is not conclusive, because again in the absence of medical evidence I cannot overlook the possibility that a deep stab wound in the back in the region of the lungs, with a not very sharp dagger might cause a moan to escape

from a recently deceased body.

There is evidence of blood on the body, but again this is by no means conclusive.

The conduct of the accused himself is the most significant item, especially since he was the only person who could really know. Against this must be weighed the fact that it is common experience that natives killing in revenge, frequently mutilate the bodies of their victims, sometimes by inflicting wounds in selected parts of the body such as head, throat, chest, abdomen, genitals, hands or feet, either to relieve their own feelings or for reasons based on superstition, and the accused apparently has entire belief in sorcery.

I think his own account of his actions raises a very high order of probability that the first and second wounds were inflicted to kill, knowing that though incapable of resisting, his wife was alive. The third wound and possibly the second could have been inflicted whether the wife was dead or alive.

This high probability is not enough to satisfy the onus of proof in a criminal case, but the standard is raised in my view of the evidence of the accused, by the fact that in my opinion the accused was lying about his wife's condition and resorting to putting forward parallel stories, designed to exculpate himself. He seemed to me to be determined to have his wife dead from any cause that would excuse himself, and even had his wife warning him that when she died he would be "framed" in Court. I do not overlook the fact that witnesses cleared out lest they be blamed for the death, but my impression of the accused himself was much stronger than this, and that his willingness to maim his wife, kill her in the near-presence of her family, and then tell a calculated story in several alternatives in Court, is convincing evidence that he carried out his intention.

On the finding that she was still alive when stabbed, there can be no doubt that the stabbing terminated her life.

VERDICT: Guilty