

IN THE SUPREME COURT }
OF PAPUA NEW GUINEA }

CORAM: PRENTICE, J.

Tuesday, .. .

5th December, 1972.

REG. v. ANGALIO KAIMAGALI

INTERLOCUTORY JUDGMENT

1972
Dec 5
WABAG
Prentice
J.

Once again I find myself in the unenviable position of having to deliver judgment without the benefit of full argument and recourse to authority. I have listened to evidence on the voir dire as to a brief statement made by a villager in the Laiagam sub-district just before his death in which he stated - "Angalio (the accused) shot me, I'm going to die soon." It is urged by the Crown that this should be received as a dying declaration. The evidence establishes to my satisfaction that the deceased's brother who bore him on his back, arrow in throat from the scene where he had been shot, felt his brother was going to die and left him with his wife (the deceased's), and went off angrily, determined to avenge him. That the man lay in his wife's presence for some hours and died from the arrow wound to his throat and innards. That during that time he asked for a cup of cold water and used the words; and duly died. That at least one old man was present besides his wife and heard his words.

It is submitted to me on the defence's behalf that though the requirements set out in Cross on Evidence at p. 529, appear to have been established viz: -

- (a) the declarant has died,
- (b) the trial is for his murder,
- (c) his statement relates to the cause of his death,
- (d) he was then under a settled hopeless expectation of death,
- (e) he could have been a competent witness;

nevertheless, the declaration should be rejected. This submission is founded on the terms of the 18th century decision of Chief Baron Eyre which appears to predicate in relation to dying declarations a Christian belief of

1972

Reg. v.
Angalio
Kaimagali

Prentice
J.

the declarant in a hereafter and in a judgment of human performance by an existing Deity. Two of my brothers have had cause to consider the application of Eyre, C.B.'s dictum since my late lamented brother Ollerenshaw decided against the admissibility of a dying declaration by a Trobriand Islander (Reg. v. Madobi (1)). Unfortunately, counsel were not fully prepared to argue this point as the evidence in question had not become available until after the circuit began. I am driven to rely on the brief note of my brother Clarkson's decision admitting the evidence of a woman from the instant district Laiagam (Kipali Ikarum's case (2)) at p. 588 of Edwards Cases on Evidence in Australia (sic) 1968 ed; and on my own hazy recollection of my brother Raine's decision on the subject, I think last year. As I recall, in the latter decision, His Honour was at pains to establish that non-practising Christians and persons of no belief in a hereafter as well as non-Christian believers in a hereafter could be relied upon to be truthful at the point of death.

During counsels' address I took the occasion for pointing out that in a number of cases, at least in the Western District where there is a belief that each death is occasioned by sorcery, I had been accustomed to a procedure whereby a dying man was expected to and did nominate who had "caused" his death by "sorcery". The result usually is that an uncle and nephew team "arrange" the death of the man nominated by the dying man. And I instanced the death of a stalwart village constable who told one "team" that x had caused his death (x was accordingly killed) and another "team" that y had caused his death (y was accordingly killed). In what the deceased village constable might have considered a suitable addendum to a "Viking funeral" - for-a-village-constable, I was required, at the one sittings, to deal with charges against the alleged killers of both x and y.

I asked counsel to make submissions to me on the basis that such a situation in a line rivalry context, might have arisen here, without benefit of sorcery. I have considered the facts in the light of such submissions.

(1) (1963) P. & N.G.L.R. 525

(2) (1967-68) P. & N.G.L.R. 119

I have not had to rely on a totally pagan background as a setting for finding that "every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth." Though the evidence established that the Enga people involved hitherto had no belief in a hereafter and consequently the approach of death might not ipso facto be thought to induce them to speak solely the truth; there had been many years of Christian influence in the particular village. The deceased had been going to Catholic Mission Church every Sunday for one year, as had his wife; he was taking instructions to be baptised. He would have been baptised soon. The old man Walit, a fellow villager who like the wife, was queried as to primitive beliefs which he said envisaged no hereafter, expressed the conventional simplistic belief that if he told lies he would go to hell. No direct evidence is available of course as to the possible Christian-influenced actual beliefs of the deceased.

On the standard of proof that I understand to be applicable to the admission of evidence, namely the balance of probabilities (Ward's case, and Donohoe's case), I am satisfied that not only are the Cross indicia established; but that the situation of the dying man was akin to that aphorised by Eyre, C.B. in Woodcock's case. I consider that the deceased man's statements are admissible and I so rule.

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

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