

A

Judgment No. 61.

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

THE UNIVERSITY
OF
PAPUA & NEW GUINEA
THE LIBRARY

Port Moresby
Bignold J
16/9/54

THE QUEEN

- v -

ROBERT KIRKLAND.

In this case the accused ROBERT KIRKLAND, a Works Department employee, comes before the Court charged that on the 8th August, 1954 in the Territory of Papua he with intent unlawfully to kill one PATRICK DESIRE MARIE discharged a loaded firearm at him.

The accused, represented by Mr. Lalor of Counsel, has pleaded Not Guilty, thus putting the crown to strict proof of every element of the offence. As regards the quantum of proof required of the Crown, it suffices to say that it must prove every element of the offence beyond reasonable doubt. There is no suggestion in this case that the firearm, which admittedly was discharged by the accused, was discharged accidentally.

The accused has pleaded drunkenness in his defence, though his Counsel wisely did not, himself, rely upon it.

The evidence required of the accused to support an absolute defence of drunkenness must go so far as to show that he was so drunk as to come within the provisions of Section 27 of the Criminal Code, and the burden of proving that the degree of his drunkenness reached insanity is upon him, owing to the presumption prescribed by Section 26 of the Criminal Code, but the standard of proof required of him is only upon the balance of probabilities.

The evidence in this case satisfies me that upon the balance of probabilities, he has not sustained this burden of proof. Drunkenness, however, being a question of degree, may be taken into consideration with all the rest of the evidence as to whether he had the intent alleged in the indictment. For reasons appearing later, it is not necessary for me to consider this aspect upon the view I take of the evidence.

The evidence of the actual incident given by the complainant, Marie, I accept as substantially true.

On the night in question the accused and one, Brunton, had exchanged blows following a period of drinking, and Marie got up from his bed, approached the accused and Brunton, who were being kept apart by one, Ryan, and suggested that they had had enough to drink and should go to bed instead of fighting. This irritated the accused (who, on his own account is unable to take liquor without losing self control), and he then used threatening words to Marie, namely - "I'll shoot you, you black

bastard." The complainant retreated, the accused having picked up a rifle, loaded it and cocked it. The accused followed the complainant towards the complainant's bed.

The evidence does not satisfy me beyond a reasonable doubt that the accused ever actually aimed the rifle at Marie.

On seeing the armed accused approaching, after the threatening words, the complainant, Marie, said - "All right, Bob - if you want to shoot me I'll go into my bed and you can shoot me in bed." The accused, who was swaying somewhat, mumbled something about "your chips," and discharged the rifle into the roof, the hole in the roof being directly above where Marie was standing at the time.

The evidence satisfies me that the accused was then under the influence of liquor, but not so drunk, in my view, as to be unaware of what he was doing. The law is that if persons chose to drink to excess so that their degree of self-control is affected, they must, subject to what has been said previously, put up with the consequences.

The Crown tried to show an intent up the part of the accused unlawfully to kill Marie by some words spoken by the accused days later. The Crown has not satisfied me as to this element of the offence, and, as pointed out by Counsel for the defence, the position of the rifle at the moment of discharge must throw doubt upon such an intent. Consequently, since the Crown has failed to prove a necessary element of the offence, I must find the accused Not Guilty, as charged, but the accused has been Guilty of a serious unlawful assault. Every unlawful assault involving the discharge of firearms must be treated seriously by the Court, and I find the accused Guilty of unlawful assault, in accordance with Section 335 of the Criminal Code.

Sgnd. Bignold J.