

RABAUL.

PHILLIPS, C.J.

8/12/55.

REGINA v. BARRIE AND PITO

Notes for Summing Up.

Charge here - wilful murder, and there are two accused, therefore Jury must remember to deal with each accused separately.

On such charge ONUS always on Crown to prove guilt beyond all reasonable doubt - no onus on accused to prove innocence. Such proof requires proof to that degree of all elements constituting alleged offence, therefore in charge as here of wilful murder:-

- Crown must so prove
- death of Gutrei.
 - caused by accused (or aided, etc. or "in concert" under Sections 7 and 8 of The Queensland Criminal Code Adopted).
 - with intent to kill (distinguish intent from motive refer to presumption re intention,
 - and unlawfully (i.e. Crown must regard possibility of
 - accident;
 - self defence (discuss)
 - "provocation" (described Sections 268 and 269 Queensland Criminal Code and its effect in homicide. Section 344 Queensland Criminal Code.)

Insanity (only thing Defence has onus to prove, generally speaking) not realised here - but jury should consider (explain insanity - Section 26 of Queensland Criminal Code - what has to be proved, etc).

Review evidence, so largely undisputed, of Barrie's coming to house of Tutule at Pogove, where Tutulo, Kurara and Pito were, and announcing he was going to kill someone and asking them to follow.

They did follow - party - Barrie in lead, Pito and other two further back. They got to river on the other side of which were Gutrei with his family (wife, Liperivai, small son Darhe and baby daughter Katoki).

Barrie discloses self- others hide in bushes near by.

Barrie asks Gutrei for light, which Gutrei, wading stream, brings and they smoke and without warning, Barrie grapples with Gutrei but Gutrei flings him off and starts to flee, whereupon he is seized by Pito and held by Pito while Barrie strikes him on head, once at any rate, with back of axe-head. Gutrei falls to ground and is struck in like fashion again and moved no more. Darhe says he saw all this, and the two accused admitted it to

Patrol Officer Young-Whitford later. Barie crosses stream and deals similarly with Liperival and the baby (but Darhe escaped). Barie comes back across the stream and gets Pito to help move the body of Gutrei further from the river, into bush. The four return to Pogove and Barie to his bark hut. Darhe emerged and viewed the bodies of mother and sister but not father. Next day he brought Lulual Maru to see the first two and indicated where father's body had been carried, but Maru did not go and look at them but did, a week later, with a Native Constable who was sent by Young-Whitford. Later Barie admitted killing the three to his Paramount Lulual, Golpak, and again, after caution, to Young-Whitford, and Pito admitted to Young-Whitford that he held Gutrei while Barie struck him. Barie told Young-Whitford he killed because he thought Gutrei had "poisoned" a relative.

On that evidence: is death of Gutrei proved: clear on evidence that Gutrei died after receiving blows: regarding later finding of bones thought to be Gutrei's by Maru and two policemen, circumstantial evidence showing that they were: but whether they were or not, clear evidence that Gutrei died before being carried from stream.

did either of accused cause Gutrei's death: (clear that Barie's blows caused it - even through no expert medical evidence: he strong enough to throw off Barie just before yet died on receiving the two blows). These could probably never have been given had Pito not held Gutrei so that Barie could strike him and Pito knew of Barie's homicidal intent and must have been very close to Barie to be able to intercept fleeing Gutrei.

was intent to kill. Barie admitted intent to kill. Pito knew that and helped by holding Gutrei while Barie struck him: Defending Officer's theory that he merely defended Barie was not borne out by the evidence.

unlawful - Clearly not killing in self-defence; indeed it the reverse.

- Clearly no "provocation in law by Gutrei (who attempted to fling Barie off, and was then fleeing).

- Clearly no accident.

- "Pay-back" of suspected sorcery is no justification in law (though could be mitigation).

On evidence I must find it established beyond all reasonable doubt that Barie wilfully murdered Gutrei and that Pito voluntarily assisted him to wilfully murder Gutrei and made himself liable under Section 7 of the Queensland Criminal Code (if not also under Section 8). My verdict will be, as to each accused, "Guilty".

(Signed) F.B. Phillips, 8/12/55.