

TRAIT.

SAMARAI 26/2/60.

175C.

R. -v- NUMAWAGA.

(ex Baniara).

ARTHUR: (Interpreter) (Baniara).

Pratt for Crown.

Smith for Defence.

Unlawful killing.

Plea: Yes story is true.

Plea - Not Guilty (entered).

STEPHEN: (Affirmed Interpreter) Baniara.

I know accused, NUMAWAGA. I present occasion Smith, C.P.O. and accused one day spoke. Smith spoke English. Accused in Wedau. I understood.

Cross-Examination:

True accused does not speak Wedau well. Wedau word for hand is "idai." I do not know if also word for "wrist." He said he and woman DADAVIA went to garden that morning and wife angry because he went and she talked angrily. He got cross and threw piece of wood and hit wall. <sup>TA'INI</sup> ~~TARIN~~ came out and angry with him. Cross words and quarrelled. Stick hit him on wrist and shoulder, and could not see <sup>TA'INI</sup> ~~TARIN~~ because dark and partly in house, and picked up wood and threw into house and later found ~~TARIN~~ hurt.  
TA'INI

RE-EXAMINATION:

- Idai quere - wrist.
- Wall of house - guidu.
- Martarau - outside of wall.
- Lavinera - inside of wall.
- Minibu
- fivere - joint.
- idau fivere - wrist.

ROBERT LAURENCE SMITH: C.P.O. and Police, Baniara.

Accused brought to Baniara under arrest.

Interpreter STEPHEN. Interpreter cautioned - received certain information led to believe 7 p.m. BONEMEBI you killed a man. You do not have to say, etc.

I understand what I say.

Evidence objected to by defence on ground that Mr. Smith would be giving hearsay evidence. The evidence has been given directly by Interpreter a Crown witness and hearsay cannot be called to contradict it.

Cannot challenge own witnesses.

Objection over-ruled, following decision in Tapini case.

On night 24th December, etc. Dark. Bad talk. Stone. Angry and picked up piece of wood. Standing about 10 feet away.

Hit me on left arm with hand.

I threw wood at ~~TARIN~~ <sup>TA'INI</sup>. He did not cry out but fell on ground. Called out. ~~TARIN~~ <sup>TA'INI</sup> lay on ground. Dead. Wound.

IKARA. Returned with Village Constable.

Informed would be charged with killing ~~TARIN~~ <sup>TA'INI</sup>.

No- Cross-Examination.  
Ikara village.

DADAVEA ~~IKARA~~: (affirmed.) Married Woman.

I remember trouble. On Thursday we went to garden - NUMAWAGA's garden

Objection to evidence as to conduct of accused in morning.

Crown only seeks to prove who present and when they arrived.

Evidence admitted.

DADAVEA: (Contd.)

We arrived early in morning at garden. Evening returned.

When we went to village VEKWAINI was angry with me. VEKWAINI is wife of accused. Accused took a stick and hit the wall with it. The stick came down and hit the fire and a spark or cinder burned a baby (or man). She was inside. I was outside. That man came out, TA'INI.

He hit accused on back (shoulder). Stick was 2 to 3 feet long (as thick as broom handle). Accused hit TA'INI on bridge of nose with a stick. (Identifies stick on table). The stick broke.

(EXHIBIT "A" - BROKEN STICK.)



DADAVEA: (Contd.)

NUMAWAGA was about seven paces from where TA'INI was. It struck him on forehead. NUMAWAGA was holding it. He ran and hit him. TA'INI fell down.

We took him inside the house. VEKWAINI.

CROSS-EXAMINATION:

Accused hit on wrist, too, when trying to ward off blow.

Re-EXAMINATION:

NIL.

KINIKUNI: (Ikara). Village Counstable.

Know accused. Comes from my village, Ikari.

Accused said trouble. Came New Year.

I arrested him and put handcuffs on him because TA'INI had been killed.

He said - "I have killed a man. We go and see. "  
He said that Didiwuna.

I spoke to brother of TA'INI. He had bone broken at bridge of nose. Nose was broken.

Bone was broken. Only one mark (INDICATED).

TA'INI's sister's daughter is VEKWAINI.

BEKWAINI's mother.

Tendering statement of accused - part of depositions.

Case for Crown.

Defence does not call evidence or tender statement.

ADDRESSES-

Crown. 303-310.

Evidence. Accused returned to village and woman <sup>wife.</sup> abused by  
Accused struck wall - broke it, and ember came in contact with  
ember.

TA'INI came out and struck accused.

Struck him with a very heavy piece of wood.

Provocation - re manslaughter.

Griffiths C.J.

R. v. Gurin 1957. }

R. v. Herlihy 1956. }

R. v. Sabri Jee 1952.

Cases of murder and wilful murder.

at 1952 Q.S.R. 269 at 295 Stanley J:- provision in 304 is as defined in 268.

Self defence.

271

Accused arrived at house; he provoked assault.  
Variance in evidence.

Defence:

Cause of death.

Witness says dead.

? normal skull.

First assault not provoked.

Threw stone or struck wall.

Other man rushes.

Doubt as to these things.

Stick in hand - hit back.

If provocation open should acquit.

Still had wood in hand. Accused might believe that attack would be continued.

Provocation in manslaughter.

Stanley J. Unlawful grievous bodily harm.

(cf. 268 - 271 - 272).

DECISION:

The facts strongly suggest murder in the second degree with a possible defence under Section 304. reducing the crime to manslaughter of which I would be disposed to convict the accused under Section 584. The real question here is the cause of death. It is not so much that there is a doubt attached, rather I think that there is an absence of evidence on the point. Certainly TA'INI was dead soon after he received the blow and apparently healthy before but I think the evidence is not satisfactory as a <sup>alone</sup> ~~founder~~ for an inference, since we do not hear of deceased again until he is buried and know nothing of the symptoms. A bone of some sort appears to have been broken, that is about all that is known of his injury. Nevertheless the blow struck was one of a nature and with an instrument likely to cause death or grievous bodily harm and I think it is clear that grievous bodily harm, at least, was done. A blow to the region of the bridge of the nose delivered with force and a heavy piece of timber



causing fracture of the bony structure is, I think, such an injury.

The defence of provocation is open under Section 268 but I think that the first attack was made by the accused without provocation and this provoked TA'INI's counter attack.

It is true that there are several versions but whether he threw a stick or stone into the hut occupied by several people in the dark, or whether he broke the wall of the house causing timber to disturb the fire, I think TA'INI was justified in taking this as an attack on all the occupants of the house including himself - and in addition his position as senior male relative put him in a position to act. Even if the attack were solely directed against the wife of the accused, Section 273 would meet the case.

I think the accused was outside sulking and angry and apparently sitting on the ground brooding over his troubles. He gave vent to a dangerous attack in circumstances likely to produce the result which occurred. After the blow was struck by TA'INI and there was nothing as far as the evidence goes to suggest the possibility of further attacks, the accused seized a convenient piece of timber and attacked back. I think everyone was angry and the attack by the accused, although very severe, was in turn provoked by TA'INI's attack, so that he would have had a substantial defence if he had not himself provoked the first attack. I think the facts do not satisfy Section 272 and therefore the accused should be found guilty of unlawfully doing grievous bodily harm.

VERDICT: Guilty of grievous bodily harm.

SENTENCE:

Crown:

No prior convictions. Comes from fairly primitive area. Little contact. No Mission training or influence. Married. Several children. Regular patrolling in area. 2 days' walk from coast. Custody 2 months.

SENTENCE: 9 months' imprisonment with hard labour.

C.J.