

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

CORAM : Minogue, A.C.J.

Tuesday,

30th June 1970

R. v. BUNO BIURE

J U D G M E N T

1970

Jun 29,30.

KUNDIAWA.

Minogue,
A.C.J.

In this case the accused man, Buno Biure, was charged before me with the wilful murder of the girl Oini Kiwai.

I have no doubt that Buno killed the girl, that he caused her death in a violent and a vicious manner. I have no doubt that he meant to kill her, that is that he meant her to die, and if the matter rested there there is a clear case of guilt of wilful murder. However in the closing stages of the trial and indeed late in the Defence case, it appeared that the defence of provocation was to be raised and in fact was raised. And that is a matter which has caused me some considerable concern. A great deal of course depends upon whether I accept the accused's story that the girl said to him at the conclusion of the intercourse and in the course of their final argument, "You can eat my vagina." In fact I accept that that was said. I accept that it was said because I regard the accused as a truthful man who is attempting to tell me the truth and to justify his actions, indeed to give vent to a resentment which he obviously still feels at the treatment which he considered he received.

It was said that no mention was made of this in the statement made to Sub-Inspector Selva. That is true. But on the other hand the statement was one made by a man who was not guided or advised to give every detail of the event that was taking place, or that had taken place, and indeed the statement makes no reference it will be noted to the putting of the 20-cent piece in the girl's pubic hairs nor does it make reference to other details of the circumstances of that evening in the garden.

But that of course does not in itself conclude the matter. I think it necessary for me to say something shortly of the accused's story and of the circumstances in which he found himself. It is clear that he was a man who did not belong to this village of Toguma and that he was a Gumine man who had come there many years ago, probably in his youth, was taken in by Kiwai, the father of the girl, and treated as a member of the community of Toguma. Indeed he was allotted land and on that land he planted coffee gardens and appears to have been a successful grower. He, I would think, is a man into his forties; the evidence of the doctor

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was that the girl appeared to him from his examination of the body to be about 20. At any rate there was a great disparity in age between the girl and the accused. I accept the accused's story that the girl approached him for money and that at first he was reluctant to accept her promise of intercourse in return for money. He was reluctant probably because he was in effect in some sort of parental relation to her because of the circumstances in which he was living. There would have been I understand some relationship, he being accepted as some sort of brother of Kiwai and he himself said he was the girl's second father. However, human nature being as it is, he succumbed to the girl's blandishments. And thereafter grew a relationship between the two, heavily sexual in nature; but I am inclined to think without finally deciding on the accused's part it became one of infatuation and that he had some genuine feeling for the girl. It was a relationship fraught with danger and on his part a relationship with great undertones of guilt because he knew at all stages, and must have known, that he was doing wrong in associating with this girl. Be that as it may, the relationship had to end at some time or another and it ended in what may have been the only way possible. The same feeling did not exist on the part of the girl and when her source of income had dried it is not surprising that she cast him off and intended to cast him off.

That brings me to the actual events of the fatal day. At about 6 o'clock on the afternoon of the Monday, 17th April of this year, the girl asked him for money ostensibly to enable her to attend some sort of a sing-sing or function at Sinasina. This time her demands were more modest than they had previously been; she asked him for two dollars which was about all that he had. With some reluctance he gave it to her and then they proceeded to the garden for the usual sequel of the giving of money to her and had intercourse. And at the conclusion of the intercourse she told him in effect that she was finished with him. Again I am inclined to think that she realized that her source of income had dried and this was the motivating factor that led her to tell him there was to be no more of the conduct which had gone on between them. He became angry and his anger was a compound I think of fear, frustration and realization at last that it was not for himself that affection lay but for the money which he could provide.

Now again if the matter had rested there and in his anger he had killed her there could be no doubt that he would have been guilty of wilful murder. But I have given long thought overnight to the effect of the final insult as it were - perhaps I should not say as it were, it was indeed an insult - and an insult which is wellknown throughout this Territory, wellknown in these Highlands, an insult of a sexual nature which in one sense can be regarded as telling a man that he is a "rubbish man" but telling it to him with particular emphasis, and one which in my view is the sort of insult which comes

within the purview of Section 268 of the Criminal Code which would be likely to cause an ordinary man, and in this case the ordinary villager, to lose his self-control and consequently to fall within the legal definition of provocation.

The difficult question in this case for me has been whether it has been that insult which in fact caused him to lose his self-control or whether previously he had, in what I might call cold anger, decided to kill the girl. Whilst I make no positive finding that it did cause him to lose his self-control and (to turn now to Section 304 of the Criminal Code) to act in the heat of passion caused by sudden provocation - whilst I make no finding, no positive finding, that it did so, on the other hand after serious reflection I cannot be satisfied that it did not. And in short I feel that I must give the accused man the benefit of the doubt in this case. It seems to me that it could well be that that sexual insult, that final sexual insult, was as it were the "turning of the knife in the wound" - a wound which was beginning to open, or perhaps indeed had opened, because of the loss and the deprivation which he felt at the time of her final break with him. It seems to me that at that time he was indeed angry and I think there is some significance in his remark that on one other occasion the girl had uttered such an insult to him but he was not angry at the time and he passed it over. At this time, on this evening when he was in a state of anger and as I say of frustration and perhaps some confusion, it could well have been that something snapped in him and that what had been (to use the language used somewhere in the books) a cold anger converted itself into a hot anger, and that he lost all control of himself and the way in which he went about attacking the girl does seem to indicate that at that stage he had lost complete control of himself and in effect went berserk.

I have been troubled by his conduct after the killing, that is the excision of the skin or what he thought was the vagina and his placing of the 20-cent piece amongst her pubic hairs. But on reflection that seems to me as if it could well be the action of a man who was bereft at that time of ordinary reason and who has some obsessional feeling, some obsessional idea to which he must give vent and he gives vent in this way. This I would think from my own experience is quite uncharacteristic of the normal type of killing of this sort in this part of the Territory. It has puzzled me. It is a case rather for a psychologist than for a judge to attempt to explain why he did these things. But in the result, as I say, I must give him the benefit of the doubt that this violent, vicious and unusual death was brought about whilst he was in an excess or a paroxysm of passion, and for those reasons which I have endeavoured to state as shortly as I can I will find him not guilty of wilful murder but guilty of manslaughter.

Solicitor for the Crown : P.J. Clay, Acting Crown Solicitor.

Solicitor for the Accused: W.A. Lalor, Public Solicitor.