

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

COR: OLLERENSHAW J.

THE QUEEN v. GULA-MAITAI.

Trial at Tapini:
9th, 10th & 11th
May, 1962.

J U D G M E N T.

The accused is charged under section 302 of the Code that on a date not known between the first day of September, 1961, and the first day of December, 1961, in the Territory of Papua he murdered Komai-Mumu of Lamoro.

The Crown, relying upon Item (1) in section 302, charges that the accused unlawfully killed Komai in circumstances in which the accused intended to do some grievous bodily harm to him.

In section 1 of the Code "grievous bodily harm" is defined to mean: "any bodily injury of such a nature as to endanger or be likely to endanger life, or to cause or be likely to cause permanent injury to health."

Komai, the victim, belonged to a Gailala group of people and lived in the village of Lamoro.

Guia, the accused, belonged to a different group, known as Kawimarpai, and lived in a village called Zhamora, situate, apparently, some few miles from Lamoro. He was the Village Chief of this village.

Although these two groups of people did meet at the village of Lamoro for some ceremonial celebrations, because they had mutual relatives between the two villages, the groups themselves "were not close relatives at all."

The incidents out of which this charge arose took place on a morning towards the end of September or early in October last year and at, or on the outskirts of a village, or hamlet, called Kiramusi, situated some two to three miles from Lamoro.

On the previous day some men of Lamoro, including Komai, under the leadership of the Lamoro Councillor Airi-Toite, had gone to the village of Kiramusi, and taken and delivered there a girl to be the bride of a man of Kiramusi.

When, next morning, the proceedings relating to this transaction were almost completed and Airi was about to take up the bride price, the accused, supported by some men of his clan, arrived on the scene. There he made claims in respect of expenditure, to which his people had been put on account of the girl, who had been delivered as a bride to the people of Kiramusi.

It would appear that these claims were not unfounded because Airi, taking up the bride price, offered to kill and deliver a pig to the accused, Guia, next day.

There was some discussion and argument and a "fight" commenced, most probably between the younger men of the two factions - the Gollala men of Airi and the men of Guia, the accused, about fifteen men in all.

There was never at any stage a real fight between these two factions because some men on both sides took no aggressive action and some of the older and more responsible men, including the accused, actively intervened to stop fighting.

There was a chain of incidents between individuals -- what Counsel for the accused, because of the suddenness of events, might have called a chain reaction -- the first blow with a fist leading to a retaliatory blow with a stick by a relative of the first victim.

At this stage Tato, another Councillor of Lamoro, with the aid of the constable of that village, moved in to stop the fighting developing and Koibabu, the younger of the two brothers of the accused, hit this intervening Councillor, Tato, on the head with a stick.

It was then that the Councillor Airi moved in with his village constable, apparently the same constable who had supported Tato, to stop more fighting and, if possible, make arrests.

It seems that this was a determined move and probably the boys, or younger men, of the accused's village realised that they had gone too far: at all events they commenced to run off. They included Koibabu and also Gutoi, who was Koibabu's brother and so also a brother of the accused. Koibabu was the youngest of these three brothers and the accused was the eldest.

At the stage when the Councillor Tato was hit on the head by Koibabu, Komai, a young unmarried man and the victim alleged in the charge, procured a sharpened garden stake and one, Kepara, his brother, took up a piece of firewood, which he found to hand near a house, about which the factions were grouped.

Komai threw the stake, as a spear, and hit the retreating Gutoi in the buttocks. Although it pierced his flesh and caused some blood to appear, Gutoi removed the stake without difficulty and continued his flight.

Then occurred the immediate incident from which this charge arose.

Komai, having thrown the stake, fell back a little and stood about six feet in front of his brother, Kepara, who also stopped there, to watch the pursuit of the younger men of Zhamora.

Thereupon, and quickly after the stake had hit Gutoi, the accused approached Komai and dealt him a blow on the back of the head with the butt of the head of his axe. Komai dropped to the ground with a wound in his skull from which blood freely flowed.

It is alleged by the Crown that this blow caused the death of Komai, which occurred some four to six days later.

In support of the charge the Crown called Andrew Neill Flowers, a Cadet Patrol Officer stationed at Tapini, to whom there on the 22nd November, 1961, Airi and Kepara brought Komai's skull.

This officer gave evidence of his investigations at Kiramusi and at Lamoro, where he saw the body of Komai, identified by his brother Kepara in Airi's presence, recumbent without a head in a grave in a burial ground on a grassy clearing at the top of a rocky eminence, chosen for its difficulty of access to humans and pigs.

The Crown also called Airi and Kepara and one of the young men of Zhamora, named Turua, who also was present when occurred the incidents to which I have briefly referred.

While I found Airi and Kepara convincing witnesses I was not at all impressed by Turua. I felt from his demeanour and his manner of giving his evidence that I could not place any reliance upon his testimony and so, where his

version differs from those of Airi and Kepara, as it does in some quite significant respects, I have unhesitatingly accepted those of Airi and Kepara.

The Crown put in evidence, without objection, Exhibit "A": Komai's skull in which there appears a complete depression fracture, where an oval shaped piece of bone, about 1" by $\frac{1}{2}$ ", is depressed into the cranial cavity to an average extent of $\frac{1}{4}$ " on the line between the occipital and right parietal bones of the skull and about two inches down on the right side of the skull from the junction of the two parietal bones with the occipital bone. Its length lies along the line between the occipital and right parietal bones; Exhibit "B": Guia's axe, and Exhibit "C": His statement, made before the committing magistrate.

The accused did not give evidence or make a statement in this Court and did not call any evidence.

Mr. Barnett, Counsel for the accused, relied upon provocation to reduce a verdict, if found, to one of manslaughter, and the onus upon the Crown not only to disprove provocation but also affirmatively to prove: (1) Intention, (2) The death of Komai, and, (3) That this was caused by the blow from the axe of the accused person. It was admitted that the accused, with his axe, had struck Komai a blow on the back of his head, although the defence tended to rely upon Turua's evidence to the effect that it was a backhand tap given with the axe held in the accused's left hand and somewhat weakly delivered by him while standing directly behind Komai.

The defence also claimed: (a) That Guia's attack on Komai was made in defence of his brother, Gutoi, and sought the benefit of section 273 of the Code, and, (b) That Guia acted in circumstances of sudden or extraordinary emergency and sought the benefit of section 25.

I do not think that the evidence, which I accept and some of which I have recited, gives any support at all for a defence of acting in good faith in aid of Gutoi for the purpose of defending him and I do not think that section 25 has any application whatever to the facts of this case.

To return to the other defences: Provocation being raised, Mr. Bowen, on behalf of the Crown, has conceded that, if I am satisfied that, but for section 304 of the Code, this would be a case of murder, then, in the circumstances of this case, sections 304 and 268 are properly applicable, and, that the verdict should be one of manslaughter.

I am entirely satisfied that the Crown has discharged the onus upon it in this criminal charge of proving:

(1) That the accused intended to do grievous bodily harm to Komai, (2) That Komai did die, and, (3) That it was the blow, which the accused, with his axe, struck Komai's head, that did kill Komai.

(1) Convincing evidence of the blow was given by Kepara, who was standing some six feet behind Komai. He described and also demonstrated a swift strong blow delivered by the accused from a position, which he took up swiftly, at the right side and a little towards the rear of Komai. Thus he stood facing the side of Komai. The top of the butt of the head of the axe hit the right side of the back of Komai's head. The depressed fracture disclosed by the skull, Exhibit "A", is, in my unhesitating opinion entirely consistent with such a blow as it is inconsistent with the tap described and demonstrated by the witness, Turua. I have no hesitation in finding that the accused, when he struck this blow, did intend to, and in fact did do some "grievous bodily harm" to Komai within the meaning given to that phrase in the Code.

It produced, indeed, a severe fracture, affecting the cranial cavity and what lay therein, inflicted by a blow deliberately aimed at the skull with an axe.

(2) Detailed evidence of the death of Komai and his burial was given by both Airi and Kepara, native men, not unaccustomed to death and burial.

They both attended him during his last few days of life after he was struck down by Guia's axe.

Airi, as to his last moments said, amongst other evidence:

"Before he died, when the blood was running from his mouth and nose, he started to move himself and threw himself from side to side and then he died."

He also said that when Komai died: "his stomach did not shake whatever", meaning that he was not breathing.

Airi sat with the body all night and they buried it next morning.

I come now to: (3) The onus on the Crown, which was strongly relied upon by Mr. Barnett, of establishing the causal connection between the blow given to Komai and his death.

As in so many trials of this nature in this Territory, the wounded man was not seen by a medical officer. There was no such officer within miles of his primitive village and no message was sent to Tapini nor was Komai carried there over the difficult and, to him in his condition, dangerous mountain journey by native tracks. It seems from the evidence that he quite definitely did not wish to be taken to the hospital at Tapini and, doubtless, both Airi and Kepara also were

traditionally accustomed to injuries taking their natural course in their village for better or worse. It appears that Komai's skull was examined by a fully qualified medical officer of the Administration at Tapini but neither his evidence nor that of any other such officer is available at this trial.

However, I consider that the connection between the blow to Komai's head and his death is clearly made out by the evidence which leaves no real room for any reasonable doubt.

Before the blow Komai was there at Kiramusi, with the men of his clan from Lamoro, playing a normal role with no suggestion of any ailment. He fell to and lay on the ground immediately after the blow was struck. Both Airi and Kepara then saw the wound in the back of his head, from which blood flowed and, inter alia, Airi said:

"I cradled his head in my hands and felt the hole in the back of his skull with my finger."

They gave him water to drink where he lay and he vomited it up. They then carried him home to their village this same day in a string hammock and he did not stand or even sit up again and scarcely spoke.

He lay in a room in a hut and Kepara said that he lay all the time with his eyes half closed.

There was some difference in the evidence of men, who did not know the days of the week, as to just how long Komai lay like this before he died. It was less than a week and may have been six days and then he died as I have already described from the evidence of Airi and he was buried on the next day.

In the light of such evidence of the condition of

Komai after he was dropped to the ground and of his death and burial I cannot give weight to the suggestions of Counsel for the accused that Komai may have been buried alive or may have died from an internal injury, such as a ruptured spleen, quite independent of the blow to his head.

I am sure, also, that he was very carefully buried and that his exhumation, when, after the flesh had decomposed, Airi severed with his hands the skull of Komai, was also very carefully conducted so that I feel sure beyond reasonable doubt that the fracture occurred as described in the evidence and not subsequently.

I have not recited all the evidence that has produced my conclusions but I have endeavoured to refer to the salient matters that have influenced me in reaching them.

I find a verdict of guilty of manslaughter and convict the accused accordingly.