

THE SHEARER'S TALE

Murder and injustice in the Australian bush

Tom Molomby; ABC Books 2004; 368 pp; \$24.95 softcover.

Wrongful convictions are Tom Molomby's forte. Once again he has written a marvellous account of the criminal 'injustice' system. (Not his phrase by the way, but one used in the 1970s and 1980s by radical groups including lawyers, academics, ex-prisoners and others. Too bad it has fallen out of favour. But that is another story.) For anyone wishing to understand contemporary wrongful convictions, of which there are plenty, and why they continue to be perpetrated, this book is a must read. Molomby writes beautifully here, as always. His is a perfect voice for the particular task. In what I might call a quintessentially taut Australian matter-of-fact style, he details a bush drama, indeed a tragedy, of many layers.

In 1947, Fred McDermott, the shearer of the Tale, was convicted for the murder of Harry Lavers and sentenced to death. Lavers was a share farmer who, with his wife, also ran a small roadside business on the road between Forbes and Grenfell in the bush of central west NSW. He disappeared after apparently being beaten to death by one or more people he caught trying to steal petrol from his bowser: 'Lavers got up at about a quarter to six and went outside to feed the horses. He was never seen again' (5). Lavers' body was never found, but some blood was found amidst other signs of a struggle at the pump. Other than those involved there were no witnesses to the killing. The case therefore was based on circumstantial evidence.

The killing occurred on 5 September 1936. McDermott was not arrested until 1946. The Tale is the story of the investigation of the murder, the construction of McDermott's guilt by the police, and the determination of the prosecution to present a case against the accused despite glaring problems with the evidence. But the book is more than just an account of a terrible injustice. It is a superb historical account of life in the Australian bush,

in that 'other country' called the Past. Molomby's description of the shearers' nomadic life and (mis)adventures, their relations with their employers, townsfolk and others — women with whom they had a variety of relations, Aboriginals (some of whom were amongst those women); some 'marginal' characters who operated in and around small towns and on the 'edge' of the law — all of this is fascinating stuff. And of course the focus on policing the rural sector is a significant part of this grass roots historical analysis.

The conviction was a surprise to many who knew McDermott and believed him innocent. All along the way he had the support of lawyers who believed in his innocence. McDermott was a fighter who maintained his innocence and was able to convince others. Molomby writes: 'Criminal lawyers, in particular, are used to hearing stories of hard luck and innocence and are not easily persuaded; to have been accepted by Lander, who at the time had one of the largest criminal practices in New South Wales, McDermott's story must have been thoroughly convincing. Indeed, Lander was so convinced that he offered his services free of charge for an appeal to the New South Wales Court of Criminal Appeal' (122).

But the appeal was rejected. This, despite real misgivings about the case against McDermott from early on. Thus, even in the Crown Law Department in Sydney 'there were several senior officers who had doubted whether the case was strong enough to be allowed to go to a trial' (120). But as the author explains: 'There is a common misunderstanding that an appeal is a rehearing of a case. In fact an appeal is only an attempt to show that the original trial was defective and, generally speaking, unless there was a procedural error at the trial, a mistake in the judge's directions to the jury, or new evidence has since been discovered, appeal courts will not interfere with a jury's verdict' (120). It was argued on McDermott's behalf that there was important new evidence to be heard, and that the judge had wrongfully admitted evidence (concerning a conversation between McDermott and the police) and another ground. An illustrious and highly experienced court, comprised of Chief

Justice Frederick Jordan, Justice Street and Justice Davidson, was not convinced of the validity of the first and third grounds. Of their rejection of the ground of new evidence Molomby comments: 'This scathing rejection was in fact almost completely unjustified; however, the court was to a certain extent misled through relevant information not being revealed to it' (127).

On the second ground, regarding the police interrogation of McDermott, there was a deep split, but the Chief Justice was out-voted. He certainly 'went down swinging'. His comment on police methodology sets an example for judges today when they are confronted by claims of impropriety in interrogations:

The 'usual caution' becomes an empty formality when administered by police officers who proceed immediately to subject their prisoner to a rigorous cross-examination, sometimes lasting for hours, and do not scruple to hold him in illegal confinement whilst he is being cross-examined. To describe as 'voluntary' admissions obtained in this way is to play with words. To allow police methods to be assimilated in this way to those of the Gestapo may be described as 'realistic', but it is not a type of realism to be tolerated in a free country. I think that, for this reason, the bulk of the evidence objected to should have been rejected in this case (130).

Fortunately for McDermott, a Labor government was returned shortly thereafter and as a warder at Long Bay informed the condemned inmates awaiting the result of the election: 'You'll all be right, Labor's back' (121). The sentence was commuted two months later. McDermott received legal aid and Garfield Barwick took the brief for an appeal to the High Court. It was heard in August 1948, the judges again of the first rank: Chief Justice Sir John Latham, Justice Dixon and Justice Williams. In September, distancing themselves from the view of Jordan CJ below, the three unanimously rejected the appeal. As in a number of other cases in Australia, several of which Molomby has brilliantly analysed in other books, the judicial system was unable to deal with a miscarriage of justice, one which had many ingredients but was essentially the result of police determination to construct a case which would convince a jury. That