

THE HIGH COURT OF THE WESTERN PACIFIC

(CRIMINAL JURISDICTION)

BEFORE: The Honourable Mr. Justice J. Bodilly
exercising jurisdiction under the
provisions of the Western Pacific
(Courts) Order in Council, 1961.

HOLDEN: At Honiara in the British Solomon
Islands Protectorate on Thursday
the 17th day of November 1966 at
2:30 o'clock in the afternoon.

REGINA

versus

WAIAKO

For the Crown: P. J. Keenan, Crown Counsel.

For the Accused: J. F. Ley, Public Solicitor, Papua/New
Guinea

Interpreter: Jezriel Houtaha (Ari Ari language)
Sworn.

Charge explained to the accused: By Registrar.

Accused when called upon to plead says:

By Mr. Ley: Guilty but insane.

Court enters a plea of: Guilty but insane.

Mr. Keenan: I will relate the facts.:

(Shorthand record taken:)
(Transcript annexed)

Mr. Ley: I would like to call Dr. Thomas under whose care accused has been from April 65.

Dr. Terrence David Thomas

Med: Officer, Central Hospital, Honiara.

Sworn.

Since June 65 I have been in charge of the Mental Hospital. I have had charge of the Accused. I have seen him at least once a week. I have never seen him suffering from delusions. He has been normal. He is still normal in my opinion.

I discussed the case with Dr. Hamblett. I had his case notes. He handed over to me in June.

I have read the depositions. Dr. Hamblett diagnosed senile dementia. I would say from my observations that diagnosis needs modifying. I would suggest that the probable cause was physical and not purely mental. e.g. Vitamin deficiency etc. Senile dementia would be a continuing thing. I would not expect the patient to show no signs of abnormality for so long. I would suggest that the accused was in an acute state of mental confusion at the time when he committed the act.

Senile dementia manifests itself gradually, and would more or less be a continuing state. It can be modified by therapy. It is ultimately incurable. I would say that he is now cured of his delusional state. I do not think that he was manic. I would attribute his recovery to proper diet and replacement of Vitamin B. This is the principal vitamin relevant to confusional states. Provided he is maintained on proper balanced diet I would not expect a repetition. I cannot say for certain what the cause of the confusional state was, but I do not think that he is now suffering from senile dementia. Any man of accused age in his circumstances would be in the same position as regards acquiring senile dementia. I would expect that if any recurrence of this mental state in the accused took place it would take exactly the same course and produce the same symptoms. I say this on the assumption that his living circumstances would remain similar.

I do not think that it would be detrimental to the Accused to be returned to his village. It may well be detrimental to him to be kept in custody. Custody makes people accustomed to a protected and institutionalised way of life. When that is lost they become upset again. In the village his would be a more active and normal life.

No XX by Keenan.

Jocelyn Bodilly
C.J.

17:11:66

Direction:

I accept the plea of Guilty but insane.

Accused, Waiako, will be detained during Her Majesty's pleasure and the case reported to His Excellency the High Commissioner for directions.

In the meantime the Accused will be detained in remand custody at the Central Prison, Honiara.

Jocelyn Bodilly
C.J.
17:11:66

Transcript of Shorthand Note of:

- (1) Mr. Keenan's summary of facts.
- (2) Evidence of Dr. Thomas
- (3) Chief Justice's direction.

REGINA versus WAIAKO

(1) Prosecution (Mr. Keenan) states facts:-

The circumstances are that in February last year the Accused, whose normal place of abode is at AreAre, Malaita, came to Hoileava Plantation in the company of various others including Joseph, (Deceased). At that time the accused suffered from the delusion that others were wanting to kill him. It seems that his fear reached such a stage that he could not sleep at night. He was afraid, My Lord, that someone was going to kill him and he formed the opinion that to protect himself he would kill someone else instead. The other men in the party took his knife and hid it in the interests of their own safety. They also hid their own knives in case he may use them. On 18th of March and in view of his confused state of mind he set off from the main camp of the Plantation to a smaller camp where the murdered man Joseph was staying. Joseph was working at this camp with four other men. At night all the men including the accused man and Joseph lay down to sleep. The accused lay next to the man Joseph. Later on that night after all of them had gone to sleep they were wakened by cries from Joseph. He called that Waiako had stabbed him with a knife. This is the knife, My Lord.

Chief Justice

That is not the usual kind of copra knife used
I see.

Prosecution.

He was very badly wounded but the men tried to do the best they could to attend to him. It was not till the following afternoon at 4 o'clock that a nurse was brought from Marovovo. She gave him two injections, one of penicillin and the other a pain killing injection and bound up his wounds as best she could. He was then taken on board a launch and the intention was that he would be conveyed to Hospital. Unfortunately he died on the way. A post-mortem examination conducted by Dr. Ayres on 20th March disclosed that death was due to peritonitis due to a perforating wound of the caecum and shock. To the charge the accused made a voluntary statement admitting he killed Joseph.

Statement read.

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The Preliminary Inquiry was opened on the 28th of April of 1965 when the Accused was found not fit to plead and he was committed to the Kukum Mental Hospital and recently in October a certificate was issued by the Superintendant of the Mental

Hospital that he was fit to plead.
was re-opened.

The Preliminary Inquiry

I move for sentence.

(2) Counsel (Mr. Ley) calls Dr. Thomas:-

I should like to call Dr. Thomas, the Medical Officer in charge of the Kukum Mental Hospital for the period from June 1965 to April and from September this year, as to both his past and his present condition, may it please Your Honour.

Dr. Terrence David Thomas. (Sworn on Bible).

Counsel

Your full name is Terrence David Thomas and you are a Medical Practitioner working as a Medical Officer at Honiara, is that correct?

Dr. Thomas

It is correct.

Counsel

Since June of 1965 you had charge of the Mental Hospital at Kukum with the exception of a short period this year.

Dr. Thomas

Six months this year.

Counsel

Whilst you have been in charge of the Mental Hospital, Kukum have you had charge of the accused man Waiako?

Dr. Thomas

Yes.

Counsel

Have you visited him on a number of occasions during that time?

Dr. Thomas

At least once a week.

Counsel

Each time you have visited him you have examined him.
Is that right?

Dr. Thomas

That is correct.

Counsel

Since you have been examining the Accused have you
ever seen him in a state of delusion?

Dr. Thomas

No, I have not.

Counsel

Has any information been given to you that he has had
a delusion while he has been there?

Dr. Thomas

Yes.

Counsel

What form has this information taken?

Dr. Thomas

The information in his Case Sheet as written by
Dr. Hamblett and information when I have discussed the case
with Dr. Hamblett.

Chief Justice

Otherwise to you he has appeared alright?

Thomas

Yes, Sir, he has.

Counsel

Have you seen any sign of abnormality in the
prisoner since June 1965?

Thomas

No, Sir, I consider him fit and well in body and
mind.

Counsel

In your view he has been so since you first saw him in June last year?

Dr. Thomas

Yes.

Counsel

When you mentioned the conversation you had with Dr. Hamblett. It would have been with regard to observations he had made prior to June 1965.

Dr. Thomas

That is correct.

Counsel

And he did not examine the accused after June 1965?

Dr. Thomas

To my knowledge he did not examine the patient after June 1965.

Counsel

Have you read the depositions taken at the two Preliminary Inquiries that have been held in relation to this Prisoner?

Dr. Thomas

Yes I have.

Counsel

Included in these depositions is a deposition of Dr. Hamblett given in April of last year.

Dr. Thomas

That is correct.

Counsel

Now you will recall that Dr. Hamblett expressed the view in giving his evidence last year that the Prisoner was then suffering from Senile Dementia, do you recall that?

Dr. Thomas

Yes.

Counsel

And that Dr. Hamblett said that this condition accompanied old age and as such was incurable.

Dr. Thomas

Yes.

Counsel

In the light of the subsequent history of the Prisoner would you say that that diagnosis was correct or not?

Dr. Thomas

I would say that it needed modifying.

Counsel

Taking into consideration the previous history, the history of the Prisoner prior to your first seeing him as stated in the depositions of the eye witnesses and in Dr. Hamblett's evidence together with your observations since you took over his control, what would you say was the likelihood as to his mental condition at the time the deceased was killed?

Dr. Thomas

I would suggest that he was probably suffering from an organic type of dementia. This means that he was precipitated into dementia by an illness or by some disease.

Chief Justice

The cause of his condition may have been physical and not mental?

Dr. Thomas

Yes, My Lord. Again, having not examined the patient at the time, it is very difficult indeed to make any firm statement but I would suggest that perhaps he was suffering from vitamin deficiencies plus stress of being separated from his own Island plus the fact that he is an old man.

Chief Justice

How old would you say he is?

Dr. Thomas

I would say between 50 and 60.

Counsel

Could you give us some indication of the normal symptoms of senile dementia?

Dr. Thomas

Yes. A person who becomes senily demented gradually, goes through phases of the cerebral degeneration. A certain confusional state would ensue, not constant all the time but would have waves of being slow mentally and gradually would be noticed by other people as being not quite mentally active as they were before and then would slowly go into a phase of loss of memory for recent events and increased confusional states, slowing of mental activity, not interested in the same activities that he was interested in before.

Chief Justice

Would you say that a person who is suffering from senile dementia, decay if you like, will show certain symptoms at one time and then clear up all together and not for a long period would there be further symptoms?

Dr. Thomas

I would not say as long as this.

Chief Justice

You would expect to see symptoms continue?

Dr. Thomas

Yes. I have not seen it in continuation in the case of this patient.

Chief Justice

You have been visiting the accused for far longer than Dr. Hamblett did, and if he had had the same opportunity he himself would have had an opportunity of revising his original diagnosis.

Dr. Thomas

At the time he saw him the patient was demented and the dementia could have arisen from any disease and Dr. Hamblett chose senile dementia as it seemed the most likely at the time but I am sure he would change his mind if he saw him now.

Chief Justice

Is this not a text book example of a paranoid state?

Dr. Thomas

Indeed, Sir.

Chief Justice

What would you suggest, if you could suggest, as a basic cause for this? The Accused suggests here in his

depositions, "I know at home in my generation that some people went cranky as myself and went into the jungle and died themselves". Now that is family history. Have you any observations on that?

Dr. Thomas

If he said that at the time, and he did, it might indicate the possibility of a hereditary susceptibility to a condition of this sort. You are suggesting the possibility of paranoid schizophrenemia which if it is going to be considered hereditary comes out in progressively younger people and I don't think this point can be used to help in diagnosis. Senile dementia - the tendency to mental decay in old age - can be considered familial.

Chief Justice

Is it not the case that normally senile dementia does not manifest itself until a person is pretty old?

Dr. Thomas

Yes. But the diagnosis under English terms would mean pre-senile dementia in a younger person.

Chief Justice

But to do an act of this kind is not a normal type of thing for a person suffering from senile dementia to do. It seems to be most unusual, from my experience of senile dementia. That is rather a falling apart of the mind. This is a different thing altogether. He was suffering from a very particular delusion and he took a very normal action. He reached the stage where, due to this delusion, he killed a man to save himself.

Dr. Thomas

He was not in a severe manic state. He was not wild at the time and he didn't fight off anyone else who went to hold him. He wasn't in an acute manic state. I agree, My Lord, people suffering from senile dementia do not usually act violently but it is quite clear.

Chief Justice

No, this seems to me, when I read Dr. Hamblett's statement, and the accused's statement of that moment namely "I have killed Joseph, I have killed my son, leave me alone" that he knew what he had done in that sense but he did it in a state of panic. Would you agree that is exactly what happened?

Dr. Thomas

I would say that he was in a confused state and not in a manic state.

Chief Justice

I mean in the sense of the mind temporarily that it was a state.

Dr. Thomas

That is correct.

Counsel

Would it be true to say that senile dementia usually manifests itself gradually and not all of a sudden?

Dr. Thomas

That is true.

Chief Justice

You are not suggesting, Mr. Ley, that this was sudden?

Counsel

I am, in that there is no evidence at all that he was in any way abnormal until a short time before the prisoner killed Joseph. It had been in existence some weeks before the incident. This was a continuing condition not something that was building up. The evidence is that he was in almost a continual state of persecution delusion for that period but that his condition suddenly became acute.

However if it was a senile dementia and the person was confused and then had a clear period one would expect the clear period not to be very long.

Dr. Thomas

It would only be a matter of days.

Counsel

Would it be true to say that senile dementia is an irreversible condition?

Dr. Thomas

Largely, yes. Untreated I would say yes, it could be modified by therapy.

Counsel

But it cannot be cured.

Dr. Thomas

That is correct.

Counsel

And would it be true to say that you consider the prisoner Waiako is cured of whatever mental condition he had at the time he stabbed Joseph?

Dr. Thomas

Yes.

Counsel

You will recall in the statement made by the prisoner to the police that he mentioned having suffered fever and pains in his legs just prior to his mental condition deteriorating. Do you recall that?

Dr. Thomas

I do.

Counsel

And he said just as he was almost better from that condition his mind went cranky, do you recall that?

Dr. Thomas

I do.

Counsel

Does that suggest a probability of a particular form of mental abnormality?

Dr. Thomas

It suggests more than one condition. Mental impairment can come after an attack of influenza in which you have fever and pains in your legs and back and as the fever went away you would become depressed. Depression can often take the place of mania, but he wasn't manic. It can also produce depression. It is quite impossible really to make any firm decision. I can suggest that he had an attack of fever, malaria or influenza and as he recovered from this the effects of vitamin "B" deficiencies became apparent. This is quite well authenticated that after an illness vitamin deficiencies make themselves felt and this would explain why he has apparently recovered, not suddenly, but rather gradually since he was committed to the Police cells at Rove and hasn't had any symptoms since due to the very adequate diet.

Chief Justice

Vitamin B is the principal vitamin, a deficiency of which can lead to what you class as a confusional condition?

Dr. Thomas

Yes Sir. A confusional state.

Chief Justice

So then as long as he is maintained on a proper diet you don't visualise any further trouble. You cannot be certain, I appreciate, but what would you say?

Dr. Thomas

The way people respond to illness and to any deficiencies may be a part of the person's constitutional make-up and given a return of similar circumstances he could respond in much the same sort of way. The circumstances are unlikely to arise again if he was healthy and had a good diet intake.

Chief Justice

You would not expect a similar condition if he was maintained on good diet. You would not expect it?

Dr. Thomas

No.

Counsel

Would you say that on the evidence of what occurred prior to the time when you saw him he would have been confused during that period.

Dr. Thomas

Yes.

Counsel

One other matter in regard to senile dementia would it be true to say that a person suffering from senile dementia would show signs of physical senility as well?

Dr. Thomas

Normally, yes, but not necessarily always.

Counsel

The prisoner Waiako does not show any signs of

physical senility?

Dr. Thomas

No.

Counsel

You have said Dr. that you cannot be sure of exactly what was the cause of the prisoner's confusional state at the relevant time and you cannot be sure of exactly what it was he was suffering from at that time. Can you say with confidence at this time that he was not suffering from senile dementia?

Dr. Thomas

I would say that he was not suffering purely from senile dementia. The fact that he is an old man could have helped in the confusional state in a way which would not have arisen if he was a younger man.

Counsel

But any man of his age in his area would be in much the same position, would that be so?

Dr. Thomas

Yes.

Counsel

Would you say if this man were to go back to his village at this stage that he would be any more likely than another man of his age to suffer a recurrence of the condition that he had before.

Dr. Thomas

What I would say is that he would be more likely to show a demented state in the way he has than anyone else; as he has already done it.

Chief Justice

Assuming this man did have a recurrence of mental disorder would you expect Dr. that it would take the same form?

Dr. Thomas

It is possible.

Chief Justice

Is it probable? That is the main point.

Dr. Thomas

The point would depend on the exact diagnosis at the time.

Chief Justice

Assuming vitamin deficiency was at the bottom of this, would you expect a future vitamin deficiency to bring about the same mental state?

Dr. Thomas

Yes, My Lord.

Chief Justice

Well now this is the vital point and to my mind what it virtually amounts to is that if the symptoms were to repeat themselves in the same manner then there would be little danger in releasing this man and returning him to his relatives. The facts here were that his relatives knew for some weeks that he was dangerous but did not report this. If you place them under a bond to report these circumstances, if they were to recur, would not this be an adequate safeguard.

Dr. Thomas

Yes. I think so.

Chief Justice

Would you really expect that the symptoms would again repeat themselves in much the same way given the same circumstances? Would not the same sort of symptoms occur again in the particular man?

Dr. Thomas

Yes I would expect it.

Chief Justice

Well I am very glad Dr. that that is your view as it is the view I have formed also. The symptoms never, or very rarely, take a different form in the same person, if the same circumstances, recur. This was a case where plenty of warning was given that this man was in a dangerous condition. If it were the case that there had been no warning, the situation would have been very different.

Dr. Thomas

Yes, Sir.

Chief Justice

Well that is your view.

Dr. Thomas

Yes Sir.

Chief Justice

I will accept that.

Dr. Thomas

Recurrent given the same circumstances, that is, going back to his village where he lived before and living the same sort of life as he did before.

Chief Justice

And, I presume, going out to work with other men on plantations away from his home village?

Dr. Thomas

Yes. There may have been some stress in that he wasn't living in his home village.

Chief Justice

Yes. They do come away and work in plantations. But that is part of their normal life.

Dr. Thomas

Yes. But he may have been doing something different.

Chief Justice

But he wasn't, it was just the ordinary sort of copra cutting.

Dr. Thomas

No, if he had done it before. But I don't honestly know whether he had been off to plantations before.

Chief Justice

But given the same living conditions and circumstances you would expect the condition to come again in the same way as before, if it recurred, and that would give people time enough to allow the necessary authorities to know.

Dr. Thomas

Yes, My Lord.

Chief Justice

I say this on the assumption that his living circumstances would be similar.

Counsel

There were a couple of further points I would like to ask the Doctor.

What, Doctor, do you believe would be the effect on the Prisoner if he were to return to his village, would it be beneficial or detrimental?

Dr. Thomas

I don't think it would be detrimental to him to return him to his village at the present stage and it might well be detrimental to him to remain too long at the Mental Hospital.

Counsel

In what way would it be detrimental to him to remain in the Mental Hospital?

Dr. Thomas

He would become used to a protected and institutional way of life. They find it very difficult to resume their former way of life the longer they remain in an institution.

Counsel

Would this apply particularly to an older man?

Dr. Thomas

An older man would find it harder to be accepted by his own community.

Counsel

What about as far as the physical activity of the Prisoner is concerned. Would he be more active in a village than he is in a Mental Hospital.

Dr. Thomas

He would be more active in the village.

Counsel

No further questions.

Prosecution

No questions.

(3) Chief Justice (Direction).

Yes, well I must decide in my discretion in this Case. Having read the depositions over carefully and the earlier medical reports in this case also, I have come to the conclusion that I may properly accept the plea which Mr. Ley has made for the accused, namely that he is "guilty but insane".

On the facts of the case there is no question whatever as to what took place. The Accused as Mr. Keenan has outlined evidenced extraordinary behaviour for some weeks, probably some three to four weeks, before this occurrence took place. He was working with a gang of men in the Variana Plantation and in the course of doing so he showed these symptoms of fear of his colleagues; and his colleagues perfectly well knew that he became dangerous. He was afraid of them and as he said in the statement afterwards that he killed because he thought they were going to kill him. That is a state of mind. Whether he was mentally abnormal to the extent that he was so confused as not to know what he was doing or, if he did know, that what he was doing was wrong, is for me to decide, and I think that it is right in this case to accept a plea of insanity. I think that had we gone through all of the evidence in greater detail than is disclosed on the depositions I would have arrived at that conclusion.

I am of course fortified in that view by the depositions of his relatives and colleagues who were working with him. They all say in their depositions that they knew he was mad, giving evidence of that by not only disarming him but also by hiding their own weapons in case he might lay hands on them. What could be clearer evidence than that that the man was insane and dangerous. The tragedy of the whole matter is that no one took the opportunity during those days before this incident occurred when it was clear to everyone that the accused was in a mentally abnormal state of letting someone in authority know. In the result the obsession of fear built up in the accused's mind until on the night of 18th March 1965 he killed the man Joseph whom he used to regard as his son. There is no doubt about the cause of death. There was a deep stab wound in the stomach which caused peritonitis from which two days later the accused died. Under these circumstances I find that the accused was guilty but insane at the time he committed the offence and I shall refer the case to His Excellency the High Commissioner for his pleasure. In the meantime I direct that the accused be detained in remand custody in Rove Prison.