

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

CORAM : CLARKSON, J.

Wednesday

21st July 1971.

R. v. LAKALYO NEAK, KAIA YONGAIPA
AND KUPUNI YAKAIRA

SENTENCE

1971
Jul 14, 15,
16 and 21.
PORT
MORESBY.
Clarkson, J.

As a result of this trial the three prisoners have been convicted of wilful murder and two matters now remain to be dealt with - the first is whether the prisoners or any of them should suffer the sentence of death or whether in terms of section 305 of the Criminal Code there are extenuating circumstances such that it would not be just to inflict that punishment. The second matter which arises is that if special circumstances are found to exist what is a proper punishment.

I should say at once that I am satisfied that in this case there are special circumstances within the meaning of section 305 of the Criminal Code. Although this crime was committed in the vicinity of an urban area the prisoners are all primitive men who have spent only a few months on a plantation away from their villages. Their ignorance of the ways of the government, their upbringing and the strong tribal traditions which have until now controlled their life and which require this killing are all circumstances which I think are proper to take into account in determining this question and without repeating it I affirm what I said in R. v. Ia Ketapi (No.613) to which counsel has referred.

This brings me then to a consideration of the proper sentence to be imposed. This case will illustrate quite clearly the degrading and anti-social tendencies of the custom of payback which perpetuates violence and inhibits the development of a unified society. The motivation for this payback was apparently an accidental death - at least the prisoner Lakalyo had no good reason to think otherwise. He chose as a victim a man who had no connection with the prisoners or with the man Ambo and who was not even known to him. It was a useless and vicious killing of a sort that should be sternly discouraged. I think in determining sentence I am entitled to take into account, and I do, the formal expression of opinion of the House of Assembly that heavy punishment is called for in such cases.

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To Prisoners:

You and all people must be shown that the law disapproves of payback killings. You and all people must understand that heavy punishments will be given to those people who do them. This was a stupid and vicious killing of a man who had done you no harm. You, Lakalyo, were the ringleader. It was you who persuaded the others to attack this man with you, and because of this you will receive the greater punishment. You, Lakalyo, are sentenced to imprisonment for life. You, Kaia and Kupuni, will each go to gaol for 15 years.

The prisoner Lakalyo is sentenced to imprisonment with hard labour for life. The prisoners Kaia and Kupuni are each sentenced to 15 years' imprisonment with hard labour.

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

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