COPY

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

CORAM : CLARKSON, J.

29th June 1970

R. v. EDWARD TOLIKUN KISION & ORS.

RULING - 10th June 1970

The Crown has presented an indictment against the seven accused charging them jointly on two counts. A number of preliminary matters has arisen for consideration on motions on behalf of the accused to quash the indictment or alternatively the second count. One such submission was that the Crown Prosecutor had no authority to present the indictment in its present form and by agreement with Counsel this matter was argued first. Two of the grounds on which this submission was supported were:

1. that the authority of the Crown Prosecutor purportedly given under Section 560 of the Criminal Code was of no effect until published in the Government Gazette and admittedly it had not been so published; and

2. that only the person who signed the indictment could present it and the indictment was signed by the Secretary for Law and not the Crown Prosecutor appearing here who purports to present it.

After consideration I ruled that neither of these objections on the grounds stated was good and I reserved my ruling on further submissions relating to the scope of the Crown Prosecutor's authority and in particular, his authority to present the present indictment. I then heard further argument on other preliminary matters and reserved my rulings. I now propose to deal with the various matters reserved.

Appointment of Crown Prosecutor

I have already dealt with two of the submissions. On the assumption that both Sections 560-563 of the Criminal Code and Section 12 of the Criminal Procedure Ordinance operate, Section 560 is the only section dealing with the appointment of persons to sign and present indictments. I express my conclusions summarily:

1. It is not necessary for the person who signs the indictment to present it;

2. The Crown Prosecutor did not sign the indictment nor has he purported to lay or direct the laying of a charge or otherwise act under Section 12 of the Criminal Procedure Ordinance. That Section does not deal with presenting of an indictment;

3. The person appointed under Section 560 can, without any further appointment, act under Section 561 or Section 563. Whether the Secretary for Law in signing the indictment is acting under Section 560 or Section 561 of the Criminal Code or Section 12 of the Criminal Procedure Ordinance is immaterial. He is the Crown Law officer referred to in each of these sections and the Crown Prosecutor, being appointed inter alia to present indictments is able to act under the second paragraph of Section 561 and Section 12 of the Criminal Procedure Ordinance is silent as to the presenting of indictments. If therefore the person presenting this indictment, containing a count for which an accused was not committed for trial must be a person who can act pursuant to the second paragraph of Section

561 of the Criminal Code, then the Crown Prosecutor is such a person.

If the inclusion of the second count is to be justified under the Criminal Procedure Ordinance it is justified by the Secretary for Law acting pursuant to Section 12 and I can see no provision in that Ordinance requiring the person who presents the charge to the Court (if indeed any presenting is necessary) to hold any particular authority.

This brings me to a further point regarding the construction of Section 12 of the Criminal Procedure Ordinance. The Defence argues that the Secretary for Law, under Section 12, must make his decision by reference only to the evidence given at the committal proceedings. Without deciding it, I assume this to be correct.

The argument then proceeds - here a large body of material came into the possession of the Crown Law Department after the committal; a letter written by the Department on 19th May giving certain particulars requested by the defence refers to an alleged common purpose and says that the facts relied upon to support the allegation "are contained in the depositions and transcripts abovementioned". The reference to transcripts is a reference to some or all of the material acquired after committal. This indicates that the Secretary for Law did or might have taken into account when exercising his function under Section 12 material that he should not have taken into account - thus illustrating a wrong exercise of discretion by him.

It was further argued that the second count could not stand if the Secretary so acted even if the count was otherwise supportable on the evidence before the Magistrate and that the doubt having become apparent, it was for the Crown to show that the Secretary acted strictly in accordance with Section 12.

I do not accept this argument.

The letter, not signed by the Secretary, was written for the purpose of supplying particulars requested by the defence. It sets out these particulars as at the date of the letter and by then the defence had been informed of evidence to be called at the trial additional to that given at the committal proceedings. The defence could have rightly complained if particulars based on this additional evidence had not been given.

I can find no indication in the letter that the Secretary for Law knew of the additional evidence and I cannot read it as attempting to identify in any way the material on which the Secretary acted when making any decision under Section 12.

Further, I think the Crown is right in saying that in the absence of some substantial indication that the Secretary acted improperly it was for the defence to show that he had.

I gave Counsel for the defence the opportunity to tender the depositions or to identify the elements of the second count of which it was said no evidence appeared in the depositions. I understand their reluctance to do so, especially when, on their argument any such omissions were irrelevant. I myself have not called for the depositions because I have formed the impression Counsel, quite properly, would prefer that I did not read them. I have therefore based my consideration on the documents tendered to me. I should add also that if Section 561 is available to the Crown to the extent suggested by Frost J. in Dwyer's case (1) that would provide a complete answer to the present objection.

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(1) (Unreported) Frost J. Judgment 449 of 7 Sep 67.

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Joinder of the Two Counts

The defendants also contend that Section 567 of the Criminal Code does not justify the joinder of these two counts in the present indictment. Without now giving my detailed reasons I am not prepared on the facts as put to me to accede to the Crown submission that the two offences alleged can be said to be constituted by the same acts or omissions. Whether they are constituted by a series of acts done in the prosecution of a single purpose is more debatable. On the literal meaning of the words of the Section it can be argued they are not. However, if one adopts the approach of the Court of Criminal Appeal in Queensland in Rodriguez(2) and Gassman(3) as adopted by Gibbs J. in Howarth (4), I think the joinder can be supported.

I have myself already adopted that approach in McEachern (5). After careful consideration of the approach by Frost J. in Dwyer (6), I think that case is distinguishable from the present. In Dwyer (7), where the acts complained of extended over a lengthy period, Frost J. concluded that acts done in the prosecution of the same purpose which is renewed or revived from time to time are not within the Section. Here on the facts put to me there is no reason to suggest any abandonment and revival of the alleged purpose. In all the circumstances, I have decided to adhere to the view I took in McEachern (8) and doing so I rule that the joinder is justified under Section 567.

I should add I can see no warrant for saying that a count for which an accused has been committed for trial cannot be joined with another count for which the accused was not committed if the provisions of Section 567 are satisfied.

I have had some misgivings as to the procedure followed whereby seven informations were dealt with at two committal proceedings and have resulted in one indictment. I have not examined this aspect closely because no defence Counsel seeks to base any argument on it and Counsel for the seventh accused expressly stated that his client did not ask for a separate trial.

I have dealt with the matters raised which go to the validity of the indictment in its present form and in relation to those matters I refuse the motion to quash the indictment.

If Counsel feel I have not clearly ruled on any matter as to the validity of the indictment and the joinder, I am prepared to give further consideration to any such matter.

As I indicated to Counsel, I am now prepared to hear argument or further argument relating to:

1. The allegation that both counts or either are bad for duplicity;
2. Motions for trials of some of the accused separately from others;
3. Motions for separate trials for each count.

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(2) (1939) St.R.Qd.227.
(3) (1961) Qd.R.381.
(4) (1967) Q.W.N.11; 61 C.J.P.R.106.
(5) (unreported) Judgment No.434 of 6 Apr 67.
(6) (unreported) Frost J. Judgment No.449 of 7 Sep 67.
(7) (unreported) Frost J. Judgment No.449 of 7 Sep 67.
(8) (unreported) Judgment No.434 of 6 Apr 67.

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RULING - 11th June 1970

I have given further consideration to the matters I reserved yesterday.

I have already ruled that the two counts were properly joined on the one indictment and I am now asked to apply the provision in Section 567 which provides that if it appears to the Court that the accused person is likely to be prejudiced by such joinder the Court may require the prosecutor to elect upon which of the several charges he will proceed or may direct that the trial of the accused person upon each or any of the charges shall be had separately.

I am also asked at this stage to direct that the trial of some of the accused be had separately from the others.

From the documents and submissions put to me it appears that the Crown alleges that the accused persons were parties to a riot on 7th December last and it is further alleged that during or about the time of the riot the accused persons assaulted one Arthur Towama.

In each case a common purpose on the part of the accused persons is alleged.

Counsel for the defence submit in support of these applications that some evidence admissible on the second count where a wider purpose is alleged would not be admissible on the first count and that some evidence intended to link two of the accused with events which occurred earlier in the day and with which the other accused are not linked could, if inadmissible against the latter accused be prejudicial to them.

After consideration I have decided not to allow any of the applications.

As to Section 567, as I have said, the counts appear to me to be properly joined as against each accused and I can see no likelihood of prejudice arising from the joinder.

As to Section 606, the authorities show that where a common purpose is alleged, prima facie the several accused should be tried together.

Here, there is no suggestion that it is the case of any accused that another or others are wholly responsible nor that any accused will give evidence prejudicial to any of his co-accused. Nor is it a case where the joinder will result in a witness who at a separate trial could only give evidence with the accused's consent, giving evidence without that consent.

This is not a jury trial and I am reasonably confident that with Counsels' assistance I will be able to distinguish evidence admissible against one or more of the accused from that admissible against them all.

I accept as correct the statement of the law by Owen J. in R. v. Kerekes (9) to which Counsel referred me.

I have considered the submission based on Torr's Case (10). It appears that there, the Court of Criminal Appeal while expressing the view that it was undesirable for the two counts there dealt with arising from precisely the selfsame facts to be joined, concluded that both counts could be joined.

Subject to any further submissions the trial will commence on the indictment as framed.

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(9) (1953) 70 W.N. (N.S.W.) 102.
(10) (1966) 1 All E.R. 178; 50 Cr. App.R. 73.

RULING - 17th June 1970

The position has been reached where objections have been taken to certain evidence which Crown proposes to call. This evidence falls roughly into three categories:

1. that all the accused, except the first, assembled at Matupit village with others and drove in a number of vehicles to Matalau village where the events already alleged in the Crown's evidence occurred;

2. that the accused were members or supporters of an Association which opposes the existence of and sponsors views different from those of a Local Government Council of which the victim was a supporter;

3. that earlier in the same afternoon as that on which Wama was attacked, two of the accused Lotu and Touloaga accompanied by others - none of whom is identified as an accused - had made visits to the homes of other supporters of the Local Government Council and had assaulted them.

The Crown seeks to tender all this evidence on each count against each accused except that it concedes that the first accused did not assemble with the other accused at Matupit nor travel with them to Matalau.

Three of the accused have made formal admissions of their presence at Matalau village during that period of the afternoon of 7th December covered by Crown evidence alleging assaults on Wama.

I give my rulings in summary form and if necessary will detail them in due course:

1. In my view the evidence of assembly together and travelling together to Matalau is admissible against all accused shown to have so acted and on both counts to establish preconcert or a common purpose.

2. Evidence that the accused are all members or supporters of the named Association is admissible against each of them on each count as supplying a possible motive for the alleged attack and as being relevant to the existence or otherwise of preconcert or a common purpose amongst them.

3. Evidence of the earlier alleged attacks is not admissible for any purpose on either count against any accused other than the two identified as taking part in them. It is admissible against those two, on each count, as tending to negative an innocent presence or association at Matalau.

Counsel for some of the accused have, in the light of the rulings I have just made, renewed their applications for their clients to be tried separately from the other accused.

No new ground in support of the applications has emerged and, in the exercise of my discretion, I refuse the applications. There is no jury, the evidence relevant to each accused is easily separable and the accused are alleged to have acted pursuant to a common purpose.

JUDGMENT - 23rd June 1970

This trial has been concerned with events which occurred at Matalau Village near Rabaul on Sunday, 7th December 1969.

On that occasion, the witness Arthur Towama was sleeping in his house in the late afternoon. The other members of his household, namely his wife, Dorkas Beti, a daughter Jean and also his elderly mother were outside the house. The women were surprised to see another prominent resident of Matalau, one Oscar Tovalue, being pursued by a mob of people variously estimated as being 50 - 100 in number.

Tovalue ran past Towama's house and made his escape into a nearby gully. The crowd then approached the three women. From what then occurred and was said, it became apparent that a large number of those present intended violence to Towama.

The three women ran to the house where Towama was sleeping and stood abreast at the top of the steps leading to the only external door of the house. What can only be described as a mob assault on the house then occurred. A number of men forced entry to the house either through windows or past the three women whose courageous attempt at passive resistance in the doorway did little more than delay entry by the attackers. At least two of the women were forcibly removed from the doorway to the ground. Towama was confronted in his bedroom by men who had gained entry to the house. He had near him a small eating knife with which he threatened the first of his attackers. He was quickly overpowered and forced, resisting, from the house down the steps to the ground. Both in the house and outside he was assaulted. In the hope of obtaining some protection he crawled under his house which stood some 4 to 4½ feet off the ground. He was followed however and beaten into unconsciousness. His assailants then left. He suffered a laceration to his ear which required six stitches and an injury to his left leg which rendered him unable to walk and which required immobilisation of the leg in plaster for a period of six weeks. He still complains of a lot of pain in his left leg and his back.

This is a barest summary of the events related in the evidence.

I do not think that any of the accused challenges the summary I have given. With certain exceptions to which I will refer, the defence of each accused was conducted on the basis that he was not present at the scene or if present was not acting in concert with the attackers.

As will be seen, the ascertainment of the facts has been more difficult than the application of the law to the facts when ascertained.

It is not disputed that Towama was assaulted nor that thereby he was done bodily harm.

Further I am completely satisfied that there was at the relevant time an unlawful assembly of persons who began to act in such a way that the assembly was a riot and that the persons thus assembled were riotously assembled.

The real problem to determine beyond reasonable doubt is which of the accused, if any, was a party to the riot or to the assault on Towama. Undoubtedly there was an assembly of 50 or more persons who intended to assault Towama and thereby intimidate him and his family and who conducted themselves in such a manner as to satisfy the provisions of ss.61 and 63 of the Criminal Code. Such persons were guilty of taking part in a riot.

Some persons themselves assaulted Towama pursuant to a common plan and others acted to enable or aid the assault pursuant to that plan.

The assault can really be regarded as the fulfilment of the common purpose. Whether liability for assault attaches because pursuant to a common purpose to assault one aided or encouraged others to assault or whether it attaches because in the prosecution of a common intention to intimidate unlawfully, the assault occurred - which was a highly likely

consequence of prosecuting that intention - seems immaterial. In the one case s.7 and in the other s.8 operates to attach liability for the assault. Those parties to the common purpose who saw assault as providing the desired intimidation and themselves assaulted are in the same position as those being parties to the same purpose who beat the flat iron walls of the house and who knew, as was the fact, that others were assaulting or about to assault Towama.

In the present case however, the Crown alleges that each of the accused, except the first, took part actively in a joint assault on Towama and that by the whole assault bodily harm was done.

It is beyond doubt that those present who struck or held or attempted to strike or hold Towama were aiding and encouraging each other in a concerted attack on Towama and, as will be seen, it is not necessary for me to consider the legal liability of those who whilst making up the crowd took no active part in the assault.

I turn now to the case against each of the six accused who remained after the discharge of Denny Simeku.

Edward Tolikun Kision occupies a somewhat special position. I have already acquitted him on the assault count. There is nothing to associate him with any prior planning for the invasion of Matalau village. This does not mean that he could not have joined in the execution of the common purpose after his arrival at Matalau. At the same time he put forward an innocent explanation, which was not effectively challenged, for his presence at the village and for his action in forcibly removing Dorkas Beti from the doorway. It is quite true, as the Crown has pointed out, that his participation in the riot is not necessarily inconsistent with an intention to protect Dorkas Beti from violence. I thought his defence stronger before he went into the box than when he left it and I am fully aware of the implications of the damaging statement attributed to him by Dorkas, Beti. At the same time I can see the real possibility that there is an innocent explanation for his presence and that while appreciating what others intended to do he intervened not to assist them but out of sympathy for Towama's wife or even a desire to protect her as he claimed.

It could well be said he assaulted Dorkas Beti, but he is not charged with that offence before me. The nexus which the Crown has established between Tolikun and the rioters is not sufficient to satisfy me beyond reasonable doubt that he was a party to the riot, and I have already acquitted him of the assault charge.

Roy Tolotu. The evidence against this accused on both counts is in my view overwhelming. Towama was to me an impressive witness who told only what he saw and heard and who resisted the temptation so often succumbed to by witnesses in this Court to incorporate into his story the observations, deductions or reports of others.

I accept with complete confidence the identification of Lotu by Towama, his wife and his daughter and by the two Matalau villagers Towaninara and Tomarut who came to Towama's aid.

Lotu, on the evidence, was the most persistent of Towama's attacke He was probably the first to break into the house an was not dissuaded from further attack until Towama had been beaten int unconsciousness.

Topirit. This young man was identified at the scene by Towama, Dorkas Beti and Jean. It is not denied he was at the scene, but he claims in effect to have been an innocent spectator.

Jean identified Pirit as one of the mob which approached Towama's house and this identification was not directly challenged in cross-exam ation by Pirit's counsel. Towama's identification of Pirit as one who was early in the house and who assisted to remove him from the room was

confident and convincing. I do not believe the story of Simeku, Robinson Bill and Pirit of their movements at Matalau. I don't believe that Simeku went into Towama's house to assist him. Jean places Simeku and Robinson Bill with Pirit in the crowd which approached the house and this I accept. Both Pirit and Robinson Bill say they were together with Simeku although Simeku says he didn't see the other two.

Pirit's statement from the dock was far from convincing. He tells of being picked up by a truck of men, not knowing where they were going, and of then learning the party was going to Talwat to fight supporters of the Multi-racial Council. Having returned to Matupit, eaten, and gone for a walk, he is again picked up by a truck the destination of which again he does not know, only to learn that the party was going to find Vama at Matalau. Although the truck stopped on the way for petrol, he did not get off. At Matalau, he says, Robinson Bill, Simeku and he stood for some time, then Denny left and "went inside" which is clearly a reference to his entering of the house. Pirit attempts to give the impression that he arrived well after the trouble started and stood well away from it. However if, as he says, he was with Simeku before Towama's house was entered by Simeku then clearly he was at the scene right at the beginning of the attack on Towama's house because Simeku was, on the evidence, one of the early arrivals in Towama's bedroom and was admittedly one of the men who dragged him outside.

When it is remembered that there was a large crowd in front of and around the house one might doubt whether an observer standing some distance from the house would have been able to see Towama on the ground or crawling under the house as Pirit describes. The closing words of Pirit's statement are significant, "When he went underneath the house we left him. We went down to the road, hopped on the trucks and left. It was already night. We went back to Matupit." I have not overlooked the point made that Towama's evidence can be read as indicating that on 7th December Pirit had a beard when in fact he did not. I think it is nothing more than a confusion which arose from the form in which the question was put in cross-examination.

I am satisfied beyond reasonable doubt that Pirit was one of the crowd which sought out Towama and that Pirit entered the house and assisted to remove Towama. Denny Simeku's suggestion that by removing Towama from his own home and throwing him to the violence of the waiting mob was of some assistance to Towama can only be described as ludicrous.

Marum. I have found Marum's case the most difficult to deal with. He is of distinctive appearance; the Crown witnesses who identified him were not shown to be biased in any way and the identification of Marum by Towama was confident.

He is a young man who has been removed from normal village contacts since he was a youth and I think it safe to assume that his physique and appearance has changed in the last six years. For that reason, although I regard Dorkas Beti as an honest witness I have some doubt whether I can rely confidently on her identification. Similarly, Jean's identification is weakened by the fact that she did not know Marum before 7th December.

I was impressed by Towama's point that he had seen Marum in the Monga Hospital on several occasions in the last six years because Marum subsequently admitted that he had indeed during that period received treatment at the hospital. But the question still exists whether Towama accurately identified the man who, from behind, disarmed him when Towama was confronting Lotu.

Marum entered the witness box and his evidence was not unimpressive.

In the end my decision has been influenced by two almost chance remarks which found their way into the evidence.

Marum said he was not involved in the attack on Stephen Tobunbun, that he heard the noise of this attack and went to the road where he met David Matlaun who said, "Where have you been? We have already fought Stephen Tobunbun." Matlaun denied making this statement but I accept Marum's evidence that he did. I think it highly likely, in spite of the impression which Marum and his witnesses sought to give, that at least the attack which had already occurred on that day in Matupit on Stephen Tobunbun would have excited much comment and discussion. It is also highly probable that David Matlaun who while giving evidence was unable to conceal his antipathy to the police and others in authority and who, as his remark to Marum shows, had already been involved in the attack on Stephen Tobunbun, would have been eager to be associated with other similar attacks.

The question which arises is whether, after Marum and Matlaun met on the road in Matupit they went to Marum's place to eat and remained there until about 7 o'clock or whether both of them, or Marum alone, joined the convoy to Matalau. I think it unlikely that Marum would have gone and Matlaun, who had already shown himself to be enthusiastically involved in the attack on Stephen Tobunbun, would not have gone. No-one names Matlaun as having been at Matalau. In addition, the following which I find revealing occurs in Matlaun's evidence. He said that he did not go to Matalau that day and first heard about the trouble at Matalau on the day after it occurred. He said he did not see a number of vehicles going to Matalau. He was asked if he heard anything, to which he replied in effect that he had not heard anything about Matalau and if he had he would have gone there. From his general attitude as revealed by his demeanour, I too think he would have if he had known of the proposal.

If I had to decide whether or not Marum was at Matalau that afternoon I would be inclined to accept Towama's identification, but I don't have to make such a decision. It is sufficient to say that whilst my estimate of Towama's honesty remains unshaken, the evidence of Marum and his witnesses has raised a reasonable doubt in my mind whether Towama's identification of Marum as the man who disarmed him was correct and Marum is entitled to the benefit of that doubt.

During the trial I reserved my decision on an application by Mr. Flood to strike from the record an answer given by Inspector Greenhalgh during his evidence. In view of the conclusion I have reached regarding Marum it is unnecessary for me to make any ruling.

Touloaga. I admitted against this accused evidence that he participated in three attacks against other men on the afternoon of 7th December before the attack on Towama. Each of these attacks was made in company with others against victims who were inside - or in one case under - their houses. Two of the attacks occurred at Talwat and one at Matupit. This accused in his statement from the dock admitted going from Matupit to Matalau but said he went only to watch.

Towama's identification of him as the man who struck and then kicked him is to me completely convincing and is confirmed by Jean whose claim that she knew Touloaga before the trouble was not challenged.

I am satisfied beyond all reasonable doubt that Touloaga was in the forefront of the mob which attacked Towama's house and that he himself assaulted Towama in the way Towama described.

Ephraim. This accused does not live at Matupit village. He told me in his statement from the dock that he was walking from his village of Talwat to Matupit and at Rapidik came across a vehicle the occupants of which were travelling to Matalau to fight and that he got on the truck. He explained that as a man handicapped by leprosy he had not the physical strength to do the things alleged against him. He did not claim to be a mere spectator because he said he was trying to get close to the steps but was pushed away. He did not explain why he should be trying to get near the steps at a time when others were doing so for the purpose of assaulting Towama.

The Crown case was that he was in the forefront of the crowd calling "Where is Wama?" and saying that they had come to fight him. Further, it was alleged that when Towama, awakened by the commotion, came to the door and stood behind the three women, Ephraim attempted to grab Towama's leg. Both these allegations are clearly proved by the evidence. The sole issue was one of identification. Although Jean had not seen him before, she identified him as the person who was calling out and to whom she spoke asking why they wanted Towama. Dorkas Beti had known Ephraim since they were at school together and Towama had known him for many years. The evidence of these witnesses I unhesitatingly accept and I find that Ephraim aided and encouraged the others in the assult on Towama.

I return the following verdicts:

Edward Tolikun Kision	- Not Guilty on second count.
Roy Tolotu	- Guilty on both counts.
David Topirit	- Guilty on both counts.
Marum Marika	- Not Guilty on both counts.
Touloaga Toilot	- Guilty on both counts.
Ephraim Tomia	- Guilty on both counts.

SENTENCES - 29th June 1970

I have given careful consideration to the sentences which should properly be imposed on the prisoners.

Their convictions are in respect of events which occurred in the Rabaul area on 7th December last. I am informed that on that day approximately 13 separate incidents occurred in which selected men were sought out and assaulted by others. One of those assaulted was Arthur Towama and the four prisoners were among his assailants. Towama suffered injuries which required hospital treatment and the effects of the injuries have not yet completely disappeared. Each of the four prisoners has been convicted of assault whereby bodily harm was done to Towama and of being a party to a riot. For each of these offences the maximum term of imprisonment provided is three years.

Many of those involved in the disturbances of 7th December were dealt with in the District Court on charges of a less serious nature than those on which the four prisoners have been convicted.

It also appears from what counsel have told me that although the differences between the two disputing groups continue, there has been no further violence.

I have studied the antecedent reports supplied to me and have considered the various submissions made by defence counsel.

It appears that prior to the 7th December each of the prisoners was a man of good standing with no previous conviction of any kind.

Two of them, Tolotu and Touloaga, are now serving sentences imposed for summary convictions in relation to events which occurred on 7th December before Towama was assaulted. Because some sentences were made cumulative on others, these two men are at present serving sentences the effect of which is the equivalent of a sentence of 12 months' imprisonment imposed in December last.

I also note that Topirit was in custody for about 17 days and Ephraim 9 days before bail was granted.

Some of the matters I have taken into account I will mention.

Firstly, I have decided to deal with each prisoner in substantially the same way. They acted together and each did violence to Towama. Before the 7th December none had any prior conviction.

Secondly, while I consider that to discharge the prisoners on a recognizance under s.19 (9) would be a totally inappropriate way of dealing with the accused, I think it appropriate in all the circumstances to require each prisoner under pain of further penalty to keep the peace for a reasonable period.

I have therefore imposed a lesser term of imprisonment than I might otherwise have, but will order the completion by each prisoner of a recognizance under s.19 (7) that he keep the peace for 2 years.

I have not disregarded counsel's submission that the whole of any sentence of imprisonment should be suspended under s.656 of the Criminal Code. I have not followed this course for a number of reasons. I have decided to deal with each accused in the same way and in view of the prior convictions of two of them I cannot suspend their sentence under the section. Probably I could not suspend the sentence on the second conviction of the other two men and since I propose to make the sentences of each man concurrent s.656 has little room, if any, for operation. Finally, the nature of the offence and the circumstances in which it was committed calls, in my view, for something more than a suspended sentence alone.

The assault was committed during and as the culmination of the riot. At one stage the two offences were being committed together. I have decided to make the sentences on the convictions on the two counts concurrent and not cumulative.

(To the Prisoners):

I have thought a lot about the proper punishment for you.

You have asked that I gave you a bond and not a prison sentence, but the offences you committed are too serious for that. You with others, invaded Towama's home and beat him to unconsciousness.

You are lucky that you did not cause more harm than you did. You might have done so and then have been liable to a very long term of imprisonment.

As it is, for the two offences you committed you could be sent to gaol for a total of six years.

As this country moves towards independence there will be many arguments and a lot of talk between a lot of people who hold strong views. That is not a bad thing. It is good. But everyone, including you, must understand quite clearly that the law forbids you to use intimidation or violence against those who don't agree with you. I know that before the day Towama was assaulted none of you had been in trouble with the courts. This, and a lot of other things, I have thought about when fixing your punishment.

On the conviction for assault, each of you is sentenced to 8 months' imprisonment with hard labour. In addition you will enter into a bond under which you will lose a sum of money if you get into any more trouble with the Courts in the next two years.

If you do not want to sign the bond you will stay in prison for a further 4 months, making 12 months in all.

On the second conviction also, that for riot, each of you will be sentenced to 8 months' imprisonment with hard labour and be required to sign the same sort of bond, but you will serve the sentence of 8 months' imprisonment at the same time as the other sentence - that is, if you sign the two bonds, the total time in prison is 8 months.

As for Tolotu and Touloaga, the sentences you have just received will run at the same time as the sentences you are now serving.

The formal sentences are as follows:

As to each prisoner on each conviction -

1. a sentence of 6 months' imprisonment with hard labour;

2. in addition an order that the prisoner enter into his own recognizance without surety in the sum of $40, that he shall keep the peace and be of good behaviour for two years from 5th June 1970;

3. and an order that the prisoner be imprisoned until the recognizance is entered into but so that the imprisonment for not entering into the recognizance shall not extend for a term longer than one year from 5th June 1970;

4. the two sentences of 6 months' imprisonment with hard labour on each count to be served concurrently and the sentences on Tolotu and Touloaga to be served concurrently with any sentences already imposed.

Solicitor for the Crown : P. J. Clay, A/Crown Solicitor

Solicitor for the Accused : W. A. Lalor, Public Solicitor