Mr. Justice Raine

SC634

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

CORAM: PRENTICE, J.

Wednesday,

11th August, 1971.

REG. v. NOBOI BOSAI
TIKA TIMOR
ABOGARWO DEGABO
KEBAI DEGABO
NOMORA BOSAI
AGAIYA AHEAI
OLBOI UNAB

1971

Jul 24, 26
DARU

Aug 11
PORT MORESBY

Prentice, J.

The seven accused are jointly charged that they did each - (1) improperly interfere with, (2) indecently interfere with, the dead body of one Sumagi. The conduct complained of is cannibalism.

The accused are charged under Sec. 236(2) of the Queensland Code of 1899, which was adopted into Papua by the Criminal Code Ordinance No. 7 of 1902.

On 26th July, 1971 I remanded the accused in custody in Daru until I should have come to my decision. The charges are misdemeanours under the Code. Section 617 provides that a trial must take place in the presence of the accused ordinarily; "provided that the Court may in any case, if it thinks fit, permit a person charged with a misdemeanour to be absent during the whole or any part of the trial on such conditions as it thinks fit." As it is in the accused's advantage so to do, I formally excuse the accused from being present during the balance of these proceedings, so that I may not be delayed in giving judgment by the necessity either to bring them to Port Moresby or to proceed myself to Daru.

Section 236 is as follows:

"Misconduct with regard to Corpses.

Any person who, without lawful justification or excuse, the proof of which lies on him -

(1) Neglects to perform any duty imposed upon him by law, or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains; or

(2) Improperly or indecently interferes with, or offers any indignity to, any dead human body or human remains, whether buried or not;

is guilty of a misdemeanour, and is liable to imprisonment with hard labour for two years."

No point is taken as to the identity of the accused; or the facts of their cooking and eating the body of Sumagi. Each of the accused readily admitted his complicity, which was also established by the evidence of other villagers of Yulabi and Dadalibi, the two villages from which the accused derive (Olboi comes from Dadalibi, the others from Yulabi). All belong to the Gabusi people, who together with the Biami people and other tribal groups, inhabit the hinterland between the coastal swamps of the Fly and the Strickland, and Mount Basavi (8,200 feet high) of the main range. Their habitat is described as jungled rain forest, and apparently includes some swamp. The people, if I am to judge from the accused, are only a little over five feet, and many have bodies covered with the "worm cast" and scales effect, of the skin disease suppuma, which is known to be allied to diet deficiency. Their staple is bananas, with some recourse to sago (the pith of the swamp sac-sac tree). Very little game is to be found in their area. Apparently they are without domestic animals. The Gabusi live in long-houses, eighty to ninety feet long; five or six families to a house. The long-houses are scattered within a radius of two to three miles of each other. The latest census figure shows an approximate population of 798. There have been no missionary activities in their area. It appears that no anthropological work has ever been done in the area. There is some difficulty of communication with them, as evidenced by the fact that in this trial it was necessary to use the services as interpreter, of Musu, an acknowledged sorcerer, who is presently serving a three and a half years sentence imposed at the last sittings of this Court, for the murder of a rival sorcerer.

The accused succinctly stated their cannibalism as follows: -

Olboi: "I was at my garden house when I heard of the killing. I went to see the bodies. On the next day men from Yulabi came and the body was cut up (Sumagi's body). Yulabi men took half the body and I the other half. The half was cooked and after I had eaten some of it I went back to my garden house."

Agaiya: "I went to Dadalibi for a sing sing at the village constable's house. We heard about the killings and went to see. After having a smoke, one man cut up the body of Sumagi and cooked it. I didn't eat any of it then. Later we took part of the body to Yulabi. At Yulabi I ate part of the body with some sago."

Kebai: "I was at the Dadalibi village constable's house when I heard of the killing of Sumagi and Isira. I went with the village constable and saw the body of Sumagi. I said I would eat the body. I removed the head, hands, lower legs, stomach, threw them away and I cooked the rest of the body and ate part of it. Some men from Yulabi took the rest of the body away."

Tika: "We removed Sumagi's head, hands, lower legs and stomach and threw it all away. We didn't know it had happened but saw the body when we went to Dadalibi for a dance. The others said they were going to eat it so we cooked it, slept the night and took the body to Yulabi and we ate it."

There is some suggestion that the discarded portions of the body were thrown in the river.

The body became available for consumption in this way. Sumagi, a member of the Sabasigi tribe who had been living with the Dadalibi, and was known to them to be somewhat "long long", that is, queer in the head; apparently without reason, suddenly killed Isira in the vicinity of a house and in the presence of several villagers, including Isira's brother Woroboi. The latter turned and going into the house, procured his bow and arrows, and coming out, immediately despatched Sumagi. Though Sumagi's body was eaten by the accused, that of Isira the Dadalibi man, was buried.

At the outset of this trial counsel informed me that they had been unable to discover any previous instance of a prosecution for cannibalism, reported either in Papua New Guinea, or indeed the world. Nor were they able to cite to me any other case of the use of this section in Papua New Guinea. This astonished me. I should have thought that the records of these Territories would have contained many such references. At the end of the trial mention was made of a charge against one Sambregi, possibly in 1960, in which such an offence may have been alleged (Mr. A.D.O. McArthur was said to have given evidence thereat). I have had extensive searches made in the Supreme Court Registry and records. No trace of an accused of that or similar name can be found. I

have, however, myself been able to find two cases in which Gore, J. convicted individuals under this section - but neither involved cannibalism.

On 4th May, 1955 His Honour at Tapini, tried and convicted Manai of indecent interference with a dead body. One Apo had been killed as a payback for the murder of Koga. The accused Manai, being of Koga's line, was invited to partake ritually in Apo's death by striking Apo's deceased body with his tomahawk. He did so, gashing it twice on the back. The accused was sentenced to twelve months imprisonment with hard labour.

On 21st November, 1960 at Mendi, His Honour tried ... and convicted and sentenced to the rising of the Court, Boen-Kebo and Korn-Dam for improper interference with a dead body. A young woman had died - it was important for her tribe to know whether she had been subjected to sorcery. The accused cut the body above the breast with a sharp piece of bamboo cutting the skin and bone. The cut extended from breast to breast. Korn took a hooked stick and hooked it under the ribs while Boen held another forked stick under the ribs. They both pulled and the chest cavity opened. They looked at the lungs which were exposed, then sewed up the skin and buried the body. There was "nothing wrong with the body" - the mark of the sorcerer, a thin black rope like cotton, was not found in the body. Obviously in this case the process being undertaken was akin to that preceding an inquest. (It was dealt with in the Supreme Court on depositions only.)

I am unable to find His Honour's Court note books; but it seems probable that in neither case were the accused represented by legal argument in their regard. With respect, I should have thought His Honour would have been exercised as to whether in a remote community without doctors, the "interference" in the second case may well have been both proper and prudent, when one has regard to the practices of sorcerers, as many times established before this Court. I should think it certain that His Honour was not favoured with the helpful legal argument I have been given in this case.

The only case involving actual cannibalism as an ingredient of a charge of improper interference with a dead body, which my researches have allowed me to uncover, was that against Kamburu-Kipu and Pone-Tunkum, which was heard in Mendi on 25th October, 1963 by Smithers, J. Again the trial judge's note book is not available to me. I am indebted to Mr. Croft of the Crown Solicitor's Office, who prosecuted the

case, for his recollections of it. The facts include that the two accused, being suspected of sorcery following the "behaviour" of the suspended corpse in their presence, were required to undergo a trial by ordeal of eating some of the deceased's rib bones with pig meat. If their bellies swelled after two weeks, they would be proven sorcerers, and killed. They duly ate as required. And found themselves charged by the Administration! During the trial, as I am informed by counsel, His Honour expressed continual dissatisfaction and disapproval that such a charge should, in the circumstances, have been laid. He expressed doubts whether the section was apt to cover such happenings. Evidence and argument was directed to establishing and rebutting justification by compulsion, under Sec. 31 of the Code. It became material to find whether the potential belly swelling after two weeks and threatened killing, could be said to be "actual threatened violence"; and the possible death thereafter at that length of time, "immediate death or grievous bodily harm threatened to be inflicted", within the meaning of the section. In the event His Honour acquitted both accused - but the court record does not allow me to establish on what ground His Honour's decision was based. The prosecutor's circuit report seems to indicate that His Honour acquitted because of some doubt that the accused might have been acting under compulsion of preset and imminent threat of death; and notes that defence counsel was not called on.

The only cases of cannibalism that I have found mentioned in the books, occur in the report of The Queen v. Dudley and Stephens (1). That, of course, was a charge of murder against two only of the three men, who partook of the cannibalistic meals alleged therein. I am unable to ascertain from that report or from any other books available in the Supreme Court's and Secretary for Law's "libraries" what happened to Mr. Brooks, the gentleman who refused to agree to or assist the killing of the cabin boy, but partook of his flesh. Presumably no proceedings were taken against him. Nor is there any record in Tulpius "observationum medicarum", referred to in that report, of whether the English authorities took action against the six Englishmen of St. Christopher in the Caribbean, who in extremity of hunger, at the suggestion of their seventh, drew lots and the lots falling against the mover of the motion, killed and ate him. (They were "treated with kindness" by their rescuers, the Dutch.)

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(1) (1884) 14 Q.B.D. 273

I proceed to a consideration of whether the undoubted deeds of the accused are intended to be caught by Sec. 236 of the Code.

There can be little doubt that the words of the subsection standing alone, are capable of being interpreted as referring to conduct of the type of which the accused in this case were guilty, and it may be the fact, that the words have been so interpreted, by assumption, to the present time.

The question having now been raised in this trial and fully argued for the determination of this Court, apparently for the first time, cannot be disposed of merely by reference to what has been assumed in regard to it in the past; and in dealing with the matter this Court must refrain from considering the words of Subsec. (2) as though they stood alone; and must pay due regard to the important rule of legal interpretation which requires it to consider the words in their setting, and the Act as a whole (Ex parte Langley; Re Humphris (2)).

The Code groups together offences of improper and indecent dealing, with misconduct by undertakers; categorising all as misdemeanours bringing a maximum punishment of two years imprisonment with hard labour. The heading "Misconduct ..." would seem to a Western eye a mild and inapt way of describing cannibalism. Nowhere in the Code is any mention made of cannibalism as such. But, not surprisingly, it does not seem in 1899 to have been contemplated as a possibility in the civilization of Queensland. Certainly the consumption of a corpse would have constituted indecent and improper behaviour to the minds of the citizens of Queensland in 1899. (I would hope that it would be so regarded still - even in the most advanced of its University circles.) But I must bear in mind the "great leading rule of the criminal law" - nothing is a crime unless plainly forbidden by law (Stephen, J. in The Queen v. Price (3)). The penalty of merely two years provided by Sec. 236 would I think lend colour to the proposition that the subject matter of cannibalism was not being brought under this section by intendment. Further, the inclusion in the section of the words "without lawful justification or excuse, the proof of which lies on him", would seem to be an indication that the section was not intended to deal with cannibalism, if one may infer from the

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(2) 70 W.N. N.S.W. 217
(3) (1884) 12 Q.B.D. 247 at p. 256

decision of The Queen v. Dudley and Stephens (4) (supra) (bearing in mind that it was a charge of murder) that cannibalism could never be justified or excused in the common law.

On consideration of the Act as a whole, and the setting of the subsection under which the charges are brought, I am satisfied that the mischief aimed at by the subsection was of a different, and what I am sure would have been considered a more minor order; such as acts of necrophilic perversion, indecent exposure, subjecting to indignity by way of mockery, and perhaps the kind of horseplay that is frowned upon but occurs, in schools of anatomy; and suchlike. I do not consider that the legislature had in contemplation the banning of a method of disposal of the body, namely by eating, as an alternative to burial or cremation. The paramount object in construing penal as well as other statutes is to ascertain the legislative intent (Maxwell on Statutes, 10th ed., p. 276) but to adopt Lord Denning, M.R.'s words: "A statute is not passed in a vacuum, but in a framework of circumstances, so as to give a remedy for a known state of affairs. To arrive at its true meaning, you should know the circumstances with reference to which the words were used: and what was the object, appearing from those circumstances, which Parliament had in view .... All that the courts can do is to take judicial notice of the previous state of the law and of other matters generally known to well-informed people", (Escoigne v. I.R.C. (5)).

I do not consider that the Queensland authorities were concerned with passing a statute against cannibalism, and it seems clear that this section was not designed to stop cannibalism.

The funerary customs of the peoples of Papua New Guinea have been, and in many cases remain, bizarre in the extreme. These are matters of notoriety. One instances the smoking of the dead, publicly and naked, for weeks, their subsequent disposition in a public place (a shelter or a cave) in a naked sitting condition, allowing free access to the fondling of relatives. The Kumaiva people, who eat the decaying portions of their deceased's bodies; "we eat him because we loved him", was an explanation recorded as given to Colin Simpson the journalist-author ("Plumes and Arrows", p. 212). The Orakaiva, where bodily contact of relatives with the corpse was allowed - the widow sleeping in its grave

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(4) (1884) 14 Q.B.D. 273
(5) (1958) A.C. 549 at p. 565

separated from the decaying body of her husband only by shallow earth, one of her duties being to collect the kanyani which crawl from the body (F.E. Williams, Orakaiva Society). Can it be said that the Covernment of Papua in 1902 by adoption of the Queensland Criminal Code, and in particular Sec. 236(2) thereof, was intending to make so many varied pious, ritual, strength-seeking practices, indecent and improper? I cannot find so. Perhaps it has been believed for some years that the section is available to cover such conduct. I remind myself of the decision of the Full Court of New South Wales in Ex parte Langley; Re Humphris (6) (supra) where the Court held that Sec. 4(2)(o)(ii) of the Vagrancy Act was inapplicable to "soliciting" of a male by a male - after the section had been used for purposes of such prosecutions for many years.

For the reasons advanced above, I am of the opinion that Sec. 236 was not intended to and does not cover cannibalistic conduct, and I am therefore of the opinion that the accused should be acquitted.

As there are eight men still in prison in Daru on a similar charge, and I understand other such charges may be pending - I consider I should deal also with the further arguments advanced by counsel herein.

Mr. Neill for the defence, has argued that even on the assumption that Sec. 236(2) applies to deeds of cannibalism, yet the accused's dealings with Sumagi's body were neither indecent nor improper. The words, he says, must be construed in their local setting and circumstances. He has addressed me to the changes in public sentiment as to dealings with corpses; changes from place to place and time to time. It was not until 1884, that it was established that a body might be burnt decently and inoffensively (as well as being disposed of by burial); (The Queen v. Price (7) (supra)). In 1906 it was established by the decision of the High Court in Doodeward v. Spence (8) that despite the general rule that when a human being dies, property in his body does not vest in anyone, the continued possession of that body could in some circumstances be lawful. Sir Samuel Griffith in that case (he of course being the author of the Code under consideration here), in discussing the possibility of illegality, stated: "The question to be determined is whether the continued possession of a human corpse unburied is in re ipsa

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(6) 70 W.N. N.S.W. 217
(7) (1884) 12 Q.B.D. 247 at p. 256
(8) (1908) 6 C.L.R. 406 at p. 413

unlawful. If it is, the reason must be that such possession is injurious to the public welfare, and the notion that it is so injurious must be founded upon considerations of religion or public health or public decency. The question of whether a particular act is injurious to the public on any such grounds is a mixed question of law and fact, so that what may be injurious at one time or under one set of circumstances may not be so at another time and under different circumstances. For instance, a discussion which would, not so very long ago, have been held to be rank blasphemy might not now be considered to be even irreverent. .... I am not sure that notions of public decency are not equally liable to change" (the emphasis is mine).

Cannibalism would doubtless be corrigible in England as a common law misdemeanour, perhaps by way of common nuisance - prejudicial to public welfare - contra bonos mores. If considerations of the kind entertained by Lord Simonds in Shaw v. Director of Public Prosecutions (9) were open to this Court, I could perhaps act as guardian of public morals so as to construe cannibalism to be an offence. (I note somewhat ruefully, His Lordship's comment that the need for courts to so act "will be rare, for Parliament has not been slow to legislate when attention has been sufficiently aroused" (p. 268). Apparently in nearly ninety years of suppression of cannibalism, the legislatures of Papua and New Guinea have not felt so sufficiently aroused.) Such a course of construction would not appear open to me in view of the provisions of Sec. 4 of the Criminal Code Ordinance of 1902, which reads as follows:

> "From and after the coming into operation of the Code no person shall be liable to be tried or punished in British New Guinea as for an indictable offence except under the express provisions of the Code or some other Statute law of British New Guinea or under the express provisions of some Statute of the United Kingdom which is expressly applied to British New Guinea or which is in force in all parts of His Majesty's Dominions not expressly excepted from its operation or which authorises the trial and punishment in British New Guinea of offenders who have at places not in British New Guinea committed offences against the laws of the United Kingdom."

Mr. Neill points to the movement of public opinion culminating in the passing of the Anatomy Act. No process of

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(9) (1962) A.C. 220

disposal of a human corpse (he says) - burial at sea with consumption by sharks and scavengers, cremation, the Parsee consumption by buzzards, depositing on raised platforms or trees, burial and consumption by decay or worms - is pleasant. He would adopt from "Urn Burial", Sir Thomas Brown's (quoting Lucan) "whether decay or fire consumes corpses matters not. The difference between the two processes is only that one is quick, the other slow. Each is so horrible that every healthy imagination would turn away from its details ...." He would no doubt seek to add, in appropriate circumstances, cannibalism, to the "quick" processes. He contends that in the application of the Code, standards of decency and propriety must vary from area to area and time to time.

On the other hand, Mr. Roberts-Smith for the Crown, contends that the standards to be applied are those of the community generally - the community being the generality of people over whom this Court is given jurisdiction. The recognised standards of decency must be those imposed by the intervention of the Europeans among the indigenous communities, and made common to all the widely varying communities of Papua New Guinea. He further urges that cannibalism is repugnant to principles of humanity as enshrined in the United Nations mandate for New Guinea, which should be applied to Papua, as the Papua New Guinea Act says the two Territories should be administered as one. I am not prepared to accept this submission in relation to the United Nations mandate, as made by the Crown.

The word "indecent" has no definite legal meaning. It has received much legal usage, as in such misdemeanours as indecent exposure, indecent language, indecent publication, indecent behaviour, indecent assault. Sim, J. in Purves v. Inglis (10) states: "In the Standard Dictionary 'indecent' is defined to be anything that is unbecoming or offensive to common propriety. This definition is wide enough to cover the language in question." Webster's work gives the synonyms "unbecoming or unseemly, morally unfit to be seen or heard." Lord Parker, C.J. for the Court of Criminal Appeal in R. v. Stanley (11) ruled that "to be indecent and obscene (publications) would need to be highly offensive against the recognised standards of common propriety." Pollock, C.B. in Regina v. James Webb (12), to assist Mr. Clarkson's argument for the appellant, interposed "'indecently' has no definite

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(10) (1915) 34 N.Z.L.R. 1051 at p. 1053
(11) (1965) 1 All E.R. 1035 at p. 1038
(12) 2 Car. & K. 933 at 938

legal meaning; and, with respect to the word 'presence,' I remember, that, in our older Courts of justice, the Judge retired to a corner of the Court, for a necessary purpose, even in the presence of ladies. That, perhaps, would be considered indecent now." (It is interesting to note that such behaviour, though it has been "indecent" in Anglo-Saxon countries, has not been held so in Continental Europe, but appears to be invariably held so in the village communities of Papua New Guinea.)

In Norley v. Malthouse (13) a decision which has long stood as the guiding beacon to magistrates of other States (see Kennedy/Allen, 1951 ed. "Police Offences of Queensland"), Napier, J. in relation to language, stated - "Language is indecent if it is highly offensive to the recognised standard of common propriety; but I think the Magistrate charged with the duty of enforcing the Statute must be trusted to apply its provisions in a reasonable way according to the circumstances of the particular case (emphasis mine). The section is not intended for the special protection of people who are easily shocked. It should be used to protect the public in their use of the public ways against 'nuisance' in the form of any substantial breach of decorum. As with other forms of nuisance, the standard ought not to be estimated according to any 'elegant or dainty modes or habits' of thought, but according to 'plain and sober and simple notions' among the community in question."

In Crowe v. Graham (14) a publication had been held indecent - the magistrate applying the test "that matter is indecent which offends the ordinary modesty of the average man." Therein, Windeyer, J. cited with approval Norley v. Malthouse (supra), and adopted Fullagar, J.'s definition of "obscene" as "things which are offensive to current standards of decency" (at p. 536). His Honour continued (at p. 538) - "In relation to indecency, other than indecent advertisements as defined, separately considered, it arises from the very nature of indecent conduct as understood by the common law. It is an act in its setting and circumstances which constitutes the offence. To publish or exhibit a particular picture in print might amount to a publication of indecent matter in a set of circumstances although in other circumstances this would not be so" (emphasis mine). And (at p. 540) - "No one would question that, however obscenity and indecency be understood as grounds for the condemnation of a publica-

(13) (1924) S.A.S.R. 268
(14) (1968) A.L.R. 524

tion, the question is to be related to contemporary standards, community standards. ..... And community standards are those which ordinary decent-minded people accept." I would, with respect, adopt His Honour's words to the instant occasion, substituting "impropriety" for "obscenity" and "conduct" for "a publication".

Similar problems of interpretation are encountered with the word "improper". Dictionaries equate it with "not suited to the circumstances - not appropriate to or congruous - not accordant with propriety or good taste." In an Admiralty setting Brett, M.R. held "improper" to connote "wrongful" as distinct from "inevitable accident" - (The Warkworth (15)). These two references do not seem to me to be of very much assistance in this case in the interpretation of the word "improper".

Concepts of decency and propriety (and obscenity), appear in many places of the ordinances and laws of Papua and New Guinea. Having regard to the multifarious customs, languages, dress, beliefs, degrees of civilization, and social organisations among the peoples who live in remote wildernesses, some where Europeans have yet walked only on a few occasions; one cannot conceive that the legislature would have intended to impose uniform blanket standards of decency and propriety, on all the peoples of the country. The wearing of no more than a phallocrypt (or penis gourd) by an Australian in Port Moresby, might well rank as indecent. It is perfectly normal dress for a villager not only in his remote hamlet, but when he is working on the labour lines in the Patrol Post of Telefomin, among the educated missionaries and Europeans of both sexes passing him throughout the day. It would be no doubt indecent (as well as contrary to other regulations), for an Australian in Lae to place his deceased father's body on a platform outside his house, and later to collect his bones and place them in a corner of his bungalow. It would be normal practice still in many parts of the Papuan deltas. Language and behaviour apt to the public bar of the Wabag Hotel where the men wear a bilim pendant from their bark belt before, and a bunch of tankut leaves behind; or indeed language perhaps of the public bars of Port Moresby, Mount Isa or of the Army camps and barracks of Moem and Vung Tau, would clearly be ranked indecent and improper in the drawing rooms of Yarralumla and Konedobu. Such divergencies would extend through a whole range of Papuan and New Guinean customs and social institutions. If the funerary customs of Everglades as described in E. Waugh's "The Loved Ones"

(15) 53 L.J. P.D.A. 66

existed in fact in Australia, I would find them arguably indecent and improper. Assuming them to exist in the U.S.A., apparently its citizens do not find them so revolting as to be so categorised.

In seeking to construe whether the behaviour of the Gabusi villagers here, amounted to impropriety and indecency, I conceive that I should look at the average man in the particular Gabusi community, as it was at the time of these happenings. Just as in the attempt to judge criminality in other sections of the Code (for example, concepts of provocation, reasonableness), one attempts to apply the standards of the reasonable primitive villager in his proper setting (as far as one can collate such standards), not those of the reasonable man on the Clapham omnibus. (See Reg. v. Rankin (16); Regina v. Manga-Kitai (17), following Regina v. Hamo-Tine (18) and Regina v. Zariai-Gavene (19) and Kwaku Mansah v. The King (20)). I consider that in assessing propriety and decency of behaviour in relation to corpses in the Gabusi area, I should endeavour to apply the standards, so far as I can ascertain them, of the reasonable primitive Gabusi villager of Dadalibi and Yulabi in early 1971 (Reg. v. Manga-Kitai, op. cit.).

References to cannibalism among Papuan and New Guinean tribes, are legion. One literary reference to the people of the Biami and Gabusi appears in John Ryan's book "The Hot Land" (pp. 73-75) - this was formally tendered in evidence. I am unaware of any overall anthropological work relating to the complete area of Papua New Guinea in this regard. The suspected connection between the eating of human brains and the incidence of the "laughing death" mysterious illness of the Fore people, is notoriously still a matter of medical research (see Gavin Souter's "The Last Unknown"). Beatrice Blackwood, the anthropologist, has made reference to protein deficiency being a powerful contributing cause of cannibalism. Mr. Simpson in his book "Plumes and Arrows" indicates that he had spoken to most of the then senior officers of the Administration Field Force, and collects information as to cannibalism among the Kukukuku (pp. 11 and 19), Bena Bena (p. 122), Sepik (p. 333), Wan Wan (p. 339), Miamins (Telefomin) (p. 362), Forai and Kumiavi (p. 212). The above references are to practices which are matters of

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(16) (1966) Q.W.N. 10
(17) 1967-68 P. & N.G.L.R. 1 at p. 10
(18) 1963 P. & N.G.L.R. 9
(19) 1963 P. & N.G.L.R. 203
(20) (1946) A.C. 83 at p. 93

notoriety in "the Territories", as they were formerly known, and in this Court.

I turn now to a consideration of the evidence given in this case. Mr. Neill for the defence, contended that I was entitled to take note of native custom in regard to cannibalism pursuant to Sec. 7(b) at least of the Native Customs (Recognition) Ordinance, for "deciding the reasonableness or otherwise of an act." The Crown contended that evidence of custom could not be tendered to exculpate, citing Sec. 6(1) (a) (b) (c). Clearly the Court could not use evidence of custom to exculpate conduct specifically prohibited (for example, a law prohibiting the eating of human flesh). But on the view I take of the necessary means of interpreting Sec. 236(2) of the Code - it is incumbent upon me to admit any relevant evidence from which the Court may adjudge what was reasonably proper and decent behaviour for the Gabusi villager in early 1971. In the event, both Crown and Defence counsel tendered evidence of custom which I have received.

Mr. Patrol Officer Philip Fitzpatrick was the arresting officer. He has served in Nomad Sub District where these events occurred, since March, 1971. He spent some thirteen months at Olsobip in the Southern Highlands - perhaps one of the most remote areas of Papua; and two years in the Western Highlands of New Guinea. He has passed through the Gabusi area four times, but does not pretend to expertise in Gabusi custom. He asserts (no doubt on information and belief only), that by 1965 the Gabusi would have given up platform disposal for burial of the dead. He opined that a lot of cases of cannibalism among the Gabusi would have been "purely for the fresh meat." Among the Biami next door, there is a "fair bit of cannibalism - mostly for fresh meat." He suggested that disregard or disgust for another clan is expressed by eating the bodies of other clans. He expressed knowledge of areas (for example, Tombul) where bodies are suspended and the essences therefrom drained into food containers, and others where bodies are suspended in the house. He was aware that among the Gabusi's "neighbours", the Biami, bodies were tendered to others for the express purpose of eating. He did not think anyone knew enough about the practices; it could take the form of insult; there have been other human flesh eating incidents in the Nomad area, but not in the Gabusi since 1965. He assumed that people ate bodies because they could not afford to let protein in the shape of meat go to waste. This officer gave his evidence with all modesty, and impressed me. But it is clear that his impressions are gained largely at second hand, and one notes that

it is unlikely that the Administration would hear specifically of the disposal of the dead, except where unlawful violence had occurred. I have myself encountered one admission of cannibalism in the nearby Biami area at the last sittings of the Court which I took at Daru, when a witness, who was being asked to identify the body which had been exhumed as being that of a person murdered; in reply to the question, "What did you do with the body"; answered, "I ate the stomach and the leg muscles."

The Crown next tendered a statement from the Assistant District Commissioner at Nomad, Mr. Robin Barclay. As no opportunity was given for crossexamining this officer as to his experience and means of knowledge, his statement must, I consider, be received with considerable reserve. Mr. Barclay's report contains, inter alia, the following statements:

"Nomad was established in 1962 and at this time cannibalism was widely indulged in in all divisions of the Sub District with the exception of the Pare area (west of the Strickland River). Generally speaking, cannibalism occurs after a murder, that is, there is no magic or religious significance attached to the eating of a body, the only consideration being given is of a gastronomical nature. Therefore, with sufficient deterrent, the practice should eventually cease. One instance when the practice took any form of ritual significance was in the course of initiation, when, if possible, initiates would kill and eat someone. Nowadays pigs have been ceremonially substituted for the human bodies.

Cannibalism is still prevalent in the Biami, the last murder at Wagilibi (about end of June) however seems to, by all reports, to have resulted in the burying of the body. The latter may have occurred because the victim came from the same clan. As a rule, if Biamis kill a member of their own clan they do not consume the body. Sometimes the body is sent to a neighbouring clan for consumption, in which case the only significance in the eating would be gastronomical. This occurred in the Waiofi murder case, where the body was eaten by the neighbouring Kugoyobi clan. The latter case has yet to be heard by the Supreme Court."

Mr. Barclay opined that in the instant case the reason for the consumption of Sumagi's flesh, was to shame the Sabasigi. I may say that no evidence tendered in the case, really lent any support to the A.D.C.'s theory in this regard.

Yaruwo Bagin, a Dadalibi villager, stated that in his village the practice was that "sometimes they eat, sometimes they bury (bodies)." "Bodies from the village they bury, bodies from other villages they eat. It does not mean anything, but they want to eat." "When a Dadalibi man dies in another village, the people of that village will eat him. Dadalibi villagers are not happy when other villagers eat Dadalibi men." To defence counsel's perhaps ill chosen question in crossexamination, "When these people ate Sumagi, did you think they were doing anything unusual", he replied "Not a good thing." He was of course by then aware that the Administration frowned on the practice, and hence this Court case, in which he was giving evidence, resulted.

Gerwari Tubiam of Yulabi, explained that in Yulabi "when a man dies or they kill him, they give the body to the other village to eat." Asked, "If a man dies in another village, does that village give the body to you to eat?", he answered "Yes."

The actual killer, whom I had committed to imprisonment with hard labour the previous day, was then called, and said that if a Dadalibi man ate a Dadalibi body it would not be good. If another village ate a Dadalibi body, the Dadalibi would not be happy. I was not surprised to find him answer to me, the Judge who had sentenced him, to the effect that also if a Dadalibi man ate a Sabasigi man, the Dadalibi men would be unhappy.

For the defence, evidence was given by Mr. Ebia Olewale, M.H.A. and Mr. Eric David Wren. Mr. Olewale, a former secondary school teacher, and for some years the member in the House of Assembly for the South Fly, and who has travelled the world, informed the Court that among his people, the Bine of the coast region, headhunting had been rife sixty years ago. From his elders he understood the heads of enemies were usually eaten so that the courage or bravery of the man eaten might be subsumed. His village is 280 miles from Nomad and he has no special knowledge of Gabusi and Biami people, but thought that their customs would be similar to his people's, before the coming of the Europeans.

Mr. Wren has been with the Department of District Administration since 1946. In 1953 he did two extended patrols from Lake Kutubu to an area west of Osari - apparently adjoining that of the people under consideration. His experience indicated that the Gabusi would have similar customs

to those of the peoples he patrolled. Cannibalism was practised throughout the area he patrolled, particularly was it associated with sago-eaters. In some areas, patrol officers would travel through and not ban or offer any comment on what the people were doing in this regard. His experience indicated that the people themselves drew a clear distinction between the killers and those who receive portion of the deceased's flesh. They felt quite blameless unless they were the actual killers or the persons who caused the killing. There was no shame or abhorrence at eating human flesh. There was some evidence cannibalism was then spreading - also in several Sepik areas. After a killing the body would be distributed among relatives and friends. It was the exception rather than the rule - very definitely. He was aware of some practices in the Highlands where a man's relatives ate his body as a reverence or ritual. He knew of no instance where a body of one clan was eaten by another for purposes of showing derision or contempt, among any peoples. (I understood his remark in this regard to be confined to the peoples whom he had patrolled.)

I may say I was very impressed with the way this very experienced officer, Mr. Wren, gave his evidence, and I feel that considerable weight may be given to it. It is unfortunate that no anthropological work appears to have been done among the Gabusi or Biami people which would allow me to be more precise in my findings on this aspect.

On a full consideration of the evidence I have come to the conclusion that the conduct of the Yulabi villagers and of the man from Dadalibi, in eating the body of the deceased Sabasigi villager, in all the circumstances of the case, was neither improper nor indecent behaviour on their part, being normal and reasonable behaviour for them as most primitive villagers living in the Gabusi area of the Nomad Sub District in early 1971, in the limited condition of pacification and administration to which that area had then been reduced.

I would therefore on this ground also hold that no offence had been established against any of the accused on either of the charges levied against each of them.

Lest this my judgment give rise to the suspicion that I myself may entertain Andronican longings or do not hold a proper dread of and repugnancy for such practices, and therefore should be suspect of the Aediles and censors; I think I should say that in the forties it was many times

my duty (as that of many others), to trudge solitarily through the New Guinean jungles, then the haunt of lurking famished enemy. Some of these men were then thought, on strong carnal evidence, to be indulging in cannibalism. A member of my family was as a (living) baby bespoken by, (but refused to), the said enemy to supplement their meagre diet. With respect, I shared, and share, the distaste of the Dadalibi people for cannibalism being introduced into my or my family's obsequies .... I take leave of this horrific subject by acquitting the accused of all charges laid against him. I sympathise with the difficulties of the Administration's field officers in effecting their laudable desire of putting down cannibalism, without satisfactory legislative backing.

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

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