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

CORAM: OLLERENSHAW, A.C.J.

Thursday,
17th September, 1964.
2 p.m.

THE QUEEN

v.

NABAI, SON OF TINIP and
ATABENA, SON OF NANGAGE and
VELIPI, SON OF MINUM

Trial at
Port Moresby.
3rd, 4th, 5th
6th and 7th
August, 1964.
and 17th
September,
1964.

J U D G M E N T

The accused persons, Nabai, Atabena and Velipi, are charged under Section 339 of the Code that on or about the 20th April, 1964, in the Territory of Papua, they unlawfully assaulted one Lancelot Harcourt Wilkinson and thereby did him bodily harm.

There is an alternate charge under Section 323 that they unlawfully wounded him.

Mr. Chaney appears for the Crown and Mr. Ley for the accused persons.

In circumstances, which I need not mention here, these accused persons have been awaiting judgment much longer than is usual. Having come to a firm conclusion I have decided to deliver judgment and return my verdict to-day and possibly publish my reasons more fully at a later date.

The encounter between the accused and their victim occurred at Mugubu Plantation, near Magarida Patrol Post, on the east coast of Papua, where they were employed as plantation labourers and he was the acting manager. They belong to the Daga people, known as inland or mountain Baniaras, and have had little contact with Europeans.

Shortly after 9 o'clock on the night of

the 20th day of April, 1964, the manager was aroused by the noise of merrymaking with drumming, singing and dancing coming from the native compound in breach of a plantation rule that such performances should not take place on week nights after 9 o'clock. Suffering somewhat from the effects of liquor, he went to the compound and grabbed the drum of the accused Nabai and struck it against a water tank thereby splitting it almost from end to end. He then said to the native labourers, including the accused persons and, apparently, some others of their people, words to the effect that the revelry was finished and he commenced to return to his house.

After the drum was tested by Atabena and it was confirmed that it no longer produced its proper tone, the accused armed themselves with "sticks" or pieces of wood, pursued the manager and attacked him near the smokehouse before he had reached his home. He received injuries including a deep wound in his upper left leg, a small deep wound of the left upper arm, various abrasions and, it would seem, a fracture of the thumb of his left hand, which caused pain and swelling. His most serious injury was a fracture of the first finger of his left hand, although the permanent misalignment of this finger appears to be due to his interference with the treatment he had received and was receiving from Sister Martin, who was in charge of the hospital conducted at Mailu near Margarida by the Papuan Ekalesia in which hospital he had spent the rest of the night after the attack. I do not understand it to be disputed that the assault did him bodily harm within the meaning of the Section.

When arraigned, Nabai said: "This talk is true"; Atabena said: "True", and Velipi said: "True". Nevertheless pleas of not guilty were entered and the substantial defence was that of provocation. Although the act of the manager, which it was submitted amounted to provocation, was directly done to Nabai, the defence was pressed also in the case of his fellow tribesman, Atabena, but not in the case of Velipi.

Dealing with some of the subsiduary issues:

I find that the breaking of the drum was a "wrongful act" within the meaning of that phrase in Section 268 of the Code. It was not necessary, either to stop the disturbance, to emphasise the plantation rule or to enforce it. I adhere to the meaning of the word "wrongful" which I suggested in my judgment in R. v. Zariai, delivered at Port Moresby on the 7th June, 1963, and, in any event, I would think that it was unlawful in the civil sense in that it was a trespass to personal property. Although such drums may be purchased at times in, for instance, Port Moresby, it appears from a piece of evidence of the manager that it must have been made by Nabai himself. It is expertly fashioned and this work would require considerable care and time in the exercise of a native craft.

I am not satisfied that the accused intended to cause grievous bodily harm to the manager, although it is possible that their attack upon him could have caused it. The pieces of wood used by Nabai and Atabena are fashioned from the stout timber known as "Black Palm". Nabai's weapon weighs some ounces over 4 lbs. and is one commonly used for fighting, although, apparently, not in war. Atabena's weighs 2 lbs. and is employed in the process of copra making as a stake by which the husk of the coconut is removed by forcefully bringing down the coconut several times upon the pointed end standing upright. Velipi's stick was a slight thing used for propping open a wooden window.

Coming to the substantial matter: I am satisfied beyond reasonable doubt that the Crown has discharged the onus of proving that the accused persons were not deprived of the power of self-control within the meaning of Section 269.

Upon the issue as to whether the manager's conduct was of such a nature as to be likely to cause an ordinary person of the accuseds' tribe to be deprived of his power of self-control and induce him to assault, the defence called William Crellin, an Assistant District Officer now stationed at Port Moresby.

Although, from his experience of these people when an officer in the Milne Bay District, Mr.

Crellin undoubtedly is impressed by their natural reaction quickly to use violence in anger to redress a grievance against a person whom they believe has done them wrong, "Revenge", as it were, "is a wild kind of justice", his evidence was all that one would expect from an officer of his standing in the Department of Native Affairs. It was given thoroughly and carefully and contains within it recognition that whether or not one of these people has been deprived of his power of self-control is a question to be determined in each case. As was emphasised by Mr. Chaney, it is a question of fact to be determined by the tribunal of fact.

I am satisfied beyond reasonable doubt that the accused persons unlawfully assaulted Lancelot Harcourt Wilkinson and I find a verdict of guilty in each case and convict them accordingly.

I order that the exhibits remain in Court until the time for appeal has expired or until further order.

I feel that I cannot leave this judgment without mentioning the assistance that I have received from both Counsel. I understand that it is not long since they commenced to practice in this Territory and it was their first appearance before me. From their work in another trial, which took place before me after this one, I have reason to belive that its standard will continue and I trust that with increasing experience it will even improve.

FOR SENTENCE 3.18 p.m.

I have given final consideration to the question of what punishment I should impose and I have taken into account all the matters that I conceive to be relevant but do not think it necessary to state now, including those matters that have come out in evidence and those that have been put by Mr. O'Regan in favour of you Nabai, and you Atabena and you Velipi and I have decided upon the following sentences :

Nabai . : Imprisonment with hard labour for a term of twelve months.

Atabena : Imprisonment with hard labour for a term of twelve months.

Velipi : Imprisonment with hard labour for a term of nine months.

In conclusion I wish to thank you Mr. McGrath for your assistance as the interpreter in this trial. Your interpretation was carried out conscientiously and thoroughly, sometimes in rather trying circumstances, and it gave me a confidence which I find of great help in these trials.