

IN THE SUPREME COURT }  
OF THE TERRITORY OF } CORAM : WILLIAMS, J.  
PAPUA AND NEW GUINEA }

Thursday,  
24th June, 1971

R. v. DOGWAINCIKATA MIAKAWO

ALIAS DOGAINCO MIAKAWO

1971

June 21, 22  
23 and 24

Dogwaingikata Miakawo is charged with the wilful murder of one Jengakam Aiyanakawo on 1st April, 1971.

SENYAMBA

Williams, J.

It appears that, and I do not think that it is disputed, that the deceased died as a result of wounds inflicted by the accused with a bush knife.

Counsel for the accused submits that in all the circumstances the accused should be acquitted of wilful murder and murder by reason of the provisions of section 304 of the Code. It is submitted that the accused was provoked within the meaning of that section.

It is thus necessary to examine in some detail the evidence concerning the events which lead to the death of Jengakam.

Evidence was given by Nabanyi Daibankaua, the widow of the deceased man. She stated that, on the day in question, she was with the deceased at their house. She saw the accused approaching. She further stated that there had been bad blood existing between the accused and her husband for several months before the death of her husband. This is substantiated by other evidence given at the trial. It appears that a dispute had arisen between the men over some pandanus nuts. What the dispute involved did not clearly emerge from the evidence but I have no doubt that a dispute arose with resulting ill will, extending over a period of several months, between the parties and that Nabanyi was aware of this. On observing the approach to the home of the accused, armed with bow, arrows and a bush knife, she

1971

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Williams, J.

apprehended trouble and called to her husband that "this man has come to fight you". She described the accused's face "as looking as though he wanted to fight", and as "evil and angry". Her husband picked up a bow, some arrows and a bush knife. He placed an arrow in the bow and tightened the bow string. He confronted the accused but did not point the arrow in the direction of the accused. According to Nabanyi the accused then struck with his bush knife at her husband's bow. A fight ensued, during which her husband sustained very severe wounds which caused his death. The accused also received wounds of a comparatively minor nature. Nabanyi was the only eye witness of the incident. Kabinikam, a brother of the accused, gave evidence concerning the concluding stages of the fight but did not witness the events leading up to the early stages of it.

On the day following the fight the matter was investigated by Mr. Connor, Assistant District Officer at Menyanya. He interviewed the accused and obtained a statement from him. I quote it hereunder:

"Yesterday the first of April I set out to go to Hengiapa. I crossed the Menyana creek and I saw the wife of the dead man cooking sweet potato in the stones. The woman who was sitting down was looking at me. She looked at me for a long time. The man who is dead was skinning a piece of sugar cane. The woman kept looking at me. She thought I was going to keep on following the road but I wanted to see her husband. The woman got up and called out to her husband "I think Dogaingo has come to fight you now". The dead man was still skinning his sugar cane. He saw me and ran towards me. He ran up to me and I said to him "Why did you come to my bush and make sorcery against me". He took his bow and tightened an arrow in it. I was afraid now. I said to him "You cannot shoot me. It would not be good if we were both injured. He slackened the bow off and took up his bush knife. We fought now. Firstly I fought his bow. He returned the fight. He fought my bow. My bow did not fall down. The second time he cut my hand with his bush

knife and my bow fell down. Then he cut my eye. I took my bush knife and cut his left hand off. The hand and the knife fell to the ground.

Accused proceeded without prompting.

The man held up his severed hand for me to see. He lifted up his right hand and I cut that too. I do not know about his head and stomach. He cut my eye and there was a lot of blood and I could not see clearly. I really fought him strongly with my knife. I was swinging the knife around and I do not know where I cut him.

Q. Why did you want to see this man?

A. Firstly he made sorcery against me and I told him to give me pay.

Q. You went to him and did you ask him for pay or what did you ask him?

A. I wanted to be cross with him for making sorcery and coming on my ground.

Q. How were you going to be cross with him?

A. I was going to be cross with him for sorcery only. I was carrying my bow and arrows and bush knife. I thought that a fight may develop.

Q. Have you fought before?

A. No.

Q. Were you too cross about the sorcery or about the pandanus?

A. We were cross over the pandanus, the bush and the sorcery.

Q. Did the hateen solve the dispute?

A. The tultul solved it and told the dead man to pay me for the sorcery he made.

No further questions.

In the committal proceedings the accused elected to make a statement as follows:

"We didn't fight before this trouble. I went to see him to talk about the matter and he cut my eye. After this I killed him. The blood covered my eye and I thought that I hadn't killed him but I had. If my eye had been alright we could have fought properly. If he struck me somewhere I could have returned the blow in the same place but it didn't happen this way. If I had been thinking about a fight I wouldn't

have talked to him. I would have shot him with an arrow. I thought that we would have a fight with bows and arrows when I went. (defendant made actions to indicate the blocking off of a blow with a knife with the bow). But he cut my eye and I didn't even know that I was hitting him. I just swung indiscriminately. That is the story - there wasn't any real reason. I only went to have an argument. He cut my eye and the rest happened. That is all."

I accept the evidence of Nabanyi as being a substantially accurate version of the events that occurred. It is, in my view, substantiated in some material particulars by the statement of the accused made to Mr. Connor.

The facts that I find are that the illwill had existed between the accused and the deceased for several months prior to 1st April, 1971, and that, on the day in question the accused sought out the deceased with aggressive intent. To use the accused's own words, he went to the deceased's place because he "wanted to be cross with him" and he went armed because he thought a fight may develop. On my view of the facts the deceased was aware of impending trouble when he saw the accused approach his home and took steps to protect himself. It was said that the acts of the deceased in picking up his bow and arrow and in tightening the bow string constituted acts of provocation to the accused. I cannot accept that these actions of the deceased amounted in the circumstances to provocation within the meaning of section 304 of the Code.

It might be contended that, on one view of the facts, the accused acted in self-defence, although this was not raised by the defence. However, even if this be so, the degree of force used by the accused far exceeded that which was reasonably necessary for his preservation. Whilst at the outset the accused may have had no intention of causing the death of the deceased a stage was reached during the fight when the accused had the deceased at his mercy and yet continued to act with great violence with a highly lethal weapon. The deceased's abdomen was opened, exposing his intestines and liver, and a hand was cut off at the wrist and a severe head wound caused brain damage.

I am satisfied beyond reasonable doubt that the accused is guilty as charged.

In my view there are mitigating circumstances surrounding this matter. The accused is a man who has received no formal education. Whilst it is true that he has lived intermittently in fairly close proximity to administration and mission influence I think that he is still a rather primitive man, living for the main part in a remote area and subject in an appreciable extent to the ways of his people. He is a married man with 2 children and has no previous convictions of offences involving violence, nor indeed of any offence. I formed the firm view that the accused (rightly or wrongly) felt that he had been aggrieved in a dispute involving pandanus nuts and it was with this in mind that he sought out the deceased man with a view to settling the matter. I think that it is also important to bear in mind that this was not a cowardly attack by an armed man against an unarmed man. Rather in the initial stages of the incident which gave rise to the eventual death of the deceased man, both were armed. Further, I have had the benefit of the views of Pastor Weir of the Lutheran Mission at Menyama, who has resided in the area for approximately 14 years. It is his view that this killing is unlikely to result in acts of violent retribution by relatives of the deceased and that the matter will be allowed to rest on the decision of the Court.

In all the circumstances it is my view that a sentence of imprisonment for 8 years with hard labour is adequate.

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

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