

JOINT COURT OF THE NEW HEBRIDES.

Criminal Jurisdiction.

This twenty-seventh day of February one thousand
nine hundred and forty,

before:

W.D. Carew, British Judge,

C.A. Doley, French Judge,

A. Noel, Assessor,

in the
presence of Monsieur Kuter, Public Prosecutor ad hoc, and
assisted by Monsieur Steinmetz, Acting Registrar.

J U D G M E N T.

Accusation is brought against :-

1. Seine Sicambi, alias Mluin Mako, native, aged 30 years, born at Magaoue, Malekula, New Hebrides, no occupation, and living at Magaoue, son of Lunprabi, deceased, and an unknown mother, married, without children; for having at the Tanmaru anchorage on the 26th October 1939, wilfully killed Paul Mazoyer, this deed being premeditated, the accused having awaited a suitable opportunity to surprise his intended victim.
2. Nari, native, aged 35 years, born at Tinambit, Malekula, no occupation, living at Magaoue, son of Leplap and of an unknown mother, married with 4 children; for having at the same time and place and under the same circumstances as mentioned above, wilfully struck and wounded the said Paul
/Mazoyer

Mazoyer with intent to kill him, as an accomplice of the native Sicambi.

3. Nati-Natrimbat, alias Bilmako, native of the village of Petair, Malekula, for having at the same time and place and under the same circumstances and with the knowledge that a crime was to be committed, assisted aided and abetted the aforesaid Sicambi and Nari in the perpetration of the aforesaid murder.
4. Aossene, native of the village of Magaoue, for having at the same time and place and under the same circumstances and with the knowledge that a crime was to be committed, aided assisted and abetted Sicambi and Nari in the perpetration of the aforesaid murder.
5. Harry, native aged about 22 years, originally belonging to the village of Tinambit, Malekula, latterly in the employ of Paul Mazoyer, for having at Tanmaru anchorage on the 26th October 1939, fraudulently taken possession of a certain sum of money the property of the successors to the deceased victim, Paul Mazoyer; the theft being committed during the night by two persons at the place serving as habitation of the said Paul Mazoyer, the said Harry being then in the employ of the said deceased Paul Mazoyer.
6. Ouaine, native, aged about 30 years, originally belonging to the village of Tinambit, Malekula, latterly in the employ of Paul Mazoyer, for having at the same time and place and under the same circumstances as above fraudulantly taken possession of of a certain sum of money the property of the successors of the deceased victim, Paul Mazoyer; the
/theft

theft having been committed at night by two persons at the place serving as the habitation of the said Paul Mazoyer, the said Ouaine being then in the latter's employ.

The Court heard the interrogations of the accused and the witnesses, as interpreted by Benoit a native of Malekula acting as interpreter for the dialect of that island, and by Monsieur Antoine Rossi interpreter in "pidgin" (bichelamar); the said witnesses and interpreters having previously been sworn.

The Public Prosecutor presented the case for the prosecution; and the case for the accused was presented by their Advocate, Monsieur de Kerangal, Native Advocate ad hoc.

After having considered with the Assessor ^{the} ~~the~~ evidence, ^{the} ~~the~~ guilt or otherwise of each of the accused, and the penalties to be inflicted, the Court now delivers the following conclusions.

Insofar as concerns the native Sicambi, it is established by his admissions and by the evidence and information gathered in the course of the proceedings that he wilfully committed the acts and caused the wounds that resulted in the death of the said Paul Mazoyer and that these acts were committed with intent to kill. And further that the wounds so inflicted were the cause of the death of the victim.

It is shown, too, by the evidence brought forward during the proceedings that the said Sicambi premeditated the crime, that he had awaited a suitable opportunity for its commission and that he had not acted alone.

/In

In regard to Nari, it is established by the evidence and the admission of the accused that he committed the acts and caused wounds to the deceased with intent to kill as an accomplice of the native Sicambi.

With regard to the native Aossene, accused of having been an accomplice of Sicambi and Nari, the Court finds that complicity in this case fall within the provisions of Article 60 of the Code Penal, which provides that actual participation in the acts which constituted the crime is not necessary. (Cour Cass. 14 Avril 1904. D.P. 1905 - 1 - 342). Aossene's guilt is sufficiently established by the fact of his having known that a murder was to be committed and that he took possession of a boat whilst his comrades detained the custodians of that boat and rowed out to the vessel where a crime was being committed, purposely to bring the murderers ashore and thus facilitate their flight.

With regard to the native Nati, also accused of complicity in the murder, it is not proved by the evidence that he had any knowledge that a crime was to be committed. There being a doubt, the accused is accorded the benefit of that doubt.

With regard to Harry and Ouaine, arraigned for theft from the place serving as the then habitation of their late master, proof of their guilt is sufficiently established by the evidence and by their own admissions. The Court takes account of the fact that as servants of the deceased they committed the theft immediately after the murder of their master.

The following Articles of the Code Penal apply to the foregoing: 295, 296, 297, 298, 59, 60 and 386. They read as follows :-

/Article

ART. 295.- L'homicide commis volontairement est qualifié meurtre.

ART. 296.- Tout meurtre commis avec préméditation ou de guet-apens est qualifié assassinat.

ART. 297.- La préméditation consiste dans le dessein formé avant l'action, d'attenter à la personne d'un individu même déterminé, ou de celui qui sera trouvé ou rencontré, quand même ce dessein serait dépendant de quelque circonstance ou de quelque condition.

ART. 298.- Le guet-apens consiste à attendre plus ou moins de temps, dans un ou divers lieux, un individu, soit pour lui donner la mort, soit pour exercer sur lui des actes de violence.

ART. 302.- Tout coupable d'assassinat sera puni de mort

ART. 59.- Les complices d'un crime ou d'un délit seront punis de la même peine que les auteurs mêmes de ce crime ou de ce délit, sauf le cas où la loi en aurait disposé autrement.

ART. 60.- Seront punis comme complices d'une action qualifiée crime ou délit

3.- Ceux qui auront, avec connaissance, aidé ou assisté l'auteur ou les auteurs de l'action dans les faits, qui l'auront préparée ou facilitée, ou dans ceux qui l'auront consommée

ART. 386.- Sera puni de la peine de la réclusion tout individu coupable de vol commis dans l'un des cas ci-après :

3.- Si le voleur est un domestique ou un homme de service à gages même lorsqu'il aura commis le vol envers des personnes qu'il ne servait pas mais qui se trouvaient soit dans la maison de son maître, soit dans celle où il l'accompagnait

it is/

It is found that extenuating circumstances exist in favour of the accused Aossene, Harry and Ouaine Which give to them the benefit of paragraphs 1, 2 and 7 of Article 463 of the Code Pénal, which reads :

1.- Les peines prononcées par la loi contre celui ou ceux des accusés reconnus coupables, en faveur de qui le Jury aura déclaré les circonstances atténuantes, seront modifiées ainsi qu'il suit :

2.- Si la peine prononcée par la loi est la mort, la Cour appliquera la peine des travaux forcés à perpétuité ou celle des travaux forcés à temps.

7.- Si la peine est celle de la réclusion la Cour appliquera les dispositions de l'article 401, sans toutefois réduire la durée de l'emprisonnement au-dessous d'un an.

The articles 19 and 401 are also applicable and read as follows :

ART. 19.- La condamnation à la peine des travaux forcés à temps sera prononcée pour cinq ans au moins et vingt ans au plus.

ART. 401.- Les autres vols non spécifiés dans la présente section seront punis d'un emprisonnement d'un an au moins et de cinq ans au plus et pourront même l'être d'une amende qui sera de seize francs au moins et de 500 francs au plus.

THE COURT therefore decides and orders as follows :

The native Nati is found not guilty of the crime of complicity in the assassination and is acquitted.

Sentence is passed on the natives Sicambi, Nari, Aossene, Harry and Ouaine each according to the above quoted texts of law as read out in Court as follows :

SICAMBI and NARI are condemned to death.

Aossene/

AOSSENE is sentenced to five years imprisonment with hard labour.

HARRY and OUAINÉ are each sentenced to imprisonment for 1 year.

The death penalty pronounced on SICAMBI and NARI shall be executed according to the prescriptions of the decree of 22nd July 1939.

The Court orders the confiscation of the gun and ammunition which were seized and were exhibited at the trial, and orders the restitution of other articles to their rightful owners.

The natives Sicambi, Nari, Aossene, Harry and Ouaine are ordered jointly to pay the cost of the proceedings amounting to four hundred and eighty-five francs forty-two centimes (Frs 485.42).

The present Judgment is made known to the sentenced prisoners by the interpreters.


French Judge


British Judge.


Assessor.


Acting Registrar