

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

REGINA -v- KORONGIA.

MADANG.
MANN C.J.
24/5/61.

The accused is an elderly man, reputedly the oldest member of his group. He had four sons and an adopted son, DEWAMBA, now a Mission Catechist.

The eldest son, KARI, died suddenly and from unknown cause, just after his departure for the Chimbu Valley, where he and his relatives were going to join in some Christmas celebrations. When news of his death reached Chimbu where his brothers had already arrived, his brothers immediately came back to mourn over the body at Boroni and attend to the burial.

The accused took charge of the funeral rites and directed the necessary operations. He was not present at the side of the body throughout the whole of the four days of mourning, partly because he had to leave occasionally to attend to various arrangements, and partly because of his restless character. He lived outside the main village area and had several houses. During the mourning period he wandered about a good deal, keening over the loss of his eldest son, and was very distressed.

The sister-in-law of the deceased, a Chimbu woman named MORU, who was ZAMOGA's wife, was present at the place where the mourners were gathered round the body. She had applied clay to her body as was appropriate to the occasion, but the brothers of the deceased noticed that she was not crying properly or giving a sufficiently convincing display of grief. This was a circumstance of special significance to these people. It was taken as a certain indication that MORU was in some way responsible for the death of KARI, by means of sorcery.

According to the evidence, DEWAMBA, the brother by adoption of the deceased, and ABA, the true brother of the deceased, took MORU a little

distance apart from the mourners and to a position out of their sight. According to the evidence nothing but gentleness was used, but MORU's baby became upset and cried, so that DEWAMBA took charge of the child, and each man took one of MORU's hands and took her to the place where, later, the conversation took place. MORU, on being released, sat on the ground. My impression is that MORU's position was defensive, and that she was under considerable pressure and that the men were aggressive and accusing in their attitude.

When MORU sat down she was accused of sorcery and asked to explain why she had not mourned properly. In her reply she stated that she had killed KARI by sorcery. According to the evidence, before she finished speaking, the accused suddenly appeared from behind the two men and without warning killed MORU with his axe.

DEWAMBA tried to intervene and take the axe but accused turned savagely towards the men and threatened them with the axe. They retreated, and, having inflicted two more axe cuts on the body, the old man ran off, but later accompanied the men who went to the Patrol Post to report the killing.

There were some difficulties that could not be resolved satisfactorily. I have used the word, "sorcery," but the evidence came through Pidgin to English and the Pidgin word "poison" was used. Efforts to ascertain whether MORU simply poisoned KARI by administering some poisonous substance or resorted to magic did not produce an entirely clear picture. The younger men did not know; and it appears that they, having no expert knowledge of the subject, observe no distinction. They all, however, in spite of some rudimentary religious training, obviously fear sorcery, and regard it as a real and potent cause of death. Even the Mission Catechist fully shares this view and in fact took the leading part in the inquisition.

The accused himself, the only witness with any knowledge of sorcery, denied that there are plants growing in the bush that could cause death, and affirmed that a death such as KARI's is to be

explained only by reference to supernatural means.

Speaking metaphorically, he said that MORU had something inside her head that could be regarded as a flying-fox eating her brain, and that she could send out this thing to kill KARI. He explained that this "flying-fox thing" was capable of flying round at night-time in the same way as a flying-fox, that is, apparently as a dark and shadowy thing, practically invisible. He said that he "knew" that the Government, in cases of sorcery by a woman against her husband's clan, merely allowed the husband to send the woman back to her own people to live, but he said that if MORU had been sent home to her people, she might have come back again and killed more men. The only way to deal with the situation was to kill the woman, thus frightening the evil spirit away, so that it would fly away and they would never see it again.

Even those who lacked the ability of the accused to explain those things as fully, shared the old man's fear. MORU herself appears to have believed that she had killed KARI, although this is not certain.

The people of Bundikara are mountain people who exchange women in marriage with the Chimbus. There are apparently many Chimbu wives in Bundikara, and it may be significant that KARI's wife was also a Chimbu from the same place and clan as MORU. However, the evidence failed to throw light on this point.

MORU purported to kill KARI because she was in difficulties. She had stolen some taro from KARI's garden, and KARI found out about it, possibly again because of some disagreement between the two Chimbu women. At all events KARI demanded £1 compensation, and said that he was going away on Government work, and that MORU must pay him on his return at the end of the week.

According to local practice, if MORU had asked for the taro, KARI would have been obliged to give it to her, and no doubt he would have been entitled to make some reciprocal request when he wanted to; but to take food without asking is regarded as stealing. KARI proposed to denounce MORU if the

pound was not paid, and public disgrace for MORU would have been the result. This was a situation which would bring great shame to MORU, and lower her prestige.

The demand for £1 appears to have been exorbitant, and it appears that KARI well knew that MORU would not have anything like that sum of money. It was a situation akin to blackmail, not uncommon in native society. Since we do not know what was going on between these Chimbu women, the explanation cannot be complete, but it seems clear enough that MORU had no-one willing to help her, and was in a predicament from which she could not escape.

Accordingly she either resorted to sorcery to kill KARI, or, to enhance her reputation amongst the women, but with great risk to herself at the hands of the men, adopted the idea that she had killed KARI by sorcery, when she was observed not to be really upset by his death, which must in any event have afforded her much relief. It is impossible to say how much interrogation went on or to how much pressure she was subjected before she confessed, or what were her motives in confessing.

The part played by accused was simple and direct. He had not spent much time at the body and had apparently failed to notice MORU's lack of sorrow. He had been cutting firewood to ensure an adequate supply for cooking for the guests, and nobody had seen him for some time. He was on his way over, quite unobserved, to ask DEWAMBA and ABA to carry KARI's body to the burial place he had selected, and was carrying his axe. As he approached from behind the two men he must have noticed that the interrogation was going on, and he heard MORU say that she had killed KARI, and also heard her detailed explanation of how and why she had done it. Before she had finished speaking accused leapt forward and killed her with an axe blow on the top of the head, subsequently followed by two other cuts.

The possibility that the three wounds were respectively inflicted by the three men present, and that the accused was nominated to take the blame by mutual consent, was carefully investigated, but

without result.

The other two men, in the confused and changing social climate in which they live, stoutly maintained that they would not have attacked MORU because they knew about the law, although the old man did so because he belonged to a past age. They did not approve of his action, but expressed themselves bound to accept what he had done as a filial duty. It is clear that none of the men had any real sympathy for MORU or grief at her death, save that afterwards her husband, ZAMOGA, remembering that she had been a good wife, felt sorry enough for her to bring her body in out of the rain.

Having regard to the parts played by men and women in this form of society, all the circumstances I have related fall naturally into place, and the social forces and beliefs indicated are very real to these people.

The accused stated that as he killed MORU, he uttered words which appear to me to represent his thoughts, probably originating at a much later stage after he had decided to go to the Patrol Post to report the killing. The effect of what he claims to have said is, "You can't work for the Government." He explained this as meaning that all his sons were making a valuable contribution towards the Government's work, and that by killing the eldest, MORU had done much to reduce the Government's best supporters, and the prestige of the accused, who is greatly devoted to the Government and its work. MORU herself was no substitute for KARI.

The accused evidently did not realise that this evidence, if accepted literally, would do him more harm than good, but I think that properly understood in its native context, it does help him to some extent, for it tends to show, by contrast, that his subsequent thoughts bore a realisation of the unlawfulness of his actions, which was probably absent at the time he attacked MORU.

The first defence I must consider is provocation. I am satisfied that the actions of accused constitute wilful murder, subject to this

and the other defence I will consider later. I am also satisfied that the accused was in fact provoked and lost control to the extent specified in Section 304. This is substantially the second question posed by Viscount Simon in Holmes case. (1946 A.C. at p. 597).

The substance of the first question is whether the provocation satisfies the objective tests of Section 268. I think that accused must be expected to observe what may be regarded as the proper standards of the people of his area, i.e., the people of his culture, mostly partly educated, mostly under Mission influence, some at least baptised, and all living within the effectively protected area adjacent to the Bundi Patrol Post. It is true that accused is in some respects a man apart, but he is very much a member of his group, and so regards himself, for he is proud of his family's contribution towards Government works.

I think that his sons' evidence and that of DEWAMBA, as well as his own, put the objective test out of the reach of the accused. The younger men would have accepted the law; they were as much upset as was the accused, but they would not have lost control of their passions, and they would not have killed MORU.

Accused, with more understanding of the dangers of sorcery than the Government appeared to him to have, realised the danger and feared it more than the younger men. He killed MORU in anger, but also as one would kill a dangerous snake; in fear; and in fear of a much more widespread danger. Accused was alone in his knowledge, and in truth, as his sons said, he belonged to an earlier age when there was no other redress. The present standards of his clan accept it as a matter for the Courts. In my opinion the fact that accused is alone and behind the present standards of his community, put him outside the scope of this defence, but his position, natural as it is, is one for consideration by the proper authorities in relation to the prerogative of mercy, when more subjective considerations may be taken into account.

It is not necessary for me to decide whether the words uttered by MORU constituted "a wrongful act or insult" for the purposes of Section 268. I have previously decided that mere words in many Territory cases may be found sufficient. At the moment I am inclined to think that no "insult" can be read into MORU's words. Reg. v. KORUAPU, to which I was referred in argument depended mainly on the onus of proof, and the likelihood of insult was not excluded.

At present I do not think that "wrongful act" or "insult" are mutually exclusive, or that the phrase separates deeds from words, for an insult may well be by conduct. I think that the speaking of words may, in many cases in the Territory, constitute provocation by wrongful acts, but that on no view could MORU's confession be regarded as wrongful.

I reject the argument that the killing of KARI was the relevant wrongful act, and that it operated as provocation at the time when it was communicated to accused, for the act relied on must itself be either done to or in the presence of the accused.

The other defence for consideration is of delusions, under Section 27, combined with some aspect of self-defence. Counsel for the Defence had difficulty formulating this defence under the present Code. I think that Section 27 is inapplicable, for although delusions are distinguished from insanity in the text, the second paragraph is a modification of the first, extending rather than limiting criminal responsibility. I think further that the beliefs of accused, common to his clansmen, are not delusions within the meaning of Section 27.

I do think that accused is entitled to be dealt with under Section 24 on the basis of an assumption that his erroneous belief in MORU's magical powers and malevolence was justified. His belief, I am satisfied, was honest, and, for the accused, reasonable enough in the light of his life's experience and his clansmen's similar beliefs. On this view MORU represented a danger

to the lives of the whole clan, which could only be avoided by killing her. Calling in aid Sections 271 and 273 of the Code, it would follow, according to this argument, that accused was lawfully acting in defence of the lives of his clan in killing MORU.

The difficulty with this argument is that the essence of self-defence under the Code is that violence is presently being offered. An actual assault is required to have been made under both Sections 271 and 273. MORU was sitting harmlessly on the ground. She may have represented some unknown future danger, but there was no immediate threat. An actual threat must be made by some bodily act or gesture before Section 245 is satisfied. Accused was bound, even if he thought the law impotent against sorcery, to resort to legal remedies and redress, which he knew were available to him, at least until an actual threat was made. It would, I think, be carrying the express words of Section 24 too far to apply this Section so as to regard the killing of KARI as constituting in the belief of the accused, a continuing threat against the rest of the clan. Section 24 is limited to the existence of a state of things, not to the probable future consequences of that existing state.

Trying to apply these Sections of the Code to the facts of the present case may well be thought to produce a result largely by accident. I find that in law the offence proved is wilful murder, but I propose to recommend that the Royal prerogative of mercy should be exercised on a consideration of the real substance of the case.

VERDICT: Guilty of Wilful Murder.

Sentence of Death recorded.