

R. v. TETA-TUPI AND 57 OTHERS

J U D G M E N T

In this trial sixty members of the Pacific Islands Regiment stationed at Taurama Barracks near Port Moresby were charged upon indictment that on or about the 16th day of December, 1957 they and each of them and other persons assembled together to the number of three and more and being so assembled conducted themselves in such a manner as to cause the subjects of Our Lady the Queen in the neighbourhood to fear on reasonable grounds that they and each of them and the other persons so assembled would tumultuously disturb the peace and that they and each of them and other persons aforesaid being so assembled together then and there tumultuously disturbed the peace.

At the close of the case for the Crown the Crown Prosecutor announced the entry of a nolle prosequi with respect to the accused DOKARA-ATIRA and the accused AIKINI-SONGARA. These two accused were then discharged from the trial upon the indictment presented to the Court.

The Pacific Islands Regiment is a regiment of native soldiery with European officers and some senior non-commissioned officers and native non-commissioned officers. The Headquarters are at Taurama Barracks.

In this trial I have a dual function, that of a Judge where it is necessary for me to direct my mind as to the law, and that of a jury to decide the facts. I think it can be accepted that I have directed myself on the principles of law which pertain to all criminal trials such as onus of proof and reasonable doubt.

The indictment is laid under Sections 61 and 63 of the Criminal Code. Section 61 gives the definition of riot and Section 63 provides the penalty therefor.

The two issues here are:- (1) Was there a riot; and
(2) Who were implicated.

A conclusion on the first issue does not present much difficulty because it seems to me that the elements to constitute the offence were present without any doubt. The common purpose has been made quite obvious by the evidence and there were there considerably more than three

persons taking part. As soon as those persons who were originally lawfully assembled marched to the Court Room, the Education Hut, having the intent to carry out the common purpose which has been proved, then they became an unlawful assembly, and when they acted later tumultuously they were taking part in a riot.

An unruly, uncontrollable mob wearing the Queen's uniform swarmed through the doors and over the low walls of the building being used as a Court, turned over tables and forms, pulled the chair from under one of the Magistrates sitting at the table used as a Bench, turned this table over, attempted to push over onto the Bench-table a heavy picture screen just behind that table, swung Army belts, shouted, beat the walls and put the Magistrates to flight in fear, put a witness to flight in fear, molested the Police Inspectors, and all this without regard for their officers or anyone else, constituted a riot. If that does not come within the conception of a riot, I do not know what does. I am not going to traverse the details; it is all in the evidence. There was a riot beyond any doubt at all, and so I find.

With regard to the other issue, that of identity, it is not so easy. With several exceptions there was no visual recognition of those who entered the Education Building where the Court was sitting. It was necessary then for the Crown to fall back upon some other means to identify the majority of the accused with the troops who entered the Education Building and engaged in a riot on December 16th.

The Education Building at the Taurama Barracks was being used by two Magistrates for a Court for Native Matters for convenience perhaps, in the trial in the Court for Native Matters of certain Pacific Islands Regiment troops who, it was alleged, had taken part in some disturbance at Koki on Sunday the 15th, the day before. The fact of that disturbance has no relation to the charge before this Court, except for the purpose of showing what soldiers were present at the Education Building for the business of the Court for Native Matters being held there with a view to connect them with the subsequent riotous behaviour. It does not follow that because certain persons were engaged in some illegal operation on one day that they were similarly engaged the following day.

In the disturbance at Koki on the Sunday, members of two Pacific Islands Regiment Companies were involved; they were "A" and "D" Companies. About 3 p.m., when the Court for Native Matters was about to sit in the Education Building, the members of these two Companies who were to be charged were assembled each on its own parade ground and marched to the Education Building. "D" Company was in the lead, marched down by Captain Brown, its Commanding Officer. This Company was halted

on New Ireland Road with the head of the column adjacent to the Education Building. "A" Company followed behind and halted in the rear of "D" Company on the same road. This Company was brought to that position by Lieutenant Musgrave. "A" Company stayed there for some time when it was broken off by Lieutenant Musgrave and the troops went to the spot on the plan Exhibit "A" marking a woodheap. At "A" Company's parade ground Lieutenant Musgrave had a roll call. He made a list of the men on parade and found that at least one man was missing; that man was Private TIKINIUR, an "A" Company driver. When the "A" Company men were subsequently at the woodpile, Private TIKINIUR was not with them.

The Court proceedings commenced, for convenience sake, by the examination of the troops in batches of 20. The first batch at the head of "D" Company column was marched into Court by Regimental Sergeant-Major Smith. This first batch consisted of 16 Non-Commissioned Officers and 4 Privates. They were marched in through the main entrance from New Ireland Road.

It is well here to describe the Education Building and the arrangement of the Court therein. The building is approximately as large as the Red Cross building in which this Court is now sitting. The roof is of galvanised iron without a ceiling. The walls of the sides of the building are about 3 to 4 feet high, leaving the rest open to the top of the studding. Both ends of the building were entirely closed. There was a small office to the right as one enters through the main door, the internal walls of which were partly of arc mesh. It had a door leading into the Main Hall facing to the rear of it. An improvised Bench consisted of a table near to, and in front of, a large picture screen at the extreme rear of the Hall. This picture screen is a four poster construction, with the posts of tent poles shod with iron and braced with planks and boards with apparently no attempt at refinement in workmanship. It is quite a heavy structure, and upon its face there was a screen covered by the Australian Flag. There was also a table for the Prosecuting Officer. At the sides of the Hall there were some forms, tables and chairs. There were two side doors leading from the building, one to the right and one to the left, i.e., the left of the Magistrate's table.

Now when this first batch of 20 were marched in, the two Magistrates for Native Matters, Mr. Winkle, the Resident Magistrate at Port Moresby, and the District Officer, Mr. Marsh, were seated at the table. Inspector Fisher was the Prosecuting Police Officer, and he was seated at the table provided, and Captain Brown was sitting next to him. In the Court also were, Major Bloxham, the Padre, Sub-Inspector Bradley, Lance-Corporal ELIAS of the Royal Papua and New Guinea Constabulary

who was standing near the Magistrate's table, and the Regimental Sergeant Major standing to the rear of the batch which he had marched in.

The Court commenced to hear charges relative to some disturbance at the suburb of Koki on the previous day, and a "D" Company Corporal SOIA was dealt with first, receiving a sentence of one month's imprisonment, Lance-Corporal ELIAS took him outside the Court through the left hand side door - the door nearest to the Quonset Huts marked on Exhibit "A". Here SOIA was in view both of the "A" Company troops sitting at the woodpile and certain of "D" Company troops standing on New Ireland Road.

When Lieutenant Musgrave had placed the troops of "A" Company at the woodpile, he walked down to the Education Building; I say "down" because there is a slope down from the woodpile to the Education Building. He stayed there outside apparently for a short while, then returned to the woodpile and walked among the "A" Company troops for about ten minutes. After that he relates that some of "D" Company troops started to come out of the Court, and all his troops started to mutter and began to make a gradual movement down from the woodpile towards the Court.

There had been muttering from the third batch of 20 "D" Company troops standing on New Ireland Road, Sergeant ESOM was apparently in charge of "D" Company while the Regimental Sergeant Major was in the Court. Sergeant ESOM heard a shout from the third batch of "D" Company. He says they sang out - "It is not only this Corporal who made this trouble, so he is going to gaol. The whole Battalion did it. If the Corporal goes to gaol we should all go to gaol." When Sergeant ESOM heard this, he went up to the third batch to stop them from shouting. They were all in New Ireland Road. He said - "It isn't for you to sing out and shout but for the Court officers and your own officers to straighten out this matter." When he said this, he was talking to the third group of 20 of "D" Company. Sergeant ESOM could not recognise any of this group.

Now inside the Court, after the removal of Corporal SOIA, there was a lull in the proceedings because Padre Bloxham had gone off to find the Commanding Officer, at the Court's wish. The other 15 Corporals were still there, facing the Bench.

To return to "A" Company and Lieutenant Musgrave. Lieutenant Musgrave says the troops were mixed - "A" Company, "D" Company and Headquarters Company. They kept moving, and Lieutenant Musgrave attempted to get ahead of them to stop them. He got level with the leading troops,

when he noticed another stream of troops coming between the two Quonset Huts; and they were just about to enter the Court. Then he ran and jumped over the low wall of the Court to try and beat them in. By the time he got into the Court Room, several had entered, and there was a large group of them up near to where the Magistrate's table was. There were at least twenty. This group was gesticulating and talking loudly. He noticed Captain Brown in front of him, and he thinks Captain Brown was trying to remove some of the troops. Lieutenant Musgrave helped two civilians out of the Court.

The names of all those who were at the woodpile, according to Lieutenant Musgrave, are in Exhibit "B", except TIKINIUR, and there might have been one or two others. Lieutenant Musgrave had been twelve months attached to the Pacific Islands Regiment, ten months of which he was with "A" Company. He said that there might have been one or two others absent in addition to TIKINIUR, but he said definitely that the names of those present at the woodpile were on the list, Exhibit "B", with the exception of TIKINIUR. I really do not know what he means when he says that one or two others might also have been missing. He could not give their names, nor indeed could he recognise or give the names himself of any who were at the woodpile, and there were Non-Commissioned Officers among them. But then, he had only been with the Company for ten months, so what could one expect. Lieutenant Musgrave did not recognise any of the soldiers who took part in the disturbance.

Captain Brown, as I have related, was sitting at the Prosecutor's table. He had his back to the wall at the left of the Magistrates. He heard a disturbance directly behind where he was sitting. He turned round and saw a number of troops coming from the woodpile. He estimated that there were twenty or thirty coming down, and they were running. They came to the side of the building and over the low wall, and they knocked over chairs and forms. There was a lot of noise and shouting. He did not recognise any of those who came into the Hall. At that particular stage he had not looked at his own group, but later he says he watched them consistently, and when the first batch of twenty still remaining on the road began moving towards the main entrance, he says he immediately went to that door and met the first of his own troops there. He held up his hands and told them to go back, and said something to them, and they immediately returned to the road. I do not doubt that Captain Brown did something of the sort, although Sergeant ESOM says that these troops were already in the Hut when Captain Brown tried to stop them, and Sergeant ESOM says he was helping Captain Brown to push back the screen. Captain Brown was not, however, all the time engaged in watching his Company. He was

also engaged in attempting to stop eight or ten soldiers from pushing over the picture screen. He does not say that in his own evidence, but there is other evidence affirming that he was so engaged. All he says is that he saw one man trying to push over the screen. Captain Brown was very definite in saying that no "D" Company troops entered the building. He said - "None of my troops entered the building, either over the wall or through the door." He did not see KANSEL; he did not see any of his troops. But NOMAI is of "D" Company, and he was in a batch of twenty which had been drawn up on the road, and it appears from Inspector Fisher's evidence that a number joined in with those coming from the wood heap, because Inspector Fisher says he saw, as he puts it, "a mob of natives in P.I.R. uniform were streaming down the hillside between the two Quonset Huts towards the Court. I also saw some more coming round the end of the Quonset Hut closest to the road. The troops whom I had earlier seen on the roadway near that point joined them." Inspector Fisher goes on to say that the first one to reach the building jumped over the wall and commenced to kick over the forms which were along the wall. Others moved into the building and proceeded towards the Magistrate's table. The first one to reach it was a native named NOMAI. He had known him for years. Inspector Fisher identified this accused in Court. NOMAI was about three yards in front of the others when he approached the Bench. Captain Brown was there, but he did not recognise NOMAI. Perhaps he did not know NOMAI of his Company. But then Captain Brown had been only six months the Officer Commanding "D" Company. He was able to say, however, that KANSEL was definitely not in the Court. I suppose this was because he had it firmly impressed upon his mind that none of "D" Company had entered the building. How he got such an impression, I am unable to find. The Prosecution has not been fortified in its effort to prove identification by the evidence of the Army officers, visually, at any rate.

There were several, however, who were definitely recognised by Police witnesses as being engaged in the riot. Inspector Fisher had known NOMAI-GUTUMU before. It was not made quite clear where NOMAI hailed from originally. The evidence of the origin of any of the accused when it became relevant during the trial was quite inexplicit. Someone thought NOMAI had originally come from Gailala. Inspector Fisher recognised him as he came towards the Magistrate's table. He was also known well to Lance-Corporal ELIAS. Lance-Corporal ELIAS was outside the left hand door in charge of Corporal SOIA when the troops entered the Court. He heard NOMAI say - "Why do the Government and Magistrates come and interfere with the P.I.R." He continued to approach, and went inside with about thirty others. Lance-Corporal ELIAS left Corporal SOIA, went inside, stood near Mr. Winkle and Mr. Marsh and put up his hands, saying - "You must not come inside. This is the D.O. and the Magistrate. You can not break the law here." NOMAI slapped Corporal ELIAS' wrist and said - "Bugger him." NOMAI then came under Corporal ELIAS' arm, picked up a chair, and threw it down between the two Magistrates. Lance-Corporal ELIAS then took the chair, pulled it off the table, it fell down and hit him on the leg. NOMAI then took some books and papers from the Magistrate's table, crumpled them up and dropped them onto the cement. Some more people came in from behind Corporal ELIAS and some from the side, and they tried to push over the picture screen onto the table. He says he took a good look at the men trying to push over the screen. At the time he recognised them, but he

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could not recognise them in this Court. Upon looking through the accused in Court, he pointed out TOBUMTABU-YAKOP. The Crown put an emphasis on a warning to Lance-Corporal ELIAS that he must be sure when identifying any of the accused. Another who was recognised as being in the Court was Corporal TETA of "A" Company. Constable PENAU knew Corporal TETA when he, PENAU, was in the Pacific Islands Regiment. He saw Corporal TETA run into the Court with the others, kick a chair which was lying on the floor, and then run out again. When he got outside, he shouted - "Enough. Finish." He was not trying to stop anyone inside. Corporal TETA came down with the others from the woodpile and took part in the disturbance. What he might have done afterwards is not relevant. I think that afterwards he was trying to "get in out of the wet."

Then we come to another who was recognised by Inspector Fisher as taking part in the disturbance in the Court. This is the accused BAPO. Inspector Fisher had known this man for several years. BAPO was about three-quarters of the way up the Hall, shouting and waving his fists in the direction of Sub-Inspector Bradley and himself. He was about two yards from Inspector Fisher, and this was when Inspector Fisher and Sub-Inspector Bradley were working their way down the Hall and while Inspector Fisher was being struck on the back with belts and fists. This man BAPO was called to give evidence in his own defence. I considered him a most evasive witness. I do not believe him. I can not agree that Inspector Fisher would make a mistake in recognising a man whom he had known for five years or more, and who was only two yards from him. BAPO himself says Inspector Fisher was always friendly to him. Lieutenant Musgrave said that all the troops started a gradual movement down from the woodpile towards the Court. BAPO said he remained at the wood heap. He could not tell who he was sitting with.

Now after Inspector Fisher and Sub-Inspector Bradley got outside the Court, Inspector Fisher again was being attacked, and Sergeant-Major Henwood came to his assistance. It is during this period outside the Court that Corporal DAUMA and Corporal TOKO-SENIGO came into the picture. I am unable to find where TOKO came from or which Company he belonged to because his name does not appear in the lists, Exhibits "B" and "C". DAUMA, however, was among the fifteen Corporals still waiting before the Court after Corporal SOIA had been dealt with and taken outside. The evidence is that the fifteen Corporals and the four Privates before the Court turned about and formed roughly a half moon and tried to ward off the people who had entered, at the same time retreating towards the Bench, and DAUMA was among the group, and he was one who received a special concession from the Court later with respect to the Koki incident because of the part he played in the riot. He was not engaged in the rioting inside the Court. The evidence of Inspector Fisher as to the incident in which DAUMA and TOKO were involved is not quite clear, and as DAUMA was not among the intruders in the Court, it is conceivable that he was trying with the help of TOKO to remove what was supposed to be the cause of the trouble, the custody of SOIA, and Lance-Corporal ELIAS pointed out TOKO as having helped him in Court. I think DAUMA and TOKO are entitled to the benefit of the doubt respecting that incident.

What remains to identify the rest of the accused is the evidence of the admissions they are alleged to have made to Mr. Marsh. I say to Mr. Marsh because the questioning of the accused after their cases in relation to the incidents at Koki had been completed was left to Mr. Marsh, because of his knowledge of both pidgin and Motuan, a knowledge which Mr.

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Winkle confesses he had not. The Crown has only the evidence of these admissions on which to satisfy the issue of identification in relation to the rest of the accused. Now it is true that a person charged with a criminal offence may be convicted upon his own confession alone. But the fact of the confession must be regarded with great care or even suspicion, if there is no other evidence connecting the offender with the offence. Without in any way impeaching the credit of Mr. Marsh, I ask myself if the admissions made were without ambiguity, and with such clarity as to remove any doubt that they were in fact made. The bald statement of Lieutenant Musgrave that all those on his list and who had been at the wood heap went down to the Court is not enough, unless one can accept clear admissions from them. A reason which casts a doubt upon the admissions is that TIKINIUR is among those whose name has a tick against it as being one of those who made an admission. TIKINIUR was not at the wood heap. He was not paraded with the others; he was missing. He should have been with the others, because he was to have come before the Court for the Koki incident. Except his alleged admission to Mr. Marsh, there is no evidence that TIKINIUR was in the Education Building during the riot. On the other hand, there is the evidence of Sergeant-Major Lee and TOLOM that he was in the Transport area all the time. Nothing has been shown which would cause me to doubt that evidence. He was not at the wood pile according to Lieutenant Musgrave's list. Why would TIKINIUR admit taking part in the riot if he knew he was in the Transport area all the time. Could it not have been that he said only that "all the Battalion had done it" and could that not have applied to some or all of the others? It is strange about TIMAN. According to Lieutenant Musgrave's list he was at the woodpile, but according to Sergeant-Major Lee and TOLUM he was at the Transport yard. Did he flit from one to the other, or is someone telling an untruth. In the result, it does not matter.

I am not satisfied with the nature of the admissions. I am not satisfied that the admissions were sufficiently personal. I am not satisfied of their efficacy. As I have not in my mind a moral certainty that admissions of guilt were made, I have a reasonable doubt, the benefit of which I must give to those against whom the only evidence of their taking part in the riot is their own admissions. It means only that the case is not proved against them.

I find that the Crown has proved the case against NOMAI-GUTUMU, TOBUNTABU-YAKOP, TETA-TUPI and BAPO-GIAMIAURU.

I give the benefit of the doubt to DAUMA and TOKO and find them not guilty with the rest of them, with the exception of the four I have named above.

J.
18/2/58.