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

BIGNOLD J.
28th July 1954.

TAPINI.

THE QUEEN v. AMUNA AND KAURUPA.

JUDGMENT

In this case, two natives of Kulumutu Village, Amuna and Kaurupa, father and son, appeared before this Court charged with in company unlawfully doing grievous bodily harm to the Village Constable Enau. The accused have had a plea of "Not Guilty" entered in their favour by the Court, thus putting the prosecution to strict proof of every element of the offence beyond a reasonable doubt.

As with so many cases in the Territory, the trouble arose over a pig, and the facts are as follows:

The Village Constable Enau had lost a pig, and for what appears to be for no sound reason, suspected the two accused of stealing the pig and eating it. On the morning in question, at about 7 o'clock, he arrived at the accused's house obviously very annoyed about the loss of the pig, and tapped with his axe on the side of the house. The accused's wife Lumepa and her son Kaurupa, the other accused, were at the house and denied killing the Village Constable's pig.

At this time the Village Constable fired an arrow at Amuna, the first accused, but Amuna was a considerable distance off, and it missed him, as did two other arrows that were fired at him. Seeing his father attacked, Kaurupa, the accused, got his bow and arrow and fired at Enau, missing him; but whilst Enau's attention was directed towards Kaurupa, the first accused, the father Amuna, approached to within a short distance, some ten or twelve feet from Enau, and with a long black palm spear with a blade affixed, transfixed Enau in the middle of the back. Enau tried to chase the two accused, but was overcome by his wound and fell down, and as a result of the wound, he has been in the Tapini Hospital from the 14th May to the 25th June, his condition upon admission being described by the Government Medical Officer, Doctor Zigas, as very grave. Doctor Zigas says that it required a heavy blow to inflict the wound, which was two inches wide and three and a half inches deep, fracturing part of the spinal process. Fortunately Enau, the injured man, has made a complete recovery.

The first matter to consider is whether the overt acts by either of the accused fall within the limits of self-defence, or whether either of them fall within the description of the defence of provocation.

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In relation to self-defence, one must have recourse to the provisions of the Code. An assault is defined by Section 245 of the Code, and Section 1 of the Code defines grievous bodily harm.

In regard to self-defence against an unprovocated assault, the conditions are laid down in Section 271, namely, that when a person is unlawfully assaulted and has not provoked the assault it is lawful for him to use such force to the assailant as is reasonably necessary to make effectual defence against the assault provided that the force used is not intended and is not such as is likely to cause death or grievous bodily harm. If the nature of the assault is such as to cause reasonable apprehension of death or grievous bodily harm and the person using force by way of defence believes on reasonable grounds that he cannot otherwise preserve the person defended from death or grievous bodily harm it is lawful for him to use any such force to the assailant as is necessary for defence even though such force may cause death or grievous bodily harm.

Now bearing in mind that the Village Constable,Enau, was the original assailant, it is necessary to consider whether the father and the son acted independently or in concert. In my view, the facts indicate that the situation arose suddenly, and that the two accused should not be treated as acting in concert.

The son Kaurupa, on seeing his father shot at with an arrow by Enau, fired his bow and arrow at Enau at a distance of some thirty feet. I think it may reasonably be said that he did it in self-defence of his father,and that his action was not unreasonable in the circumstances.

I therefore find the son, Kaurupa, not guilty because as I said I do not think they acted in concert,and he therefore should not be held responsible for the father's blow.

Now in regard to the father, it is quite plain that the defence of provocation is not available to him, because the use of the ten foot spear with the blade on it was likely to cause death or grievous bodily harm, and in fact it did cause bodily harm to Enau.

It is true that Enau had unlawfully assaulted Amuna and that Amuna had not provoked that assault, but I cannot agree that in the situation in which the accused Amuna found himself, he could have thought that the only way to preserve himself from death or grievous bodily harm was to spear the Village Constable Enau, especially bearing in mind that Enau was speared in the back. Nor do I think, because of their distance apart, that he could have reasonably thought that his action was the only way to preserve his son from death or grievous bodily harm.

The whole affair is most unfortunate because, if the Village Constable had kept his temper and acted sensibly, the situation, which nearly ended fatally, could not have arisen.

The evidence satisfies me that Amuna speared Enau in the back unlawfully, thereby doing him grievous bodily harm. I therefore find him guilty as charged.

J.