

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

CORAM:

10 o'clock Friday  
 24th July, 1959.

B E T W E E N

THE UNIVERSITY  
 OF  
 PAPUA & NEW GUINEA  
 THE LIBRARY

THE QUEEN

v.

EUGENE MURRAY RYANJ U D G M E N T

The accused (represented by Mr. Stan Gory of Counsel) comes before the Court charged with unlawfully killing one KEVIN ERNEST BUROW.

To this charge he has pleaded "Not Guilty", thus putting the Crown to strict proof of every element of the offence beyond a reasonable doubt. The learned Crown Prosecutor, Mr. C. McLoughlin, very properly conceded that the onus was on the Crown to negative any defence open to the accused (as insanity is not raised here) so I do not need to deal with this aspect. The accused elected at the close of the Crown evidence, to give evidence on oath.

If the Court is left in reasonable doubt of any element of the offence the accused is entitled to his acquittal.

The facts in the case are as follows, and to a proper understanding of them it is necessary to cover a period leading up to the crucial time when violence erupted.

On Tuesday the 9th June, 1959 the witness, Ian Harvey, arrived at the Samarai Club about 4.30 p.m. and had drinks with two friends, Williams and Williamson.

About 5 o'clock they were joined by the accused, Ryan, and about 5.15 by the deceased, Burow, and his wife. Drinking continued with the deceased consuming brandy and port wine. The bar closed at 6.30 with the deceased having consumed more than the others mentioned.

The deceased, Burow, and his wife invited about ten people at the Club to their flat for further drinks. At this stage the deceased was showing obvious signs of over indulgence. The condition of the accused, Ryan, is described as mellow but not drunk.

At the flat the deceased drank rum, as did the accused, Ryan, whilst Harvey continued drinking beer.

About 7.30 Harvey left to get some fish for dinner, having been invited by Burow and his wife to dine. The accused appeared to Harvey to be drunk at this stage, but there was as yet no sign of any unpleasantness at the flat. Harvey returned to the flat at 8.15, finding Mrs. Burow, the accused, Ryan, Williams and Williamson in the lounge, and was told that Burow was tired and had gone to bed.

The meal was consumed without incident and the diners, about 9 o'clock, repaired to the Club again. Mrs. Burow had apparently spoken to her husband, who did not object. At this time the accused had sobered, and Mrs. Burow seemed unaffected by alcohol.

At 9.15 at the Club drinking continued. The Bar at the Club closed at 10.30 and Williams and Williamson wisely left for home.

The accused played, during the period at the Club, a foursome of snooker and a game of snooker and one of billiards with Harvey.

About half an hour after closing time accused, Ryan, and Harvey escorted Mrs. Burow to the flat and were invited in by her for further drinks. On their entry the deceased called out from the room abusively to the males to go home. Unfortunately neither heeded him.

"Then Mrs. Burow said to the accused - "Bring Kevin (the deceased) out for a drink."

The accused, it appears, went in to do this, but narrowly missed a heavy punch from Burow. The two, the accused, Ryan, and Harvey were overpersuaded by Mrs. Burow and continued to drink.

At this stage the (deceased) husband followed his wife to the kitchen where she was getting cold water for drinks, and he was heard to say to her - "Fuck off to bed, you slut", followed by the sound of slaps, and Mrs. Burow's voice saying - "Stop it, Kevin. Don't hit me any more."

Mrs. Burow returned to the lounge, crying, followed by her husband. Harvey said to the accused - "We should go," but again unfortunately they made no move. Mrs. Burow foolishly asked them to have another drink, and appeared frightened.

At about this stage the husband pulled his wife from the chair and kicked her, but not heavily, in the posterior, and he said - "Get to bed, you bitch."

The accused tried to mollify the husband, who told him to mind his own business.

Then the husband said to accused - "I'll have you." The accused reiterated that he did not want to fight and said - "Why pick on a little bloke like me." Then Harvey intervened and got the two to shake hands, and the drinking continued.

The accused rose, saying - "I am going home", and moved towards the door. The husband said - "Good, I'll have you outside."

From the evidence it appears that Burow was set upon having a fight with the accused. All of the four in the flat were much the worse for liquor.

The accused reached for the door handle and Burow, who was on his right, struck him unexpectedly a heavy blow with his fist on the right side of the head, felling Ryan to the floor. He then followed accused down and struck him three or four blows which Harvey describes as vicious and heavy.

The accused, who tried to crawl away on all fours, to protect himself grabbed the lower part of the deceased's legs and threw him over his shoulder, still holding his legs, so that he fell to the floor heavily. The evidence shows that the deceased fell heavily on his back towards his side. It is a great misfortune that the other two in the room were not good witnesses through over indulgence in alcohol over a period of hours, as the Crown Prosecutor very fairly admitted.

It was contended for the defence that Burow might have hit his head on the strip at the doorway, but the evidence does not support that.

The accused then seized Burow by the hair as he was attempting to rise and helped him on his feet. Burow then stood up in a crouching position with his hands and arms protecting his face and body. The witness Harvey thought that this was the prelude to another attack on Ryan.

Ryan then hit Burow two blows to the body and some blows to the head, but as Burow had covered up, the exact places where the blows landed are uncertain.

Burow fell to the floor and Harvey intervened. Burow sat in a chair. He was breathing heavily and was obviously in a bad way. Artificial respiration was immediately applied by Harvey and accused and after a doctor was called, he pronounced life extinct.

A post mortem revealed a fracture on the right side of the skull inside on the floor of the skull involving the temporal bone. There were three bruises on top of the head. There was extensive haemorrhage in the brain.

The cause of death was the fracture. Medical evidence found no mark of a blow likely to cause the fracture, though the doctors agree that a heavy blow to the chin in an upwards direction is the most likely cause of the fracture and that death would follow so soon that no mark of the blow might be observable.

One doctor (Brand) concedes it is in the reach of possibility that being dumped heavily on the floor might cause the fracture, but Dr. Francis could not concede this.

It was obvious from the post mortem that the deceased had consumed <sup>an</sup> usually large quantities of liquor. He was a much bigger man than the accused.

Now a man who is accused of a crime can not take advantage of his being excited by alcohol to escape responsibility, but he is no worse off than a sober man if he acts within the limits in the circumstances which a reasonable person who had not consumed liquor would.

As a jury I think the brutal attack of the deceased upon the accused would justify a sober man in acting in self-defence, as the accused did.

I do not believe the accused when he tells the Court on being attacked as he was he did not lose his power of self-control; the facts do not support him.

I think that the accused should be acquitted both on the grounds of self-defence and provocation. Section 269 appears designed for just such a case as the present. On the medical testimony the Court can not exclude the possibility that the fall caused the fracture, though this seems highly unlikely.

I trust that all concerned will consider in the future carefully the dangers of grossly immoderate use of alcohol, without which this case would hardly have arisen.

Accused I find you Not Guilty. Accused discharged.