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

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Criminal Jurisdiction.

THE QUEEN

-v-

FREDERIC DAVID ANDERSON.

J U D G M E N T.

I am satisfied that the Crown has established its case against the accused.

Two independent and responsible witnesses, Dr. Ramori and Mr. Clark, gave evidence that they saw two natives, one of whom was recognised, secured to the flagpole at different times during the afternoon in question. The events leading up to this were explained by MANAIA, the official Native Interpreter, whose evidence I find reliable and consistent and supported in some details by Mr. Clark. I accept MANAIA's evidence. The accused at one stage volunteered the remark that MANAIA was a close friend of either AVILA or KOUPA, and I think he must have been prompted to make this remark by the realisation that MANAIA's evidence was unshaken in cross-examination. MANAIA's evidence conflicts in several important details with the evidence of KOUPA and AVILA, to such an extent as to negative any suggestion that he was in any way influenced by them; moreover, during his cross-examination no suggestion was put to MANAIA that he had conspired with either of the other natives, nor could such a suggestion have been reasonably made.

The other two main witnesses for the Crown were KOUPA and AVILA. It is conceivable that for reasons of resentment their evidence might be turned against the accused, but the only apparent reason for any such resentment arises out of the incidents described by other witnesses, including the accused himself. I do not think that in fact AVILA was motivated by spite; in fact, he was prepared to concede that he had done wrong and deserved what he got. KOUPA and AVILA both appeared far from eager to come forward to condemn the accused. If the precise details of the case were important, I would have some doubt about the evidence of these two witnesses. If the Crown cause

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deponed solely on their evidence and if the accused were charged simply with battery, then there would be much doubt in AVILA's case especially. The defence has fully dwelt upon all the discrepancies of their evidence, but this case is not concerned with small details of how hard or how often a witness was struck. There is no suggestion that the natives suffered any serious physical injury. There is at issue a matter of greater substance than the force of the blows.

In determining whether an assault took place, regard must be had to all the circumstances.

The accused admitted that he was in effect trying to persuade KOUPA to admit that it was an unlawful shooting, and I have no doubt that the whole purpose of the accused was to force both natives to admit this. To achieve this end he kept them handcuffed in a position of discomfort for some hours. It is naive to suggest thatthey might have made themselves comfortable by sitting down. They would not have dared unless he told them to. He purposely inflicted on KOUPA the shame of being stripped of his uniform and being made to stand in public like a convict for all to see him divested of his uniform. He tried to overpower them by subjecting them to a long interrogation with obvious threat His whole attitude must have appeared menacing to the natives, who had no defence against it, and who were so distressed that further interrogation was useless. I am convinced that the whole purpose of leaving them outside was to punish or discipline them by in the hope that they might give up the struggle and confess. The accused intended to interrogate them further but it does not appear whether he did so.

I reject the explanations of the accused that he feared a pay-back incident. There was no suggestion of this unless the natives adopted the view of the accused that AVILA was at fault and the two natives concerned were rejecting this view. Moreover it is not possible to accept such an explanation when two supposedly mortal enemies who would stop at nothing, were secured in a position to reach each other with their feet, and in such a way as to constitute a double target for any of IVAI's relatives. The freedom with which KOUPA moved about before and after this occurrence denies that the accused had any such idea in mind.

I think that the accused has done his utmost to explain away a most unfortunate set of undeniable facts. This has led him into a position of having to make several unconvincing explanations. For example, he said that he was brandishing the ruler in the air in an admonishing way and it accidentally hit KOUPA's hand. In cross-examination he admitted that it was possible that he pulled KOUPA's ear. When this gave rise to some difficulty in his evidence as to his movements, the accused

stated that if this happened it must have occurred whilst the persons concerned were going down the steps.

KAMALA had no doubt that the accused was conducting a Court as a Magistrate, and I think that it is a reasonable inference from the circumstances that if the evidence had been forthcoming, the accused would have committed AVILA for trial. It would have been his normal duty to do so. The accused said that he regarded himself as conducting a police investigation but this does not really place him in any better position. Counsel for the Defence adopted this statement of the accused as a basis for his argument that the accused was exercising a power of arrest without warrant. There was no charge and so far as appears, no evidence to support any charge of felony or breach of peace which might justify arrest. The fear of reprisals by natives was not the reason nor was it any justification for what the accused did. The emergency powers of the police to stop impending violence cannot be called in aid here nor does the power to arrest felons extend beyond the bringing the felon as speedily as practicable before a Justice, who may issue a warrant to authorise the arrest to continue. The accused could and should have issued the warrant himself if there were any justification.

British law owes its success largely to the fact that it is openly administered in public and that it insists on fair play to an extent that affords real protection to accused persons against any form of duress or unfair treatment before or during the trial. Confessions if obtained by the means employed by the accused would be rejected as evidence. Police officers and Magistrates have a clear duty to warn an accused person that he is not bound to say anything which might incriminate him, and the action of an officer who is both Magistrate and Police officer using any means of forcing a person to confess his supposed crime is so repugnant to the plainest requirements of justice that the accused cannot have been under any misapprehension about it.

It is no answer to say that an Assistant District Officer might, in exceptional cases, have to resort to violence or deprive a native of liberty to save life. The law provides for cases in which any citizen is justified in taking action of this kind, but they do not extend to steps taken to extract evidence from witnesses or suspected persons. Moreover, if any real fear of reprisals existed, I have no doubt that an officer with the experience of the accused would, if the circumstances had warranted taking the natives into protective custody, have first asked their consent, secondly discussed the danger with them, and thirdly reported his actions and wishes to his superior officer and asked for whatever assistance he might need to ensure adequate protection for the natives.

I find the explanations offered by the accused inconsistent and unconvincing. I have no hesitation in accepting MANAIA's evidence as to the assaults, and I accept the evidence of AVILA and KOUPA as true in substance.

I find the securing of the two natives to the flagpole amounted to an unlawful deprivation of the liberty to which they were entitled as a matter of legal right.

I therefore return a verdict of Guilty on each count.

There is much that may be said and which has been said on behalf of the accused. He proved himself an able and efficient officer. I have no doubt that he was keen and industrious. He could have no personal desire to injure a native and I think the explanation of his conduct is to be found in too much ambition and zeal. As a young man he was put in charge of a notoriously difficult Sub-District and he found many difficulties to contend with. He was determined to make a success of his posting, and I think that he saw prospects of rapid promotion ahead if he could acquire an outstanding personal reputation. The service has been characterised by the great personal reputation enjoyed by many of its outstanding officers, past and present, but the accused apparently failed to appreciate that integrity and objective responsibility are two of the greatest factors in making such a reputation. Events demonstrate that a man of mature mind and stable temperament is required for the task that was assigned to the accused. The pressure of work made him hasty, and prevented him from bringing to his Magisterial duties that detachment of mind which is essential to any Court.

These factors do not excuse the accused for what was revealed in his own cross-examination to be a course of conduct purposefully unfortunate, but they call for some exercise of judicial mercy. I will take these matters into account. Before passing sentence I will allow Counsel for the accused to call further evidence in mitigation, if he so desires, and if he desires I will remand the accused until the completion of the next case.

C.J.

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