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Supreme Court of the Territory of Papua=New Guinea,

PORT MORESBY.

.â€• 28th December, 1946.

2 His Honour the Administrator,

Government House,

PORT MORESBY.

cs Your Honour,

Report\_on the Case of THE KING vy, HOR MUI, HUT YEE,

AND LEONG WING KWONG ,

At the Criminal Sessions of the Supreme Court which opened on 13th

December 1946, Hor Mui, Hor Yee and Leong Wing Kwong were tried before me

on a joint charge of having wilfully\_murdered Loh Kheng Whye on or about

8th September 1946, at Rabaul, in. the Territory of New Guinea. | owe

: 2. The three accused were defended by counsel and all pleaded "Not

Guilty.â€• .

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3. The killing of Loh Kheng Whye was alleged to have occurred -at No.

- 5 Group Camp, at Wangaramut, Rabaul, of which the\_three accused and the

& deceased were members, on Sunday mornings 8th September 1946, shortly after the attack there the same morning on Loh Yee Chor. {As a result of Loh Yee Chor's death six Chinese were indicted and tried for wilful murder and found guilty at the same Sessions: my report on that case ~ The King v.

Les Chee Lam, Leong Nam, Ho Pinu, Deong Kwong, Chan Mun and Ho Kit = has already been sent to Your Honour) . .

4 At the trial, Mr. Carroll, of the New Guinea Police, gave evidence that all of the accused orally and voluntarily admitted to him that they had been in the "incident relating to Loh Kheng Whye": two of them admitting having stabbed him and the third (Leong Wing Kwong) only admitting having held Loh Kheng Whye. Mr. Carroll said that each of the accused later made

a voluntary written statement and he tendered, these statements at the trial:

(Exhibits "B", "C" and "D" = copies of which are attached). It will be

noted that while in their written statements Hor Mui and Hui Yee admitted repeatedly stabbing or slashing Loh Kheng Whye, the accused Leong Wing Kwong said in his written statement that he saw Kheng Whye running with a knife and dagger in his hands towards the scene of the attack on Loh Yee Chor,

and that Loh Kheng Whye was going to stab someone, that he grappled

with Loh Kheng Whye and called for someone to come and tie him up but when he saw Loh Kheng Whye struck with a knife by another Chinese, he let Loh Kheng Whye go and took no further part in what went on.

At the trial, each of the three accused elected to give evidence on oath. The evidence given by Hor Mui and Hui Yee in their examination in chief, also that of Leong Wing Kwong was much on the lines of their respective written statements ~ except for some additions which, I do not think it unfair to say, were more favourable to themselves, and except for the fact that Leong Wing Kwong said that he had spoken of a "Yip Cho" in his written statement instead of saying "Hui Yee" and that the long detailed account, given in his written statement, of a number of other Chinese attacking Loh Kheng Whye, was quite untrue: he said - "that he had seen these people near the scene and, being 'frightened' at the Police Station, had named them as participants. Later, when giving evidence, Leong Wing Kwong said he was also 'frightened' at the trial but, being on oath, was now telling the truth.

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8th September, 1946, members of No. 5 Group Camp.

and five others above referred to.

watch of his: (Exhibit. 'D').

. Other witnesses at the trial included Captain N. A. We Macdonald  
â€œ(who described the organisation of No. 5 Group Camp and his view of  
the body) and Dr. V. G. Price, who gave evidence of his autopsy on the  
body of Loh Kheng Whye and tendered his written report of that.  
â€œexamination (Exhibit 'A', copy attached) from which it will be seen

that Loh Kheng Whye suffered nearly forty wounds, and that the "causes  
of death" were given as â€œpenetrating wounds of the chest, lungs,.  
abdomen, spleen and kidney and haemorrhage." (That report also relates

to ari autopsy on another body not relevant to this case),  
-5, The facts, as found on the evidence, were as follows:-

{a) The deceased and the three accused were, on Sunday,

{b) The organisation of that camp was as described in

paragraph 4 of my report on The King & Lee Chee Lam

(c) "The camp leader was Loh Yee Chor and the deceased, though holding no official position at the camp, was Loh Yee Chor's constant companion and associate, was described as his "brother", and was alleged to have Joined with Loh Yee Chor in abuses of his power and authority -- such as demanding money with threats (including threats of death) from members of the camp. Thus Hor Mui said these two took two coats and 2,000 yen of Japanese money from him and had him gaoled: and he suspected them of being concerned in the death of Leong Ping who had previously been asked for money: (Exhibit 'B'). Hui Yee said Loh Kheng Whye extorted \$15 from him with the aid of a pistol; Loh Kheng Whye and Loh Yee Chor manipulated the camp rations to their private ends; and that he too suspected them of being concerned in Leong Ping's death: (Exhibit 'C').. The accused Leong Wing Kweng made similar allegations about Loh Yee Chor and Loh Kheng Whye concerning rations, and their suspected implication in the death of his brother, Leong Ping, and said that Loh Kheng Whye had taken a wristlet

(d) Shortly after the fatal attack on Loh Yee Chor that Sunday morning, and while he was still surrounded, Loh Kheng Whye was seen running from his quarters towards the scene of "the attack with a bush-knife in his right hand and a dagger in his left.

The accused Leong Wing Kwong, observing this, and fearing (he said)

that Loh Kheng Whye was about to hurt someone, grappled with him, and

pinned his arms to his sides leaving only the forearms of Loh Kheng Whye

free, It is reasonable to suppose that Loh Kheng Whye was going to

help his "brother". Leong Wing Kwong prevented this, .and,. by grappling

with Loh Kheng Whye, in a sense contributed to what followed. But...

Leong-Wing Kwong. said, in his written statement, that he called for

someone to come and tie Loh Kweng Whye up: and, at the trial, that he

called on someone to disarm Loh Kheng Whye. It is quite possible that

Leong Wing Kwong, even if he thought Loh Kheng Whye was going to help

his "brother", considered further bloodshed useless and undesirable.

At this stage, while Loh Kheng Whye was held by Leong Wing Kwong,

the accused Hui Yee (who says he was -then unarmed ) moved: in to take

Loh Kheng Whye's bush-knife from him and (he says) received a cut from

that knife in his arm. (The cut, shown to the Court,

was a small one,

such as might be caused by a man who was held as above described or even

by accident). In the struggle, Loh Kheng Whye is said (in the written

statements) to have kicked Hui Yee in the testicles:

but in view of

Hui Yee's agility thereafter ~ as described in the written statements -

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this would hardly have seemed credible. At the trial, however, it was stated that the kick was aimed at Hui Yee's testicles, but missed altogether. Hui Yee's reaction to this kick was to bring the bush~knife

(the possession of which he had now obtained) across Loh Kheng Whye's shing whether it caused a wound or not is not clear. Somewhere about this time (at the trial the accused seemed disposed to put it a little earlier than they had done in their written statements), Leong Wing Kwong either let Loh Kheng Whye go, or the latter broke free. All agreed that Leong Wing Kwong took a further part in events. Although it could be inferred that there was no need for Leong Wing Kwong to take further action, seeing that Loh Kheng Whye now only had a dagger; whereas Hui Yee had his bush-knife and was using it, it can also be inferred that

events had moved more rapidly and more drastically than Leong Wing Kwong had foreseen and that he disassociated himself from them at the earliest moment. He was accordingly given the benefit of that reasonable doubt and acquitted.

When Loh Kheng Whye was released by, or broke away from, Leong Wing Kwong he is said to have made a sweep, with his dagger at Hui Yee but to pave the way for Hui Yee, it will be remembered, had possession at this time of Loh Kheng Whye's bush-knife. He struck Loh Kheng Whye with it, in an attempt to ward off the dagger (he said), the blow falling on

the spot where the shoulder merges into the necks at the trial he

described this blow as "accidental."

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- Loh Kheng Whye then turned and fled towards his own quarters ~



(which were only a few yards away, according to the evidence).

i. ~ Instead of leaving matters at that, Hui Yee elected to chase Loh Kheng Whye, and the accused Hor Mui joined in this chase. Loh Kheng Whye was about to enter his house when he was kicked in the rear by Hui Yee and fell forward into the house. (Hui Yee ~ leapt over his body and, according to his own written statement, ~ turned (Loh Kheng Whye) round and, when he tried to get up, .. struck him on the head with the bush-knife ~™. At the trial Hui Yee said he Struck this blow because Loh Kheng

Whye had tried to grab his testicles but had missed: it is strange that h ~ Should apparently have forgotten to mention this in his written statement, (Nor was it mentioned by Hor Mui, ~ who was with Hui Yee

at this time and had picked up the dagger which Loh Kheng Whye had dropped, - either in his written statement or at the trial).

The position now was that Loh Kheng Whye was prostrate, had already been wounded twice by a bush-knife, was completely disarmed, and had Hui Yee and Hor Mui standing over him armed respectively with @ bush-knife and a dagger. There is no doubt about what happened next. Those two kept stabbing the helpless Loh Kheng Whye repeatedly until he was dead: between them they inflicted over thirty wounds. Hui Yee said at the trial:~ "I was over~frightened and, not knowing what to do, f went on striking him with the bush-knife until he was dead"s: and Hor Mui, said at the trial:- ~ "The reason I struck him was because I saw him getting up, desperately trying to attack us."

6. For the Defence, it was urged that Hui Yee and Hor Mui were at the start unarmed and had therefore not plotted to kill Loh Kheng Whyes and that Hui Yee intervened to disarm Loh Kheng Whye, who looked dangerous, and in so doing became possessed of the latter's bush-knives that Hor Mui went to aid Hui Yee and became possessed of the dagger Loh Kheng Whye had dropped; that "perhaps the blows they inflicted were more than necessary to ensure self-defence, but these are not intelligent or cultured men: some allowance must be made for the heat of the moment blinding their judgment as to when to leave off."

7. The law relating to the measures which may lawfully be taken in self-defence or in the defence of others has been referred to in paragraph 6 of my above mentioned report to Your Honour on the case of The King v. Lee Chee Lam and five others.

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Even if Hui Yee's initial blows may be reasonably conceived as

having been inflicted on Loh Kheng Whye in self-defence, the oft-repeated

striking & stabbing of Loh Kheng Whye "by Hui-Yee and Hor Mui, when

Loh Kheng | Whye was prostrate, wounded, disarmed"and\_at their mercy,

seem to me to have been acts far beyond anything that was necessary for

self-defence and to have therefore been unlawful.

For that reason, I found both Hor Mui and Hui Yee guilty of wilful

murder.

8. Before sentence was passed, counsel for the accused referred

to their youth, Hor Mui being now 23 and Hui Yee 26: Hor Mui had been

a prisoner of war of the Japanese for six years and Hui Yee for four.

In answer to the usual question each of these two accused said:--

"I ask for mercy."

9, Notwithstanding the fact that Hor Mui and Hui Yee had shown no

mercy towards Loh Kheng Whye, I felt that there were circumstances in

this case which warranted a recommendation that Your Honour extend

clemency to them, and I accordingly did not pronounce sentence of

death but directed that it be "recorded".

My reasons for makingâ€™™ that recommendation to Your Honour are  
Similar to those which have led me to submit a like recommendation in  
the case of The King v. Lee Chee Lam and five others: {see paragraph  
9 of my report on that case to Your Honour). The two accused in this  
case were younger than those in The King v. Lee Chee Lam and fiye  
others, ~ Hor Mui, for example, having become a prisoner at seventeen,

I have the honour to be,

Your Honour's obedient servant,

F. B. Phillips, J.

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