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

CORAM: MANN C.J.

THE QUEEN v. KOIVI

Trial at Tapini:  
23rd August, 1961.

REASONS FOR JUDGMENT.

The basic question in these cases is whether it is appropriate to attach to the accused responsibility for violence which is in fact likely to result in death, when the medical knowledge, social habits and actual experience of death are different from our own. It is often very difficult to present in the evidence an adequate picture of this.

The test of foreseeability which I have put forward in R. v. Diru and dismissed in R. v. Gamumu, was intended to afford an interpretation of the code which enabled section 23 to operate in harmony, as I think it was intended to, with sections 288 and 289 as well as with the sections defining homicide.

What I said in Diru's case at paragraph 15 was a reference to the Crown's allegation, which was not proved, that the accused, on being reprimanded by his aged father, delivered a running kick in the abdomen of the old man, who was sitting on the floor. Perhaps in that paragraph I placed too much emphasis on ruptured spleens, for on the facts alleged in that case, a kick of the kind allegedly delivered would be just as likely to render the accused responsible had death ensued

as a result of the rupture of any other organ.

Manslaughter is the classification of homicide which calls for greater care, greater concern for life. If it is just to say to the accused: "you did not observe the proper standard", it is right that he should be criminally responsible. The effects of malaria are well and widely known. Generally, people who do wrongful acts likely to rupture spleens must take the responsibility. This, however, is not a statement of law but poses a conclusion which may or may not be drawn depending on the facts of the particular case. It represents, perhaps, a normal statement of responsibility for the ordinary citizen, but we must contemplate that some people who are backward and socially primitive may not be reasonably expected to come up to the normal standard.

In cases of skulls split open by axes the inquiry will seldom arise in practice, similarly in many areas with spleen cases; but it must appear from the circumstances either that it is fair to treat spleen rupture risks as foreseeable in the environment of the accused, or that the blows were so violent and delivered in such an unprotected part of the body that it is fair to say that a person in the position of the accused should have foreseen death as a likely result.

These people are fairly simple and it is not obvious that the accused should be held responsible. Other people separated the two combatants, but the evidence does not relate their anxiety to the woman's spleen. I do not know whether malaria is common in the area or whether accused has any knowledge or means of knowledge of it.

The evidence shows that two blows were delivered in the lower abdomen, not in the region of the

spleen, but does not indicate their force, or relate them clearly in line to the death which, on the medical evidence, must have been quite sudden. Two healthy young people, angry and jealous, were engaged in a violent physical fight. The evidence does not give a clear enough picture of how the spleen came to be ruptured. The rather "matter of fact" description of the two blows hardly even established that they were intentional.

I do not think that the evidence clearly enough shows that these blows caused death, it suggests only that the accused may have thought so afterwards. The blows may have been extremely violent, but unless the evidence says so I cannot infer it, nor can I say that death was caused by them and should have been foreseeable. I hold, therefore, that the evidence does not exclude the defence of accident nor does it enable me to apply any standard of criminal negligence to established facts.

Not Guilty Manslaughter.

Verdict: Guilty of Assault.

Crown: 33 years of age. No previous convictions.  
3 children (1 daughter (3), 2 sons (6 and 1 year). Very little contact with Administration and Europeans and village community. Four months in custody and has worked.

Allocutus: -

Sentence: 5 months I.H.L.