

27/2/60

REASONS

At the close of the trial I intimated that the evidence admitted by me discloses in my opinion circumstances which establish an intention on the part of the accused to inflict more than the injuries comprised in Section 302. In my opinion the evidence establishes the crime of wilful murder, but my proper course is to return a verdict of guilty of murder as charged, under Section 302, by virtue of the provisions of Section 584.

I do not want to be taken as saying that the indictment ought to have been for wilful murder in the first place. The result indicated has been due to the unusually clear evidence given by two witnesses as to the nature and extent of the victim's wounds.

During the hearing the whole of the evidence of Mr. Smith, recounting his conversation with the accused, was objected to by Counsel for the Defence, relying on the recent English case R. v. Attard (1959) Cr.App.R.90 and other cases decided in Australia. (R. v. Wong Ah Wong & Ors (1957) S.R.(N.S.W.)582). Following the views which I have expressed in other cases and set out in a note of my decision in R. v. Gabi Kopa (Tapini, 12/1/60) I over-ruled the objection. It is clear in this case that if the objection had been upheld there would have been no evidence implicating the accused, and he would have been acquitted.

At this time when the legal system of the Territory is under review I think it would be highly desirable for this old and important problem of the Territory to be settled by authoritative decision, for any necessary change in the administration of the law on this question would require substantial changes in the practice and facilities of the legal institutions.

On the question of penalty, I can see no native social environment which would explain or mitigate the crime. It was a cold-blooded act, not an enraged attack, nor due to violent quarrels. The accused may have felt the strain of trying to persuade his wife to return to him, without success, over a period of four days or so, but he quietly inflicted wounds which in his experience must have been such as to cause profuse bleeding and as quietly made his escape to avoid the wrath of others.

I think that the principle against deliberate killing and maiming of others, and especially wives, is directly called into account. Making substantial allowance for the lack of education, Government and Mission influence and the primitive social status of the accused, I think that he should be sentenced to ten years' imprisonment with hard labour.