

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

CORAM : KELLY, J.
Tuesday,
9th June, 1970.

R. v. WABIA YASI

1970
Jun 9.
MENDI.
Kelly, J.

The accused is charged with having unlawfully killed one Timapu Yagari, a small child about five years of age. It is proved from the evidence that death resulted from the administration by injection of a drug known as Anectine, otherwise known as Suxamethonium Chloride, and that this was done by the accused who had purported to give the child an injection of Chloroquine. The Crown case depends on Section 288 of the Code, it being alleged that the case not being one of necessity the accused, having undertaken to administer medical treatment to the child, failed to use reasonable skill and reasonable care in so doing and that such negligence was in the circumstances criminal negligence so that the accused would be guilty of having unlawfully killed Timapu.

After I had ruled against a submission that there was no case to answer, the accused gave evidence.

The accused is a young man of about nineteen years of age, educated to Grade 6, and who was trained as an Aid Post Orderly at the Medical Training College at Mount Hagen for fifteen months. In the course of this training he was taught how to give injections, including injections of Chloroquine, was taught about dosages but was not shown any ampules and did not in fact give any such injections. After finishing at the College he commenced duties at Mendi Hospital as an Aid Post Orderly in April 1969. In the period of approximately six months prior to the events the subject of the charge the accused had given some injections, but not injections of Chloroquine, although nobody had told him that he was not to give such injections. There was evidence from Sister Ratu that while she herself had only given Chloroquine injections on the instructions of a doctor and would always consult a doctor before giving such injections, there was nothing to prevent an Aid Post Orderly in the Outpatients Department from giving an injection without consulting anybody. It appears that ampules of various kinds of drugs were kept in a ward and from the evidence I infer that these were not kept under lock and key.

On the day in question a man named Yagari, the father of Timapu and who was himself a medical orderly usually stationed at Como Aid Post and had been an orderly for some twelve years, brought to the Outpatients Department of Mendi Hospital his son aged about five whom he believed to have malaria. At the Outpatients Department he saw the accused who was there on duty. The accused proposed giving the child some infant Camoquin but Yagari insisted that he should be given an injection of Chloroquine.

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There was some conflict of evidence as to exactly what was said but it was clear that the accused went outside to the nursery ward for the purpose of obtaining an ampule of Chloroquine. The accused knew Yagari to have been an orderly for some years as he had seen him as such at Mendi Hospital in 1963. The accused went to a refrigerator or icebox in which he saw some capsules covered with brown paper, from which he picked two on which he saw the letters "chlor" and took them outside to the Outpatients Department. He said that he was in a hurry because Yagari had urged him to be quick and so he looked only at the first few letters of the words appearing on the ampule. He said that when at the Training College he had never been told that the names of any other drugs started with the letters "chlor" and while at the hospital at Mendi he did not know of any other drugs the names of which began with those letters. The ampules which he took were in fact marked "Anectine" in capital letters, beneath which in small letters were the words "Suxamethonium Chloride".

On returning to the Outpatients Department the accused placed the ampules in a position where he believed Yagari could have seen what they were or at least seen the colour of the contents, although Yagari says that he was not sufficiently close to see them and it seems that he was preoccupied with his sick child and took no notice of the ampules. The accused injected a dose of 2 c.c. of the drug into the child, this being the dose which Yagari said should be given. The accused said that he gave the child the injection because Yagari told him to do so. Had the injection been Chloroquine, the medical evidence was that 2 c.c. would have been within the upper limits of safety for the child. However, the drug in fact administered was a muscle-relaxing drug and its administration in these circumstances where artificial respiration could not be maintained was dangerous. The child died very shortly after having been given the injection.

It is clear that the case was not one of necessity, and that the accused did undertake to administer medical treatment, so that the crux of the matter is whether in so doing he was criminally negligent. I would consider that, after making all due allowances for the accused's limited training and experience, he did fail to take reasonable care in two respects, namely in failing to make sure before he administered the injection that the ampule which he had was in fact an ampule of Chloroquine, and in failing to take any steps to check with any person in authority that it was in order to proceed to administer the injection. He obviously had only a very cursory look at the writing on the ampule before he used it for the purpose of the injection and it was scarcely sufficient to merely leave it where he believed that Yagari could see what it was. I also consider that he should have checked with some person senior to him on the staff of the hospital as to whether or not he should give the injection sought; he does seem to have been somewhat overborne by Yagari and even though he had never been told not to give such an injection, in view of his complete and admitted lack of experience in this direction

prudence would have demanded that he obtain some guidance other than from Yagari.

However it is not sufficient to find that the accused was negligent as the authorities are clear that the negligence necessary to establish a criminal charge is greater than that required in a civil case and in the well-known and oft cited words of R. v. Bateman (1) ".....in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment....." And of course as the tribunal of fact it is necessary that I be satisfied beyond reasonable doubt that the negligence of the accused was of so serious a nature as to amount to a crime against the State and conduct deserving punishment.

On careful consideration of the whole of the circumstances of this case I am unable to be so satisfied. I do think the case is somewhat close to the line but finally I have been unable to be persuaded beyond reasonable doubt that either in failing to make sure that he had the right ampule or in failing to check that it was in order to proceed to administer the injection the accused showed such disregard for the life and safety of others as to amount to a crime against the State and conduct deserving punishment. In coming to this conclusion I must have regard to the circumstances of the accused, as a young man of about nineteen with little education and only limited training for the task he was undertaking, and also for the fact that he does seem to have been overborne by Yagari who, rightly or wrongly, he regarded as a person of knowledge. The accused was certainly very careless in his hasty assumption that he had the right ampule and unwise in his apparent reliance on Yagari, but I cannot be satisfied that this amounted to criminal negligence in the sense which I have indicated.

As I am unable to be satisfied on these matters beyond reasonable doubt the Crown fails to discharge the onus which lies on it and I therefore find the accused Not Guilty.

Solicitor for the Crown : P.J. Clay, Acting Crown Solicitor.

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