

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

CORAM:

5th March, 1959

REGINA

v.

APAU - AUFE

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J U D G M E N T

The accused in this trial is a Mekeo native named APAU-AUFE, often called ERIKO, of Inau, and he is charged that on or about the 20th December, 1958 in the Territory of Papua he unlawfully wounded one ORINA-MAREA a Kerema man.

The accused and a number of others were playing a gambling card game called "Lucky" on a Saturday afternoon. A dispute arose because the wounded man ORINA was accepting cards in the deal without putting money in the centre. Sometimes he did put the stake in the centre, and each time he lost. Someone else won the pool on the five occasions when he took cards but failed to put money in the centre. He did not therefore get any money from his irregular practice. This failure to put the money in the centre, however, was considered unfair because the other players who won were, in their eyes, cheated out of the money he should have put in. The accused became angry and told him to leave the game. Then the man ORINA is said to have jumped to his feet, flung the cards on the floor and said some bad words which he admits saying, but they were in reference to the cards and not with reference to the accused. The accused says they referred directly to him. ORINA says accused went off to the front room and returned with a scrub knife. ORINA made haste through a window. The other Kerema men in the room went out also through the window.

When they all jumped out through the window, accused says he walked into his own bedroom to put away his wallet. He was not a bit angry, so he says. He did not go to get the bush knife, return to the bedroom with it and the man ORINA and the others jumped out of the window, according to his evidence. Why did those seven men jump out of the window? Perhaps that was an easier exit or a way for flight, as ORINA says it was.

We are concerned, however, particularly with the wounding by accused which occurred in the vicinity of the front door of the boy-house. As to what happened there is the evidence of ORINA. ORINA showed himself to be such a liar that his evidence can not be relied on. HAEAE his brother who is supposed to have witnessed the event placed the scene of the wounding on a spot where no one else says it happened. Without going into the matter of HAEAE's evidence further, I am quite sure HAEAE did not see the wounding happen.

The Crown case is then boiled down to what the accused told the Sub-Inspector. I am not forgetting Sander's evidence, but as to the events which led up to the wounding and as to the actual wounding, his evidence is too vague to be of any value.

I do not see that the Police Sub-Inspector offended against the Judges Rules. He acted in quite the normal manner for an investigating officer, insofar as his examination of the accused was concerned. He had, however, interviewed ORINA and HAEAE and got their stories before he had a conversation with the accused, and he might have been satisfied with so much of the accused's story which appeared to tally with the stories of ORINA and HAEAE. When he was told by accused that some of the Kerema men had stones, he should have investigated that assertion. Accused did not declare to anyone that he had used the knife in self defence or in defence of his family before the lower Court proceedings, but he did tell the Sub-Inspector about the stones, and an investigation of that might have disclosed why he had used the knife.

Here is a native accused who has made certain statements to the police investigating officer, and now at his trial he declares that he did not tell the investigating officer what he is alleged to have told him, but more and different things. Without definite proof that he did say what was alleged and no more, and that definite proof in the shape of a proper record appears to be wanting, as it does appear, then in my view there is sufficient to throw a doubt upon the evidence of the Sub-Inspector, which is the case upon which the Crown must rely. The accused does not have to prove a negative; it is enough that his defence raises a reasonable doubt on the Crown case. This he has done. I find him not guilty.