

THE QUEEN

v

**JOHN TAHANA RAWIRI
GLENYS LYNETTE WRIGHT
AROHA GWENDOLINE WHAREPAPA
TANGINOA APANUI
ANGELA RANGIAROA ORUPE**

Hearing: 14 August 2009

Counsel: G J Burston, P K Feltham and K Grau for Crown
P V Paino for J T Rawiri
I M Antunovic and S B Antunovic for G W Wright
G King and P Mitchell for A G Wharepapa
L C Ord for T Apanui
V C Nisbet for A Orupe

Judgment: 14 August 2009

SENTENCING REMARKS OF SIMON FRANCE J

[1] The five offenders were convicted following a jury trial of the manslaughter of their niece, Ms Janet Moses.

Facts

[2] In setting out these facts I intend to take more time than would normally be the case on sentencing. I do so because I cannot do fairness to the situation, nor assist people to understand the sentencing response, unless a reasonably full context is provided.

[3] John Rawiri Senior and his wife, Gwendoline had nine children. The family base came to be the Wellington suburb of Wainuiomata, and many of John and Gwendoline's family settled there. The siblings themselves had children many of whom remained in the district and presently there is a further young generation growing up there.

[4] The deceased, Ms Janet Moses, is one of the many grand-children of John and Gwendoline. She and her cousins spent a lot of time together, as did their elders. The description of a tight knit family is a very apt. Extended family members provide the bulk of friendship and social interaction. Many who testified described their cousins as best friends and the ones they hang out with.

[5] The five offenders to be sentenced today are all children of John Senior and the late Gwendoline. Ms Moses' mother is their sister. John Rawiri is the recognised head of the family; it is clear from the trial he is much loved and respected. Mrs Glenys Wright is the eldest of the daughters and is the senior woman within the family. The nature and responsibility of those roles undoubtedly changed in 2007 when Mrs Gwendoline Rawiri died. She was until her death the family's rock, and plainly on whom people relied in situations such as the one which was to arise with Ms Moses.

[6] The essence of this case can be briefly stated, and then some expansion will be required. The essence is this. Around the time of her death two external factors were plainly having an effect on Ms Moses. First and by far the most significant, she had been particularly close to her grand-mother and was devastated by her death. She struggled to cope with it, and several observed that it was as if a part of her had

died also. Second, Ms Moses and her partner were experiencing problems, and this was a further stress.

[7] In the period subsequent to her grand-mother's death Ms Moses exhibited signs of being depressed; she had a lowered mood and was uncommunicative, both things which were very out of character. However, in the week leading up to her death the behaviour changed for the worse. She became aggressive at times to people to whom she would always have treated with the greatest of respect. Her thought patterns at times verged on the incoherent, and her sleep patterns became impossibly disturbed.

[8] Specific incidents occurred which greatly troubled her family – on one occasion she was given a special gift of pounamu by her other grand-mother, and on receiving it, she just stared fixedly at her grand-mother without speaking. Throughout the week prior to her death, there were prolonged periods of Ms Moses staring blankly; on one occasion this coincided with her being found just standing in the middle of the road.

[9] Ms Moses was cared for over this period by her family, under the supervision of her aunts and uncles, many of whom were the accused in this case. They stayed with her in the flat occupied by her grand-father, and were with her day and night. On one evening Ms Moses became particularly upset, and seemed to be either dazed or drowsy, or alternatively growling and roaring like a lion. At other times she rocked. Her conversation or utterances were bizarre and unconnected but a common theme was drugs, a hit and a battle.

[10] Dr Rhys Tapsell summarised her conduct over this period as lacking stability:

She continued to talk about rather paranoid themes and she appeared quite pre-occupied, distractible, and unresponsive either to those around her or her environment.

[11] Dr Tapsell's view is that Ms Moses was suffering from a mental illness; she plainly had a disturbed mood and many of the signs suggest an underlying psychosis, which is where people lose touch with reality. Their perception becomes distorted, they see things that are not there, and they can hear voices. Paranoid delusions are

common. The person can often also take on board and feel matters from the environment around them; as I understood it this was to say the person might act them out.

[12] That then is medical science's explanation for what was happening but this case is about how the family, Janet's family, perceived what was happening and reacted to it. The first step was a common one for the Rawiri family – on the Sunday a family meeting was called. Numbers are difficult to recall or gauge but possibly twenty to thirty people were present, as people discussed what might be wrong with Ms Moses. She herself was there, off to one side, but still uncommunicative.

[13] A further meeting was held on Monday. I run these two meetings together because I do not feel sure as to exactly what happened at which, and when events and ideas were mentioned.

[14] What is clear is that over the course of these two meetings it came to be decided both that Ms Moses was the victim of a makutu – sometimes called a Maori curse – and that the reason this had happened was because other family members had stolen a lion statue some weeks earlier from a pub in Greytown. The statue had been left at the grand-father's flat in Wainuiomata. No doubt Ms Moses overheard some of these discussions

[15] It is necessary here to pause and comment on why a makutu might be thought to be the cause. Some Maori people, as indeed do many other people, believe in the existence of spirits, which can be good or evil. Makutu is a particularised form of such beliefs. It is the practice of deliberately imposing a curse on a person. As I understand the evidence at trial, in very general terms it was a belief that existed more generally in Maori in centuries past, but has declining acceptance. However, there remain some or many Maori who still believe in its existence. The accused in this trial, and many of their wider whanau, fall within that group. They believe that at other times in their lives other family members have also been afflicted by a makutu. On those occasions Nana Gwendoline supervised the process of dealing with it.

[16] The family, and these are of course generalisations, also have a firm belief in the healing and protective powers of water. Again this is a belief not unique to them or to Maori. Water is obviously symbolic in many rituals, such as baptism for example. Many members of the family follow a practice of doing their waters, which is an extended process of blessing themselves with water in a set order of movements. Some do it daily; others when thinking that they are going into situations that might be unsafe.

[17] Returning now to the events leading to Ms Moses death, the family came to believe that the theft of the lion had led to Ms Moses being afflicted. Although she had not herself been involved, she was the vulnerable member of the family and the one thereby cursed. The family consulted with a local tohunga who is a senior spiritual adviser. It is common ground that this was the proper thing to do.

[18] The tohunga confirmed that Ms Moses was the victim of makutu. He said he could see claws in her stomach and they had to be removed. He confirmed that the theft of the lion was the cause, tracing it to the fact that the theft had separated the lion from its mate. His advice was that the lion must be returned, and amends made.

[19] The next day the family took the lion back. It is indicative of their commitment to each other that ten cars made the journey. Many had taken Monday and now Tuesday off work to be part of this and to help. Several, including the five offenders, were also to take the rest of the week off to continue to be with Ms Moses.

[20] The trip went well and afterwards some improvement in Ms Moses was noted. However, the tohunga said it had not been wholly successful. He could still see there was half a claw left in Ms Moses and the family would have to help to get it out.

[21] In hindsight there was a vagueness about this that was unfortunate. It seems the tohunga meant for the family to stay with her and pray and comfort her and it would come right. The family seemingly thought it meant that he was out of ideas and it was over to them to know work it out.

[22] Whilst in some ways this could seem crucial to what happened next, in other ways it was not. Because what the family did, at least initially, was what the tohunga meant. They stayed full time with Ms Moses. They prayed for her and with her. They noted what she was saying and they then spent anxious hours trying to understand its meaning, trying to work out how they could help.

[23] On Thursday, however, things started to go wrong. Again within the witnesses there was confusion over Wednesday or Thursday, but what is clear is that things with Ms Moses deteriorated. An unfortunate contributor to the unfolding events was the fact that the tohunga in question was himself physically unwell, and required regular hospitalisation. Following his involvement on the Tuesday he had departed for a scheduled period of hospitalisation.

[24] It is apparent that over the Wednesday and Thursday, the use of water became more prominent. There was a shower incident where it was noted that Ms Moses seemed concerned about cold water. This was believed to be the demons being scared of it, so there was a prolonged period of holding her in the shower. It is important to note that at this stage it was not just these few family members who had separated Ms Moses off. Ms Moses' father had come to Wainuiomata when told of Ms Moses ill-health. He was there when the shower incident happened and he helped her in the shower. Over these few days he asked Ms Moses on several occasions whether she wanted to leave and she said no. Also at points on the Thursday Ms Moses paternal grand-father was also there. He left when concerned at what was happening. He had tried to get another kaumatua to have access to the situation, but without success.

[25] Sometime on the Thursday night, things changed again. It is to be recalled Ms Moses had been repeatedly talking of battles, drugs and hits. The belief had been that there was a family member in trouble with drug dealers and some sort of attack was imminent.

[26] However at some point about 7.00 p.m. when outside the flat, Ms Moses got up and said "they're coming" and that she would face them. Some say she said she was not afraid to die. The family took her inside and prepared to fight. It came to be

thought that the battle was not with people but with demons, or evil spirits, and it was a war they must win.

[27] At some point after that, Ms Moses had got up and walked around the room pointing out where the evil spirits where. She was talking to John Rawiri and saying “there Papa, over there”. He would respond by using a crutch as a taiaha and seeking to ward them off.

[28] Sometime around 11.00 p.m. or midnight, the use of water became prolific. It seemed to have two roles. First, there were more than thirty adults and teenagers in this sealed room. They were praying and chanting, probably at times feet stomping. It was undoubtedly very hot and oppressive, so shirts were removed and water was used to cool.

[29] At the same time water became the weapon to fight the demons. It came to be believed that both Ms Moses and a cousin were primarily afflicted. What happened to them will soon briefly be described but first it is to be noted that over the evening and through the night hours of the morning it was believed that many family members were hit. All these people were treated with water in a bid to flush the demons out. The senior men, but primarily John Rawiri, would question the victim, asking them to name names or other such things to check if they were okay.

[30] As for Ms Moses and her cousin throughout the night they were held down and water was poured into their eyes and down their throat. Ms Moses resisted violently but of course this was interpreted as being the demons fighting back. At times as many as five or six people sat on her legs and arms, or held her head so that water could be forced in. The idea was that she had to be made to vomit so that she would thereby vomit out the evil spirits that had possessed her.

[31] It is beyond doubt that for some time madness reigned in that room. Dr Tapsell spoke of group hysteria taking over, and that seems indisputable. There was so much water a hole was drilled in the floor to let it out.

[32] Around 7 or 8 in the morning Ms Moses died. The cause of death was drowning. The mechanics of drowning in such circumstances are not really known to medicine and so the literature is sparse. What happened is plain enough at one level in that Ms Moses' airways became blocked. When water gets into them a mucus develops that ultimately blocks the airways unless expelled and the person cannot breathe. Drowning is usually by full immersion, and the processes can be described reasonably accurately. Drowning caused by progressive intakes of water whilst on dry land is not documented.

[33] In terms of sentencing the position must be this:

Ms Moses died because water was forced down her throat against her will. That had happened many times during the night. On the last occasion it so compromised her airways and lungs that she drowned, essentially because she could not get air through her blocked airways.

[34] When the family realised Ms Moses was in trouble they immediately tried CPR. It was unsuccessful. Authorities or help was not called because it was believed that her cousin was still afflicted and attention turned to saving her. It was several hours before people were given access to the property.

The roles of the five accused

[35] At trial, nine senior members of the family faced charges of manslaughter. They were the five who have been convicted, plus two of their partners – Mr Horo Wharepapa and Mrs Georgina Rawiri – and finally another sister Mrs Gaylene Kepa, and her husband Mr Alf Kepa.

[36] Mrs Rawiri was discharged at the end of the Crown case, and Mr Wharepapa was acquitted on the basis of non-involvement at the critical times. Two others were acquitted. I do not go into the detail, but record that I generally agree with Mr King's analysis that the reason for different verdicts lies in the interviews and what those accused said about belief in consent.

[37] In terms of culpability I conclude that the accused did what they genuinely thought was right. They were motivated solely by a desire to help Ms Moses, and I

have no doubt they believed she was in serious danger because of the makutu. However, they decided what had to be done without reference to Ms Moses herself, and without actually thinking about whether she wanted this sort of treatment to occur.

[38] In terms of respective roles, the Crown singles out Mr Rawiri and Mrs Wright as the ones primarily responsible. They have the leadership roles in the family and were plainly in the forefront of what was happening through the night.

[39] The others were assisting but were following and being guided by their decisions.

[40] I do not understand either Mr Rawiri or Mrs Wright to dispute the differentiation suggested.

[41] On behalf of Ms Orupe, Mr Nisbet suggests hers was a very minor role such that initially a discharge without conviction might be considered. There is no doubt that the evidence against her was less strong. One witness spoke of holding her chest whilst water was being forced in, and she was plainly present around the time of the final occasion when water was forced in. In her own statement Ms Orupe said she was holding Ms Moses' head whilst her sisters were flushing out her eyes. She denied pouring water in.

[42] My assessment is that Ms Orupe's main role was one of comforting her niece during this process. That is not to suggest she was not rightly convicted as being involved and as aiding what happened to Ms Moses but I accept hers was much more a peripheral role.

[43] Ms Apanui is submitted to have played a similar role. The evidence of her involvement and presence was much stronger, with many different witnesses commenting on it. She herself said she was mainly focussing on Ms Moses' eyes, and helping to restrain. Ms Apanui accepted (interview, p 165) that she could have put water into Ms Moses.

[44] Concerning Mrs Wharepapa, the defence was advanced on the basis of non-involvement around the crucial time. Ms Wharepapa in her video statement did not accept particular involvement and denied holding Ms Moses down. She accepted she was present throughout. However, three witnesses had seen her using water on Ms Moses, and there were also descriptions of her holding Ms Moses down, and doing things to the eyes.

[45] I admit to an initial impression of a fuller role played by Ms Wharepapa but having reviewed the material consider that there is no reason to depart from the Crown assessment in relation to her. I accordingly see Ms Wharepapa and Ms Apanui as both involved in the way advanced by the Crown, but in a lesser role from that of Mr Rawiri and Mrs Wright. I consider that Ms Orupe was more peripherally involved, although present. My sense is, as Mr Nisbet submitted, she was somewhat less engaged in it all but was trying to comfort her niece and got caught up in the family dynamic.

Personal situation of each offender

(a) *Mr John Rawiri*

[46] Mr Rawiri is fifty years old. He lives with his wife, Georgina, and two sons. In addition, a thirteen year old grand-daughter spends much time with them. There are two other children living away from home. He has been in steady employment all his life, and is a valued employee at his current job. His continued employment in my view says much about his undoubted good qualities – he left school when he was fourteen, and has six times been made redundant, yet has pressed on with his responsibilities and been able to obtain other employment. Mr Rawiri has some previous convictions, the most recent of which is sixteen years ago. They are not relevant to today.

[47] Throughout the trial the position clearly emerged that Mr Rawiri is the leader of the extended family. He is the oldest male of his generation, and is looked up to

by his siblings, their partners, and all the next generation. He is looked up to with genuine respect and love.

[48] The report writer notes that Mr Rawiri seemed seriously traumatised by what happened on the night, and had difficulty discussing it. I observe that I have no difficulty accepting this. It is apparent to me that many of the witnesses, many from the younger generation, were likewise traumatised, and I venture to suggest may well benefit from some appropriate counselling and help.

[49] Concerning the offending, the report writer notes that Mr Rawiri said that he and the others were acting out of a sense of love. They were trying to help his niece rather than anything else he and the other family members have been portrayed as doing. He is reported as being dismayed by the verdicts. He explains what happened as being a spiritual thing. He is noted as repeating in the interview something that was said several times at trial:

You had to be there to understand what happened.

[50] On sentencing, Mr Paino emphasises that his client's culpability should be seen in light of his beliefs. Once it was believed that Ms Moses was affected by makutu, then his perception was that outside assistance was not an available option. Rather the family did do the right thing within this belief system by consulting with the appropriate person – the tohunga.

[51] The case is said to be unusual because throughout Mr Rawiri and others were trying to do the right thing, and were motivated solely by a desire to help a loved niece.

[52] Mr Paino submits a term of imprisonment is wrong in principle where the offender had an honest belief that what he was doing was right. Prison would not achieve anything, and deterrence by imprisonment directed at a cultural belief is ineffective.

[53] Accepting some penalty is likely, Mr Paino urges there be an outcome that allows Mr Rawiri to continue in employment. Home detention is preferred to

imprisonment, but is submitted to be equally wrongly focussed. Something that allowed continued community involvement, and contact with his extended family, is preferable.

(b) *Mrs Glenys Wright*

[54] Ms Wright is the oldest member of her generation, and is the senior woman in the family. She and her husband have lived at the same address for thirty years. Presently residing with them are three adult children, one younger child, a son-in-law and a grand-daughter. She has generally been in full-time employment, but has not worked since the events that claimed Ms Moses' life.

[55] Ms Moses' mother, Ms Olivia Rawiri, was contacted by the report writer. She spoke lovingly of her sister Glenys, noting her to be a role model. She is a person who Oliva looks up to, and she could not wish for a better sister. I record these observations for their own value, but also of course because they provide another context for today's sentencing. There are no victim impact statements. Consistent with all the evidence I heard at trial, the resolution of any issues stemming from what happened has been managed within the family. Plainly Ms Moses' mother holds no resentment, and attaches no blame, to her sisters and brother. The family bonds remain strong.

[56] Ms Wright advised the report writer that she found it hard to accept the verdict since she had been co-operative and truthful throughout. She also commented on the inability of those who were not there to understand, and that it felt like the demon wanted to wipe out the whole family. Mrs Wright is sad and gutted over the loss of Ms Moses who she describes as a beautiful humble person.

[57] On her behalf Mr Antunovic referred to the circumstances as I have already described them. He emphasised the on-going dilemma presented by the belief that there was still a claw left in Ms Moses. He emphasised the lack of appreciation in anyone that they were threatening Ms Moses' life. He emphasised that the loss is truly the family's, something they will live with forever. He submitted the impact on them both as a family and individuals is profound, and will affect their lives always.

[58] Mitigating factors were noted to be co-operation with the police, a low risk of re-offending, remorse, family forgiveness and the general motivations behind what happened. He notes the total absence of alcohol or other drugs as a contributing cause. Letters in support have been filed.

(c) *Mrs Aroha Wharepapa*

[59] Mrs Wharepapa is forty-seven years old. She lives with her husband. They have three adult children who live away from home. She has been in constant employment all her working life until these events in late 2007. They coincided with financial difficulties for the company that employed her, and she resigned at that point.

[60] Mrs Wharepapa commented to the report writer on the impact the death of her mother, which occurred not long before Ms Moses' death, had had on the family. Mrs Wharepapa continues to grieve the death of her loved niece.

[61] Like her sister Mrs Wharepapa cannot accept the verdict noting that she had been honest and co-operative from the outset. She was shocked by the verdict and believed her proximity to Ms Moses at the time of her death explained why the jury held her guilty.

[62] Mrs Wharepapa explained that at the time when Ms Moses was ill the family did not know who to turn to. They came together to help each other. Of the day in question Mrs Wharepapa notes her confusion about what unfolded, and the confusion at the time about what Ms Moses was doing, and saying. Mrs Wharepapa was feeling exhausted and had a sense of utter chaos unfolding. She noted that the family had only recently been able to talk about matters and start to repair.

[63] On her behalf Mr King submits a punitive sentence is not required. He suggests a sentence involving home detention or community detention, with supervision is appropriate as meeting the education issues that the case has highlighted.

[64] Mr King submits that factors relevant to culpability include:

- a) the clear reality that the offenders loved Ms Moses, and believed they were acting in their best interests;
- b) the fact that the family has suffered a great loss and will continue to live with that;
- c) the compelling evidence that the victim, Ms Moses, believed she was possessed;
- d) the evidence of Dr Tapsell about the effects of social isolation, sleep deprivation and psychogenic illness.

[65] The situation was that the family thought they were doing the right thing, a belief reinforced by Ms Moses own behaviour such as when she was pointing out to those present where the demons were in the room.

[66] Mr King emphasises that these observations are not to challenge the verdict, but rather that where the law draws the line is not necessary an accurate barometer of culpability. Mr and Mrs Kepa, who were acquitted, had in their statements emphasised their belief in consent. The others had tended to focus on their belief in the necessity of what they were doing. Whilst a legal difference, against a background of a victim who is not consenting, the gap in moral culpability is very little.

[67] Mr King noted not only the loss they have all suffered, but their exposure to the public has been high in relation to matters that have exposed them to ridicule.

(d) *Ms Tanginoa Apanui*

[68] Ms Apanui is forty-three years old, the seventh oldest of the siblings. She is presently single and has three of her six children living with her, as well as some

grand-children. Mrs Rawiri, Ms Moses' mother, confirmed to the report writer that Ms Apanui has struggled to cope since the verdict.

[69] Ms Apanui is presently unemployed, having resigned shortly after being charged with her niece's manslaughter. Ms Apanui said that they were all trying to help Ms Moses, and never envisaged hurting her in any way.

[70] On her behalf Ms Ord focuses on the purposes of sentencing on this occasion. It is noted that there is victim forgiveness, and that the need for general deterrence is questionable in circumstances where the offending is unique.

[71] Her client is forty three years old with a largely offending free past. She is traumatised and remorseful for what happened. She mourns the loss of her niece every day. She is the youngest member of the family who was charged, and had a following role. She was not a decision-maker. Like the others her motivation was to make her niece better. There was no appreciation that the actions might kill her niece. Ms Apanui was one of the first to react to Ms Moses situation by trying to free her tongue and perform CPR. Letters in support have been filed.

(e) Ms Angela Orupe

[72] Ms Orupe is the fourth oldest of the siblings. She has three adult children, and three grand-children. She separated from the father of her children many years ago, and has been with her current partner for ten years. Together they built a house in 2007, and now live with two other people who assist with mortgage commitments.

[73] Ms Orupe has been in employment for her whole working life. She lost her job as a result of the present conviction, but her partner's business has been able to employ her. The financial viability of their situation is dependent on her continuing to earn.

[74] The report writer notes Ms Orupe continues to assert her innocence. The report notes:

She appeared to have great difficulty in describing in even limited detail the events that ultimately led to the death of her niece. However she did speak of a situation where “no-one had control over their actions, it was mad and ugly” and “things changed on the Thursday” and “went crazy”. It was the worst day of her life and she was visibly upset and distressed when speaking about the death of her niece.

[75] On her behalf Mr Nisbet submits in his submission that Ms Orupe had a lesser role, has been discussed.

[76] Mr Nisbet emphasises the impact the entire process has had on Ms Orupe and others, and submits the situation the family finds itself in, its attributable to their genuine and firm belief in “makutu”. It is noted that any penalty would be trite compared to the loss of their niece, and the suffering already endured. Financially the trial has been a significant burden.

The Crown submissions

[77] The Crown has provided the Court with decisions in other cases both from New Zealand and overseas. I record my appreciation in relation to that.

[78] In New Zealand the only comparable sentencing case is *R v Lee* where a pastor had performed an exorcism on a church member. The process had resulted in cracked ribs, and then manual strangulation. The pastor had acted in this way before so had awareness of the risks of pressuring the neck, although no-one had previously died. He was a church leader who had many followers, who by his actions had endangered them and placed hem in legal jeopardy. A sentence of six years was imposed.

[79] In Australia a case with some similarities to the present saw terms of two years jail imposed, but the sentence was suspended so the offenders did not serve it.

[80] In the present case the Crown notes the following aggravating features:

- a) the violence used on Ms Moses;
- b) the loss caused to her children and family;

- c) the method of death involved cruelty;
- d) the vulnerability of the victim who was mentally ill.

[81] Overall the Crown submits the paramount considerations were the sanctity of life especially in the case of the mentally unwell, and deterrence of those who act this way in furtherance of misguided and ill-informed fanatical beliefs. It is noted that the offenders continued to refuse to accept responsibility for the death, and in this sense remorse is lacking.

[82] It submits a starting point for John Rawiri and Glenys Wright of five to six years, and one of two to three years for the other three offenders.

[83] Mr Burston identified three factors that arguably made this case worse than *Lee* – the length of time over which the violence extended, the fact that the victim in *Lee* consented and here the victim was mentally unwell.

[84] However factors that I see as making this case different are that Mr Lee was the pastor of a church who performed these exorcisms as part of a ritual or settled practice. What he did (pressure on neck) was more obviously dangerous and he had knowledge of possible consequences. Most importantly the whole context and motivations in the two cases, and the relationships of the participants, are different.

Sentence

[85] I am grateful to all counsel for their submissions.

[86] The situation that is being dealt with today, at least as I see it, presents some unique dilemmas. The primary dilemma is the starting point from which one critiques or assesses what happened. Does one stand in the shoes of the accused, armed as it were with their deeply held beliefs and convictions, and their fears for Ms Moses' life? Or does one stand in the shoes of the public who are no doubt amazed and horrified that such things can still happen today. The end result of the sentencing process varies markedly based on where one starts.

[87] On this occasion I consider it is proper to assess the matter from the mindset of the accused. I do so because I consider that based on the evidence I saw, anything else would be wholly artificial. Further, I do not see any great need for deterrence – it is a unique case, and there is no sense others might act likewise. The Crown highlights that many of the offenders do not accept they were wrong in what they do and that is something that should influence the sentencing response. I accept that it gives rise to concern in terms of the future but the events that came together here are unlikely to be repeated. Further there is no doubt a degree of wilful blindness there, and other means can be employed to address these things. I do not consider that factor requires a punitive response.

[88] I consider it important to state that in my view this was not a situation of a killing that was part of a ritual. It is easy to attach labels but they can mislead. There was no pre-planned ritual here and it was not a group of fanatics pursuing some warped ideology with no regard for others, nor was it the playing out of fanatical beliefs.

[89] What happened was that a group of people who hold a deep belief in the deadly power of evil spirits ended up in a situation they could not handle:

- a) they feared for their niece's life;
- b) they had tried taking advice, and following it, but it had not worked;
- c) they believed that non-believers in makutu could not assist;
- d) they saw their loved one deteriorating.

[90] I will return to this because I certainly am not suggesting there was not fault or responsibility but in my view one should be careful with easy classifications. Ms Moses died because a group of sleep deprived people isolated themselves from the opportunity of help or advice, and fastened on a method of helping someone that led to her death. It was a death that was wholly unintentional and to them wholly unexpected. There was no realisation of danger. There should have been, but there

was not. The method used was invented at the time and undoubtedly represents a tragic confusing of different beliefs and practices.

[91] On a related topic, I want to comment on the topic of culture. Whilst the offenders' culture provided a context, it would equally be wrong to over emphasise it, and equally wrong for the offender's to hide behind it and see all that has happened as an attack on that culture. That would also be far too easy and simplistic.

[92] Culture played a role in that it led Ms Moses' family to believe she had been afflicted by makutu. I am sure that Ms Moses herself also believed she was cursed. Probably her mental health contributed to that belief, but the reality is that had it been another family member afflicted, she like the others would have accepted makutu as the reason.

[93] However what happened on the Thursday night was not the acting out of any cultural or religious practice. Expert witnesses were clear they have never heard of such actions and their evidence was compelling.

[94] A third general topic I should address is that raised in the Crown's submissions, namely the sanctity of life. It is always of pivotal relevance. It is why there can be no criticism that a prosecution was brought. A young woman died in horrible circumstances in the presence of numerous adults who were keeping her isolated from the world. What else was to happen other than for there to be a proper consideration of what went on and whether there was criminal responsibility?

[95] Although the sanctity of life is paramount, society's response to the loss of that life can and must vary according to the circumstances. Manslaughter involves so many situations which vary. It is not unique to have a manslaughter conviction where the offender's aim had been to help the victim. In New Zealand, for example, Dr Ramstead was found guilty of manslaughter for negligent surgery. He was sentenced to a six month jail term which was suspended.

[96] I mention these matters not to in any way minimise the value of importance of life, and the seriousness of any conduct causing death. But the reality is the

responses to such events vary, normally always in relation to the assessment of the culpability of the offender, including what why they did what they did. Finally, as regards this aspect, I do note that the fact of a conviction for manslaughter is important. Of and in itself it makes a statement.

Culpability

[97] Having decided to assess matters from the viewpoint of the offenders' belief, it is important to identify where the culpability lies:

- a) first, it lies in the failure to seek outside help. I understand that you believed there were no such options, but that is wrong and it is culpable on your part. If you listened to the evidence of Dr Tapsell you would realise that there is an awareness of these issues, and strategies within mental health agencies to address it. Besides, like all of us, you might have been wrong. Even if makutu exists, Ms Moses might not have been an example. I know the tohunga confirmed it, but when that did not work none of us have the right to ignore other options in relation to a sick person in our care;
- b) second, you did not seek other help from within your community. When Tuesday proved unsuccessful you internalised the issue and closed others out;
- c) third, you made this whole use of water up. No-one has suggested there is a basis for it in any religion or culture. Certainly water is used, but it is not force fed down someone's throat. There was no basis to think that forcing water continually into Ms Moses would rid her of the curse;
- d) fourth, what you did killed Janet. Even within your beliefs, even accepting if you want that she was the victim of a makutu, it did not kill her. She drowned, and it will not be known if something else might have worked had you tried to get other help;

- e) fifth, you carried on doing it to another person even after Ms Moses had died. I know that shows how genuine you were in your beliefs, but it also shows how close minded you had become;
- f) lastly, you exposed the younger generation of your family to a terrible event, and involved them in it. They look up to you, they respect you, and on this occasion you let them down, badly.

The sentences

[98] A common response in other jurisdictions to this type of situation has been the imposition of a suspended sentence of imprisonment. The fact of imprisonment sends the necessary message, but the suspension of it allows recognition of the reduced culpability of the individual. That is not an available option here, and means that I must confront head-on the key issue of whether any of you should serve time in jail.

[99] I have concluded that the answer is no. I understand that to some that may not seem an adequate response to what happened, but my reasons are these.

(a) the offending

- mistakes were made but you did not intend to harm Ms Moses, you did not realise you might harm her or kill her, and you were trying to save her;
- you failed to seek help when Ms Moses deteriorated, but importantly you did initially seek help and you did exactly what you were told;
- the death did not occur in the course of any ritual, or because of some fanatical beliefs. It was the product of a tragic and somewhat random coming together of circumstances;

- your capacity for rational judgment on the night was undoubtedly greatly affected by sleep deprivation.
- It is not to excuse but the events were in part the product of several features coming together in timing: the recent death of Mrs Rawiri, the theft of the lion, Janet's mental ill-health and the way in which her utterances and actions were capable of reinforcing the family's view, together her own belief that she had been cursed, the confirmation by the tohunga of makutu being the cause, the confusion over his advice on the Tuesday night, his subsequent unavailability through hospitalisation, and Janet's deterioration after that time.

(b) *the offenders*

- you are all parents who have worked to provide a good environment and to bring up your families. You have most of you a blemish free past;
- you have kept in employment in circumstances of difficulty over the years, and have sought to provide for your families in a way one always hopes parents will;
- the level of co-operation was very high. All members of the family provided interviews. Several of the younger ones who had been present gave video interviews saying what happened. They were open, and these videos provided the bulk of the evidence against the accused. The videos were played by consent and without any challenge; no witnesses had been required to testify at depositions;
- the accused all made statements. What was remarkable was the similarity in accounts, and again the lack of any guile. Brother and sister openly acknowledged the role not only that they had played but also that their siblings and their children had played.

Some of the accused were exhausted at the time of these interviews but still co-operated and did their best;

- there was absolutely no attempt to hide things in any way;

(c) *other circumstances*

- Ms Moses was a loved member of the family whose loss has been devastating. The family have reconciled over events, and Ms Moses mother has spoken in strong support of her sisters. No one will suffer more than the accused and their family;
- the events of that night were traumatic and will linger, I am sure, with many if not all who were present. It will be an on-going cost;
- I think it may well be the case that your understandings and knowledge about those aspects of your culture are incomplete;
- and given what has happened here I think society does have the right to require to attend and listen, and be open to what others are saying;

(d) *conclusion*

- in my view the answer here lies in a mixture of penalty and supervision.

[100] The sentences I impose will involve community based sanctions, and supervision including attendance at certain programmes. They will be higher for Mr Rawiri and Mrs Wright to reflect their greater role.

[101] Mr John Rawiri and Mrs Glenys Wright:

- a) on the charge of manslaughter I sentence you each to:

- i) six months' community detention. The curfew will run daily from 9.00 p.m. to 6.00 a.m. The curfew will commence Friday, 28 August 2009. The curfew addresses are:

Both of you must attend the Lower Hutt Probation Service next week to confirm arrangements.

- ii) 300 hours community work;
- iii) supervision for twelve months, such supervision to include three special conditions:
 - to undertake such counselling sessions or psychiatric assessment as directed, the purpose of this condition being to address on-going issues arising from the events of 12 October 2007;
 - to undertake Tikanga Maori programmes, or similarly related cultural programmes as are considered suitable by the probation officer;
 - to undertake any other educational programmes determined by the Probation Officer.

[102] Mrs Aroha Wharepapa and Ms Tanginoa Apanui:

- a) on the charge of manslaughter, I sentence you each to:
 - i) 300 hours community work;
 - ii) supervision for twelve months, with the special conditions that:

- you undertake any psychiatric or counselling assessments as directed, the purpose of this being to address any on-going issues arising from the events of 12 October 2007;
- to undertake Tikanga Maori programmes, or similarly related cultural programmes as are considered suitable by the probation officer.

[103] Ms Angela Orupe:

- a) on the charge of manslaughter, I sentence you to:
 - i) 150 hours community work;
 - ii) supervision for six months, with the special condition that you undertake any psychiatric or counselling assessments as directed, the purpose of this being to address any on-going issues arising from the events of 12 October 2007.

Simon France J

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