

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

CORAM: MR. JUSTICE KELLY

1st July, 1957.

at 10.00 a.m.

B E T W E E N

THE QUEEN

KEANA KAPORAKA.

J U D G M E N T

The accused is charged that on the 10th April, 1957 in the Territory of Papua he wilfully murdered one OVA EVI.

Wilful Murder is defined in Section 301 of the Criminal Code (Queensland, adopted) as follows: -

"Except as hereinafter set forth, any person who unlawfully kills another, intending to cause his death or that of some other person, is guilty of wilful murder."

On the expert evidence of Dr. Price, I find that the cause of OVA's death was a bullet wound in the head. The bullet penetrated the skull at the back, careered through the brain and then out through one nostril.

The accused and AME and OVA and another native KITA had escaped from Bomana Gaol on 8th April. On the 10th April they were camped at what has been referred to as 15 A.R.D. - Aircraft Repair Depot, near Ward's Strip. About half past six that evening they left the camp, intending to walk down to the Six Mile. At about 7 o'clock they met up with eleven natives on a truck. When they reached the truck OVA and KITA began to run away.

A native named TAU was in charge of the party in the truck. Apparently members of the truck left the truck and came on to the roadway. There was some conversation between some members of the truck and the accused and AME. They had left the road and gone into the grass on the side of the road. TAU called them out and spoke to them, inquiring who they were, where they worked, and what they were doing. The accused explained, or said, that they worked at the Eight Mile, that they had been playing cards that night and were then going home. It is not clear to me who said it, but somebody on the truck may have said to the accused and the three others "All right. Go now." But as they were about to move away, TAU noticed that the accused had a pistol in a holster slung round

his waist. That pistol has been produced in Court.

TAU said - "Give me that pistol." The accused said - "No it is mine - you cannot have it." There was then a struggle between TAU and the accused, for possession of the pistol. The accused called AME and OVA to his assistance. OVA is now dead, so no harm can come explaining his act. He flourished a bush knife over TAU. But before that AME had taken part in the scuffle, but some other charge may arise out of his action, so I will not comment on that at this stage.

When OVA flourished the bush knife over TAU, TAU broke off the struggle with the accused, and, to use his own words - "I ran for my life." The other natives in the truck party also ran in different directions.

From then on there were four shots fired. I will not comment upon the third and fourth shots, because here, again, there may be some other charge or charges arising out of those two shots. I am not sure, on the evidence, which shot was the one responsible for OVA's death, either the first or the second, but it was one of those bullets.

Mr. O'Connell, Counsel for the Defence, made the submission that there must be a doubt in my mind, as a jury, that there could have been somebody else present on that night armed with a pistol, and it could have been possible that that other person had fired the shot which caused OVA's death, but I cannot accept that submission.

I find it was either the first or the second shot that was fired which caused OVA's death, and that the accused is responsible for OVA's death.

Mr. O'Connell, Counsel for the Defence, submitted that the Crown had failed to prove the intent - that it was the accused's intention to kill OVA. Mr. Clay, Counsel for the Crown, accepted that submission. Therefore the accused cannot be guilty of wilful murder. There is no evidence that he did actually intend to kill OVA, therefore the verdict must be either murder or manslaughter.

So far as the Crown is concerned in this case, murder is defined as "unlawfully killing a person if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life." That does not mean the shooting itself; there must be some other unlawful purpose.

Mr. Clay, Counsel for the Crown, submitted that there was that unlawful purpose; firstly that the accused assaulted TAU in an endeavour to resist arrest. But on the evidence before me, there is no ground for arriving at a decision that the accused

assaulted TAU. On the contrary, so far as I see by the evidence, the accused's concern was to retain possession of the pistol. Mr. Clay made the further submission that it was another unlawful purpose; in that the accused assaulted the other natives in the truck by chasing them with a pistol.

The evidence of KITA, the fourth man, shows that he went back to the camp after the shooting, and asked what had happened. Without traversing the whole of KITA's statement, the accused told KITA - "Yes I am sorry I killed OVA. I didn't mean to do it. I did shoot aimlessly or recklessly, but I didn't intend to kill OVA."

The accused gave a similar statement to Sub-Inspector Fisher. There again the evidence translated through into English - "I fired the pistol over the truck."

However, there is no evidence before me on which I can find beyond a reasonable doubt that the accused did fire the first shot at any particular person with the intention of endangering that person's life. If it was the second shot which killed OVA, then that was not fired at any other person. In any event I gave the accused the benefit of any doubt there may be on that point. Therefore I do not find him guilty of murder, but I find him guilty of manslaughter - unlawfull killing.

Since 22nd June, 1950 the accused has had seventeen convictions, apart from eleven penalties imposed by the Visiting Justice of the Gaol. It appears that at present he is undergoing a sentence for three years imposed by the Supreme Court on 21st May, 1954. On the same date there was a similar sentence of three years imposed by the Supreme Court, but that was concurrent to the one just mentioned. On 31st May, 1954 he was convicted in the Court of Petty Sessions for escaping from custody, and was sentenced to one month's imprisonment. On 18th June, 1954 there were eight convictions in the Supreme Court on charges of breaking and entering - sentences ranging from eighteen months to nine months were imposed, apparently all concurrent with the two sentences of three years imposed the month before.

The accused is sentenced to seven years' imprisonment with hard labour cumulative with the sentences now being served by him.