

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

CORAM : MANN C.J.

REGINA v. WILLIAM CADE SMITH

REASONS FOR ~~JUDGMENT~~ SENTENCE

Port Moresby.  
March 7th,  
1967.

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This case has involved a great deal of consideration. I think the Court has been very much assisted by the evidence of the experts and I think it is possible to arrive at a true understanding of the situation. This is not a case where a deterrent sentence would serve any useful or enlightened purpose. The accused is quite frank about what he did. He does not seek to justify what he did, and he is prepared to take whatever punishment is appropriate to him.

The one thing which must be clearly understood, at this stage, is that when the accused acted as he did, and in the circumstances existing at the time, he was beyond a situation in which any thought of a deterrent punishment would have had the slightest affect on his actions. In fact, it appears that it was his intention to dispose of himself as well as his wife. He says that he tried to shoot himself but, for some reason, the gun would not work. It probably would not work because it was being mishandled, with the accused under grave emotional stress. His purpose was not clear in his own mind because if he had succeeded in disposing of himself, after killing his wife, of course Martin would have been left. A few moments later he changed his mind on that score.

Now this is the picture of a person under very grave strain who had become quite violent and savage in his actions when he broke down and lost his self control. Mere loss of self control is not in itself a justification, but when you look at the evidence of the situation that led to that loss of control one

might be a little surprised that the accused lasted as long as he did before he finally broke. Over a long period of time he had suffered many things which were hurtful and quite unjust. I do not think it will serve any purpose to go into details now of his experience with the police but, as I have remarked before, and I simply say this again, that from the point of view of the accused, knowing certain circumstances to be real, and having every reason to suppose that other circumstances were also real, the conclusions drawn by the accused were by no means unreasonable, and I think it in his favour that in that tense situation he was able to be as reasonable as he then was. I do not accept the suggestion that the accused was normally a man of violence, I think that is a mis-interpretation. I think that anybody with any courage at all will become violent in his own defence, in a situation like this, if he breaks under the strain. A normal person will often turn to violence when he has lost control of himself under pressure that he cannot bear any longer.

There is, I think, some indication that the accused has a dogged persistence which is not necessarily a defect at all. In fact, it is much the same characteristic that was greatly admired in the Londoners during the bombing of London. If a person has that sort of trait and is under strain and hardship, he is just the sort of person who is going to keep on trying until finally his own characteristic of persistence will lead to his own breaking down. I think the accused carried his burden for a long time. I think the pressure was beyond what he could ultimately bear. I think that his wife was under less pressure because she had already found an escape from whatever burdens she might have thought, rightly or wrongly, she was carrying. That is why it all came back to the accused, and that is why he was the one to break.

The assault cases in which the accused was convicted were, to say the least, unfortunate, and it is unfortunate that the first appeal was not brought sooner. The result was that the appeal was allowed in

the Supreme Court after the present proceedings were commenced. That was another circumstances that the accused had to suffer and which, in the events that happened would lead quite reasonably to a sense of persecution. Now, I am concerned, not with the situation of the accused himself so much, but rather with the interest of the community at large, when I consider what sentence should be imposed, and I have to think of the future.

There is always a risk that a person will break down again. I would not be particularly concerned about a risk of the accused breaking down if he could settle down, re-orientate himself and avoid the sort of personal conflict which led to these events. It is particularly important for the accused to try to avoid these pressures because, as he has already seen, his own characteristics tend to increase the pressure, and when he gets into the position of perhaps being a little dogmatic, it is time to be careful, and avoid the building up of pressures.

Now, I regret that there is no provision in the Criminal Code which is at present in force, which would enable me to make provision for an appropriate kind of parole, so that under proper medical advice and treatment, after the lapse of not too much time, the accused could be given the experience of being released on his own responsibility.

I think that the experience would be valuable to him and valuable to the community as a whole. Therefore, the only sentence that I can impose is one for a period of time, and I have to impose it for a substantial period because of the risk to which I have referred. I accept the expert evidence that the risk is no greater than in many other people in the community in general, but it would be a bad thing for the confidence of the public if I were to sentence the accused for only a short period of time without having any means of knowing how he was going to settle down and progress. I think that he has a very bigoted religious outlook and this is something which might lead to too much self-justification and might create problems for himself.

Now, I think I can overcome the situation in this way. I will impose what I would regard as a long sentence for such a case but I will recommend that after a reasonable period of time, if there should be legislation in force at that time for prisoners to be released on parole, or under some similar formula, a report should be made by Psychiatrists or Psychologists and that, on their recommendation, the accused may then be released on parole.

Now, I will make the sentence in that form although there is no such legislation in force at the present, in the hope that by calling attention to this deficiency, some such appropriate legislation may be considered by the appropriate authorities in the meantime.

The sentence of the Court, William Cade Smith, is that you be imprisoned with hard labour for ten years; and I make the recommendation to the appropriate authorities that, should there be legislation in force, or other provision which will enable this to be done, your medical condition should be thoroughly examined at the expiration of about four years from now, that is after the expiration of five years from the committing of these offences, and that you may, if the experts so advise, be released on parole on suitable conditions.

Now, you understand, I have no jurisdiction at this stage to impose any of these conditions, because there is no legislation in force, but I have expressed my view as to that. I mention the commencement date expressly, because I do agree that your experiences in the last 12 months have not been ideal for you. You have shown the capacity to stand up to things that are adverse to you, and I can only hope that with rest and something to occupy your mind, you will be able to relax and afford the community the advantages of having once more, a valuable and useful asset in the shape of a competent citizen.

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