

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

BETWEEN:

R.

v.

ABE

REASONS FOR JUDGMENT

MINOGUE, J. Mr. Harris, I propose to give a fairly short judgment in
PT MORESBY. this case and I will subsequently explain the effect of it to ABE.
23/3/64 (This was translated to the accused).

In this case the accused ABE was indicted on an indictment that he on the 1st December, 1963, in the Territory of Papua, did unlawfully kill ALIEBE. The killing was by shooting and the shooting was undoubtedly the direct cause of death.

By Section 291 of the Criminal Code of Queensland (Adopted) it is unlawful to kill any person unless the killing is authorised, justified or excused by law and by Section 300 any person who unlawfully kills another is guilty of wilful murder, murder or manslaughter according to the case. In this case no question of wilful murder or murder arises.

By Section 303 a person who unlawfully kills another under such circumstances as not to constitute wilful murder or murder is guilty of manslaughter.

The excuse put forward in this case is that the killing was accidental and Section 23 should be prayed in. But the Crown says that this case comes squarely under Section 289 and that I should be satisfied beyond reasonable doubt that the accused was criminally negligent.

I turn now to consider the facts. On the 1st December 1963, the accused, ABE, set out with NOPE and two others on a hunting expedition. NOPE had borrowed a shot gun and had acquired five cartridges. I am not satisfied that ABE had ever seen a gun before this day. By 3 p.m. four shots had been fired by NOPE without success in acquiring anything - anything that is for the pot. NOPE was the only one to use the gun and I am satisfied that ABE had observed him load it and take aim and fire. I doubt whether he had acquired detailed knowledge of

- 2 -

the simple mechanics of firing and, at any rate, I am not satisfied he had. The gun, I should add, is a single barrellled shot gun without a safety catch and of the type which, once having been loaded and cocked, it is impossible to extract the cartridge without pressing the trigger or by moving the hammer forward.

About 3 p.m. in the afternoon NOPE decided to have a swim, as did two others of the party. ABE did not join them and I am satisfied that he was by this time fascinated by the gun and anxious to handle it for himself, although he had not, or would not, have NOPE's permission to use it. Whilst the three were swimming he gave rein to his impulse to use the gun and, taking the remaining cartridge which was in a bag, he set off.

ABE is in my judgment about 18 or 19 years of age and is quite an immature youth. Although he had virtually no knowledge as to how to use the gun I am satisfied that he knew it was a dangerous and indeed lethal weapon but, in my opinion, his anxiety to, as it were, play with a new toy prevented him giving any real consideration to the potential danger of what he was doing. On sighting a likely looking pigeon he loaded the cartridge and pointed it and, not knowing he had to pull the trigger, nothing happened and the bird flew away. He was now in difficulty because having loaded the gun he could not extract the cartridge. This could have happened because he cocked the gun either on loading or because he attempted to break the gun to extract the cartridge. Whatever happened the hammer had to go forward before he could extract the cartridge. He now had an extremely dangerous weapon in his hands, a loaded gun which was cocked and with no safety catch and it was in this situation that he met up with ALIEBE and his companions.

Stopping at this point, I am satisfied that ABE knew: firstly, he was doing wrong in taking the gun; secondly, it was a dangerous and indeed a lethal weapon; thirdly, that it was loaded, and fourthly, that a dangerous charge emerged from the muzzle and if it was pointed at an object intended to be hit it would be, or could be, effective. I am not satisfied that he knew the way in which the gun was actually fired. I think he probably did not.

I come now to the shooting. At some time in the late afternoon ABE came up with a group of seven men who were, or had been, cooking food. Whether or not he was given some of the food I am unable to say but I am satisfied that he, ALIEBE and ANGABE were walking along a track through the rubber. As to what happened then the evidence is conflicting but I am satisfied that ALIEBE made some jocular remark, something like "who is that policeman" at ABE and ABE pointed his gun at him. Prior to this ABE had been aiming at various objects and generally showing off with the gun. I think he was filled with importance with the possession of

- 3 -

the gun and was making the most of it to the point that its danger was secondary to the figure he was cutting. I think it possible that ALIEBE made some playful motion towards him and in doing so he pulled the trigger and it fired. I am satisfied that he could not have fired the gun if he were carrying it in the way he demonstrated in Court and although Mr. Germaine gave a convincing demonstration showing how the gun could have been fired if the accused had stumbled forward it did not accord with the evidence given by ABE. That ABE failed to use reasonable care in the use of a dangerous thing is clear but I have to be satisfied beyond reasonable doubt that this failure constituted criminal negligence and that his conduct was going beyond a matter of compensation and that it was conduct deserving of criminal punishment.

As was said by Their Honours of the High Court in The King v. Callaghan () this is a question of degree to be determined by a jury, and in this case by myself sitting as a Judge of fact. I take into account the youth and inexperience of the accused; I allow for the fact that he had never seen or handled a gun until this day; but against this I repeat the considerations I set out a little earlier.

In my opinion handling this weapon in the way he did showed a degree of culpability and recklessness which makes his conduct deserving of punishment and I find him guilty in the circumstances of criminal negligence and manslaughter. I have not found this an easy case and have given it long and anxious consideration. All these matters of degree do cause difficulty, as I have felt, but in the result I am satisfied beyond reasonable doubt that ABE's conduct comes down, for the want of a better word, on the wrong side of the law.

The verdict is guilty.