11 Reg Counsel

IN THE SUPREME COURT OF ) CORAM: FROST, A.C.J.

PAPUA NEW GUINEA )

Tuesday,
9 July 1973

THE QUEEN

-v-

PETER ARANO

REASONS FOR JUDGMENT

1974

Jul. 3,4,9

PORT MORESBY

FROST, A.C.J.

In this case the accused is charged upon indictment that on the 23 April 1974 he wilfully murdered one Voira Amua. There is no dispute that on the night of 23 April at Kaugere the deceased met his death as a result of at least one blow to the head dealt by the accused with a baseball bat.

The defence is self defence and in the alternative that the accused acted under provocation in circumstances such as to reduce the crime to manslaughter pursuant to Section 304 of the Criminal Code.

The only eye witness was Aita Voira, the son of the deceased. His evidence was that on the night in question the deceased had gone to the accused's house which was only a few feet away from his own and had returned some time later. Apparently the deceased and the accused and some other persons were drinking in the accused's house but Aita said that his father was not affected by alcohol. According to Aita a short time later the accused came to the deceased's house armed with the baseball bat. At this stage both the deceased, who was sitting down, and Aita were on the front verandah of the house. The accused was shouting as he came. On arrival he asked, "Why did you get angry and come to your house"? The deceased made no reply. The accused then hit him once with his closed fist upon the head and then with two blows using the bat - one to the left side of the head and the other to the back of the neck. The deceased was struck as he was in the process of getting up. The place where he was struck was identified as the position on the verandah just opposite the steps, where a large pool of blood was later found, and identified by Constable Buasin on the following day.

The accused then left the bat near the deceased's body and left the verandah. He then returned and picking up the bat, ran off. He was seen almost immediately afterwards outside the Kaugere store which was nearby by one John Kate to whom the

../2

accused said, "I struck a man and the man fell down and lay on the ground. I am just running here to tell you this". He went on to say that he had used a club. After running up to the deceased's house John Kate saw the deceased apparently lying dead on the verandah, and then returned to the vicinity of the store where he picked up the baseball bat from beneath a mango tree.

The medical evidence given by Doctor Aiken was that the cause of death was a fractured skull and brain damage, the fracture being on the left side of the skull extending into the base. The associated brain damage was most marked on the right side. It was thus a contre-coup type injury. It was consistent with having been caused by one blow although it was possible that the two had been dealt.

The accused did not give evidence. He relied on four statements which apart from the fact that they contained admissions that on the night in question he had struck the deceased with a club, are entirely self-serving. It is on these statements that the defence case is based.

His first statement was made on the morning of the 24 April to Mr Adams, Director of the Legal Training Institute, where the accused was then employed. The second consisted of answers to questions by Constable Buasin shortly afterwards on the same day. The other two were the statement to the District Court and an unsworn statement to this Court. The substance common to all the statements was that the deceased had been drinking at the accused's house but he left in anger, he then threw several stones at the accused's house, he insulted the accused calling him "Yu samting nating" and threatened to kill him. The deceased collected three spears and an axe from his own house, he threw down the spears and finally he had an axe in his hand when he was struck by the accused.

However there are grave inconsistencies in these statements. In the statement to Mr Adams the accused said he came outside and stood beside a big mango tree and the tenor of the statement indicates that the incident took place outside the house. The accused certainly clearly asserts that the deceased was taken by surprize. This is quite inconsistent with the two Court statements which described a confrontation between the two men with the deceased holding an axe and trying to strike the deceased. In the District Court statement the accused said he spoke to the deceased before hitting him. The whole tenor of that latter statement is also that the incident took place in the grounds outside the house. It is only in the unsworn statement to this Court that the accused makes it clear that he came up to the house and stood on the verandah. However, his account

../3

that he did this deliberately, exposing himself to a blow with the axe held by the deceased is improbable.

I have considered the evidence and I have taken into account the various criticisms by Mr Edwards of Aita's evidence especially the different accounts he has given to the District Court and this Court as to the number of blows dealt by the accused. His evidence is however consistent with the police evidence that no axe was found on the scene nor were there any signs of a struggle having taken place.

The law in relation to unsworn statements is laid down by Griffith, C.J. in R. B. Peacock (1) as follows:

> "The proper direction to be given, it seems to me, is this: that the jury should take the prisoner's statement as prima facie a possible version of the facts and consider it with the sworn evidence, giving it such weight as it appears to be entitled to in comparison with the facts clearly established by evidence."

Having regard to the conflicting nature of the statements made by the accused and the improbable account given in this Court, and weighing that unsworn statement supported to some extent as it is by the statement to the District Court, with the sworn evidence, I am unable to give that unsworn statement any weight and I reject it and the other statements as credible accounts.

I think it is possible that, as is not uncommon with indigenous witnesses, Aita may have exaggerated by stating that there was more than one blow with the bat even although the medical evidence is that two blows might have been received. However the medical evidence casts doubts on Aita's evidence that the deceased was not affected by alcohol. However I am satisfied beyond reasonable doubt to act on the substance of Aita's evidence which is to the effect that the deceased, unarmed, met his death by the accused attacking him with a baseball bat.

I am thus satisfied beyond reasonable doubt that the accused did not act in self defence, and that defence has been excluded by the Crown.

There remains the defence of provocation. It is of course quite possible that the deceased made statements to the accused as he left the house which angered the accused but, rejecting as I do the accused's statements, there is no foundation for this defence. If any such offensive statements were made by the deceased I am quite satisfied beyond reasonable doubt that, from the action of the accused in taking the baseball bat from his own house and going to the deceased's house, in all the circumstances of this case the accused

.../4

(1) (1911) 13 C.L.R. 619

acted deliberately in retribution and that the Crown has excluded that the accused did the act which caused death in the heat of passion caused by sudden provocation.

The accused is therefore guilty of unlawful killing but having regard to the circumstances and especially that both parties had been drinking, I am not satisfied that there was any intention to kill. I am however satisfied that the accused's intention was to do grievous bodily harm within the meaning of Section 302 of the code.

I therefore convict the accused of the murder of Voira Amua.

Solicitor for the Crown B. Ryan

Solicitor for the Accused B. Edwards