

THE REPUBLIC VS. BORERE YEE ON

JUDGMENT

The accused is charged with three charges namely, causing grievous bodily harm according to Section 320 of the Criminal Code Act. Secondly, for unlawful wounding, Section 323 of the Criminal Code and thirdly, assaulting occasioning bodily harm contrary to Section 339 of the Criminal Code Act.

I would assume that these charges filed will be dealt with on that basis. The fact is beyond reasonable doubt and I have considered the submission made by both counsel. I, ofcourse, have considered the evidence of all witnesses called. I have had the benefit of hearing them give their evidence in the witness box and have witnessed their demeanour. The conclusions I have arrived at on the evidence satisfy me beyond reasonable doubt that the following facts have bee established.

Firstly, I turn to the nature of injuries inflicted on the complainant Boruru. Dr. Madio has satisfied me that they were established in such a nature that is to endanger the life of Boruru and consequently constitute grievous bodily harm. In order to decide whether it one must refer to the definition of term in Section 1 of the Criminal Code which says:

(Read out)

Secondly, I shall make findings of facts which I am satisfied have been established. I have no doubt the the accused complained to Mrs. Kamoki the wife of the Is. Rep. about the T.V. not being available. He was outside Flat 4 at the accommodation block and Mrs. Kamoki was about 15 to 20 feet away. Boruru was with the Island Rep and Mr. Beia outside his Flat 2 at about 20 feel from Mrs. Kamoki. The accused was incensed and complained loudly enough to

to Mrs. Kamoki to be heard by Boruru. I am satisfied he suggested one of the reasons for the T.V. being withheld was because of Boruru's conduct. Boruru then became incensed and there were words between him and the accused which would leave no one in doubt the same sort of altercation would accumulate between them. Afterwards Boruru challenged Borere the accused to a fight and rushed towards him with a chair in his hand. He was restrained by Beia and went back to the area of his room which he was about to enter but did not do so. This was seen by the accused. At this state, Mrs. Terang Tiroi, a reliable witness whose evidence I accept came on the scene. She saw Boruru being held back by Beia and heard more arguing. She promptly left the area and went to her upstairs, above the scene. From there she observed break away from Beia and run towards Boruru. He was not carrying anything. When he came up to the accused he was jabbed two times. Boruru's attitude was aggressive but he had not at that stage touched the accused. This was seen by Mrs. Terang. As I have said, I accept Mrs. Terang's evidence. Other witnesses whose credibility I accept, also saw the stabbing. They are Mr. Beia and his daughter. Behind Boruru was Beia who was himself struck by the handle of the spear and Boruru's daughter who in struggling to release the spear from the accused's hand was cut on a finger of her right. I have no doubt Beia and his daughter's action in rushing to the accused was prompted by his production of the spear. It was at that stage that the accused was struck by a stick held by Beia. Mr. Tetaki saw that. He came out of the accused's room and saw the accused, Beia, Boruru and Boruru's daughter struggling. The significance of his evidence is that he saw the hitting of the accused after Boruru was stabbed. He saw Boruru was injured. Ultimately, the spear was taken from the accused by Mrs. Kamoki. I have arrived at these findings without any doubt.

Now, turning to the defence put forward by the accused in the light of these findings of fact. It has been suggested that Boruru was in venture of his own acts in that he ran towards the spear and impelled himself on it. That conclusion, I reject. Apart from the fact that I have found on the evidence that the accused was

jabbed with the spear by the accused, the suggestion that a man would not only impale himself once and sustain serious injuries and then by way of encore repeated the performance and further two times hardly bears consideration. The defence of the provocation has been raised: (Section 269 of the Criminal Code read out). To succeed it must be established that the accused being provoked, assaulted his provoker acting on the spur of the moment suddenly losing his power of self control in the heat of passion before he had time to cool down. The facts here as established negate the defence. The argument between the accused and Boruru went on for sometime. Boruru has rushed to the accused once was stabbed, a further period elapsed and then he rushed to the accused again at which time the accused had got his spear and was pointing it to him. This action of the accused was not an action on the spur of the moment, it was a calculated one. Besides the accused speared Boruru not once but three times. There was ample time for him to cool down if indeed he ever was without self control. Furthermore, I am satisfied even if there was provocation, the injuries inflicted could not by any measure be held to be justified. They were so severe to be completely disproportion to the type of provocation suggested here.

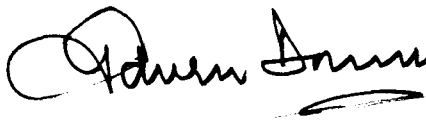
Turnin g now to the defence of self defence.

That Boruru intended to fight with the accused I have no doubt. I have no doubt the accused was prepared to meet the challenge and that he used the spear for that purpose. I reject his evidence that he used the spear only when he was charged by Boruru, Beia and his daughter. I am satisfied that he was aware that when Boruru rushed to him on the occasion of the spearing Boruru was unarmed.

However giving the accused the benefit of his contention that he was defending himself, I find that the use of the spear in the manner used by the accused was unreasonable. The accused at the worst being confronted with the possibility of an assault by an unarmed man. To use by way of retaliation or defence a spear, was unreasonable and unjustifiable. I am satisfied the accused could move on reasonable grounds have believed he was to suffer death or grievous bodily harm at the hands of the unarmed Boruru. The defence of self defence fails.

Finally, it has been submitted that the accused was not able to comprehend what he was doing. This submission depends upon a finding that he had been struck on the head and rendered incapable of knowing what he was doing. The evidence does not establish this.

I am satisfied in a result I find the accused did grievous bodily harm to Boruru. That he intended to do it has been established. The fact that Boruru was speared three times indicates a clear intent of grievous bodily harm. Therefore I find him guilty doing grievous bodily harm on Boruru. I propose to convict him to imprisonment next Wednesday. Probation officer's report will be required.


C.I.

DATED THIS 19th DAY OF MARCH 1986.