Mr. Justice Raine

767

IN THE SUPREME COURT
OF PAPUA NEW GUINEA

CORAM: WILSON, A.J.
Thursday,
20th September, 1973.

REG. v. NERE PUNDALI and YAMBI PERALIN

First Ruling

1973

Sep 12, 13, 14, 17, 18, 19 and 20.

WABAG

Wilson AJ

In this case the two accused, both of the Ki clan, stand charged with the wilful murder of one Warum Korao of the Kara clan. It is alleged by the Crown that the two accused men each struck the deceased with axes or tomahawks, one of which blows, which was to the head, caused the deceased's death later the same day. It is alleged that the deceased had been selected as a suitable payback victim following the death the previous night of one Ladlio Akopen, a member of the tribe of the two accused men, the Ki clan. It was felt that the Kara clan had been responsible for Ladlio's death and that another death as compensation was called for. It is alleged that the two accused men deliberately struck the deceased intending that he die.

The Crown (represented by Mr. L. Roberts-Smith) seeks to lead evidence, to which objection has been taken by counsel for the Defence (Mr. W. Andrew), of a statement said to have been made by the deceased after he had suffered the injuries which caused his death and shortly before he died. This statement refers to his impending death and identifies his assailants. The contention of Mr. L. Roberts-Smith, for the Crown, is that such a statement by the deceased constitutes what is commonly known as a dying declaration and, as such, is admissible as evidence of the matters contained therein. Mr. W. Andrew, counsel for the two accused men, has submitted that the statement is inadmissible as contravening the evidential rule against hearsay and that it does not fall within the strict rules applicable to the admission of dying declarations.

Before I refer to the authorities which are relevant to the point in issue, I set out the substance of the statement and my conclusions arrived at on the balance of probabilities as to what the deceased's belief was as to his impending death and (whether necessary or not) as to what the deceased thought would happen to

1973

Reg. v. Nere Pundali & Yambi Peralin

Wilson AJ

him if he did die. I received evidence on the voir dire as to these matters with a view to placing myself in a position to rule upon the evidence that has been objected to. I find, for the purposes of the ruling only, as follows:

(1) That the alleged statement attributed to the deceased at the hospital prior to his death later the same day was, according to the witness, Kulau Wangiru, "I am dying because Nere and Nambi hit me."

(2) That the deceased used the words "I am dying" (naba kumely lege) and not the words "I am in pain" (tanda pyuma lege).

(3) That the deceased's statement, insofar as he purported to identify his assailants, relates to the cause of his death.

(4) That the deceased was under a settled hopeless expectation of death when he made the statement. He was in hospital. He knew he had received a heavy axe wound to his head. I add one further observation that follows from this finding, viz. that the deceased's belief went at least as far as a belief that he was in danger of approaching death.

(5) That the deceased died shortly after it was made.

(6) That the deceased would have been a competent witness if called to give evidence at that time. At the time of his admission to hospital he was "fully conscious although slightly confused." He had received a fracture of the vertex of the skull and a small tear in the dura. According to the doctor who treated him, his thought processes were rational.

(7) That (if it be necessary for me to so find) the deceased probably thought, much as do many Christians, that a man has some future after death and that a man's future after death depends, or might depend, on the goodness or otherwise of his life before death. The deceased appears to have had some contact with the Christian religion. It has not been shown that the deceased, however his beliefs might be characterised, had no belief in a future state after death.

(8) That (if it be necessary for me to so find) the deceased's motive for falsehood at the time of making the declaration was silenced and he was under the most powerful conviction to tell the truth. Accordingly, the deceased was under a feeling of compulsion to tell the truth.

A dying declaration which is hearsay evidence may be admissible at common law and therefore becomes one of several exceptions to the "hearsay rule," provided that certain conditions of admissibility have been strictly complied with.

"Dying declarations ought to be admitted with scrupulous, and I had almost said with superstitious, care" - see Byles J. in R. v. Jenkins (1).

The common law rule as to the admissibility of a dying declaration is as follows:

"The oral or written declaration of a deceased person is admissible evidence of the cause of his death at a trial for his murder or manslaughter provided he was under a settled, hopeless expectation of death when the statement was made and provided he would have been a competent witness if called to give evidence at that time" - see Cross on Evidence (Australian Edition), p. 528.

Section 32 of the Criminal Procedure Ordinance provides:

"32. The declaration of a deceased person whether it be made in the presence of the accused person or not may, if the Chief Magistrate shall see fit, be given in evidence if the deceased person at the time of making such declaration believed himself to be in danger of approaching death but yet had hopes of recovery."

I am persuaded by the reasons of Clarkson J. in R. v. Kipali Ikarum (2), where there is a careful and comprehensive analysis of the law in Papua New Guinea as it relates to dying declarations. I accept, as His Honour did, that Sec. 32 merely effects a minor refinement of one of the common law conditions of admissibility and, in doing so, makes admissible some declarations which otherwise would be inadmissible but for Sec. 32.

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(1) (1969) L.R. 1 C.C.R. 187
(2) (1967) P. & N.G.L.R. 119

There have been a number of decisions in this country and elsewhere which relate to the extent to which it is necessary for the Court to investigate, before making a ruling as to the admissibility of a dying declaration, the beliefs of the particular deceased especially if the deceased be a member of a native community. I refer to: R. v. Kuruwaru (3); R. v. Wadderwarri (4); R. v. Madobi-Madogai (5); R. v. Kipali Ikarum (6) (supra).

Counsel has referred me to two fairly recent (as yet unreported) decisions of this Court, one a decision of Raine J. in July 1971 (No. 636) and one a decision of Prentice J. in December 1972 (No. 725). I have not had an opportunity to read either of those judgments or indeed to satisfy myself that they are relevant to the point in issue. I am called upon to make this ruling whilst on circuit at a place where there are very limited library facilities (with no law reports) and which is so remote that there is no telephone which could be used to contact the Supreme Court Librarian in Port Moresby with a view to having the judgments read to me or summarised for me over the telephone. I gather from counsel that both decisions are authority for the proposition that a belief in Christianity on the part of the declarant is not a pre-requisite for the admissibility of a dying declaration. If that is what those cases are authority for, I respectfully agree with their Honours' opinions.

My view is that one ought not to assume that a sanction against telling falsehood prior to death exists where the deceased is a civilized member of a predominantly Christian community any more than one can assume that no sanction exists where the deceased is a member of an uncivilized or partly-civilized native community.

If it is appropriate to undertake an investigation or enquiry into the beliefs of the declarant at all, then, in my view, such an investigation should, in the absence of statute law to the contrary, be undertaken whether the declarant lives in a predominantly Christian society or not and, in fact, whatever the nature of the society in which the declarant lives.

It may well be that legal authority supports the view that an investigation or enquiry is not required at all.

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(3) (1860-1907) Q.C.R. 372
(4) Unreported, but referred to in (1960) 34 A.L.J. 195
(5) (1963) P. & N.G.L.R. 252
(6) (1967) P. & N.G.L.R. 119

Clarkson J. in the case of R. v. Kipali Ikarum (7) (supra) said: "The stage may well have been reached when this Court should not embark on the necessary inquiries." and therefore foreshadows the view that an investigation is not needed anywhere. It may well be that the decisions of Raine J. and Prentice J. (supra) resolve this issue at least as far as they are concerned. The lack of case reports in this remote place prevents me from reaching a definite conclusion one way or the other. Suffice it to say that, following the reasoning of Clarkson J. in R. v. Kipali Ikarum (8) (supra) which I find attractive, I suspect that the law is that such an enquiry is not required at all. However, as I cannot be entirely satisfied that the law is as I suspect it is, I have taken the precaution of having such an investigation or enquiry carried out with the consent and co-operation of both counsel. Bearing in mind the evidence elicited during the voir dire examination of this aspect of the case, no great harm will have been caused and only time will have been wasted if the law is as I suppose it to be. If the law is that an investigation is required, then such investigation has been carried out in this case and the interests of these two accused have not been prejudiced by me failing to do something that I should have done.

I am reinforced in my decision to adopt what might appear to be an over-cautious or hesitant approach to this problem by an awareness that the Native Customs (Recognition) Ordinance 1963 is law in this country, to which full effect should be given. That Ordinance, it seems to me, calls upon the Court to recognize native custom (see Sec. 6) and to do so especially when it may be necessary "to ascertain the existence or otherwise of a state of mind of a person" or "where the Court considers that by not taking the custom into account injustice will or may be done to a person" (see Sec. 7). The question of the admissibility of a dying declaration raises for consideration (albeit with an onus of proof limited to the balance of probabilities) of what the state of mind of the declarant was at the time of making the declaration as to his life expectancy. Consideration of a person's state of mind as to his life expectancy may involve some consideration of his appreciation of what death really involves for him as well as a consideration of the proximity of his expected death, If the law is that an investigation should be undertaken, for me to have declined to do so and

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(7)(1967-68) P. & N.G.L.R. 119 at p. 130
(8) (1967-68) P. & N.G.L.R. 119

to have ruled that this dying declaration was admissible in circumstances where the native custom of this declarant may have revealed that this dying declaration was inadmissible (e.g. where death means the immediate and entire transportation to a better world), may well have led to an injustice to these two accused.

I am led to the conclusion that the deceased's declaration should be admitted in evidence. As Clarkson J. said in R. v. Kipali Ikarum (9) (supra):

> "The true position may well be that referred to earlier, namely, that this Court would not now embark on inquiry as to the personal religious beliefs of a declarant to *determine admissibility as opposed to weight*.....".

In any event the evidence in the case before me is that the deceased had beliefs of a kind sufficient to bring his declaration within the scope of the rule in relation to dying declarations.

I have given particular and anxious consideration to whether or not it has been established in this case to the requisite degree of proof that the deceased was, at the time of the making of the declaration, a competent witness, having regard to his medical condition at the time (see my finding No. 6 above).

I follow the principle established in R. v. Pike (10) where it was held that the statement of a child aged four made shortly before its death should be rejected.

In Cross on Evidence (Australian Edition) at p. 532, the learned author suggests: "No doubt the principle of R. v. Pike would apply to the statement of a lunatic."

Likewise, in considering the competence of evidence *from a weak-minded or incapacitated person*, that person's ability to be rational must be considered and, if he is not thought to be rational, the witness may be declared to be incompetent.

A witness is not competent when there is an obstacle in law to his giving evidence, if he so desires. Any doubt as to the competence of the declarant to have given evidence had he lived is material for the exercise

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(9) (1967-68) P. & N.G.L.R. 119 at p. 121
(10) (1829) 3 C. & P. 598

of the Court's discretion to exclude the declaration.

Just as in considering the competence of evidence from a child, a lunatic or an incapacitated person involves a consideration of whether the declarant is sufficiently intelligent to be able to give a rational account and understand the duty of telling the truth, so, in my view, in considering the competence of evidence from a person who is dying from a serious head injury involves a consideration of whether the deceased is sufficiently well oriented in his mind to be able to give a rational account and understand the duty of telling the truth.

I find on the balance of probabilities that the deceased was not so injured or so confused, even with a fractured skull, to lead one to the conclusion that he was not fully rational. On the other hand, I consider that the extent of any confusion may well be relevant at a later stage when considering weight.

I rule that this dying declaration is admissible. What weight is to be given to it is another matter. The question asked of the witness is allowed. The reply to the question is, in my view, a statement which comes within the strict rules applicable to dying declarations.

Second Ruling

The two accused, both members of the Ki clan, stand charged with the wilful murder of one Warum Korao of the Kara clan at Amala on 30th June 1973. It was alleged by the Crown that the two accused, in the tradition of the Enga people, had selected the deceased, the "No. 1 man" in the Kara clan, as a suitable payback victim following a long history of inter-clan enmity. It was further alleged that what sparked the payback was the death the night before the death of the deceased of one Ladlio Akopen, a member of the Ki clan, whose death was attributed to the Kara clan. A payback killing was thought to "even the score" and avoid the necessity for the payment of compensation in other forms, such as the handing over of pigs.

The methods used in the killing of the deceased were not uncommon amongst the people of the two clans in question, who are known as the Enga people, a semi-primitive

and highly volatile Highland people. The deceased was woken at dawn and as he went to the door of his house he was struck heavily by his assailants each of whom carried and used an axe.

The evidence was that the deceased received two axe blows, one a fatal blow to the vertex of his skull which resulted in his subsequent death and the other a blow to the shoulder.

The trial commenced on Wednesday 12th September 1973 at Wabag and continued with some unavoidable interruptions until 20th September 1973 covering a period of six sitting days. The Crown was represented by Mr. L. Roberts-Smith and the two accused men were represented by Mr. W. Andrew.

The Crown case was as outlined above. The most critical aspect of the Crown's case, as it appeared to me, was whether or not the two accused were the men who struck the deceased killing him. The Crown witnesses comprised the following:

1. Kulau Wangiru, the deceased's father, who testified that he had slept in the same house as the deceased the night before the attack and that he had seen the two accused men strike the deceased at the door of the house and then run away.
2. Dan Enjio of Amala, who testified that he lived in a house near to the deceased's house, that he heard the deceased cry out, and that he saw the two accused men (one of whom was carrying an axe) fleeing from Warum's house shortly after the time when the attack must have occurred.
3. Yerapai Lagun, the deceased's wife, who testified that she had been sleeping in a nearby pig house and did not see the attack but later heard the deceased utter a dying declaration purporting to identify the two accused men as his assailants. I was called upon to make a ruling as to the admissibility of such a declaration and I announced my reasons for making such a ruling during the trial.
4. Nick Ligamen of Amala, who testified that he heard the deceased utter a dying declaration purporting to identify the two accused men.
5. Councillor Niock, a relative by marriage of the Kara clan, who testified that he too heard the deceased, shortly before he died, utter a dying declaration purporting to identify the two accused men.

6. Constable Lili Luguwe, who gave some evidence, but his evidence was of little importance.

Medical evidence was given by way of the tendering of the depositions of a Dr. Pybus, who had treated the deceased during the few hours after the attack and before his death.

It was suggested in crossexamination of these witnesses, and to some extent established, that two other men had, subsequent to the arrest of the two accused men, confessed to the killing. It was also suggested that the first five prosecution witnesses, all of whom were connected with the Kara clan were falsely accusing the two accused men because they (the two accused) were "big men" in the Ki clan who should be implicated and punished in reprisal (or payback) for the death of the deceased Warum Korao who was the "No. 1 man" of the Kara clan.

At the conclusion of the Crown case there was no submission of "no case to answer" and I saw no reason at that stage not to proceed with the trial. There was clearly before me at that stage sufficient satisfactory evidence upon which a reasonable jury properly directed could convict.

The Defence case then commenced, and I was told that each of the two accused men would give evidence and that a number of witnesses would also be called. The following witnesses gave evidence:

(1) Nere Pundali, the first of the two accused men, gave evidence that he was the "No. 1 man" of the Ki clan, that he had been "marked" or falsely accused of the death of the deceased, and that he had an alibi.

(2) Kapakon Monda, the accused Nere's wife, gave evidence in support of the alibi.

(3) Moses Epati, of the Laipiane clan, testified in support of the alibi,

(4) Liamas Warai, of the Itapuni clan and a brother-in-law of accused Nere, did likewise.

(5) Yambi Peralin, the second of the two accused men, gave evidence that he had not killed the deceased, and that he too had an alibi.

(6) Yapaine Yakap, of Sopos, testified in support of this alibi.

(7) Pungwa Tibuk, the wife of Yapaine, gave evidence in corroboration of her husband's evidence.

(8) Constable Joel Sirabui gave some factual evidence as to the movements of the accused Nere, as to distances and times, and also as to interviews he had had with two men named Imbo and Tomang.

The Defence case, in summary, was that the two accused men, both "big men" in the Ki clan, had been falsely accused of this crime by the Kara clan as a payback or revenge for the death of the deceased, the "No. 1 man" in the Kara clan.

At one stage of the trial I felt that it was my duty to draw counsel's attention to a number of matters. I did so and was grateful to counsel for their co-operation and assistance.

The trial then proceeded and I heard evidence from an anthropologist, Mr. Malcolm Lamont McKellar, whose evidence was to be followed by that of the two men who had allegedly made a voluntary confession of having been the persons who killed the deceased. There was a suggestion that these two persons had been "nominated" to accept the role of the killers.

The situation I was in, sitting in my dual role as Judge and Jury, was that I had before me conflicting testimony. There was ample evidence suggesting that inter-clan trouble had reached the point of open hostility. Feelings were running high. It looked to me at that stage that, upon hearing the evidence of the remaining two witnesses, I could be called upon to decide whether I was satisfied beyond reasonable doubt as to all material aspects of the charge against the two accused men, and, in particular, whether the Crown had discharged the onus that rests upon it in criminal trials of this kind. There was an absence of objective evidence, direct or circumstantial, to implicate the two accused. The task that was ahead of me was not only to resolve, if I could, the differences between the witnesses but also to make a proper decision on the evidence and decide, having regard to the demeanour of the witnesses and other relevant considerations, as to whose credibility was to be accepted and who was to be disbelieved or not relied on. I was all too aware of the observation of Smithers J. in R. v. Mon and Debong (11):

> "When the court is dealing with native persons whose ways are frequently inscrutable, it is not for the court to reject hypotheses because they are not reasonable as

(11) (1965-66) P. & N.G.L.R. 42 at p. 51

applied to the white man. The onus is on the Crown to convince the court of the reality of its allegations against a background of the unknown. In such a setting an ounce of objective evidence is obviously of great value to the tribunal and the absence of that evidence may well be fatal to the Crown."

and of Clarkson J. in Reg. v. Namiropa Koinbondi (12):

"Where the law requires the proof of a fact the court must feel an actual persuasion of the occurrence of that fact. A mere mechanical comparison of probabilities is not enough. There must be a belief in the reality of that fact."

and of recent decisions relating to the meaning of "reasonable doubt".

This case was the more complex because there does not appear to have been any investigating officer as such in the case.

The issues confronting me at that stage were vividly brought into focus by the evidence of Mr. McKellar, the anthropologist. His evidence (which was admitted pursuant to the Native Customs (Recognition) Ordinance 1963 without objection), if believed and accepted, would have led to the almost irresistable conclusion that it would be a rare case indeed where a court could feel satisfied beyond reasonable doubt as to the guilt of an accused person in circumstances where the accused and his witnesses on the one hand and the Crown witnesses on the other come from, or are aligned with, feuding Enga clans, where there is no objective evidence, whether direct or circumstantial, to support the Crown case, where there are no other factors present to enable the court to decide as between the varying stories, and where there are allegations of "false accusation" or "marking" on the one hand and/or "nomination of the innocent" or "pre-selection of those who are innocent to surrender and take the consequences" on the other hand.

The relevant parts of Mr. McKellar's evidence are:

Examination -in-Chief: Q. Within the Enga society, in serious matters of crime, is there a custom, especially in cases which involve two clans with a history of disputes, whereby one clan would mark a more important or big man as being the guilty

(12) (1969-70) P. & N.G.L.R. 194 at p. 200.

party when in fact they might know that he is not the guilty party?

(Notwithstanding no objection, His Honour rules evidence admissible under recognition of Native Customs Ordinance.)

A. Your Honour, my experience is that they don't view it in that way. Custom is to apportion guilt collectively so that the matter becomes a dispute between one clan and another. However, I would say this, that it would be to the accusing clan's benefit to be able to include somebody of high status in the group to which it is trying to apportion collective guilt.

H.H. Q. Is what you are saying that you agree with the proposition put to you in the previous question but with the qualification that it is seen in a different light by the Enga people themselves?

A. Yes, Your Honour.

Examination -in-Chief: .....
.....

Q. Is what you are saying that it is a custom of the Enga people for the accused's group, where the important people are named, then to turn around and put forward some unimportant people?

A. Yes.

Cross-examination: .....
.....

Q. As to the custom of these people, I think you have never seen an example of one clan accusing the big man of the other clan even if the one clan knew it was not the big man?

A. Yes.

Q. Is it not also a custom for the Enga people to protect their big men?

A. Yes.

Q. And you have indirectly experienced cases where ordinary men have come forward to take the blame for big men?

A. Yes.

Q. And I think you also said that the reason you said it would be possible for a big man to be

named falsely by another clan because it did sometimes work the other way, is that correct?

A. Yes, I think I also said that there would be material advantages for doing so.

Q. But, to that extent at least, your opinion is that it might be a custom?

A. Yes.

Q. So as a matter of fact you do not know whether in fact there is such a custom?

A. Yes, I do not know.

Q. If a clan wanted compensation for a death, is it not a fact that they might suffer disadvantage if the big man from the tribe from whom they wanted the compensation were to be sent to prison?

A. Yes, the compensation would be less in all probability.

Q. So, to that extent, whilst they may name big men in the other clan as responsible in order to attract those big men into a compensation situation, it would not be to their advantage to make that accusation before a court and thereby take the risk of losing a portion of that compensation, is that correct?

A. It is correct to the extent of the amount of the material compensation that is handed over. But there is another aspect of compensation to be considered, and that is the punishment that those particular men would suffer. As an example, if the defendant were sent to gaol for the term of his natural life, then for all clan purposes he would be socially dead in relation to the village; no material compensation would be necessary because the payback would be complete - "a life for a life".

H.H. Q. Do you mean that payback killing or payback equivalent to killing and compensation to the point of satisfaction are synonymous?

A. Yes, Your Honour.

Q. You said that "as a matter of fact" you do not know "whether there is such a custom",

i.e. of one clan accusing the big man of another clan falsely, how would you as an anthropologist expect to learn whether or not such a custom exists?

A. By asking people how after it had happened and in what circumstances.

Q. And by any personal experience of your own?

A. It is unlikely that I would have personal experience of my own - but I could find out by doing a survey.

Q. Upon what do you base your opinions as to custom given in your evidence this afternoon?

A. By evidence .... in .... some 600 cases so far this year (400 at Wabag and 200 at Wapenamanda) and from survey work which I have done as part of my thesis and from studies of previous anthropological works among the Enga. The leading works are "The Mountain People" by Westermann, "The Lineage System of the Mae Enga" by Prof. M.J. Merritt (the Professor of Anthropology at the City University of New York) - he pays periodic visits to the field and his last return visit was just after the incident before the court had occurred, and his actual location of field work is Sari, just the other side of Teremanda; and while he was here he spent a good deal of time in discussion with me in a professor/student relationship - there are the anthropological works which Prof. Meggitt has published mainly in the form of journal articles in relation to specific aspects of Enga culture.

Q. I don't know whether you can answer this question, and please indicate if you can't, but can you refer me to any specific work of any anthropological expert or any specific part of work which refers to "false accusing" by the Enga and/or "the standing-in of innocent people for the guilty" by the Enga?

A. There is a publication called "Official and Unofficial Courts" by Marilyn Strathern. She is the wife of the Professor of Anthropology at the University of Papua New Guinea and the

"courts" and "unofficial courts" referred to in that are in relation to Mt. Hagen - but what is written in that book can, in my opinion, be applied directly to the Enga people, and there has been no such equivalent work done on the Enga, and the section on "unofficial courts" relates to the way that the Hageners sort out the problems of "false accusation" in their "unofficial courts", and, in my opinion, that refers equally to the Enga situation.

Q. .... Can you tell me whether the author herself is qualified in any way as an anthropologist or person expert in the ways of Highland people in New Guinea?

A. She holds a Doctorate in Anthropology. There is a brief reference in Meggitt's book explaining how Enga people achieve what they want in dispute situations. The brief reference is, from memory, "they employ force, deceit and litigation". .....

It was after Mr. McKellar's evidence had been given that Mr. Roberts-Smith, counsel for the Crown, and being a person who is an officer duly appointed by the Administrator in Council to sign and present indictments to any court of criminal jurisdiction, informed the court (and in accordance with usual practice gave an undertaking to inform me formally by writing under his hand upon my return to Port Moresby from this circuit sittings) that the Crown would not be further proceeding upon the indictment upon which the two accused had been arraigned and then pending in the court. He purported to enter a nolle prosequi. At first I hesitated as to whether I should accept the nolle prosequi but, upon reflection, I have decided that, having regard to Sec. 563 of the Criminal Code (Queensland adopted) and upon being assured that this conforms with the usual practice, I am required to do so. Mr. Roberts-Smith is an experienced Crown Prosecutor. Notwithstanding the responsibility that his decision carries with it, the Crown Prosecutor is not answerable to anyone in this regard, even to me as the presiding Judge. I have no reason to believe that he cannot make up his own mind on a matter such as this, bearing in mind the evidence that has already been given and the witnesses as yet not called. For me to refuse to allow him to enter a nolle prosequi would be for me to interfere impro-

perly with a responsibility that falls to the Crown and, in this instance, to the Crown Prosecutor as an independent officer of the Crown - see R. v. Sneesby (13) and R. v. Puplett (14).

The conclusion to this trial is therefore reached somewhat unexpectedly and prematurely. The two accused are discharged from any further proceedings upon the indictment. They are free to leave the court.

As they do so, I feel that I should say something about the circumstances surrounding this long trial. I am referring to matters which fall outside the perview of the evidence and which would not have effected any decision of mine in this case had I been called upon to announce a verdict. This trial has created considerable local interest. Crowds built up daily to the stage that this small court-room was packed to capacity with numbers of people having to sit on the floor. Crowds outside the court-room, clustered generally in two fairly well-defined groups, numbered several hundreds of persons. On more than one occasion crowds had to be dispersed by police as dozens of faces were pressing against the court-room windows seeking to gain a glimpse or sound of what was going on inside. Police and other officials concerned with law and order and crowd control were constantly on the watch for developments. The evidence that was given in the trial up to the stage that the Crown purported to enter a nolle prosequi supported the intimation given to me as a matter of courtesy to the Bench both before and at the commencement of the trial that trouble, in the form of inter-clan fighting or rioting, might be expected before or at the conclusion of the trial.

The sociological and anthropological implications of the incident of the deceased's death probably far outweighed the legal and criminal justice implications for those concerned in it. Be that as it may, all of those officially concerned in the trial were called upon not only to do their duty but also to be seen to be doing their duty. I am satisfied that, as far as I could assess the position, the two counsel in this case and the court officials, including Associate, police orderlies and court staff, discharged their respective duties in the best traditions of the legal system which exists in this country.

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(13) (1951) Q.S.R. 26
(14) (1968) Q.W.N. 16

I was concerned lest this trial, far from bringing about a solution to the trouble, would, instead, be the spark to ignite further and more serious trouble. I felt it was my duty, as presiding Judge and also as one who has a responsibility to ensure that the criminal justice system wherever possible serves the community, to ensure that appropriate steps be taken to ensure the preservation of life, liberty and property. I was naturally concerned for the personal safety of all persons involved in this trial whether they be the accused, witnesses, spectators, counsel, court officials or even Judge. With this concern in mind I invited the Deputy District Commissioner, Mr. H. Redman, in the absence of the District Commissioner, to confer with counsel and me in Chambers with a view to him giving me such assurances as he could about plans he had made for the control of any situation that might arise. He was able to put my mind at rest and I felt reasonably happy that everything that could reasonably be done was being done.

Before I leave the Bench I will say something to those assembled about the implications for them of further trouble. I will, at the Deputy District Commissioner's suggestion, advise the members of the two clans to sit down with Administration staff and negotiate with a view to reaching a final settlement without blood-shed. I will remind those assembled that the law in this country is strongly against payback killings. As I would be surprised if any person in the near vicinity of Wabag is unaware of the dispute which gave rise to this trial and the fact that this trial has been proceeding during the past week, it is not unreasonable to assume that any advice or warning I give will become widely known at least amongst the Ki and Kara clan of the Enga people. I indicate, as strongly as I am capable of, that, if there is any further payback killing stemming directly or indirectly from the death of Warum Korao or the discharge of these two accused, the persons responsible, if proved to be responsible, can as far as I am concerned expect the severest of punishments. It is likely that evidence would be adduced to satisfy me that whoever kills again in revenge for what happened at Amala at dawn on 30th June 1973 not only did so wilfully but also did so well-knowing the illegality of such a deed and the likely serious consequences that would follow. Again, speaking entirely for myself, I would feel constrained to give the most serious consideration to imposing the death penalty or at least imposing a gaol sentence in the order of fifteen years against the guilty person or persons.

Traditional payback killings must stop.

Solicitor for the Crown : P.J. Clay, Crown Solicitor

Solicitor for the Accused: G.R. Keenan, Acting Public Solicitor