

## New Zealand Lost Cases Project

### *R v Rangitapiripiri (alias Kopitipita)*

(This case should be read with *The Queen v Native (Ratea alias Kai Kararo 1849)*)

1 December 1847

#### Supreme Court, Wellington, Chapman J

**Keywords:** Maori; murder; *inter se*; interpreter; conquered colony; abrogation; *malum in se*

**Main Source:** *The New Zealand Spectator and Cook's Strait Guardian*, Dec. 4 1847, 2-3

**Additional Sources:** [HS Chapman] Notebook entitled Criminal Trials No. 5 1847-9, Hocken Library, Dunedin (HL), MS-0411/013, entry for Wednesday December 1, 1847, 23-36; H.S. Chapman 'Legal Notes', c. 1858, Alexander Turnbull Library, Wellington (ATL) MSPapers-8670-047.

**Counsel:** D Wakefield, Crown Solicitor; Hugh Ross for the defendant

**Significance:** *R v Rangitapiripiri* and *R v Native* together constitute the first significant attempt to assert jurisdiction over matters *inter se* matters, ie those between Maori. Both concerned murder. Together they are significant as they outline the approach of the Supreme Court (or at least of the one judge who heard these decisions) to the application of British law to *inter se* matters. According to the Colonial Office, New Zealand was designated a settled colony. Chapman agreed (Chapman 'Legal Notes'). However, as far as the law to be applied in the new colony, this only indicated that as between the settlers, or the settlers and Maori that English law should be applied. For the purposes of determining matters *inter se* Chapman J chose to treat the colony as conquered. Thus, Maori laws and customs remained in place unless specifically abrogated on the basis that they were *malum in se* or against the law of humanity. According to Chapman, small matters of custom were to be left to the Maori themselves (Chapman 'Legal Notes'). Thus jurisdiction was based primarily on status, although there was little doubt in Chapman's mind that the Crown had effectively asserted jurisdiction over the whole of New Zealand. This is in contrast to the emerging assertion of jurisdiction based on territory which characterized the Australian colonies.

**Further Information:** Shaunnagh Dorsett "'Sworn on the Dirt of Graves": Sovereignty, Jurisdiction and the Judicial Abrogation of Barbarous Customs in New Zealand in the 1840s", (2009) 30 *The Journal of Legal History* 175; Damen Ward, 'A Means and Measure of Civilisation: Colonial Authorities and Indigenous Law in Australasia', 1 *History Compass* (2003), AU 049, 001 – 024.

#### Transcript of the Decision

Rangitapiripiri, alias Kopitipita, an aboriginal native, was indicted for the murder of Kopereme another native by drowning him on the 4th September last, in the river Manawatu.

Mr. D. Wakefield, Crown Solicitor, conducted the prosecution, and Mr. Ross was specially retained by the Crown for the defence.

Tangaru, otherwise Webster, a baptized native living at Manawatu - I belong to the Ngatimaru tribe as does also the prisoner and the deceased; I was with the prisoner at Manawatu four years ago ; a wife was not given to the prisoner then ; I was at the Hut the latter end of August; the prisoner was not with me ; I left the prisoner at Manawatu when I went to Eretonga; the deceased had all his property at that time; I left Eretonga on Saturday, and spent my Sunday at a place called Kokowa ; on Tuesday I went to Ruatotara, when I got there I heard that the prisoner was there, and that his companion the deceased was drowned : on the Wednesday I went to see the prisoner; I saw him and asked him to tell me whether the deceased had been drowned or murdered ; the prisoner said he did not murder him, but that the deceased had lost his life in the river ; I then asked the prisoner to go to the Manawatu, which he declined doing, but told me that if the body was found to write to him and he would return ; I insisted on the prisoner going with me, which he did; I left Ruatotara with the prisoner and others on Thursday ; we arrived on Saturday at a place called Puahutai ; when we got there we heard that some of the tribe were looking for the deceased ; we left Puahutai and came to Ngawapurua on Monday; we met the natives searching for the deceased, the natives had been nearly a day hunting for the body but had not found it; the following morning I left that place and went down the Manawatu; I left word with the natives that if they found the body and there were marks of violence on it they were to let me know; on Thursday, I arrived at Rewarewa on the Manawatu; on the Thursday following, a week after, two natives came in a canoe with a letter to me stating the body had been found; on the Monday previous some natives belonging to the Ngatikahunu coming from Eretonga to the Manawatu river embarked in two canoes, and coming down the river, one took one side of the river, and the other the other side, and the body was found ; I heard that the body was brought to Ngawapurua; I have not seen the body ; on my way here with the prisoner at Okaho I asked him what weapon he had used to destroy the deceased ; prisoner said he had used no weapon ; that in crossing the Manawatu river they were compelled to use a stick, each taking hold of one end, that he (the prisoner) kicked the deceased in the stomach and when he left hold of the stick, the prisoner held him by the ' hair of the head till he was drowned. The prisoner had given up to witness property belonging to the deceased, a green-stone worn in his ear, a blanket, a pair of boots, a piece of a calico, and a handkerchief. Prisoner never was married: the prisoner and deceased were connected with some female ; she belonged to a man named Robert. I heard of no quarrel or dispute between prisoner and deceased respecting the woman. I heard of prisoner being stabbed." I asked the prisoner what weapon he used, because the deceased disappeared mysteriously. I have heard the prisoner both admit and deny the murder. The denial was previous to his confession. Another party, Te Muera, Was present when the prisoner made the confession.

Cross-examined by Mr. Ross - When natives are travelling it is customary to have a load on their shoulders containing their things : on coming to a river which they are obliged to swim over it is customary to strip and take their things over by degrees ; if the river where the prisoner and deceased crossed had been deep enough to swim, the deceased would have stripped, except his shirt and greenstone in his ear ; the prisoner told me that they had to swim over two rivers that day, and that deceased stripped everything off except his shirt ; the prisoner gave me a shirt ; the natives are not in the habit of taking the greenstone out of their ears except to give to their children ; sometimes they take the greenstone out of their ears and carry it in a basket ; when I asked the prisoner at Eretonga, where his companion was, in the first instance he told me he was drowned in the river ; I asked him if the deceased had been drowned in the freshets or murdered ; I told him that I had given notice to the natives to let me know when the body was found ; the prisoner saw the natives searching the river; they were using shovels; the prisoner pointed out the spot where deceased was drowned to witness

and, also, to other natives; Okaho is about 4 or 5 hours'." travelling from Manawatu ; I do not know how many days elapsed from the time the prisoner first told me that deceased had been drowned, until I asked him at ORaho what weapon he used ; I always had a suspicion ; I have had conversations with the other natives respecting deceased's death : I have told them my suspicions ; there were four other natives besides the prisoner and myself coming' from Eretonga; formerly the natives would have killed the prisoner on the spot, but they now wished to hand him over to the Europeans; this is the first instance of their doing so ; on our way down from Eretonga to Manawatu the prisoner wished to stop at Waipakarahau till the body was found ; if the prisoner had not consented the natives would have compelled him to come ; a native of the name 'of Wilson' told witness that the prisoner should be sent to Wellington : the prisoner was the first to suggest that he should be brought to Wellington to be tried ; from the time the prisoner first told me about deceased he could have gone away if he had wished.

Te Muara, an aboriginal native of the same tribe as the prisoner and deceased - The last time I saw deceased, he was alive at the pa; I came from the Manawatu with the prisoner to Wellington with the last witness and others; we left Manawatu and, arrived at Okaho, where we slept; I heard Webster ask the prisoner what weapon he had used ; I heard the prisoner say he had used none, hut that in crossing the river he had jumped on the deceased, and when he rose he held him down by the hair of the head until he was drowned, and when he was dead he towed him' into the stream; I heard the prisoner tell the last witness that he had committed the murder, but did not tell him at the settlement because there were too many natives there; where the prisoner was drowned the water was only up to about his hips.

Cross-examined by Mr. Ross - I do not know that the water was only up to the hips of deceased ; I only heard so. The confession was made in a ware at Okaho; there were four of us altogether ; one was asleep, and the prisoner made the fourth. The prisoner knew he was coming down to be delivered up to the police. The nearest police was at Waikanae, about two days' walk. This was the only crime against the prisoner. By a Juryman - The deceased was a middle aged man, and as strong as the witness, or stronger.

Te Warehana, an aboriginal native, a relative of the prisoner - I saw the body of deceased on the 13th of October last; I saw it on shore ; there was a mark under the eye ; it was suspected to have been done with a stone ; the bridge of the nose was broken, also the cheek bone ; the jaw was crooked, it looked as if it had been done with a blow. The eye was completely out, and lying on the ear; the skin had not left the body when I saw it ; it was in a bleeding state. It did not smell in the least; there was a cut on the right arm. The skull was quite broken at the back of the head.

Cross-examined by Mr. Ross - This is the first time that I have spoken of it ; Mr. Hadfield wrote me a letter to come down to Wellington on 23rd November last; Mr. Hadfield is living at Mr. St. Hill's ; the letter merely stated that I was to appear as a witness in this matter ; the prisoner had stated to Mr. Hadfield that he was innocent, and thinking that the two other witnesses were telling lies he wrote to me to come down ; a great many other natives saw the body ; there are two of them here ; all the witnesses are related to the prisoner and deceased ; when the body was found some strangers to the tribe were present ; my tribe does not live where the body was found ; another tribe was living at the place where it was found ; I call them strangers ; the strangers I mean belonged to them ; this is the first instance of a native being handed over to the Europeans by themselves ; it has been the custom of the natives on a person being strongly suspected of murder to kill him at once ; if such person escape they would kill a relative of his as utu; all the witnesses against the prisoner are relatives of his ;

the body was found in the water on the 13th of October; I should think the body had been 20 days in the water ; the edges of the wounds were still sharp ; it is a quick running river ; there are falls in the river, also rocks ; the wounds on the body could not be done from the rocks in the river ; the wounds on the deceased would have caused his immediate death.

Matiu - Belongs to the same tribe as prisoner and deceased; has seen the body of deceased; saw it when it was being prepared for burial.

Panapa - Belongs to the same tribe as deceased and prisoner; saw the body of deceased at the settlement; saw it the day after it was taken out of the water; there was a blow on the back of the head, a cut down the lip, and the eye stuck out.

Cross-examined by Mr. Ross - I examined the wounds on the body of deceased ; the wound on the back of the head appeared to have been done with a stone ; the skull was broken ; from the appearance of the wound I should think instant death would ensue ; I think the body had been in the water five days ; the edges of the wounds were not chafed ; if the body had been twenty or twenty-one days in the water ; it would have been in a putrid state; if the deceased had. been that time in the water, he would have appeared in a worse state ; I saw my brother after he had been ten days in the water ; his flesh-was separating ; a policeman was sent for witness last Thursday ; witness was not subpoenaed.

An objection was taken to the indictment on the ground that the deceased was not properly described therein. His name appeared to have been Te More, and he had received the baptismal name Ko Pereme; in the indictment he was called Ko Pereme instead of Ko Pererae te More. His Honor said he should let the case go to the Jury, but he would reserve the point for after consideration.

The Jury without retiring from the box returned a verdict of Not Guilty.

### **Transcript of Chapman J's Notebook**

Wellington

Wednesday Dec 1 1847

Grand Jury Called

Edward Daniell (Foreman)

George Baker

K. Bethame

W. Fitzherbert

W. Hickson

James Kelham

A. Landlorne[?]

A. McDonald

George Moore

C. Sharpe

Robert Stokes

T.W.R Waite

William Wakefield

C. Clifford

J.M. Johnston

Nathan Levin

Abraham Hort

William Dunacan sworn in as interpreter in the case of R v Rangipiripiri.

The Queen v Rangipiripiri alias Kopitipita for murder.

Indictment read and translated.

Plea – Not Guilty

Crown solicitor opened case.

Mr. Ross retained for the prisoner.

Tangaru. I live at the Manawatu. I am a baptised native. The prisoner & deceased and myself all belong to one tribe – the Nga-ti-maru. I was with the prisoner four years ago. A wife was not given to the prisoner on that occasion. I was at Herataonga [Eretonga] in Sept. I went there the latter end of August. The prisoner was not with him [me]. I left the prisoner at the Manawatu. The deceased had all his property with him he was living in the bush. I left Herataonga [Eretonga] on the east coast on a Saturday – to spend my Sunday at a place called Raukawa [Kokawa]. On the Monday I went to Hapuku's settlement. On Tuesday I went to Ruatotara. When I got there I heard the prisoner was living there, and that his companion (the deceased) was drowned. It was women who told me this. On the Wednesday I went to see the prisoner. I asked the prisoner if "the ancestor" (the deceased) had been carried away to the last or whether he had killed him. The prisoner answered that he did not murder the deceased but that he was actually drowned. He [I] then asked the prisoner to return to Manawatu, he said he did not wish to do that, but that if the body of his companion was found and witness would write him a letter to that effect he would return to Manawatu. But I insisted on prisoner going back with me. The prisoner & myself with four others left Ruatotara on Thursday. We arrived on Saturday at a place called Puahutai. When we arrived there we heard that some of the Ngati Maraa were looking for the deceased. On Monday we left Puahutai & came to a place called Nga Awapurua [Ngawapurua] where we met natives searching for the body of the deceased. They had been nearly a day employed looking for the body & had not found it. On the following morning Tuesday I left this place and went down the Manawatu. The prisoner went with me. Before I went I told the natives if they found the body and it had any marks of violence to send & let me know. On Thursday I was at a place called Rewa Rewa on the Manawatu. A week after 2 natives came down in a canoe with a letter to him [me] stating that the body was found. On the Monday previous some Ngatikahunu coming from Heretaonga [Eretonga] to the Manawatu River embarked in 2 canoes. In coming down they separated and by one of the parties the body was found. (The Ngatikahunu not in court.) The body was brought to Ngapawapurua [Ngawapurua]. I have never seen the body. On our way here from Manawatu we called at a place called Okio [Okaho]. I asked him what weapon he had used to destroy the deceased. The prisoner said he had used no weapon. The prisoner told him that in crossing the river they were compelled to use a stick, each had hold of an end to aid them in swimming across the river. The prisoner said he kicked the deceased in the stomach and as he lost his hold of the stick the prisoner got hold of the hair of his head and held him under water till he was drowned. That is all he said and all I know. The prisoner had given up to me a green stone [word?], a blanket, a pair of boots &c. belonging to the deceased. The prisoner was never married. There was a woman who lived at times with both the prisoner & the deceased. She was the wife of one Robert. I never heard of any quarrel between prisoner & deceased. I heard prisoner had been stabbed. I have heard him both acknowledge & deny the thing the murder.

Cross Examined by Mr. Ross. It is customary when Maoris travel to carry a load (pikau). When they come to a river they must divide their load and take it over piece by piece. The prisoner told me the deceased had swam two other rivers in his shirt. There was a shirt given up to him by the prisoner. People who are travelling are not in the habit of taking the green stone out of their ear – unless to give to their children. At times they may carry the green stone in a basket. When I asked the prisoner for his companion, he said he had been drowned in the river. I asked the prisoner whether he had been carried away by the river or whether he had murdered him. I found on going towards the Manawatu with the prisoner – that prisoner had told the natives to search for the body. We saw the natives searching for the body. They were using shovels. The prisoner pointed out the spot to me & to the natives who were searching. (The witness described the distance so that the interpreter understood Okio [Okaho] to be about 18 miles.) It may be about 6 hours' journey. It was more than a week between when I first saw the prisoner to when the conversation at Okio [Okaho]. I was always of the suspicion that the native was murdered by the prisoner. I have had conversations with many of the natives about my suspicions. Six of us came down from Eritaonga [Eretonga]. Formerly the natives would have put him to death at once – this is the first time they have brought a prisoner to be tried by the Pakeha custom. On coming down the prisoner wished to stop at Waipukarau [Waipakarahau]. If he had not consented to come down we should have compelled him. A native teacher there had told witness to come down with the prisoner. The prisoner was the first to suggest that he should be brought to Wellington to be tried. If the native had had any wish to go away he could have gone.

Re Examined. I never heard threats.

Mamuere [Te Muara]. I belong to the same tribe as the last witness. The last time I saw the deceased he was alive he was then turned out of the pah. I came from Eritaonga [Eretonga] with the last witness & prisoner. We left Manawatu on a Thursday and came to Okio [Okaho] on Saturday where we slept. I heard the last witness ask prisoner what weapon he had used to destroy the deceased. I heard prisoner tell last witness that in crossing the River Manawatu he jumped on the deceased and made him sink, that when he came up again he took him by the hair and held him under, then when he was dead he towed the deceased into the stream. He said now they were alone he (prisoner) would confess that he murdered the man that the reason he would not tell him at the settlement was that there were too many people there. The[y] use the same expression for jumping as for kicking. He was in the water at the time. Where the deceased was drowned the water was not above the hips.

Cross Examined. I heard the water was no deeper from other people. The confession was made in a ware [whare] at Okio [Okaho]. There were four in the ware [whare] – the fourth was asleep – the prisoner was one of the four. The only two who heard it were witness and the last. The prisoner knew he was coming down to be tried. The nearest police were at Waikanae. Okio in about 2 days' walk.

By a juror. The deceased was a middle aged man about as strong as myself, a man of ordinary strength.

Tiwirihana [Te Warehana], of the same tribe as the last witness. I have seen the body of the deceased. It was after the prisoner had left. I saw the body on the 13<sup>th</sup> of October. I first saw the body lying on shore. It had a mark under the eye. It looked as if it had been broken with stone. The bridge of the nose was broken. The lower jaw was crooked. There was a cut down the face. Another had struck the eye. The eye was out and lying on the face. When I saw the body the skin had not left it. It was then in a bleeding state. It had not commenced to be

offensive, not in the least. There appeared to be a cut on the right arm. Those are all the marks I saw. There was a wound behind the ear. The skull was quite broken.

Cross Examined. This is the first time I have spoken of it. Mr. Hadfield told me to come here. Mr. Hadfield wrote me a letter to come here on the 22<sup>nd</sup> Novr. The letter merely stated that he should come here & give evidence. Mr. Hadfield thought the other natives were guilty of telling lies and he wrote to me to come. There are 2 here who saw the body. A great many saw it. The other witnesses are also related. When the body was found there were some strangers to the tribe saw it. My tribe does not live there. Another tribe lives there. They are the people I call strangers. This is the first case of a native being brought to the court to be tried. It was formerly Maori law to kill the prisoner themselves. Supposing the prisoner escaped the Maori law is to look out for some other to kill. All are related to the prisoner. The body had remained in the water from 11 Sep. to 10 Oct. I should think from appearance that the body had been about 20 days in the water. The edges of the wounds were still sharp & plain. The river is a quick running river. There are falls & rocks. I think the appearance could not have been produced by rubbing or knocking against the rocks. I think the wounds were such as to have caused immediate death.

Re Examined. I know of no other case of murder lately.

Matiu, belongs to the same tribe. I saw the body of the deceased – I saw it when they were preparing it for burial. His cheeks appeared to be beaten with stone – he was cut about the mouth.

Parmapa [Panapa], of the same tribe. I saw the dead body. I saw it at our Kainga. I did not see it when first found. It was the next day when I saw it. A blow on the eye – a blow on the back of the head & a cut down the lip. The prisoner never said any thing to me about the deceased.

Cross Examined. The mark at the back of the head appeared as if beaten by a stone. The skull was broken. I think such marks would have produced death. I should not think it had been (leaf missing). It never has been enough to ask the Christian name throughout. The native name is the name acquired by usage & reputation. That is enough, but no native can be known universally by his baptismal name alone. Throughout the deposition the native was called Piremi-te-Mori – It was in the information alone that he was called Ko Piremi. It is possible the Crown solicitor did not look at the deposition.

As to the merits – the case was similar to *Rex v Hindmarsh* as to evidence, ie. there were two probable causes of death. In *Rex v Hindmarsh* there were two counts. 1 for the blows 2 one for the drowning. In *Rangitapiripiri's* case there was only one count, namely for drowning.

For further information contact Shaunnagh Dorsett