

Mr. Justice Raine

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IN THE SUPREME COURT }
OF PAPUA NEW GUINEA }

CORAM: PRENTICE, J.

Tuesday,

17th October, 1972.

REG. v. TEREP KOMAR

1972

Oct. 17

MENDI

Prentice
J.

In this trial the Crown case stands unchallenged except to the extent that defence counsel contends provocation to have been shown, such as would reduce the accused's doings from wilful murder to manslaughter of his wife. Undoubtedly, he killed her with an axe, inflicting six wounds in all - to the neck, shoulder, trunk, hip and thigh - the wounds being of such a nature as of themselves to indicate an intent to kill.

Clearly, for some time, the accused had had cause to be dissatisfied with his wife's marital behaviour. She had shown a preference for another man, a "brother" of the accused who lived in a house close to his. It had been shown apparently to the satisfaction of the Local Court Magistrate at Mendi, that she had committed adultery with that man. By some process which does not appear, the Local Court Magistrate ordered the adulterer to pay the accused \$10 compensation and this was paid. A further attempt was made to conciliate marital differences before the police at Wambip - both parties attending. After a "reconciliation" of a few days only, the wife resumed association with the other man. The next morning, a Sunday, the accused broached the matter anew with the village councillor - he took the attitude, no doubt subject to bride price adjustment, that if she wished to leave him and go to her village and take another man that would be in order. But, because of their four children, he considered it bad that she should move into his "brother's" house, close by.

After Sunday service the accused again requested his wife to go with him to effect a settlement - this time to Munio patrol post. While he was still trying to make her agree to this in the vicinity of the church and in the presence of a church crowd, the deceased wife said, "You can tie a rope on my vagina and (make me) go with you to Munio. I will not go with you."

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She then walked in one direction - he in the other towards the back of the church. The accused then struck her twice and as she was running, again and again. She fell and died from blood loss. The accused went straight to Mendi police station and surrendered. In his record of interview the accused said nothing concrete about his state of mind. He did not touch on this subject either, in a statement he made to the District Court on committal, saying, after referring to the adultery, "I became very angry about this so I killed her."

In these circumstances the Crown says provocation has been negatived; that though very angry the accused did not act in the heat of passion. That there was no temporary suspension of the reason (cf. R. v. Moses-Robert (1) and Parker v. The Queen (2)). That rather the accused had been brooding for some time and conveniently used the woman's remarks as an excuse for carrying out a pre-existing purpose, or acting on a grudge.

Councillor Ponts Kimp was a witness to the woman's remarks and the killing. He had taken part in settlement discussions with the accused. He stated that the woman's saying was "a very bad way of saying". If his wife had spoken to him like that he would have felt very very angry. For such words to be used publicly by a woman would be very bad - in front of a crowd it would bring big shame on the husband. "Once she used this word, everyone felt very bad." Everyone and the husband would feel shame. In that area such words would sometimes cause the husband to kill a wife, sometimes to beat her. He himself would beat his wife if she used such words. From the councillor's evidence it is clear the accused got straight up and went straight after his wife. There was no appreciable lapse of time. He was translated from place talk as saying "two minutes" elapsed, which I take to mean almost instantaneously. It happened very suddenly.

I am satisfied that the words spoken by the wife were such as would be likely when said to an ordinary Papuan villager of the accused's background

(1) (1965-66) P. & N.G.L.R. 180 at p. 185
(2) (1964) A.C. 1369

and village environment, to deprive him of his power of self-control and to induce him to assault the speaker. As a matter of judicial comity, I consider it idle at this stage for a single judge of this Court to do other than apply the many decisions of judges of the Court, that Sec. 268 applies to a consideration of whether provocation existed for the purpose of Sec. 304. I have taken this view in a number of other cases. I am satisfied that the accused had over some period of time made numerous attempts to settle his marital differences and was at the moment when the wife so spoke, attempting yet again to arrange a separation. He had tried every law-abiding method to deal with his unfaithful wife. I am satisfied that the nature of her insult was such as could amount to provocation within the meaning of Sec. 268, and was "sudden" within the meaning of Sec. 304. It seems to me more likely than not that the accused had to that moment been conciliatory while angry; but that at that moment he became enraged to such an extent that it could be said in the words of the section, he acted "in the heat of passion and before there was time for his passion to cool."

I am therefore unable to be satisfied that the Crown has negatived provocation. I must therefore acquit of wilful murder and convict of manslaughter.

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

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