

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

CORAM : MINOGUE C.J.  
Thursday,  
15th October, 1970

Re. v. TOPAMKIN WAMI & 7 ORS.

1970

Oct 6,7,8,  
9,12,13,14  
and 15.

RABAUL.

Minogue,  
C.J.

This trial began on the 6th October against eight persons charged before me that they on the 7th December 1969 assaulted Dimain Tokurapa and thereby did him bodily harm. Those persons were Topamkin Wami, Tepan Tollian, Toniruk Tokalen, Daniel Rumet, Tobing Tokait, Joseph Tokubak, Toiona Tabut and Joseph Titilop. At the conclusion of the case for the Crown and as the result of submissions by Counsel that there was no case to answer or, alternatively, that the case was far too tenuous to be allowed to proceed further, I acquitted Tepan Tollian, Toniruk Tokalen and Toiona Tabut. It remains for me now to pronounce a verdict and judgment in respect of the remaining five accused.

It is alleged by the Crown that each of the accused took part in a joint attack on Dimain Tokurapa in or in the vicinity of the United Church at Matalau on the outskirts of Rabaul, on the morning of Sunday 7th December 1969, and that there was a common purpose amongst or between them to assault the victim. For the defence it was generally argued before me that unless I were to find something in the nature of a conspiracy albeit instantaneously conceived by some or all of the accused to assault and thereby cause bodily harm, then the verdict should be one of not guilty. It was submitted that all I have here is a series of assaults, perhaps with some continuity in point of time but not effected in pursuance of any common purpose. As was forcibly put by Mr. Griffin two identical purposes do not necessarily amount to a common purpose.

I propose first to set out the facts as I find them and in my view it is necessary to begin with some events and attitudes prior to the happenings at Matalau Church. The accused, Damien Rumet, was a vice-president of an association in December last year well-known in Rabaul and in the Gazelle Peninsula. That association of course is the Mataungan Association. And the other four accused had all previous to the 7th December attended executive meetings of that body. On Saturday, 6th December, the Administrator Mr. Hay arrived in Rabaul and Rumet, and I have no doubt the other members of the Association, believed that arrival to be of a secret nature - this belief being engendered as was said to me because of the lack of publicity attendant upon his visit. I would not nor should I comment on the reasonableness of this belief. I note its existence because I think it has some bearing on the events with which I am concerned.

At some time on the Sunday morning Rumet and the president of the Mataungan Association, one Damien Kareku, were in the Association office on the other side of Rabaul when they were attracted by the noise of shouting coming from trucks passing on the roadway and on going out and stopping one

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of these trucks Rumet heard of some trouble having taken place in which the Administrator and the District Commissioner were involved. He also, from what he was told, formed the belief that members of what was then compendiously known as the Multi-Racial Council were meeting at Matalau, that the truckloads of men on the move were heading for that meeting and that there was likely to be trouble. He decided to go along to see what he could do to avert such trouble. En route to Matalau a then Multi-Racial Council supporter named Ismael Towalaka was severely assaulted. It was obvious to Rumet that the crowd was in an angry mood and he believed that there were those among it who were likely to try to break up the imagined meeting of the councillors and indeed to assault those councillors.

After the Towalaka diversion the convoy proceeded on its way to Matalau, coming to a halt on the roadway below a steep pathway which rose about a hundred feet to the Church and its surrounding grounds. There were eight or more trucks and something like 60 or 70 people gathered. Rumet and Kereku spoke to the crowd in an endeavour to calm them and went up the pathway. On arrival at about 11.00am they found that a few of the truck passengers had preceded them and others were following up the hill after them. They were met by the Reverend Taylor, the Minister of the Church, who himself had been attracted and I would think disturbed by the noise. He assured Rumet and Kereku that what was happening at the Church was not a meeting of councillors but a meeting to discuss Church finances, following upon the Church service. The Minister requested Rumet and those with him to retire until the conclusion of that meeting. At this time there were from 10 to 20 strangers on the small plateau on top of the pathway. And I am satisfied that during this conversation Rumet went halfway down the path and spoke to the throng below commanding or beseeching them not to come up, and returned to join Kereku. Rumet then retired and on going down to the roadway concluded that some of the truck party had gone further on to Nodup. He went after them both to see what had happened and to try and exercise some control. It seems that there was some sort of a fracas there, that he was briefly involved in an argument with one Herman Taman and that he then returned to Matalau. I should say that my impression is that at this stage so far as Rumet was concerned the situation had got out of hand. The excited and angry mob which he had joined was hardly amenable to control and I think that he himself was sufficiently upset by what he conceived to be the perfidy of his opponents to be unable to calmly and rationally handle the situation which was developing. Nevertheless I was impressed by his sincerity in the witness box and I am satisfied that he was determined to do what he could to prevent the spread of the violence which he had already seen in course of growth. On arrival at Matalau after a ten to fifteen minute absence it was obvious that the imprecations to calm and to allow the leaders to discuss matters with the councillors had been disregarded.

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