

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

CORAM : CLARKSON, J.

THE QUEEN

v.

FERAPO MEATA

1967
March 8th
and 9th.
Kerema.

The accused is charged with the wilful murder of one Sarifa.

The evidence shows that on the night of 20th July 1966 the accused attacked the deceased from behind whilst the deceased squatted in a latrine area near their village. The accused inflicted fatal wounds with an axe and a knife. He did this with the intention of killing the deceased.

The evidence is that the accused and the deceased were members of a community where a belief in the power of a sorcerer to kill by sorcery is genuinely and widely held. Such a killing, it is thought, can be accomplished by the exercise by the sorcerer of some supernatural power. The deceased was generally regarded as possessing and as having in the past exercised this power.

It appears that in 1965, two nephews of the accused died and in 1966 a daughter of the accused died. There was no evidence of the cause or manner of any of these deaths but the accused formed the belief that the deceased had killed his relatives by sorcery. He sought to appease the deceased who foolishly, as it now appears, accepted an offering of £5 from the accused in return for an undertaking not to harm any more members of the accused's family.

About a week before the killing, the accused's youngest daughter became ill. Again the nature of the illness was not disclosed. The accused concluded that the deceased had not kept his bargain and became, as he said, very angry. He taxed the deceased with his apparent breach of faith and unsuccessfully demanded the return of his £5.

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Finally, on 20th July, seeing the deceased defenceless and unwary, he crept up behind him and killed him in the way I have already described. I note here that the object of the killing was not established. The accused said that at the time, he thought his daughter was going to die. Whether he killed for revenge or in an attempt, as he thought, to save his daughter, I am not sure. I assume, in his favour, that the latter was his purpose.

The defence may be simply stated as being that the killing was in aid of the defence of the accused's daughter to prevent her death, and is based on Section 273 of the Criminal Code, as amplified by Sections 271, 245 and 246.

(These sections were read).

These sections alone would not appear to assist the accused.

But the defence goes further. It sets up that the accused's belief that the deceased was a sorcerer killing his daughter was a reasonable belief within Section 24.

(This section was read).

By implication, the defence concedes that the accused's belief was mistaken but it is argued all these sections combine to justify the accused's act.

This argument raises a number of problems which, on reflection, I do not find it necessary to consider in the present case.

I reach the conclusion I do on the proper construction as I see it, of the sections relating to self defence and defence in aid, and therefore I do not pause to consider, for instance, whether the accused's belief was reasonable or was a belief in a state of things within the meaning of Section 24.

Also, as I have said, I have assumed in the accused's favour that the killing was not by way of revenge.

The justification provided by Section 273 applies only when a person has unlawfully assaulted another. The relevant part of the definition of "assault" in Section 245 has two limbs. The first provides that one who "strikes,

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touches or moves, or otherwise applies force of any kind to the person of another" assaults that other. The second provides that one who "by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another" assaults that other.

"Applies force" includes "the case of applying heat, light, electrical force, gas odour or any other substance or thing whatever if applied to such a degree as to cause injury or personal discomfort."

I deal with the two limbs separately:

As to the second, there is no evidence of a bodily act or gesture indicating an attempt at or threat of force. The deceased, on the evidence, was not shown at any relevant time to have been in the presence of the accused's daughter and there was no suggestion of any physical act done by him which could indicate harm to the accused or to his daughter. It follows that there was no assault within the meaning of this limb, and indeed, I did not understand counsel for the defence to suggest that there was.

The argument for the defence, as I understand it, rests on the contention that the accused "applied force" within the meaning of the first limb of the definition.

Counsel rightly pointed out that the definition of the phrase "applies force" in Section 245 is not expressed to be exhaustive but I think it is clearly a case where the *eiusdem generis* rule applies and that the "force" referred to is one detectable by the ordinary senses. A striking, touching or moving would be so detected by the victim and it is only when a person does such an act or "otherwise applies force" that an assault occurs. I think this view is confirmed by the fact that the application of energy in the form of heat or light, for instance, constitutes an assault only if injury or personal discomfort is caused.

If the accused had reasonably and mistakenly believed his daughter was in a particular bed and had seen the deceased striking at the bed, Section 273 and 24 could no doubt combine to justify his assaulting the deceased even if in fact his daughter was hiding safely under the house. But this is not what the accused sets up. What he

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says is that he thought the deceased was engaged in exercising a supernatural power to harm the girl. He concedes by his defence that the accused in fact possessed no such power and therefore could not be exercising it, but claims that it was reasonable for him to believe mistakenly in the existence of the power and that it was being exercised.

As at present advised, I would not be prepared to concede that such a belief is a reasonable belief but, in any event, it seems to me that the state of things, if it can be so described, in which he believed does not qualify for protection under the sections to which I have referred. Even if the facts he believed to exist had existed, the deceased was not "assaulting" the accused's daughter.

Even on the assumptions I have made in favour of the accused, it is necessary, in order to establish the defence, to concede not only a mistaken belief in a state of things, namely that the deceased was a sorcerer exercising a power to harm but also a mistake of law, namely the mistaken view that an assault can be made without any application or threat of force. Section 24 does not permit the latter concession.

In my view, therefore, the defence based on the sections to which I have referred, fails and it is unnecessary for me to consider the other arguments raised.

I am satisfied, as I have already indicated, that the accused killed the deceased, intending to kill him, and I find the accused guilty of wilful murder.