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R. v. EDGAR ROY EDWARDS

JUDGMENT

Bignold, J.
29/6/50

In this case the accused Edgar Roy Edwards appears before this Court indicted on six counts of assault. The first count is quite separate from the succeeding counts but the second, third, fourth and fifth count all arise out of the same incident whilst the sixth count is in respect of a separate occurrence.

Before examining the evidence placed before the Court it is necessary to examine the law relating to the charges and then to advert to the standard of proof required of the Crown to establish them.

Section 245 of the Criminal Code defines the nature of an assault and is as follows (Reads Section).

Section 246 provides that assaults are unlawful except in certain circumstances (Reads Section 246).

Provocation is defined in Section 268 and then (reads 268) Section 269 provides that provocation in certain narrow limits may constitute a defence for an assault.

Provocation is in question in relation to the last count.

It is essential to recall that the burden of proving every element of the offence charged lies upon the Crown and the Crown must establish every element beyond a reasonable doubt. If the Crown falls short of that high standard of proof then the accused is entitled to the benefit of the doubt and to his acquittal.

It should be understood that the Crown must negative any defence open to the accused. (The defence of insanity is not raised here).

It sometimes happens that the accused tells a story disbelieved by the Court and yet that story may raise a reasonable doubt, to which he is entitled to the benefit.

The accused has pleaded NOT GUILTY to each count.

Coming now to the facts in this case and it is convenient to deal with the first count separately and then for the purpose of consideration to group the 2nd, 3rd, 4th and 5th count together leaving the last count for separate consideration.

The accused is a Patrol Officer in the service of the Administration at the material times stationed at Tapini in the GOILALA Sub-District.

He was in November, 1949 engaged in the difficult task of investigating a number of old murders, the perpetrators of whom had as yet evaded justice.

In the course of the patrol for the purpose(inter alia) he arrived at the Village of APORATA, where Corporal Jiki on his instructions brought a prisoner Kou Geru to the patrol house.

In the house was also a Mr. Jensen, who had accompanied the patrol in charge of pack horses and mules.

The evidence shows that Kou Geru was taken into the house where the accused interrogated him. Kou Geru denied having killed a woman the subject of the inquiry, whereupon according to Jiki the accused Edwards slapped him on the face with his open hand. Avila, the interpreter, was present but had not been called. Kou Geru on the other hand swears that the assault was with a belt, the accused hitting him across the mouth. The accused himself on oath has denied that any assault at all took place at Aporata and Mr. Jensen who was present says that he saw nothing unusual occur in the house.

The evidence shows that there was in fact another occasion at another village that day in which the accused himself admits that he struck the native Kou Geru on the face with his open hand.

The Crown however has indicated at the request of learned Counsel for the defende,Mr. Jones, that the assault relied upon is the assault which took place at Aporata.

I think that the Crown should be bound by the particulars given and that I should not consider for the purposes of the count as to what happened on another occasion even though the learned Crown Prosecutor has not amended the indictment, which in its terms would cover the second occasion.

The evidence fails to satisfy me that any assault took place at Aporata.

I therefore find the accused NOT GUILTY in respect of the first count.

It now remains to consider the evidence in regard to the 2nd, 3rds. 4th and 5th count.

The evidence of the witnesses for the prosecution discloses a weird story of the accused causing the native Kou Geru to be pushed up a pole that had been inserted in the ground near Kioi Village so that his handcuffed hands were over a fork, which was at the top of the pole. The pole having been a ridge pole of a house or used as one witness said to support sugar cane being about 10 feet x 5 and which had at the direction of the accused been brought down by Maia to place where it was placed in the ground.

These witnesses allege that the accused with Maia Corporal Jiki and Kou Geru (the prisoner) proceeded after being at the bush house to a spot in a small clearing some distance from the village of Kioi and down the hill from it.

They further swear that Maia brought at the direction of the accused some Katoro leaves (Mountain Pandanus) and placed some at the foot of the pole. That these were lit by the accused and the fire burnt up quickly singeing the hairs on the legs of Kou Geru, who in trying to avoid theheat drew his legs up, whereupon the accused hit him with a small stick like a cane to cause him to put his legs down again. That the fire burnt out quickly and the accused then ordered Maia to cut the pole down, which he did cutting it about a foot from the ground. The accused then fell with the pole. Finally Maia at the command of the accused picked the fallen man Kou Geru up and rubbed mud on his legs.

There are a number of inconsistencies in the story of the three witnesses for the Crown, which have been revealed in cross-examination and otherwise.

It is the difficult task of the Court to assess the weight that can be attributed to their testimony and to determine whether the inconsistencies are such as may naturally be expected of accounts of different observers or whether the differences are such as may be expected when the story itself is a fabrication.

It has been pointed out in the conduct of the case that Corporal Jiki has admittedly given false testimony at the Court at Tapini in regard to the matter the subject of these counts. His explanation is that some native named Mo asked him to conceal the matter of the counts now in question. Mr. Jones has urged that be that as it may this fact of itself must lead the Court to be distrustful of his evidence and the more so if the Court comes to the conclusion that his account of the assault at Aporata the subject of Count 1 is unreliable.

The defence has pointed out further that the witness Maia at first swore that he helped Kou Geru up whilst he Maia being already up the pole but later he changed this and said that he and Jiki pushed Kou Geru up from the ground.

The defence also pointed out that Kou Geru, Jiki and Maia were at variance about who first went down to the place where the pole was put in. Jiki and Kou Geru swearing that Maia accompanied the accused and themselves to that place whilst Maia himself swore that he did not go down with them at all, but went down after carrying the pole.

Maia testified that at the pole he heard Kou Geru call out Mother Father, but apparently this was not heard by the other native witnesses there.

It seems an extraordinary story to be one completely fabricated and learned Counsel for the prosecution urges that if such a story were fabricated that it would be far more simple that in the main the witnesses agree on the salient points and if it were a fabrication the witnesses would go the whole length and say that Kou Geru was burnt whereas they only testified that the hairs of his legs were singed but that he was not burnt.

That in the case of Corporal Jiki whose testimony must carry weight as he was not willing until pressed to disclose the incident the subject to counts 2, 3, 4 and 5. He points out further that there is a substantial agreement as to the size of the pole. He dismisses the disagreement as to the order in which the party proceeded down to the place where the pole was inserted as not being at all surprising in view of the lapse of time. I do not subscribe to this view and in my experience it is astonishing the way natives recollect the exact position in relation to each other of members of a party walking one behind the other.

The accused denies the incident relating to the pole flatly and is supported by the witness Loula who says that on returning to Kioi village all those who went down to the bush house to search for the skull (a search made on the information given by Kou Geru which proved fruitless) never separated and the incident relating to the slap in the face and the placing of Kou Geru in the grave followed at Kioi after a short spell following which the party all went back to Aporata.

The witness Jensen supports this evidence also and says that he is certain that none of the party left Kioi on returning from the bush house except possibly for a couple of minutes and that most certainly four of the party were never away even for that time altogether.

In connection with this evidence it is interesting to note that Corporal Jiki at one stage in his evidence on cross examination said that it was true that as soon as he came back from the bush house the grave incident occurred and then he went on straight to Aporata.

As I stated in the course of the case I would have expected since the pole was cut off a foot above the ground that the very significant evidence might have been obtained that upon search of the area in question the remains of that pole were found in the ground. No such evidence however has been available to assist the Court in its determination.

After sifting the evidence and bearing in mind the matters brought to my attention by Counsel I find myself as a jury unable to be satisfied beyond a reasonable doubt of the matters the subject of these counts.

Accused I find you Not Guilty in respect of the 2nd, 3rd, 4th and 5th counts.

Finally it becomes necessary to deal with the last count and in respect of this count I am satisfied from the evidence that having asked a question of the native Kou Geru and receiving no reply and later an unsatisfactory reply the accused slapped Kou Geru on the face and then ordered him into the open grave nearby. The order was conveyed to Kou Geru through Corporal Jiki and the prisoner Kou Geru against his will thereupon got into the grave. The accused then caused banana leaves and sugar cane leaves to be thrown in on top of the man who was at the bottom of the grave.

I am satisfied too that the accused did this in an effort to frighten Kou Geru into an admission.

Kou Geru was in the grave under the leaves for a short time and I think that the witnesses for the Crown have over-estimated the period which I think was a matter of minutes. No bodily harm befell the unfortunate Kou Geru as a result of his ordeal. The accused has admitted placing the native Kou Geru in the grave and causing leaves to be placed over him there and in his defence he pleads provocation.

The Crown contended that this defence is not open to the accused as he was not an ordinary person as set out in Section 268. I disagree with this contention and reject it as the words "ordinary person" are inserted so that a single standard is adopted and the standard does not vary with the temperament of the person concerned. (See Mancini v. Director of Prosecutions 1942 Appeal Cases 1).

On the facts I hold the defence fails as the native Koru Geru did not commit any wrongful act or offer any insult to the accused which might constitute provocation.

Kou Geru had been arrested for murder and could please himself whether he answered questions as the accused well knew from his warning. Accused persons frequently tell lying stories to the police and they are entitled to do so if they wish as they are not required to incriminate themselves. There is, therefore, no foundation for a reasonable person who believes any account by an accused person to be untruthful to be enraged, especially when such person is a Police Officer.

On the contrary, in my view, the accused acted in a most reprehensible way and his evidence indicates plainly that his attitude and conduct towards the native prisoner is a highly improper one. I am not impressed with his story that he placed the native in the grave in an uncontrollable fit of anger and the evidence satisfies me that he did it deliberately to see if the mental shock would cause him to make some confession.

Accused I find you guilty on the last count.

6 months I.H.L.