

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

CORAM : CLARKSON, J.

Monday,

16th March, 1970.

R. v. ASIS AND BITIMUR

(for sentence)

1970
Mar 16,
MADANG
Clarkson, J.

These two men have been convicted of the murder of the man Yuwarem. For reasons already explained, I was not satisfied beyond reasonable doubt that they intended to kill rather than wound and they must therefore be dealt with on the basis that they attacked Yuwarem intending serious harm but not intending to kill.

The facts need not be recapitulated. This killing is another example of the evil consequences which flow from the supposed practice of and sure belief in sorcery by ignorant and primitive people.

I am satisfied that the deceased was widely reputed to be a sorcerer in his area and that he boasted of his achievements in allegedly killing kinsmen of the prisoners. His boastings caused great unrest in the Asai Valley and in part of the Simbai Valley. Meetings were held to consider the problem which he posed, whether, to prevent his practices he should be killed and if so whether by sorcery or the axe. These problems were real and pressing in a community dominated and largely ordered by a universal belief in sorcery. The killing of the deceased has been welcomed with relief throughout the area in which he lived.

Administration influence has extended into the area only in the last ten years and the first accused was a grown man and the second a youth when this commenced.

This is a case in which the Court, while enforcing the law, must recognize that the enforcement is against primitive people who have acted in accordance with their own customs, who have only a vague knowledge of the significance of a law imposed from outside their own immediate community and who for all practical purposes do not enjoy its day to day protection.

It is of course necessary that the prisoners and their kinsmen should grow to accept the law of the larger community of which they unknowingly form a part, and in my view at this stage this is best achieved by a sentence intended to be educative and corrective rather than one calculated only to deter or to bring retribution.

For these reasons I impose a sentence considerably less than I might on more sophisticated people living in more settled areas.

Sentence: 3 years' imprisonment with hard labour.