

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

CORAM : MINOGUE CJ.

Friday,

14th May 1971.

THE QUEEN v. KAUKA MORU

1971

May 10, 11,  
12, 13, 14.

PORT  
MORESBY.

Minogue CJ.

Kauka Moru stands charged before me that on or about the 15th December 1970 he wilfully murdered one Aroma Lahema. This case contains many puzzling features not the least of which are that the evidence against the accused consists almost entirely of two confessional statements made by him, that those statements are conflicting in significant respects and that one Uhau Metahau who, so it is said, conspired with the accused and instigated the murder, is not arraigned jointly with him.

In approaching my verdict in this case I have thought it desirable to consider firstly and independently all the evidence other than the accused's own statements.

On Tuesday 15th December he was met on a roadway by a woman named Gauma. This road led from Eilogo Plantation in a general southerly direction to the tradestore and house owned by a Mr. Carriage which stood at the tip of a narrow peninsula jutting into Sirinumu Dam. Over a mile to the north of this store and about 30 yards to the east of the roadway is a small cleared piece of land on the shore of the Dam which was used by local people for drawing up canoes and which has been referred to in this case as "the canoe anchorage". Something over half a mile to the north and west of this area is the house of Mr. Brian Lukin on Nihoa Plantation which in its turn is south of and adjoining Eilogo Plantation. It is not clear where on the roadway Gauma met the accused but it must have been somewhere to the north of the canoe anchorage because according to her they were both heading in the direction of the canoe anchorage from the direction of Eilogo and the accused who was walking faster than her passed her on the road. This she said was about 7 o'clock in the morning but it is very difficult to rely on her accuracy as to time. However, I conclude that it was early in the morning. At about 8.45am the accused arrived at the house of a relative of his, one Muru Gorea, who is a tractor driver at Nihoa Plantation. He was wearing trousers and no shirt and his trousers were wet as was the upper part of his body. The accused lives at Ogotana village which is perhaps a mile and a half from Muru's house. He is a young man of about 21 but lives the life of a

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villager; unlike most of the young men of his age is not married, has no gardens of his own and apparently depends for subsistence on relatives. He was described by a leading member of the village as a good man in the village. On the accused's arrival at Muru's house Muru asked him what was the matter with him to which his reply was a request for tobacco - with which to roll a cigarette. Apparently to explain his wet state he told Muru that he was very frightened, that there were "masters" - by which I take him to mean Europeans - at the river and he came up. According to Muru's wife, Inoa, he had water all over his body which ran down through his trousers and on her asking him why he came to the house he replied that he was afraid of the master and therefore he came from the river. There is a chest-deep river a few yards to the north of Muru's house and there was evidence that Mr. Lukin, the owner of the Plantation, discouraged people other than employees from entering on the plantation. To enter by the normal road would have involved the accused passing the plantation rubber factory and probably being seen by Mr. Lukin. However, on other occasions he had visited Inoa walking up the plantation roadway in full view of the factory.

After Muru had finished his breakfast he left the house to work and Inoa and the accused walked up the main roadway towards Ogotana. According to Inoa he seemed normal in behaviour. This would have been at some time shortly after 9 o'clock. On the roadway they met one John David who came from a village some distance away and who was walking in a southerly direction. According to the latter the accused's behaviour was somewhat strange in that he turned his back on him when they exchanged greetings, but I cannot see any real significance in this action. David went on his way towards the canoe anchorage and on arrival there he saw the woman Uhau in a canoe in the middle of the stream. She apparently was calling out and he entered a canoe to look for her husband, the deceased man Aroma. This was the first indication that Aroma was missing and I assume that David, probably from what Uhau had said, believed that Aroma had fallen into the water.

There is about 500 yards of water between the canoe anchorage and the opposite shore at this point of the Dam and it would appear that Uhau in her canoe would have been about 250 yards out from the shore. Aroma's disappearance was reported to the police and at about midday that day Sub-Inspector Hodder arrived from Port Moresby. On the arrival of the police party at the canoe anchorage there were 20 to 25 native people present standing around and there were also a number of canoes in the water.

Amongst the people on the bank Sub-Inspector Hodder saw Uhou. The Sub-Inspector boarded a powered raft and travelled to within about 80 yards of the opposite shore where Uhou pointed out a tree to him. A police diver dived in the vicinity of this spot but without result and a search was made along the opposite shoreline but nothing of any significance was found. The Sub-Inspector had observed a mark which could have been made by a human foot about 3 feet out from the bank but it was impossible to deduce anything from this mark. However, he did observe that to get a sitting in a straight clear line from the bank to where the powered raft was tied to a tree a person would be forced to enter the water and walk out from the bank for a distance of approximately 20 feet.

Later that evening Sub-Inspector Hodder interviewed the accused at the Sogeri Police Station. I should add that the accused had after returning to his village with Inoa gone to Itikinumu some 12 to 14 miles away where he visited relatives, arriving at some time after lunch. Sub-Inspector Hodder questioned the accused asking him did he know the man Aroma Lahema to which the accused replied "Yes, he was the missionary at Ogotana". He next asked him did he know that the missionary was shot at the Sirinumu Dam that day and killed. According to the Sub-Inspector the accused seemed quite taken aback at the question and shocked and he had to ask him twice more before he received the answer that the accused had been at Itikinumu all day. Upon being asked why he went to Itikinumu he replied that he went to see his sister to have his trousers sewn up. The Sub-Inspector asked him "What time did you go to Itikinumu?" to which he replied "10 o'clock". The Sub-Inspector corrected himself by saying that his question was, "What time did you get to Itikinumu?" However, I do not think that this is of great moment. During the further questioning the accused denied having had sexual intercourse with Uhou. He was subsequently allowed to leave the police station.

Police enquiries continued during the ensuing days and on Friday, 18th December, Sub-Inspector Hodder with Doctor Wilkie, the Government Pathologist, went again to the Dam and in the water about 500 yards from the canoe anchorage and near the opposite shore saw the body of Aroma floating. Around the left arm was a piece of rope loosely looped which they used to tow the body ashore. It was then taken to the General Hospital in Port Moresby where Doctor Wilkie conducted a post-mortem examination. There were four separate round holes on the right side of the face each about a half-inch in diameter, the highest being level with the ear and the others lower on the face. They bore the appearance of shotgun wounds. The mandible had been completely shattered on the right side and the right upper jaw was also fractured. There had been considerable bleeding in the soft tissues of the neck and face in relation to these injuries. Dr. Wilkie recovered a number of pieces of lead from within the

head and I am satisfied beyond doubt that these pieces of lead were portions of pellets from an ICI SG Cartridge and that the shot in this cartridge is designed for large game at close range. Dr. Wilkie was unable to say whether death had been caused by these wounds or from drowning, but it is clear to me that it was caused by one or the other.

On the Sunday, the 20th December, the accused was again brought to the Sogeri Police Station, this time by Constable Ibara who was a Motu/Pidgin interpreter. Whilst awaiting the arrival of Sub-Inspector Hodder the accused was handcuffed and Ibara told him that everybody in the area said that he, the accused, had killed the missionary. There was some suggestion that Ibara said to him that if he hid the truth he, Ibara, would call all the people and they would say that the accused had killed the deceased, but Ibara would not agree that he had said this.

Sub-Inspector Hodder questioned the accused at the Police Station and made out a typewritten record of the interview. No question was raised as to the admissibility of this document and although the questioning by Sub-Inspector Hodder of the accused was strictly in breach of what are known as the Judges' Rules I can see nothing unfair or overbearing in the manner in which he was interrogated and the Sub-Inspector seems to have been at considerable pains to remind him that he was not compelled to answer questions. This record of interview discloses that on the previous Tuesday, that is the 15th December, the deceased man, his wife Uhau and the accused had gone out on the water, that the deceased shot at a bird with a gun but missed, that he told the accused to take the gun and use it, that the accused took the gun, stood on the bank, but instead of shooting a bird shot the missionary. The accused went on further to make a full disclosure of a previous and rather long-standing sexual association with Uhau. The shooting he claimed was at the instigation of Uhau and she had been talking to him since the beginning of the year about killing her husband. In November she wrote him a letter telling him that if he loved her he would kill Aroma but if he did not he should take her underpants and tie them around his neck. This was an insulting remark indicating that he was not a man. This letter he received so he said in the third week in November. He tore it up but went to Uhau and agreed that it was a good idea to kill the missionary and then marry her but he was afraid. Once again in this conversation she taunted him with not being a man and told him to get her underpants and tie them around his neck. This stirred him to anger and he told her that if she were to decide how the deed was to be done he would do it. The next time he was at the missionary's house was on the Monday previous to the shooting and according to him Aroma suggested that they go out to the Dam to shoot some birds for food. Uhau signalled to him that this would be the time to eliminate her husband. He stated that on a previous occasion he had spoken to Aroma about his having

possession of a shotgun for which no permit was held and said that Aroma had told him to hide the gun in the bush near the Dam. On the Tuesday morning he arrived at about 7 o'clock at Aroma's house, had some tea with him and Uhau and then the three of them walked down to the Dam. He went into the bush and took the gun and gave it to Aroma. Aroma had 2 SG Cartridges with him. The three of them entered a canoe and went to the other side of the Dam where the missionary gave him the gun and the cartridge, he went ashore and from a distance of about 40 yards fired at Aroma. Uhau was in the front of the canoe and Aroma in the back. After he was shot Aroma fell into the water. He broke the shotgun against a tree and threw it away into the water and then ran away. He later went to Itikinumu, after having first gone to Muru's house and to his village. He volunteered to take the police back to the Dam and show them where the incident had taken place and also to show where the gun had then gone into the water, but with regard to the latter he stated that it would be hard to find. He was taken back to Port Moresby and charged with the wilful murder of Aroma. On the following day a single barrel shotgun was found in the presence of Uhau but about 30 feet from the canoe anchorage. In the breech was an ICI SG cartridge case. Sub-Inspector Hodder again questioned the accused showing him the gun and asking him whether he knew it. He replied that he did, that it belonged to his father who was dead and that he had been looking after it. Upon being asked whether he wanted to tell anything about the gun he said that he did and thereupon related a completely different version of the shooting. This was set out in a record of interview by the Sub-Inspector. Kauka stated that on the morning of the shooting he went down to the Dam first and waited for Aroma and Uhau to come. At the canoe anchorage Uhau began to take off her clothes to wash in the water whilst Aroma sat on the edge of a canoe. He shot Aroma whereupon he fell to the ground and the accused ran and held him then took him and put him into a canoe, took the canoe out into the Dam having put the shotgun on the ground. He took Aroma into the middle of the water, turned the canoe over and Aroma fell into the water. He saw Uhau throw the shotgun into the water. She followed him in another canoe but when he pushed his canoe back to the shore Uhau sat in her canoe in the middle of the water. He then went to Muru's house, thence to the village and later to Itikinumu. He was hiding in the bush when he fired the shot at Aroma and according to him Uhau knew that he would be waiting in the bushes and she pretended that she was going to wash. He further stated that on the Monday night Uhau had said to him that on Tuesday morning he should wait for them in the bush where the canoes were kept and when they (i.e. Uhau and Aroma) came he should kill Aroma.

I am satisfied beyond reasonable doubt that it was the pellets from the cartridge case in the shotgun found on the Monday morning which entered Aroma's head and that it was the firing of this gun which led to Aroma's death. I am quite satisfied too that the gun was formerly owned by one

Nevara who was an uncle (or clan father) of the accused.

The accused elected, as he was entitled to, not to give evidence nor to call any evidence so that I am left with the problem of satisfaction beyond reasonable doubt of the accused's guilt on the case as presented by the Crown.

Mr. Dillon, for the accused, has forcefully and ably argued the danger of convicting on confessional evidence alone and I am fully conscious of that danger. In his submission the two versions of the killing given by the accused are so incompatible that I cannot really rely on either. As he pointed out although there were a number of people at the canoe anchorage site on the morning of the 15th December, if the second version were true it is incredible that no blood should have been noticed either on the ground or on the accused's clothing or in any of the canoes, no-one heard any shot that morning and the possibility also exists that the shooting could have taken place at least a day earlier. Of course there was no witness to the event. Nonetheless there are to me some indications to connect the accused with the killing. Firstly it is clear that Aroma disappeared on that morning. This I deduce from the witness David's arrival at the canoe anchorage at a comparatively early hour and finding Uhau obviously setting up an alarm over the disappearance of her husband. It is undoubted that the accused was in the vicinity at the time of the disappearance. It is undoubted, too, that the whole of his body had been immersed in water shortly prior to his arrival at Muru's house. In the light of his previous and open visits to the house it would have been unusual for him to go via the river. Although there was no evidence as to the custody of the gun after Nevara's death it is significant to me that no evidence was led of any custody other than that of the accused. The possession of a gun in villages of this Territory is notorious. I am satisfied beyond reasonable doubt that Aroma was shot at a range of no more than 27 feet and I am further satisfied that the grouping of shots on his face would not have been possible at anything like 40 yards. For this reason the version contained in the first confession I discard. In my view too the volunteering of the second statement without prompting or pressure of any sort and after discovery of the gun lends credibility to it. Nothing was said to the accused as to where the gun was found and his second version of events clearly shows that he must have known where it was disposed of after the shooting. There is no suggestion anywhere in the evidence of anyone other than Uhau or the accused having any reason to dispose of Aroma. This in my view is a case where I should make use of the dicta quoted with approval by Their Honours of the High Court in May v. O'Sullivan (1):

"when.....the defendant has been called upon for his explanation or answer, and no evidence has been forthcoming, the Court or jury is entitled to take

(1) (1955) 92 C.L.R.654 at p.658.

into consideration the probable means of knowledge on either side. If the truth is not easily ascertainable by the prosecution, but is probably well known to the defendant, then the fact that no explanation or answer is forthcoming as might be expected if the truth were consistent with innocence, is a matter which the Court or jury may properly consider."

In this case I have a voluntary statement of the accused that he shot Aroma at a range of something like 22 feet, that he disposed of his body in the middle of the stretch of water opposite the anchorage, that he overturned the canoe and swam ashore with it (thus assisting the washing away of blood which would have been present) that Uhau remained at the scene (with opportunity to dispose of any other evidence of the crime) and there has been nothing arising in the course of this trial to suggest why this confession should be untrue.

In these circumstances the lack of explanation by the accused enables me to come to the clear conclusion that it was his hand which fired the gun.

Accordingly I find him guilty.

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Solicitor for the Crown : P.J. Clay, Crown Solicitor.  
Solicitor for the Accused : W.A. Lalor, Public Solicitor.