

THE KING v. HARRY EDWARD HAMILTONJUDGMENTPhillips C.J.  
5 Mar 48.SENTENCE

In sentencing the accused, the Judge read the following:-

Accused! You have pleaded 'Guilty' to a charge of having, on or about the Sixteenth day of November 1947 in this Territory, unlawfully and indecently assaulted a male native named Tuwara.

The facts in this case are undisputed, and briefly, they are as follows:-

On the day in question, at the Government Police Post at Kaiapit which you were visiting, you received information, in your capacity as an Assistant District Officer of the Administration, that Tuwara, a married man with grown-up daughters, had violated a native girl about eight years of age. After making a preliminary (or police) investigation you concluded that Tuwara had done this. You say that in your 15 years' experience you had never struck such a case and that it "infuriated" you. You then made Tuwara take off his loincloth and, in the presence of other natives, you struck him repeatedly on his genitals, upbraiding him the while for his alleged offence. You then told a succession of police-boys to strike or manipulate his penis. You were "the Government." They obeyed. Tuwara's penis did not erect so you sent for a native woman and ordered her to masturbate Tuwara. She was a relative of Tuwara's and spoke of the "shame" this would bring and did not wish to do it. You insisted. You were "the Government." She obeyed, and succeeded in producing the erection of Tuwara's penis and ejaculation. You say that some of your native police said, at the time, and that some natives whom you have discussed the matter with since have said that this punishment of Tuwara was just. Many natives consider it unwise and lacking in tact to disagree with a Government officer. One native constable, as I see from the depositions, had the moral fibre to consider your conduct unseemly.

Tuwara, at the time this outrage was inflicted upon him, had not yet been tried or found "Guilty". When anyone is charged with, tried for, and found guilty of the offence he allegedly committed, the punishment prescribed by our law is sufficiently drastic. It is not for anyone to invent and inflict punishments outside the law and anyone who does so, whether his motive be lofty or base, does so at his peril.

You say you know that what you did that day was illegal and in excess of your statutory powers but that you "cannot honestly express remorse at the punishment inflicted on Tuwara" because you think it "was in the best interests of (his) village society." You also say

that your "intention was to subject Tuwara to the greatest degradation and fear and to prevent him repeating his actions," and that you intended his punishment to be a "demonstration and warning to any other natives of the area who might have similar inclinations." You certainly submitted Tuwara to the greatest degradation that may readily be conceived. In doing that, you did other things. You also subjected the woman you forced to masturbate him to an equal degradation. You also degraded yourself and the Administration whose officer you were. You degraded ~~your~~ your race. The punishment you inflicted on Tuwara was savage and barbarous, and it and your conduct that day show that you are unfit to be entrusted with any share in the administration of justice in this Territory.

In mitigation of your offence and by way of a plea for leniency, certain facts have been placed before the Court by you or your learned Counsel. You have served the Administration for 15 years and you served in the Territory for virtually the whole period of the hostilities in New Guinea. In rendering those services you had to endure overwork and overstrain; once you had an illness and were sent on leave; and on another occasion your health broke down and because of that breakdown (which you think may have been paranoia) you were medically down-graded and told to rest for three months. Since your military discharge and your taking up duty with the present Administration, you have put in 23 months of arduous work under difficult conditions without having a leave. You have had a clean record hitherto and Mr. Costelloe (Assistant District Officer, Lae) has spoken in your favour. You have told the Court that on the day in question, just before the commission of this offence, you had had some drink, but you have said and reiterated at this trial that you were sober at the time and knew what you were doing. I assume that there is a possibility amounting almost to certainty that, as a result of your offence, your career with the Administration and in this Territory will end; if so, that is something you have brought upon yourself. You have told the Court that "as an officer of the District Services" you "would feel a moral responsibility if the actions you took on that occasion would influence any of the younger officers joining the Service to depart from recognised procedure." Undoubtedly a moral responsibility would rest on you if any younger officer has been, or should be, so influenced by your example as to copy it.

The punishment to which your commission of the offence has made you liable is - Imprisonment with or without hard labour for three years, and with or without whipping. I have carefully considered all the circumstances which have been mentioned in mitigation or in the plea that leniency be given to you, for I believe and have always tried to see that justice should be tempered with mercy when that is a right and proper course. At the same time, I realize that there are cases where leniency would merely be weakness and would be prejudicial to the due maintenance of law and order; and this, I think, is such a case. In my view, your offence is one that, because of its atrocious character,

would amply warrant the full punishment allowed by law: and your sentence should be one that is not only a just punishment on you but also one that will be an effective deterrent to others who may think of doing as you have done. You seek mercy, but you showed none to Tuwara. The Court, however, will give you some mercy - although you have forfeited all right to it. I shall not order a whipping and I shall not order (as you have been long in the Territory) that you be put to hard labour, but I shall sentence you to imprisonment without hard labour for three years.

Sentence:- Three years imprisonment without hard labour.