

ni Siea orca ninisaiensansees

ET ERIE SSA Sint cont aiid nae alsntn decode sae tc

Wee

. PHILLIPS c.g,

IN THE SUPREME COURT OF THE

TERRITORY OF PAPUA~NEW GUINEA.

THE KING

Ve

PALWASKIT, TELMILI, ITWALIO and AUâ€™UM.

JUDGE'S SUMMING UP.

(delivÃ©red at Rabaul on 12th April, 1949).

| '

hit .

â€œIn this case, PALWASKIT, TELMILI, ITWALIO and AU'UM are

charged in the indictment that, on or about 12th December, 1948,

in the Territory of New Guinea, they wilfully murdered Alfred

Lambton /Robinson. .

“At the close of the case for the prosecution, Mr. Keena,

Defending Officer for the accused, submitted that the Crown had:

failed to prove a prima facie case against Itwalio, one of the four

accused. That submission was upheld, and Itwalio was therefore found

"Not Guilty" and discharged. The case proceeded as against the other

three accused, (Palwaskit, Telmili and Au'um), and the Court is therefore

concerned with the question whether any or all of those three accused

committed the crime charged. - ,

_ Except where "provocation" may reduce the killing to manslaughter,

a person who unlawfully kills another, intending to cause his death or

that of; some other person, is guilty of wilful murder: S. 301 Q.c.c.

(adopted).

“A person is deemed to have "killed" another when he causes the

death of another, directly or indirectly, by any means whatever -

provided the death occurs within a year and a day of its cause: SS, 293

and 299 Q.C.C. (adopted). It is unlawful to kill any person unless such

killing is authorised or justified or excused by laws S.291 Q.C.c.

(adopted) An instance of an "authorised" killing is a judicial

hanging: an instance of a "justified" killing is a killing, in certain

exceptional circumstances and provided there is no other reasonable way,

done to prevent the escape of an arrested felon: an instance of a

killing "excused" by law, is that of a killing, in certain exceptional

circumstances, in legitimate self-defence. Intention to kill has to be deduced, not from a man's statement of his intention, but rather from his acts, for his tongue may lie, whereas his acts may be clear, and it is a general presumption that a person intends the natural and probable consequence of his acts. : .

Not only the actual wilful killer, but also anyone who has aided or abetted in his killing or who has counselled or procured it, may be found guilty of wilful murder: S. 7 Q.C.C. (adopted). Also where several persons act in concert in an unlawful purpose, in the prosecution of which an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed that offence: S. 8 Q.C.C. (adopted),

2a

SSeS Teeter yr een cena ir

ate ae So

eens

Sah ETE SLR

TRE

sare mae

a teyt9 png emer

g

an

ma:

isertge eyenae e a

tee onc ea OT RT ete cere

eames

The onus is on the Crown to prove a charge preferred by it beyond all reasonable doubt: there is no onus on an accused to prove his innocence. And the Crown has to prove every element of the offence charged, otherwise there must be an acquittal of that charge. So, in this case, as the charge is one of wilful murder and wilful murder is the unlawful killing of another with intent to kill him or someone else, the Crown has the onus of proving as against each of the three remaining accused (Palwaskit, Telmili and Au'um) that he caused, or was party to causing, the death of Mr. Robinson, with the intention of killing him, and that that death was an "unlawful killing", i.e. one not authorized, justified or excused by laws. There has been no suggestion by the Defence that the killing of Mr. Robinson was one that was authorized, justified or excused by laws nor that it was "provoked" by Mr. Robinson in any way that would support a plea of "killing on provocation" and a consequent finding of manslaughter on that ground.

If, in the case of any or all of the three remaining accused, the jury considered that the Crown had failed to discharge the already described onus of proof upon it, then that or those accused must be acquitted of the charge of wilful murder. - If, on the other hand, the Crown be found by the jury to have fully discharged that onus as to any or all of the three remaining accused, he or they must be convicted of wilful murder. If, however, the jury found that, although the Crown had failed to prove wilful murder against any or all of these accused, the Crown had, on the evidence proved "murder" or "manslaughter", the jury could so find: 3.576 tisC.C. (adopted). The benefit of every reasonable, doubt must always be given to an accused and this must never be forgotten,

Some of the evidence in this case was given by persons whom the jury may consider to have been "accomplices", and it must be borne in mind that "a person cannot be convicted of an offence on the uncorroborated testimony of an accomplice or accomplices" : S\$.632 Q.C.C. (adopted).

In other words, the evidence of an accomplice must be corroborated in some material particular by evidence, direct or circumstantial, from an independent source, which implicates the accused in the very crime charged: (S,1 9.C.C- and Baskerville's Case). Section 632 Q.C.C. (adopted) uses the words "accomplice or accomplices" and this shows that one accomplice's evidence is no "corroboration" of another accomplice's evidence: corroboration in law must come from an independent source.

The evidence in this case is substantially unconflicting.

It appears that, not quite a fortnight before Christmas last, Mr. Robinson was on a recruiting trip, seeking native labour, in the hinterland of Kandrian Government Station in the Gasmata Sub-District of New Britain. Mr. Robinson came to a place called Au'u, which was on a "Government road". In his party were two natives who have been witnesses in this case, Sukan and Giha. Mr. Robinson appears to have met and recruited, Au'um, one of the accused in this case and a native of the area in which Mr. Robinson later met his death, While at Au'u, Mr. Robinson asked the "tultul" if he knew the way to the place of Palwaskit (one of the accused), The tultul said he did not know the road to Palwaskit's place and advised Mr. Robinson not to go there because

the natives ~ might either run away or kill him. However, Mr. Robinson ascertained that Au'um knew the way, and he told Au™um to go on ahead and tell Palwaskit that he (Mr. Robinson) was coming for the purpose of getting recruits.

Aufum left Aufu on this errand, and Mr. Robinson and the rest of his party went on to another place called Lagungung, which is also on the Government road. At Lagungung, Mr. Robinson -was again advised by the luluai, by a tultul and by Sukan, not to go to Poi'iong, Palwaskit's

23k

£

.

abd getheebee esti earns asad

~

¢

:

:

place, but to do his recruiting along the Government road. Evidence has been given by Mr. Foley, a/ ADO at Kandrian,â€™ that Poi'iong is in what is known as the Mumii area - an area of about 35 miles by 18 miles, populated, (he estimated) by no more than 100 natives. He said that Poi'iong was off the Government Road, and about 6 or 7 hours' walk from Lagungung, with a limestone barrier or ridge of 1,700 feet between: Poi'iong was in what was classed, for administrative purposes, as an "uncontrolled area". Mr. Foley said that the Poi'iong people still fought with some of their neighbours on occasion; there was no white missionary or native missionary among them and no European had ever visited Poi'iong before Mr. Robinson did; when Mr. Foley visited Poi'iong shortly after Mr. Robinson's death, he saw there primitive natives clad in bark, and saw no "trappings" of European material. He saw no saucepans, blankets, mirrors, and so forth which might have indicated contact or trade with Europeans.

In pursuance of the errand Mr. Robinson had sent him on, Au'tum came to Poi'iong. This was on a Saturday. Palwaskit was away at his gardens when Au'tum arrived, but Telmili (one of the accused) was present; so were other natives such as Itwalio, Kakosli, Hetio, Kambulo, Pauwan and Minda. Telmili and Itwalio we have seen at this trial; and both were grown men. Hetio and Kambulo were witnesses at this trial and were

two of the, recruits offered to Mr. Robinson when he arrived later: they were, as we have seen, mere boys - probably about 16-18 years of age. Pauwan and Minda (who were also offered as recruits to Mr. Robinson) the Court has not seen: but Palwaskit has told us that they, like Hetio | and Kambulo, were striplings too.

It appears that, in the absence of Palwaskit, Au'um had a conversation with Telmili. There is no evidence that any of the other natives present took any part whatever in that conversation, nor is it clear that all of them had an equal opportunity of hearing it. Indeed, Itwalio, in a voluntary statement he made to Mr. Foley on 7th January, 1949, said he "was too far away to follow the conversation accurately": he said nothing at all, in that statement, about what Au'um and Telmili may have said to each other but he did mention something Au'um said to Palwaskit at a later time - a remark which other witnesses say was made after Au'um and Telinili had spoken together. Hetio, however, said in his evidence that he heard Au'um say to Telmili that the "master" was coming to Poitiong to recruit native labourers: and that he heard Au'tum suggest that Palwaskit be sent for. Kakosli was sent off to get Palwaskit.

Meanwhile, Hetio says, Telmili inquired how many masters were in the party and Au'um replied: "Only one master. I have come to tell you that the master is coming down to you and I am going back now to bring the master down when he arrives, you kill him and take his trade goods".

Telmili asked whether the master was armed and Au'um replied - "He has only one shot gun and no cartridges"; whereupon Telmili said - "As the white man has not got any cartridges for the shot gun, you go back, sleep at the village of Lagungung with the master, and bring him back here in

the morning". -At this point Hetio left and went into the bush:

(Palwaskit: had not yet arrived). â„¢

| , ~

Kambulo also gave evidence of Autum's talk with Telmili that afternoon and Kambulo's version of it is almost identical with that of Hetio, except that Kambulo did not say, as Hetio did, that Autum told Telmili, early in the conversation, that the master was seeking native recruits for his plantation. Both Kambulo and Hetio positively stated that it was Autum who proposed that the master be killed, and Telmili who concurred.

,

BURA A Sainte Gauine b dado

VANES aa

Telmili himself, in a voluntary statement he made to Mr.

Foley on 16th January, 1949, told a story of the talk he had with

Autum and that story was much the same as Kambulo's, except that

Telmili added that Autum had said that the master wanted Palwaskit

to go to Laqungung to receive a luluai's "hat". (This enticement may

have been the master's idea or Au'um's: there is evidence that suggests

it may have been Autum's, thought because Sukan has told us in evidence

that, when Mr. Robinson arrived at Poi'iong next day, he at once

disclaimed that he had come to appoint Palwaskit a luluai).

To return, however, to Telmili's voluntary statement to Mr.

Foley: It must strictly be borne in mind that what Telmili said in

that voluntary statement (which was presumably made in Au'um's absence)

is not admissible against Au'um: any admissions made in it would affect

Telmili only, and cannot bind Autum. But Telmili also elected to give

evidence on affirmation at this trial, and what he said in evidence here

about Au'um is, subject to the ordinary rules of evidence, admissible

against Au'tum. In that evidence, Telmili substantially repeated what

he had said in his voluntary statement to Mr. Foley: he said that Au'um

suggested that he should bring the master to Poi'iong, and then, Telmili

(or Telmili and others ~ "œyou" was the word used) could kill the master:

Telmili also said that he told Au'ums- "That will be all right. The

master has no cartridges: you bring him down: we will] kill him." He said

Au'um agreed to this and said that when the mater was killed, "œwe can

have all his laplaps and trade goods". Telmili also said that Au'tum remarked:~ "We will wait till Palwaskit comes back and we will talk with him and if he agrees to the killing of the master, I will go back and bring the master here.â€•

Shortly after this, Palwaskit, accompanied by the messenger Kakosli, returned from his gardens to where Au'um, Telmili and the others were. According to Kambulo and Palwaskit himself (who elected to give evidence at the trial) - and their versions are substantially similar - what then happened was this. Palwaskit asked Au'um, what was this about a white man coming. Au'um said he had encountered a master at Auâ€™u who had sent him ahead to contact Palwaskit and to tell Palwaskit that the master wanted to recruit native labourers and also wanted to give Palwaskit a "luluai*s" hat. Palwaskit temporized: he said he had never seen a white man, did not want to meet one, and did not want the white man to come to them: in any case, he said, most of the males were away at a "singsing" at Lais and it would be no use, the master's coming to recruit, In the end, however, Palwaskit compromised and said that four recruits would be available and that he would send a "tanget" or message-stick to the master indicating this. Then Palwaskit, Au'um, Telmili and the others present went to Palwaskit's place, Maragwa nearby, where Palwaskit gave the message-stick to Au'tum, and told him to take it to the master to show him that four recruits were available. Au'â€™um said he would do this and return with the master next morning. He then left and the otherÂ¿ii returned to Poi'iong, where for a while they discussed the matter of the recruits who would be given to the master: then PalwÃ©Ã©kit left the others and went to!Sleep alone at his gardens. .Now it will be noted that neither

Kambulo nor Palwaskit mentioned in their evidence that Au'um had said anything whatever to Palwaskit about the proposed killing of the master. Lt may also be noted that Itwalio, in his voluntary statement already mentioned, did mention a part of Au'um's talk with Palwaskit, but Itwalio said. nothing in:that statement about their having said anything about the proposed killing of the master.

Telmili, in his voluntary statement to Mr. Foley, already referred to, narrated his version of the talk between Palwaskit and Au'um: he said that after Au'um stated his errand, Palwaskit temporized and said that he did'not want to see the master, that he would be frightened, and that "if the master came, they would kill him": Telmili also said in that

SS

--5-

statement that he himself told Palwaskit that the master would be

bringing tomahawks and lavalavas and that Palwaskit said:- "Good,

then we can take them". Apart from the fact that these alleged remarks

of Palwaskit could bear an innocent interpretation, there is the fact

that, even if they did not bear that interpretation, Telmilits

allegations in that statement about what Palwaskit said are inadmissible

as against Palwaskit - for there is no evidence to show that Palwaskit was

present when Telmili made that statement. And there is this further 4

important fact - that when Telmili gave evidence at this Court and

again told his story of the talk between Palwaskit and Au'um, he said

; nothing whatever about the proposed killing of the white man having been

y mentioned by Au'um or Palwaskit in the conversation between them.

SRA et tah ac cnitan

AEDS Sis cai aii

It comes to this then, that there is no admissible evidence at all against Palwaskit to show that anyone mentioned to him, that Saturday afternoon, a proposed killing of the master.

Aa Re

Next morning, a Sunday, Telmili and other natives who had slept at Pol'iong waited there for the white man to arrive. Towards noon they speculated about whether he would come, but they decided to wait a while longer.™ Then Palwaskit arrived at Poi'tiong, and he too speculated i on the arrival of the master and said they might as well wait a little i longer. Presently, a native named Dipli came up and announced that the i master was now close to Poi'iong. This seemed to fluster Palwaskit, i because he suggested that they should all run away into the bush and J hide; then the white man would find the place empty and go back. (The

Â£

f

Â£

Defence suggestâ€™™ that this showed that Palwaskit could not have been :

privy to an already-arranged plot to kill the white man). But Telmili

said that the white man was now so close to the village that it was no

use running away. So the natives present remained where they were,

and, soon after, Mr. Robinson, accompanied by Auâ€™™um and a native employea

of Robinson's called Sukan, entered Poi'iong: their carriers, bearing

i â€™œcargaâ€™• or gear, arrived soon after them, Mr. Robinson, through Sukan

4 and Au'um, asked for Palwaskit to be pointed out to him. Au'um did so.

Mr. Robinson and Palwaskit shook hands. Then the recruiting of natives

. commenced. First, Palwaskit brought Hetio to Mr. Robinson, and Hetio,

: for recruiting, received 3 laplaps, 3 razor blades, 1 "tomahawk" or

axe, 1 mirror, a belt, and a small bottle of scent. Several other

; natives followed Hetio, and were recruited and received similar trade

; goods. These natives were Minda, Kumbalo and Mumuli. AfÃ©â, -er these

; natives had been recruited, Mr. Robinson and Sukan squatted down on

: -either side of a coconut palm, and a yard or so from each other, with

| trade goods spread onâ€™• the ground, between them. Mr. Robinson's single-

barrelled shot-gun was leaning against that coconut palm. The recruits had taken their "trade" presents to one of the two houses which comprise Poitiong, a house about 13 to 16 yards away from where Mr. Robinson was sitting. At this stage, Telmili, who had procured an axe ~ the axe Mr. Robinson had given to Mumuli-- came to where Palwaskit was standing and spoke to Palwaskit. _Palwaskit, giving evidence at this trial, said:-

: "Telmili said to me - 'You seize the pigeon gun and I will strike him

: with my tomahawk", Palwaskit also said in evidence that she made no

A oral reply to that suggestion. Telmili, however, also gave evidence at

: this trial and he said this- "I said to Palwaskit-- 'You take the master's gun and throw it away and I will hit him on the head with this | axe's Palwaskit said 'Go on'", ~

HE Se

Now whether Palwaskit made an oral reply to that suggestion of Telmili's or-not, there can be no doubt on the undisputed evidence of a number of witnesses (including that of Palwaskit and Telmili themselves), i that Palwaskit™ and Telmili then walked to a spot behind Mr. Robinson, : that Palwaskit then seized Mr, Robinson's pigeon gun and turned and : threw it away, and that, while he was so doing, Telmili struck Mr.

}

i

Robinson in the nape of the neck with his axe, the blow almost completely decapitating Mr. Robinson. The evidence of various witnesses is that the head only remained attached to the body by a small piece of flesh at the

234

--6-

front of the neck: the vertebrae had been completely severed. (This evidence is confirmed by that of Mr. O'Donnell, a European Medical Assistant who knew Mr. Robinson well and who saw and identified the

body three days later). After receiving this blow, Mr. Robinson groaned once only and fell over on to his side. According to all the witnesses who said they saw this, he never moved again or showed any sign of life thereafter; his body lay still, the muscles did not twitch, there was no sign of breathing or movement whatever; it lay there, as Palwaskit has said, "as if it were a log of wood". Palwaskit himself did not, he says, actually see Telmili strike his blow because he (Palwaskit) had turned to throw the gun away and then had run to the house where the recruits were

to get a spear. He came back with this spear and thrust it into Mr.

Robinson's body - at the lower left breast. After that, Itwalio came to

the body with an axe and he struck Mr. Robinson's body on the side of the

head, this blow penetrating to the brain. (As { mentioned earlier the

Court had already held, on a submission of "no case" by the Defence at

the close of the prosecution's case, that there was no prima facie

evidence to warrant a finding that Itwalio was guilty of wilful murder.

The reason for the Court's so holding was that the Court considered that

the evidence already showed that Itwalio's blow had been inflicted on a

dead body, not on a living body; and Itwalio was, for that reason, and

also because there was no sufficient evidence to show that Itwalio was

a "party" to the killing that had already occurred or had acted in concert

with any killer, found "Not. Guilty" of the wilful murder of Mr.

Robinson). The people of Poitong were now in an uproar, yelling and

shouting out, and a number of the male natives, after Itwalio had

inflicted his blow on Mr. Robinson's dead body, thrust spears into the

body. A woman also cut it and two other women beat it with diaging-

sticks. After the killing, the four accused scattered and were apprehended,

piecemeal, over a fair space of time, and at different places.

Paiwaskit has said, in the witness-box, that Mr. Robinson did

nothing whatever to provoke the killing. Telimili has said, in the

witness box, that when he struck Mr. Robinson, he did so because he was

thinking it would not be good for Mr. Robinson to take the recruits away

to work, where they might die. This thought was not, in law, an excuse for the blow Telmili inflicted on Mr. Robinson. It will also be remembered that Telmill himself admitted, in this Court, that on the afternoon prior to Mr. Robinson's death, he had agreed with Au'um that Au'um should bring Mr. Robinson to Poi'iong, where Mr. Robinson would be killed, and his trade goods seized. There is evidence, in my opinion, that would warrant a jury's findings, if it believed that evidence, and if there were no reason in law to the contrary, that Telmili deliberately inflicted that axe-wound on Mr. Robinson with intention to kill, that that blow caused Mr. Robinson to die instantaneously, and that that killing was an unprovoked and an unlawful one and not a killing in any way authorised, justified or excused by law. As for Palwaskit, although there is no positive evidence to show that he was told on the Saturday of the proposed killing of Mr. Robinson, there is evidence that when Telmili suggested to him on the Sunday that he should take and throw away Mr. Robinson's gun while Telmili struck Mr. Robinson with his

axe, Palwaskit immediately complied with this suggestion and acted upon it forthwith. He went and seized Mr. Robinson's gun while Telmili inflicted the fatal wound on Mr. Robinson. Palwaskit then ran to get a spear, came back with it, and speared Mr. Robinson's body with it. I think that by this time Mr. Robinson was already dead. I also think that Palwaskit's act in running to get a spear could be considered significant and as confirming his complicity in the killing that had already occurred. Though Mr. Robinson had been reported not to possess cartridges, neither Telmili nor Palwaskit could be sure that the master's pigeon gun was not loaded. If loaded and at hand, it might have forestalled Telmili's

carrying out of his intention -to axe Mr. Robinson. But-jf the qun was
out of the way, Telmili's intended course of action was obviously more

eee rien Odo

:

=

i

â€˜Gnd cuneate awe

jeanne

i es

sense dat tee

likely to succeed.. He cunningly suggested to Palwaskit that he first remove the gun. Palwaskit did so. That is the undisputed evidence and a jury could properly find, in my opinion, if it believed that evidence and there was no reason in law to the contrary, that Palwaskit deliberately did an act "for the purpose of enabling or aiding Telmili to commit an offenceâ€™™, viz. the wilful murder of Mr. Robinson. On such a finding, Palwaskit would be deemed, because of S.7 (b) Q.C.C. (adopted) to have taken part in committing that offence and to be guilty of it.

As to the accused Au'um, the Crown has submitted that the evidence shows that he â€™œcounselledâ€™œ the wilful murder of Mr. Robinsoa and that he therefore must, because of S. 7(d) of the Q.C.C. (adopted), be deemed to have taken part in that wilful murder and to be guilty of it. Mr. Keenan, for the Defence, has submitted that what Au'um did, did not amount to "counselling" wilful murder, and that, at any rate, it did not amount to â€™œcounsellingâ€™œ Palwaskit to commit wilful murder, because there was no evidence to show that a suggestion by.â€™™ Au'um that Mr. Robinson be wilfully murdered had ever been communicated to Palwaskit. Mr. Keenan's contention is not, I think, sound, because as Kenny puts it, in his â€™œOutlines of Criminal Law", 15th edition at pages 99 and 100:- "An accessory before the fact is @ person who procures or advises one or more of the principals to commit the felonyâ€™œ. If, therefore, the facts were, that Au'tum had counselled only Telmili (and not Palwaskit) to wilfully murder Mr. Robinson, and Telmili had got Palwaskit to assist him in the commission of that crime, the fact that Auâ€™™um had not also counselled

Palwaskit "to commit it would be immaterial. In England a person who counsels a felony, and is absent when it is committed, is called an "accessory before the fact"; but "if he is actually or constructively present when the felony is committed, he is ...+.+. an aider and abettor, and not an accessory before the fact" : see Archbold, 30th edition, at page 1453, Archbold also points out at page 1454 that "the procurement must be continuing, for if the procurer of a felony repents and, before the felony is actually committed, actually countermands his orders, and the principal notwithstanding commits the felony, the original contriver will not be an accessory "»...0+. To support an indictment for being an accessory before the fact, there must be some active proceeding on the part of the defendant; i.e. he must procure, incite, or in some way encourage the act done by the principal". It will be remembered that the evidence in this case is that Au'um was present when Mr. Robinson met his death. Section 7 of the Q.C.C. (adopted) does not speak of "accessories before the fact" or "aiders and abettors". It speaks of "principal offenders"! and includes in that description (a) every person who actually commits the offence; (b) every person who does or omits to do any act for the purpose of aiding another to commit the offences (c) every person who aids another in committing the offences and (d) any person who counsels or procures another to commit the offence. The question the jury has in this case to decide is whether or not Au'tum falls within one or other of those descriptions of "principal offenders". Now several / witnesses have Said that Au'um proposed to Tglmili that Mr. Robinson should be killed so that his trade goods could-be taken; that Telmili (after making cautious inquiries about whether Mr. Robinson was. the only master and whether he was armed and after being reassured on these points by

~Au'um) agreed to Au'um's proposal; that it was agreed between them that Autum should bring Mr. Robinson to Poi'iong on the morrow, where and when Mr. Robinson would be killed; that Au'tum did guide and come with Mr. Robinson to: Poi'iong next day, where he pointed out Palwaskit to Mr. Robinson; and that Au'um was present at the time Mr. Robinson was killed. There was no evidence that Autum had countermanded his alleged proposal to, - and agreement with, Telmili that Mr. Robinson should be killed. We have

236

~8-

not heard Au'um's version of what part, if any, he took in these alleged events, because he has not given evidence or made any statement at this trial. I hasten to point out that he was perfectly entitled not to give evidence and not to make a statement; and the fact that he did not do so = should in no way be held to his disadvantage. My purposs in mentioning â€œthat we have not had his version is, to remind myself that I must be all

the. more careful in scrutinising the evidence that others have given about him. Mr. Keenan has contended that Au'um's actions were consistent with that of ordinary assistance to Robinson in his recruiting. That would certainly be so, if the evidence merely was that Au'um had only come to Poltong on the Saturday to announce that Mr. Robinson thought of coming there to recruit native labour and that Au'um had then merely led Mr. Robinson there next day for recruiting purposes. But the evidence goes further than that, .because of the evidence that Au'um proposed to Telmili on theâ€™ Saturday that Mr. Robinson should be killed next day and the evidence that both Au'um and Telmili agreed to that plan: in the light of that evidence what Au'um did thereafter could be considered (if the jury were satisfied of the truth of this evidence) to be consistent with the furtherance of that plan or plot. However, that is for the jury to decide, having regard to the rules of evidence and its findings as to the credibility of the evidence that has been given.

It may have been observed that I have, several times during the course of this summing up, said that certain findings were open to the jury "if it believed (certain) evidence and if there were no reason in

law:to the contrary". I used these words deliberately, because I had in mind an important aspect that the jury has to take into account in this case; and that is, that some of the witnesses may be regarded as "accomplices". As already stated, our Criminal Code provides that a person cannot be convicted of an offence on the uncorroborated testimony of an accomplice or accomplices. The Court, as jury, must therefore take care = to-see, not only that it is satisfied beyond all reasonable doubt before

convicting anyone, but also must take care, when considering if it is so Satisfied, that it does not infringe the rule about accomplice evidence; if-may not rely on the evidence of an accomplice or accomplices alone - it must be satisfied that this is corroborated in some material particular by independent evidence, direct or circumstantial, implicating the accused -Anethe offence charged. These precautions are nok so essential, in the _ circumstances ofthis case, in regard to the accused Palwaskit and Telmili, because of the full admissions,. already referred to, that each of them have made-when giving evidence here, and because S. 644 of the Code provides that "an accused person may admit on the trial any fact alleged against him and.such admission is sufficient proof of the fact without other evidence."

â€œInvary case there is the evidence of Giha, one of Mr. Robinson's party and an independent witness, that he saw Palwaskit seize the gun and Telmili almost decapitate Mr. Robinson. There is also the evidence of the elderly -Orlil-to the sane effect: he, though a local native, and present at Poi'tiong that Sunday, had not been present at Au'tum's talks on the previous day; and it has. not been suggested, nor does the evidence show, that he -was-an accomplice, Sukan, another of Mr. Robinson's party, said that he noticed Palwaskit and Telmili go behind-Mr. Robinson; that he suddenly heard \ir. Robinson beside him groan and saw him topple over woundeds that he-.did not see who caused that wound as he got up.and rans; and that as he was getting away from the scene, Palwaskit followed him and gave him a â€˜Gina' shell, at the sane time asking Sukan not to go to the Government Station and report the occurrence. ,

But Au'tum at this trial has been silent and so has made no such admissions here as Palwaskit and Telmili have made. Though a number of

witnesses testified to his presence at Poi'iong the day that Mr. Robinson was killed and as to his coming there with Mr. Robinson, only three witnesses, I think, gave evidence about his proposal to, and agreement with,

23

--9-

â€”Telmili, on the Saturday. afternoon, that Mr. Robinson should be killed so that his trade goods could be taken and that he, Au'um, should bring â€”Mr. Robinson to Poi'tiong next day for that purpose. These three witnesses were Telmili himself, and the two youths, Hetio and Kambulo. .That Telmili

was an accomplice at least, the jury may find. What of Hetio and Kambulo?

â€œThey both say they heard the alleged plot between Au'um and Telmili.

But there is no evidence that they were assigned or took any active part

in that plot. Kambulo, indeed, has expressly denied that he was assigned â€œany part in the killing and has also denied that he knew that the killing would really take place. There is no evidence that Hetio and Kambulo took any part in the killing itself, though there is evidence that, after Mr. Robinson was killed, they joined with many others in spearing his dead

body. That is a common enough native reaction, as past cases before this Court have often shown; and these two youths may not have felt able to act > in-opoosition to the example set by their elders. Nevertheless, they eoynust be about 16 - 18 years of age, and as a jury I have to decide whether -sor-not these two lads were accomplices. If they were, that would mean

that all of the evidence tendered by the Crown to prove that Au'um

counselled the "wilful murder of Mr. Robinson is accomplice evidence, -uncorroborated :in the way the law requires," and therefore evidence on which the law forbids a conviction.

With the directions I have given myself in mind, and on the _ evidence in this case {which I have heard and seen given) I have, as jury, cons to the following conclusions or Findings: ~

" As-to the accused Telmili:- I find, on his own admissions and on the

_ evidence of his accomplice Palwaskit, "corroborated" in the legal sense as. the latter was by the independent evidence of others, that he, on or about the 12th day of December 1948 in the Territory of New Guinea -conilfully murdered Alfred Lambton Robinson. The nature of the wound he --inflicted on Robinson and the instrument used clearly showed his intent ato wilfully murder.

As to.the accused Palwaskit:- I find, on his own admissions, and on the

the evidence of his accomplice and principal, Telmili, corroborated as the

--Jatter was, in the legal sense, by independent evidence, that he did an act. (the seizing and throwing away of the gun} for the purpose of

enabling or aiding Telmili to commit that wilful murder: he therefore, because of S, 7(b) of the Q.C.C. (adopted), must be deemed to have taken part in committing that wilful murder.

As to the accused Au'ums- I find that, on the evidence of Telmili, an accomplice and principal, corroborated as it was in the legal sense by the independent evidence of Hetio and Kambulo (whom I find not to be

accomplices) that he counselled Telmili to wilfully murder Mr. Robinson

and that he also, by bringing Mr. Robinson to Poi'iong after having plotted that Mr. Robinson should be killed there for his "trade goods",

did an act for the purpose of enabling Telmili to wilfully murder Mr.

Robinson: on that finding, and because of S.7 Q.C.C. (adopted), Au'um must be deemed to have taken part in the commission of that wilful murder.

: On these findings, and pursuant to 8.7. Q.C.C. (adopted) my

verdicts are~

Palwaskit - Guilty of Wilful Murder.

Telmili - Guilty of Wilful Murder.

Autum ~ Guilty of Wilful Murder.

eH I have already stated that the other of the four originally

â€œsaceused persons, Itwalio, has already been found â€œNot Guilty".