

Mr. Justice Raine

775

IN THE SUPREME COURT }
OF PAPUA NEW GUINEA }

CORAM: PRENTICE, J.

Thursday,

6th December, 1973.

Appeals 214, 215 and 216 of 1973 (P)

SAREA ARAVAPO; HAROHARO TAURAKE; and
EVERA TAURAKE

1973

Dec 4

KEREMA

Dec 6

Separate informations, each alleging a pretence of sorcery under Sec. 10(1) of the Sorcery Ordinance, were laid against the three appellants. Each appeals on a number of grounds, against his conviction. By consent, the appeals were heard together.

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At the outset I consider I should state how important to my view, are prosecutions for sorcery. In capital cases this Court is repeatedly met with the excuse, that the victim was, or was thought to be, acting as a sorcerer. In imposing punishment for the murders of such alleged sorcerers, the Supreme Court can do little other than advise the prisoners that evil sorcery is illegal, and that they should seek for evidence of the practice of sorcery and take their complaints to police and Administration officers. When such complaints are made it is of the highest importance that the alleged sorcery be properly investigated and any subsequent court proceedings be properly conducted. It is obvious that any failure in investigation or court process, which results in a successful appeal from a conviction, may have the double effect of enhancing the alleged sorcerer's reputation (which is very often a principal tool of trade), and of weakening belief in the power of the law to deal with sorcerers and to protect the public.

In this matter the learned magistrate proceeded to hear the three informations together without any apparent consent given by the three accused. In Kereku v. Dodd (1) Minogue C.J. attempted to apply what he understood to be the necessary inferences from the High Court decisions of Munday v. Gill (2) and Russell v. Bates (3). As I understand his judgment, he held that the hear-

(1) (1969/70) P. & N.G.L.R. 176
(2) (1930) 44 C.L.R. 38
(3) (1927) 40 C.L.R. 209

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ing jointly without the consent of the accused, of separate charges (the "lumping" of trials), is an irregularity which may amount to a mistrial.

Many other points were argued in the appeals before me which indicate irregularities of procedure. Each information was in the form "on various days of various months 1973 at Lelefiru he did pretend to be a sorcerer". These informations, without particularisation, appear to me to be bad for uncertainty. And though it could be inferred from the evidence that a particular pretence of sorcery was complained of, which occurred only a few days before the hearing of the informations, the magistrate does not appear to have been alive to the need to satisfy himself that he had jurisdiction - having regard to Sec. 21 of the Local Courts Ordinance: - "A local court has no jurisdiction over an offence which took place more than three months before the complaint was made unless it is of the opinion that the complainant had no reasonable opportunity to make the complaint within that period."

Much of the evidence was of a hearsay nature and seemingly inadmissible, even under the special evidentiary provisions of the Second Schedule to the Sorcery Ordinance. The alleged instruments of sorcery do not appear to have been satisfactorily identified as such by the witnesses. The alleged payment for the services of sorcery were not I think drawn out from the witnesses in a satisfactory manner. Nor does the record of proceedings indicate whether the question of the sorcery concerned (that relating to the child) having been "innocent sorcery" - that is intended to be protective or curative only (Schedule 1 to the Ordinance) - was considered by the magistrate. While I am not prepared to accept counsel's submission that there was no evidence to support the charges, the whole pattern of evidence as it was adduced is to my mind unsatisfactory. I am satisfied that a mistrial has occurred here, the order of irregularity being such as amounts to a substantial miscarriage of justice within Sec. 43(3) of the Local Courts Ordinance. I have given consideration to whether retrials should be ordered; allegations of sorcery being of such potential seriousness in this

community. However, as the appellants have already served four months of the sentences of five months' imprisonment with hard labour imposed on them all, I do not feel that the expense and inconvenience of new trials are called for.

The order of the Court is that each of the appeals is allowed and the convictions of the respective appellants quashed.

Solicitor for the Appellants : G.R. Keenan, Acting Public
Solicitor,

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