

Mr. Justice Laine

60596

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

CORAM: PRENTICE, J.

THE QUEEN

v.

HAME MANGA AND 16 OTHERS

JUDGMENT - 19th October 1970

1970

Oct 6, 7, 8,
9, 12, 13,
14, 19, 20
and 22.

PT. MORESBY

Prentice, J.

Tunke Wantina, the boss-boi, of an Okapa labouring line at Doa Plantation died between 4.00 a.m. and 5.15 a.m. approximately on the morning of 11th March, 1970. The evidence of Doctor Wilkey establishes that he died from injuries inflicted to his neck by axe or bush knife blow. A further very severe injury which smashed the skull and exposed the brain was inflicted on the deceased's forehead at the point of death or shortly thereafter. The injuries were inflicted while the deceased lay wounded with four other Okapa men in the plantation hospital. He was clearly murdered. The present seventeen accused are jointly charged with his wilful murder. On the previous evening a dispute arose over two rice rations. Two Tari men were killed (presumably by the Okapa line), as a result. Later in the evening a Tari line became involved in attacks upon an Okapa line. The Okapas were besieged in their sleeping quarters. The plantation overseers tried to rescue the besieged Okapas. The Taris armed with bows and arrows made repeated furious attacks upon the Okapas both as they were being got into, and while they were in one of the two landrovers which were brought to the labour compound by the overseers. The overseers finally succeeded in driving off a landrover with seven Okapas aboard. These seven Okapa men were taken away to the Doa Plantation hospital building some one quarter to one half a mile away. On arrival at the hospital two of the Okapas were seen to be dead and their bodies were locked away. As these men had all made their own way to the landrover, plainly two of them were killed while in the landrover. The remaining five men, one of whom appeared to be then fatally wounded (evidence establishes he was not Tunke) were bandaged and left alone in the hospital. Thereafter these remaining five Okapa men were attacked in the hospital and further wounds were inflicted on them, three of them (including Tunke) were found after 5.00 a.m., to be dead. One of the five who survived gave evidence at the trial.

Evidence was given by three plantation overseers, by Doctor Wilkey, two inspectors and a cadet officer of police,

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two interpreters and the abovementioned Okapa survivor of those wounded men left in Doa hospital. A great deal of time was taken in mounting an attack on the police evidence with a view to challenging the voluntariness of certain confessional evidence. During the trial, and before the examination in chief of Inspector Hodder, the principal investigating officer, had got very far under way, this challenge was explicitly abandoned by defence counsel. The veracity of all evidence given was in the upshot unchallenged; though the opportunities for and accuracy of observation, and the remembrance of, the Okapa survivor Piangare Wara were questioned. No evidence was given nor statement made by any of the accused, and no witnesses were called on their behalf.

The evidence does not establish who the person was who dealt Tunke the blow or blows from which he died.

The Crown case against the seventeen accused must rely either on their being persons who -

- (1) did or omitted acts for the purpose of enabling or aiding another or others to murder Tunke; or
- (2) aided another person or persons to murder Tunke; or
- (3) formed a common intention to prosecute an unlawful purpose in conjunction with one another; and in the prosecution of that purpose an offence (namely the murder of Tunke) was committed, that offence being of such a nature that its commission was a probable consequence of the prosecution of that purpose.

The question of whether the connection of a person with a crime was such as to bring him within Sec. 7 (being (1) and (2) above) or Sec. 8 (being (3) above) of the Code is a jury question.

When questioned at the factory compound by police officers on 11th March, each of the accused made a statement. Each statement is in evidence with the exception of that made by Hame Manga which may not be rendered admissible as the Huri interpreter who apparently acted in its compilation cannot now be located and the statement without that connecting link would be hearsay. The statements of the other accused related firstly to that Tari attack on the Okapas which was interrupted by the arrival and intervention of the Dutch overseers, and secondly to the attendance of the particular accused (it is

said by the Crown) at the hospital where the fatal attack on Tunke occurred. Each of the accused (except Hame) therein admits going into the hospital that early morning and either firing arrows at, axing, or hitting with canes, one or other of the wounded men then lying inside.

In some circumstances what was done is a useful guide to what it was intended to do (R. v. Wendo and Others (1) the judgment of Ollerenshaw, J.). From the evidence in particular of the geographical setting of the incidents of that night, the account of the attacks made earlier in the night at the factory compound on the Okapa men, the evidence of the overseers and others as to what was actually done at the hospital and from the two sightings over a period of a little over half an hour of men in the vicinity of the hospital by Mr. Van Slooten - numbering six in all, and from the identification and admission to Inspector Banono and to Cadet Officer Charles later in that morning (to which I shall refer later); I am satisfied beyond any reasonable doubt that a number of Tari men formed the common intention of going together to the hospital and of further attacking the wounded Okapas therein with a view to killing some or all of them and that they went together to the hospital and proceeded to carry out that intention. From each of the sixteen individual statements read individually in association with the evidence other than that of his fellow accuseds' statements I am satisfied beyond reasonable doubt that I may and I do draw an inference to the same effect against each of the accused except Hame. A series of statements from each of the accused Hame, Teraba, Wildeba, Are, Gowai, Piru, Labu, Kojuba, Goarima, Ibagu and Manga was put in evidence from which an intention in each case appears - an intention to kill in company. I am satisfied beyond reasonable doubt that I may draw and I do draw the inference from each of these individual statements also, against each of the individuals respectively concerned that such a common intention among a group of men was formed.

Defence counsel have urged upon me the possibility that there were several parties, or many individuals independently, raiding the Doa hospital that night. It is said this possibility arises upon a scrutiny of Mr. Van Slooten's evidence, from the fact that he initially saw two men in the vicinity and after hearing screams, that he discovered the massacre and quickly reported to his seniors, that he then

(1) 1963 P. and N.G.L.R. 217 at p. 239

waited outside the hospital for half an hour until Mr. Uiterwyck arrived; that then excusing himself he went some fifty yards to the manager's house to the toilet and that while there he heard a chopping sound (not apparently heard by Mr. Uiterwyck) from the direction of the hospital and that a little later he saw four men in white lap-laps running towards another group of Tari huts which are nearby but on a course which could be taken by men proceeding from the hospital to the factory compound. If the sounds of chopping, Mr. Van Slooten said that he heard, related to the presence of further men in the hospital this would indicate that raiders were present in the vicinity of the hospital from 5.15 a.m. the time of the screaming for something under three quarters of an hour. Taking into account the fact that this incident happened at the hospital a comparatively short time, of the order of about an hour, after the bodies had been left there and the wounds of the men bandaged, that it was getting on then towards dawn, that the raiders had obviously carefully waited until the hospital became unguarded, and all the preceding and surrounding circumstances as shown by the evidence, I am satisfied beyond reasonable doubt that though those attacking the hospital may have actually entered the hospital in waves, that they were all one party and were there as a result of formation of a common intention. It must be noted that the evidence of the Okapa survivor Piangare, though it must be looked at with caution, as he had been asleep and became after the further attack unconscious, is to the effect that he became aware that "plenty of people" came to the hospital (in the early hours of the morning) and that, "only once". I find as facts on the standard of proof required, namely that beyond reasonable doubt, that -

- (1) in the early hours of the morning of 11th March a number of Tari men formed a common intention of going to the hospital at Doa Plantation and attacking the persons lying therein with a view to killing some of those men;
- (2) this intention was prosecuted to the extent of a raiding party entering the hospital and by means of axes or knives and other weapons killing Tunke and other Okapa men;
- (3) those raiding the hospital that morning were all one party, there as a result of the formation of common intention abovementioned;

- (4) any men who were present in the vicinity of the hospital as members of that raiding party which gave Tunke his quittance aided the actual assailant by their presence and readiness to assist (see R. v. Wendo and Others(2) (supra)).

I next ask myself which, if any, of the accused were present in the vicinity of or in the hospital at the material time, that is, about the time when the deed was being perpetrated, the deed being the killing of Tunke.

Mr. Uiterwyck's evidence establishes that at the preliminary Tari attack at the compound about midnight Goarima and Kaiju Pabe were acting as leaders of the Tari faction. It was apparent to him that they were the "heads of the tribal fight" as he described it. These two men shouted "We have to kill two Okapas because two Taris were killed" during a lull in what, from Mr. Maas's description, appears to have been a ferocious and sustained attack by a large number of men armed with bows and arrows and axes. These two leaders were invited to inspect the bodies then in the landrover. They did so but denied on one occasion that any Okapas were then dead and later said "No, they're not killed yet because there is still noise in the car." I am satisfied that these attacks on the Okapas at that time, waxing and waning as they did in accordance with the movements of the overseers away from or toward the landrover, were the attacks of a number of Tari men who were fired with the necessity of working a "pay-back" on some of the Okapa men, and that the attacks were being controlled to some extent by Goarima and Kaiju.

A matter which I consider of the very first importance in the evidence is that which occurred when Inspector John Banono attempted to marshall certain of the labourers who were in the vicinity of the factory compound in the morning of 11th March. There were apparently a group of men there consisting of Taris, Chimbus and a few Okapas. Inspector Banono spoke to them and directed them to make "one line". The men present then proceeded of their own volition to form two lines. The front line consisted entirely of Taris. The Taris formed a line on their own. Inspector Banono speaking to the crowd of labourers in Pidgin said "Why do you make two lines?" The man Hame replied "We were the ones who fought." Inspector Banono then asked "What do you mean by fought", to which Hame replied "We were the ones who fought with the Okapas." Inspector Banono avers that when Hame was saying this the others in the line were nodding their heads in agreement. All the accused

were in this line and there were no persons in this line who were not the accused (other than an eighteenth accused man who has since died). Inspector Banono proceeded then to record the names of these eighteen Tari men who were in the front line in a book. The seventeen accuseds' were among the eighteen names. Cadet Officer John Charles gave evidence in which he corroborated this evidence of Inspector Banono. Cadet Officer Charles also averred that the following morning he was on duty in the vicinity of the small hospital building near the factory area in which two Okapa bodies were being held, at a time when the accused were grouped separately from other labourers; and that he spoke to them in Pidgin saying "You are the ones who were involved in the fight"; and that while he was saying this they were nodding their heads. Defence counsel submitted to me that Hame's explanation concurred in as it was by the remainder of the accused, and the further acquiescence by the accused of the description that was put to them by Cadet Officer Charles, is not to be taken as necessarily an admission of complicity in the incident involving the murder of the Okapas at the Doa hospital. It is necessary to bear in mind that the accused and all others present must have been aware that the police had come to the scene for the specific purpose, as had been promised in the middle of the night, of investigating the murders which had taken place on the plantation. By the morning the number of murders had risen to seven in all. I am satisfied beyond reasonable doubt that the accused must have understood "the ones who fought" - "the ones who fought the Okapas" descriptions with which they acquiesced; and "involved in the fight", as referring to the totality of the incidents in the night of the 10/11th March including that of the attack on the Doa hospital.

I turn now to a consideration of the material in the confessional statements affecting the question of the complicity or otherwise of each of the accused in the attack on the hospital. Each of the confessional statements is evidence of personal implication only against the particular accused making it.

Hame Manga

Only one statement from Hame Manga is in evidence. This was a result of an interview had with Hame at Bomana Corrective Institution on 18th March by Inspector Hodder. Inspector Hodder commenced the interview by saying "Hame, I am going to stop this court against you for fighting at Doa and instead I am giving you a big court because you killed a

man at the Doa hospital. You did this with your friends. You must understand that this court is a very big court and is not the same as just fighting. Do you understand", to which the accused Hame answered "Yes". After some questions by way of caution Inspector Hodder asked this accused "Hame, you told me before that you went to the hospital at Doa with your friends. I want to know what you were thinking of when you were walking to the hospital at this time", to which the accused gave the answer "The Okapas had killed two of our friends. We had to kill two Okapas. We went to the hospital to kill the men in there."

Teraba

The second accused Teraba gave a statement on 12th March in which after describing his participation in the initial attack on the Okapas at the factory compound, went on, "The Europeans took the Okapas to the hospital. In the morning at the time of the first bell I went with some of the Tari to where the injured men were. I carried an axe. We went into the hospital and killed the men who were still living. I hit one of the Okapas with my axe. I hit him twice. I saw that this man was moving so I just hit him with the axe. I do not know where I hit him with the axe. It was dark at the time. I ran back to the house." On 19th March at Bomana, Inspector Hodder had an interview with this accused which was prefaced, as were all his interviews at Bomana, by the explanation that the court was now to become one for killing a man from Okapa in the hospital at Doa. Teraba, in reply to a question, then thereafter answered, "The Okapas killed two of our men. We did not fight for nothing. We paid back the killing of the two Tari men. We killed the Okapas."

Wildeba

This accused in his statement on 12th March after describing his part in the earlier compound fight said, "The Europeans came and took the Okapa men out of the house. They put the Okapa men in their car. I, with some other Tari men, shot our arrows into the car because the Okapa men were not dead. I fired three arrows. The next morning I went to the hospital where the sick Okapa men were and I shot my arrows into the Okapas. I shot one arrow. I then ran back to my house." On 20th March at Bomana, after a similar preface from Inspector Hodder, this accused said "No, I do not want to say anything. We killed the Okapa men because they killed the Tari men. That is all."

Are

This accused after describing his part in the compound fight said, "The Okapa men went to the hospital with the Europeans. Near the time when the sun was coming up I went with the Tari men to a hospital and shot my two arrows at the Okapa men there. I stood at the door. I do not know who they hit. I ran back home. I had fired all of my arrows." On 18th March at Bomana, after the preface common to the interviews with all the accused, this accused was asked the question "I would like to know what you were thinking when you left your house to go to Doa." This accused answered "The Okapas killed two Taris. We had to kill two Okapas. We went to the hospital and killed the Okapas."

Gowai

This accused after describing his participation in the compound fight said, "I hit a man with my axe when he was in the car. I went to the hospital and took my axe. We went into the hospital and I hit some of the Okapa men with my axe. I hit one man on the back. I ran away. I threw the axe in the river." At Bomana on 19th in reply to Inspector Hodder's question "When you left your house at Doa and was walking to the hospital what were you thinking of", this accused answered "The Okapas were not dead and we had two Taris dead. We wanted to pay them back at the hospital." This accused took the Inspector on 12th March to a spot on the creek bank and retrieved an axe which he identified as his under a bush.

Piru

This accused after his description of the compound fight said, "The Europeans came in their truck and took the Okapas to the hospital. I was in my house at this time. I came out and had a look. I did not do anything. In the morning I took a stick and went to the hospital where the Okapas were. I went inside and hit some men. I went back to my house." At Bomana on 19th in answer to Inspector Hodder's question "When you left your house at Doa and were walking towards the hospital what were you thinking about", this accused replied "Two of my friends had been killed. The Okapas were not dead. We had to kill two Okapas. We were sorry for our friends."

Porawi

This accused described his part in the compound fight saying, "I went back into my house and got my axe. We

all went to the house of the Okapas. I cut the wall of the Okapa house. We made a hole and the others shot the arrows inside. The Europeans came and took the Okapas and put them in their truck. The Okapas were not dead. We stood around the car and some men shot arrows at the car. I got my axe and hit an Okapa man in the car. I went to the hospital in the morning and I hit a man a number of times but I don't know who it was I hit or where I hit him. It was dark in the hospital. I ran away to my house." This accused did not add anything in the interview which Inspector Hodder had with him at Bomana on 19th March.

Urulu

This accused after describing the compound fight went on, "The Europeans came and took the Okapas away. I did not shoot any arrows or fight the men in the car. I went with the rest of the Tari men to the hospital and I took my cane. We went into the hospital and I hit some of the Okapa men with my cane. We all ran away back to my house." The accused added nothing to this in his interview with Inspector Hodder at Bomana on 19th March.

Labu

This accused after his descriptions of the compound fight went on, "The Europeans took the sick men to the hospital. In the morning I went to the hospital and took my bow and arrows. Others took their axes. I fired three arrows into the hospital and hit three men. I hit one man on the arm. I hit one man on the leg and I hit one man on the side. I went to my house." At Bomana on 19th March after the identical prefatory remarks by Inspector Hodder, in answer to the Inspector's question "When you left your house at Doa and were walking to the hospital what were you thinking of", this accused answered "The Okapas killed two men from Tari. The Tari fought the Okapas but did not kill them all. There were some Okapas in the hospital and we went down to kill them."

Kojuba

This accused after his description of the compound fight said, "At the time of the bell I went with the men to the hospital. There the Okapas were. I went inside and shot all my arrows into the Okapas. The Okapas were not all dead when we got there. I came back to my house. I hit the Okapa men on the chest." At Bomana on 19th after the standard prefatory remarks, in answer to Inspector Hodder's question "When you left your house at Doa and were walking to the

hospital what were you thinking of", this accused replied "The Okapas had killed two Tari men. We had not killed an Okapa. We went to kill the Okapas and pay back the two Tari men."

Mandoba

After this accused's description of the compound fight he went on, "The Europeans took the men away and I went back to my house. Very early in the morning I went with other Tari men to the hospital where the Okapas were sleeping. We went into where the wounded men were resting and we killed them. I had my bow and arrow and I shot one of the injured men. I hit him in the leg. Other men hit this man with axes and we killed him. We ran away back to our house. I put my bow and arrow in the house." This accused added nothing at his interview on 20th March at Bomana.

Iawijia

This accused's addendum to his description of the compound fight was to this effect, "The Europeans took the Okapas away. I went to the hospital with the men and took my axe. I hit the Okapas with my axe. I only hit the man once. I ran away. I put my axe in my house." This accused added nothing in his interview on 19th March.

Goarima

This accused's reference to the hospital incident after his other narrative was as follows, "In the morning I took my bow and arrows and went with the men to the hospital. We went into the hospital and I shot five arrows into the Okapa men. I ran away with the other men back to our house." At Bomana on 18th March in answer to Inspector Hodder's question "When you left your house and went to the hospital at Doa what were you thinking of", this accused answered "It is no good if I get court for nothing. I am not getting court for nothing. The Okapas killed two men from Tari. We had to kill two men from Okapa. We went down to the hospital to kill the men from Okapa." This man was one of two men who were described as leaders of the tribal fight at the incident at the factory compound.

Ibago

This accused's reference to the hospital incident was, "In the morning I went with the other men to the hospital. I took an axe. I hit an Okapa man in the hospital. I hit this man on the neck. I ran away to my house." At Bomana on 18th in answer to Inspector Hodder's question "When you left your

house to go to the hospital at Doa what were you thinking about", this accused answered "I was not thinking about anything. We were going to the hospital to kill the Okapa men because they had killed two Taris. This is something we had to do."

Manga

This accused's relation of the hospital incident is as follows, "I went with the men to the hospital and I took my bush knife. I went inside the hospital with my friends and I cut some of the Okapas. I saw a leg sticking out and I hit the man. I did not see who I hit. I went to my house." At Bomana on 20th in reply to Inspector Hodder's standard question this accused replied "When I was walking to the hospital I was thinking that the Okapas had killed two of my friends. The Okapas were not dead and we had to pay them back."

Kaiju

This accused's reference to the hospital incident was, "The Europeans took the Okapas away. The Okapas were not all dead. I went to the hospital with the men and I took my bow and arrows. We went inside the hospital and I fired my arrows at the Okapas. I shot three arrows into one man. I put my bow and arrows in my house." This accused did not add anything at his interview with Inspector Hodder on 20th March at Bomana. This man was one of the two who were described as leaders of the tribal fight in the incident at the factory compound.

Etabe

This accused's reference to the hospital incident is as follows, "Europeans came and took the Okapas to the hospital. I went with the men to the hospital in the morning and went inside. Some of the Okapa men were not dead. I hit these people with my cane. I ran away." This accused added nothing to his interview with Inspector Hodder at Bomana on 19th March.

I am satisfied from a study of his confessional statement or statements in relation to each of the accused and from the application to each of them of the remainder of the evidence, other than the individual written confessional statements of his fellow accused; that each of the accused formed a member of the raiding party which attacked the Doa hospital which attack resulted in the death of Tunke. I am satisfied of this beyond reasonable doubt and so I find each of them

affected by the findings which I have already made. Their responsibility seems to me to be provided for by Sec. 7(b) and (c) of the Code, but it would seem that Sec. 8 also provides for their responsibility. I would, with respect, adopt the expression of His Honour Mr. Justice Ollerenshaw in Wendo's case (3) (supra) as to the effect of the phrase "probable consequence" in this section of the Code.

Verdict in respect of each of the seventeen accused - guilty of wilful murder.

ADDENDUM TO JUDGMENT - 22nd October 1970

Antecedents,
Addresses
on Sentence
Oct. 20.

Before leaving this onerous case I wish to make a few remarks. The investigations into this dreadful incident must have been carried out under trying conditions. I should wish to commend the police officers and constables concerned for the conspicuously proper and correct way in which statements appear to have been sought at Doa and later at Bomana, from the accused.

In the light of this it is I feel, a matter for regret, that these officers and other witnesses had it suggested to them in crossexamination by one of the defence counsel that -

- (a) improper use had been made of police authority in the treatment and confinement of the suspects;
- (b) improper suggestions had been made to various accused that others had made inculpatory statements, the effect of which was then put to the particular accused with a view to inducing admissions;
- (c) there had been excessive improper questioning;
- (d) Inspector Hodder had made up an incorrect record of interview by putting into narrative form what had been elicited in lengthy periods of question and answer.

Such accusations are serious. Counsel is under a duty to searchingly test all evidence, ordinarily, in accordance with his instructions. No doubt, in dealing with

unsophisticated and primitive clients he should be allowed greater latitude; but I consider that he is not entitled to make up for himself an imaginary version of what might have happened and then to cross-examine to try to establish that version - in the process attacking the credit, honesty and veracity of witnesses - unless he has reasonable grounds for thinking that the imputations conveyed by the questions are well founded or true. In this case at certain times one defence counsel's questioning seemed to be rather of the nature of a "fishing expedition" and gave the distinct impression of being based not on instructions but on imagination.

Having expressed commendation of the police work in one respect I think it is necessary to express regret that once again the reception of confessional evidence appears to have been made the excuse for lack of further adequate and detailed criminal investigation work. The judges of this Court have frequently (and perhaps increasingly) expressed themselves concerned at the apparent lack of attempts to corroborate confessions, and to investigate, so as to negative the possibility outlined by my brother Clarkson in a recent decision (R. v. Namiropa Koinbondi (4)), the possibility that persons may volunteer to accept the blame for the misdeeds of others (a possibility that was, I am informed, a probability in a case this week at Laiagam).

Some attempt was made in this case to identify the ownership of a large pile of weapons said to belong to various of the accused. Amazingly, no attempt appears to have been made to elucidate whether any of these weapons were actually used in the attack on Doa hospital, or whether any of them belonged to persons other than the accused. In the event the evidence as to ownership of weapons appeared to be largely irrelevant and futile. No attempt appears, from the evidence, to have been made to interview labourers of lines other than the Okapa and Tari. It seems incredible that some of the Chimbus living in the two huts which separate by a few yards the Taris' and the Okapas' huts at this compound, would not, for instance, have witnessed a good deal of the activities of this night and morning.

I am disposed to share what is said to be the Taris' puzzlement why no Okapas have apparently been charged over the killing of the Taris earlier that night.

(4) Unreported Judgment No. 563 of 9/2/70, Goroka.

SENTENCE - 22nd October 1970

The Criminal Code of Papua provides that the punishment for wilful murder is death. If the Court is able to find extenuating circumstances it may impose a lesser punishment of imprisonment. This, by all accounts, was a very bad case of wilful murder. Following a trivial argument over rations two Taris were killed and later two Okapas. Three other Okapa deaths occurred in the raid on the hospital arising out of which the seventeen accused were charged with the murder of Tunke. Following the discovery of the death of the two Tari men, the Taris and the others in the factory compound were warned that the police would be sent for and would arrive in the early hours of the morning to investigate the then two murders. The subsequent actions of the Tari men cannot be considered other than a deliberate attempt to forestall the police action which had been promised. In particular, the raid which I have found to have occurred after deliberation, amounts to an attempt to take vengeance into their own hands. I am asked to find that these Okapa murders occurred under the feeling of compulsion to make a traditional "pay-back". After hearing the evidence of Mr. Orwin who was called by the defence especially on this aspect, I feel very grave doubts as to whether this could be considered a traditional pay-back in the accepted sense in that it was not a pay-back between lines that were traditional blood enemies. I find indeed considerable difficulty in arriving at the view that there are any extenuating circumstances at all in the case. After lengthy consideration I have arrived at the view that the ages of the accused running as they do from some fifteen years to some twenty-five years representing men of an age group who would not normally perhaps partake in community decision making in their own villages, considered in the light of the tribal excitement which would have occurred in the circumstances of this night would and did amount to extenuating circumstances and I propose accordingly to impose a substituted punishment. Possibly the fact that the accused were said to be in their first contract labour job outside their home area provides a further matter of extenuation. It is submitted on behalf of the accused that when they were proceeding to the hospital to perpetrate these murders they did not advert to the fact that their proposed deed was against "the Administration law" as it was called, and it is said indeed that they did not know that it would be contrary to "the Administration law" in any event for them to work such a pay-back, if it may be called a pay-back. Eleven of these accused had some degree of

mission affiliation. Two of them were baptised. Six of the eleven villages from which they come are shown on the map as close to or on the road systems now linking Tari and Mendi. All the accused apparently come from the Tari subdistrict and the Kuroba subdistrict. In view of these facts and of the evidence of Mr. Robins and of Mr. Orwin as to the degree and method of Administration's instruction throughout the district of Tari and Kuroba over the years, and because the accused must have known that the police were to arrive on the plantation a matter of some six hours or so after the murders of the Taris had been committed, I am unable to accept that all or indeed any, did not know that they were doing wrong in accordance with "Administration law". It is said on behalf of the accused that as to some of them there may have been some degree of ritual association only, with the murder. As I have found, the evidence indicates an equal culpability in law, in that all participated jointly in a planned scheme and were there helping at the time of the murder. There may have been degrees of culpability. Some may have played leading roles. Some may have been persuaded against their will to take part in the deed. But no one of the accused has said anything to this effect, which leaves me with no material whatever on which I can differentiate as to degrees of legal culpability in the light of the findings I have made. Should I make any differentiation on the score of the weapons which are admitted to have been used? I doubt whether I can do so on any logical basis; but I propose in fact to do so in favour of those who used weapons which were unlikely to have caused death in any event, namely the kunda canes and also in favour of those whose degree of participation as far as weapons goes, does not appear at all. I should like to feel that I could make some differentiation in favour of the younger assailants. However, I find difficulty is made for me in this regard in that the very youngest Iawijia, who is said to be fifteen and looks it, although in the nature of things he should not have been recruited as labour unless he was sixteen, was a man who wielded an axe not only in the hospital but earlier against a man in the truck; and two others among the younger ones were among the five assailants who used either an axe or knife in the hospital; and among these the actual killer of Tunke would appear to be found. I propose to make some differentiation in favour of the younger men and in particular the obviously youngest Iawijia, and of Etabe who appeared to me to be less than 18; on the basis that in the nature of things the older men should bear a greater responsibility for the decision

that was taken. I am aware that of recent times murders which partake of the nature of "pay-back" have been thought to call for sentences of ten years' imprisonment, and that considerable social pressures from indigenous sources, notably from the area from which these young men come, have been building up in favour of an increase in these sentences. Information was before me that the population of six of the eleven villages concerned, would be somewhere about the 4,000 mark. I feel it is incumbent upon me to remember the possible cumulative social effect on their communities were I to inflict punishment of the order of ten years' imprisonment or more upon seventeen men from the one district. Thereby, possibly well over 170 procreative years of seventeen young men in the prime of life, would be lost to the village communities along with the traditional work and support that those young men could give to their communities. I want all you accused and through you the members of your communities, to retain no doubt that for many years the law has been that no killings are allowed. Where any men, women or children have been wrongly attacked, injured or killed, punishment of the wrong-doers must be left to the Administration and the police to investigate. Wrong-doers must be brought before the courts if they are to be punished. I would recommend that the Crown bring to the attention of the elected members from the subdistricts from which these accused come and to the appropriate District Administration authorities, the nature of the excuses which have been propounded here on behalf of the accused as to ignorance of the Administration law. And if it is practicable I would recommend that additional educative patrols be instituted so as to re-emphasize the ban on killings and to ensure that no one from a long-controlled district can pretend to have justification for raising in the future such a defence of ignorance as to the law re murder.

I sentence the following accused to imprisonment with hard labour for nine years - Teraba, Gowai, Ibagø, Wildeba, Are, Labu, Goarime, Kaiju. I sentence the following accused to imprisonment with hard labour for eight years - Piru, Hame, Porawi. I sentence the following accused to imprisonment with hard labour for seven years - Urulu, Manga, Kojuba, Mandoba. I sentence the following accused to imprisonment with hard labour for six years - Etabe, Iawijia.

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

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