

IN THE SUPREME COURT OF THE
TERRITORY OF PAPUA AND NEW GUINEA.

CORAM: PHILLIPS, C.J.

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against

CHIVIRING

Criminal Trial (the Chief Judge) at Rabaul
7th and 8th July, 1947.

Provocation - premeditation and deliberation

CHIVIRING, a police constable, suspected that his wife might be unfaithful because he had heard stories about other policemen's wives. As a result of his insistent questioning she told him she had been unfaithful. CHIVIRING killed the sister of his wife's alleged lover at the culmination of a complex plan.

HELD:

He showed premeditation, deliberation, and considerable cunning in achieving his end. There was no "sudden" provocation.

W.W. Watkins, Crown Prosecutor

W. Dishon, Assistant District Officer, by leave, for Defence.

This was a Sohano case heard at Rabaul (10.13 a.m. to 5.40 p.m., 8.00 p.m. to 11.30 p.m. on 7th July, 1947)

On Tuesday, 8th July, 1947, the Chief Judge delivered judgment orally.

This is a charge of wilful murder, which is one of three forms of unlawful killing under our Criminal Code. Section 301 reads: -

"Except as hereinafter set forth, a person who unlawfully kills another, intending to cause his death or that of some other person, is guilty of wilful murder."

Section 291 says that a killing is not unlawful if it is authorised, justified or excused by law. Of these three exceptions only one concerns us: - "excuse", and in regard to "excuse", provocation, of a kind recognised by law, may reduce what would otherwise be wilful murder to manslaughter (s. 304 of the Criminal Code).

Now, the onus is on the Crown to prove the charge beyond all reasonable doubt. There is no onus on the Accused to prove innocence.

The facts, which are really not in dispute, are that Accused hearing stories of the conduct of other policemen's wives, asked his wife of three months if she was the same. She denied it. He kept on asking her till at length she said she had misbehaved. He asked her: "With what man?"

He says that she then suggested that he name the men he know and she would tell him if he named the one - a curious proposal. He named fellow villagers - no result. Then, he says, he named policemen till he came to HULULA and, he says, she said he was the man. Asked how often misconduct occurred, he says, she said: once. Then, later she said twice. Then she said, "Since a week after my arrival at SOHANO". He says he asked repeatedly, "Is this true", and she said, "Yes." (Pausing here - I may comment that the wife may have been telling the truth or, stung by his suggestion of infidelity, which was probably unfounded, she may have thought she would sting him in return by saying she had been untrue: a not uncommon feminine reaction. Which it was is not known, as the wife and Hulala have not testified in this case).

Accused was obsessed by the thought of his wife's infidelity. He told the Sergeant-Major, who made enquiries and ascertained that his suspicions were (the Sergeant-Major thought) unfounded (or that Hulula and the wife had, on enquiry, denied it).

Accused says he asked his wife, who agreed HULULA had laughed at the charge, but said she had denied infidelity to the Sergeant-Major because she was afraid. She added that, in truth, she had been unfaithful.

Accused thoughts were now on revenge, he says, and he had HULULA's sister in mind. Yet he says he looked twice for HULULA in one afternoon and could not find him. He thereupon concluded HULULA had a guilty conscience and was avoiding him. Yet, it was possible that HULULA was away on an innocent errand: and it would have seemed wiser to wait till he could find HULULA - for example, when next he came on duty.

Accused did not wait. He decided to leave headquarters with his wife, and, doing so, he took with him his bayonet and belt, hiding them under an unusually long double lava-lava and strapping them with rubber to his leg.

They went to LONAHAN village (where HULULA's sister HOHANAN, lived with her husband, ROEPA). Accused told his wife he would induce HOHANAN away from the village and would do what he intended to do at a spot called TON, midway between LONAHAN and

SING Villages. He warned his wife not to betray his intention by saying anything to HOHANAN. Apparently, his wife understood that his intention was to square off what he thought HULULA had done to Accused's wife, TAMIN, by having sexual intercourse with HULULA's sister HOHANAN (HULULA, by the way, had no wife, being unmarried).

Accused got GONEHAN of LONAHAN to carry a message to HOHANAN to the effect that Accused had come with a message that she was to accompany him back to the station of SOHANO and that he would be waiting on the beach.

HOHANAN came to the beach and enquired of Accused what it was about. He said he was not sure, but thought it was something to do with her brother's pay.

She said she would speak to her husband first - and Accused said she should leave her baby behind, but she said she could not do that as the baby was sick.

She returned with her husband, ROEPA, who also enquired about the errand and got a similar reply. ROEPA said he would come too, but Accused told him not to do that because there was no need to worry as Accused's wife was with him, but that if ROEPA wanted to come then he ought to return and get food for the child and bring it to SOHANO on the morrow. ROEPA agreed to this.

Thus Accused got ROEPA out of the way.

Then he, his wife and HOHANAN (and her baby) headed for SING. Near TON, Accused's wife, according to the plan he had already instructed her to follow, went ahead.

He then spanked HOHANAN playfully on the posterier with a vine. She said, "What is that". He said, "Don't you know?" She sensed he had tricked her and ran into the sea and along a reef calling on her husband who was now far away. He reassured her (she weeping) that all was well. She came back only to be jumped by Accused. She had her baby in her left arm, and he held her right and proposed sexual intercourse. She refused. He said it was in retaliation for what HULULA had done to his wife. She still refused but, (he says) she admitted HULULA was a trouble-maker with married women and had not agreed to proposals to get him married. He asked did she not like the idea of intercourse - was she averse to it. She said no - but she had to think of her sick child. (This may have been a tactful answer to a man armed with a bayonet).

He says he then said he would kill her and she replied, "Alright, kill me. I must pay for what HULULA has done".

Whereupon he thrust his bayonet through her body and again into her back - but not through her body - killing her.

Whether he raped her first or not, there is no evidence: her body was later found naked and half covered with sand, but the tide may have uncovered her lava-lava from her body and washed it some distance away, where it was later found. When giving evidence of this part of the events Accused seemed to have to think before speaking, he was hesitant rather, for first time in his long story. However - as I have said - there is no certain evidence, and the charge does not relate to possible rape but to a killing, which Accused has admitted.

Later the bodies of HOHANAN and her child - also dead - were found by village searchers.

Meanwhile Accused and his wife had hidden in the bush, where some days later they were apprehended. On apprehension Accused admitted the killing, and said he must have been crazy. He also said it was because of HULULA's conduct.

Thus what Accused did was based on his suspicion of his wife's infidelity, which was based on her admission of such after his long questioning and nagging (an admission which may or may not have been true). He did not check up by questioning HULULA or by setting a trap. He accepted his wife's "admission" as correct, and plotted a dreadful revenge which he allowed nothing to prevent him carrying out. He showed premeditation, deliberation, and considerable cunning in achieving his end.

On this evidence, I can see no defence. His killing was not authorised, justified or excused by law, and there has been no "sudden provocation" such as might, in law, have reduced wilful murder to manslaughter.

In these circumstances, only one verdict is possible. I find CHIVIRING Guilty of Wilful Murder.