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

CORAM : MANN C.J.

REGINA v. MONDO-GENGEGL.

JUDGMENT

E. Pratt for the Crown.
Wignall for the Defence.

Kundiawa.
1967,
May 25th.

The accused is charged with the wilful murder of a child who was his nephew. The evidence showed that this child was one of three, two nephews and a niece of the accused, who were all killed by the accused on one occasion, and over a period of a few minutes at the most.

This evidence was objected to on the ground that the killing of the other children was not relevant to the charge which came before me for determination and that since each killing was a separate act the other two could not be part of the res gestae. It was argued that even if the evidence were to have some relevance, it would be highly prejudicial to the defence. I was referred to R. v. Bedingfield (1); Tepet v. R. (2); Makin v. Attorney General for New South Wales (3); Harris v. D.P.P. (4); Noor Mohamed v. R. (5) and R. v. Christie (6); also Archbold, para. 1020. I was told the act of killing was not in issue and that the accused had admitted it and would not deny that he killed the child the subject of the charge.

It appeared to me that the evidence was admissible because the three killings were clearly part of a single course of conduct in which a previously formed intention to kill all three children was carried out on one occasion at the same place and in the same manner by killing the three children in rapid succession.

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(1) 14 Cox 341.
(2) (1952) A.C. 430.
(3) (1894) A.C. 57.
(4) (1952) A.C. 694.
(5) (1949) A.C. 182.
(6) (1914) A.C. 545.

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Apart from any other consideration, it seems to me that the burden is on the Crown to establish the essential intention, and that this evidence is the most direct evidence possible of the intent of the accused, particularly since the element of repetition makes it clear that the intention was present and remained unchanged throughout the whole course of his actions.

Subject to the question of insanity, with which I will deal later, there was no defence raised by the evidence.

The accused elected to give evidence and did so with complete frankness. He said that he lived at a small village near Kerowagi, but had been away from home working for about seventeen years. He appears to be a man aged about 40 or more, and was the first child of his mother. He had a half-brother and a half-sister, named respectively KAGAMI and DAGAM. The accused appeared not to have attained intellectual maturity and possibly for this reason had an exceptionally strong attachment to his mother. He grew up with the family and it appears that his mother re-married on two occasions after the accused was born. The other members of the family did not regard the accused as a person who should be married, as would be usual, and did not make any effort to encourage him to be married, or to make any contribution which would be essential if he were to marry. So far as appears the accused did not take any greater interest in this question than the other members of his family, but he did leave the village as a young man in order to find employment at the coast.

When the accused returned home he was told by his half-sister, DAGAM, that his mother had died and had been dead for a long time. The accused was very upset about this because he had received no message from the family and it came as a severe emotional shock to him, not only to hear that his mother had died, but also to realise that the family had ignored his feelings in the matter and had not taken the trouble to inform him.

On further enquiry DAGAM told the accused that his half-sister-in-law, KILIAN, the wife of KAGAMI, had neglected the mother of the accused and had failed to

look after her as was her duty. She had been absent from the village for a long period of time and had only just recently returned. The accused was told that on one occasion the mother of the accused had prepared some food and had given it to other members of the family, but did not give any to the three children of KAGAMI, who were angry about this and struck the old woman with sticks. She had been more or less crippled for a long time having had some long term disability in one leg which hampered her movements. The accused was told that sometime after this the old woman died as a result of the injuries inflicted by the three children.

It appears that the accused brooded over this situation and was very angry and upset. He felt a growing urge to kill the children apparently in retaliation for what they had done to his mother. He worried about this, but felt that he could not avoid the feeling about the children. He, therefore, left the village and went to Gembogl, where he remained for some four months trying to rid himself of his thoughts about the children. His feelings, however, remained unchanged throughout the whole of this period and, being unable to change his mind, he decided to come back to his village to live. He had not been back very long before he made up his mind that he would kill the children and during the weekend before doing so he sharpened his bush-knife. He said without hesitation that he had sharpened the knife because he was thinking of killing the children.

On the Sunday evening, KAGAMI had some visitors at his house. The accused went across to the house and spoke to KILIAN, the wife of KAGAMI, and invited the three children to come and stay the night at his house, apparently to make more room for the visitors. KILIAN said that she did not want the children to stay with the accused, but when he repeated the invitation and the children appeared quite willing to go, she let them. In addition to these three children, the accused also invited the two children of one of the visitors, named KARENGA, to stay at his house.

The five children slept in the house of the accused without any incident and apparently without any alarm. Early in the morning and probably just before

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six o'clock, the accused got up and took KAGAMI's elder son by the hand and led him to a place near the doorway where the light was better. The child was still practically asleep and the accused killed him with several very severe blows with the bush-knife across the back and shoulders. He apparently died immediately without any sound. It was this child who was the subject of the charge before me and he it was who was said to have been the cause of the death of the mother of the accused.

Leaving the body on the floor near the doorway, the accused immediately went across to get the second child, a small girl, and led her to the same place at the doorway where he killed her in a similar fashion. By this time the third child was stirring slightly and had sat up, but was not fully awake; the accused came up behind him and killed him in the same manner. He made no attempt to approach or to harm the other two children.

There is before me evidence which raises the question of the sanity of the accused. Apart from the evidence that the other members of the family did not regard him as fit to marry, and apart from the peculiar attachment which he had for his mother, one of the witnesses said that the accused was regarded as "long long" by the people of his village, and that this was the reason why they did not regard him as fit to marry.

In giving his own account of what happened, the accused said that his thoughts were fixed on the children over a period of more than four months before he killed them, although after he had killed them his mind relaxed for the first time. He made no attempt to evade detection and frankly disclosed all the details to everybody concerned.

Shortly after he killed the children, the accused went to the river and threw himself into the water, but the river failed to carry him away, as he had thought it would, and he found himself in shallow water where he could reach the bottom. Although he could not swim, he was unable to reach deep or fast flowing water, and realising that he was not going to be drowned, he came back to the village and waited until the officer at

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Kundiawa sent for him.

The Defence consulted an experienced psychologist and received a report from him, but Counsel did not wish to rely on that evidence and did not call the psychologist as a witness.

Now apart from the question of insanity, it will be necessary for me, in the event of the accused being found guilty, to decide whether there existed extenuating circumstances within the meaning of Section 305(3) of the Criminal Code, as amended by Ordinance No. 69 of 1965. It seems to me that the opinion of the psychologist, which was based on an examination which took place before the trial, might well be influenced by some of the facts which emerged during the hearing. In any event, the state of mind of the accused will be a relevant consideration both on the question of insanity and on any application of Section 305(3). It seems clear that under Section 305(3) the finding is one to be arrived at judicially upon proper evidence as to the existing circumstances. I think, therefore, that the proper course is to adjourn the trial, before arriving at a verdict, and request that a thorough psychological examination of the accused should be made and that a detailed report should be requested from the available psychologists and psychiatrists, not only on the question whether the accused shows any attributes of insanity, within the scope of Section 27 of the Criminal Code, but also to indicate whether at the time that the three children were killed, the state of mind of the accused was such as to constitute an existing circumstance having a significant influence on his behaviour, which ought to be taken into account by the Court in arriving at a finding under the provisions of Section 305(3) of the Criminal Code.

Solicitor for the Crown: S. H. Johnson, Crown Solicitor.

Solicitor for the Defence: W. A. Lalor, Public Solicitor.