

OPETAIA BAKEWA TUIVUYA

v.

REGINAM

[SUPREME COURT, 1962 (MacDuff C.J.), 16th, 30th November]

Appellate Jurisdiction

Criminal law—sexual offence—age of complainant in issue—production of birth certificate—need to identify complainant with person named in certificate—Penal Code (Cap. 8) s.147(1)(a).

Criminal law—evidence and proof—sexual offence—evidence of age—birth certificate—need to identify person named in birth certificate as complainant—Penal Code (Cap. 8) s.147(1) (a).

At the trial of the appellant for the offence of having unlawful carnal knowledge of a girl between thirteen and sixteen years of age the complainant gave evidence that she was thirteen and produced a certificate which she said was her birth certificate. There was no other evidence tending to identify the complainant as the person named in the certificate.

Held: There must be admissible evidence identifying the person referred to in the birth certificate with the person whose age is required to be proved.

Cases referred to: *R. v. Weaver* (1873) L.R. 2 C.C.R. 85; 29 L.T. 544; *R. v. Bellis* (1911) 6 Cr. App. R. 283; *R. v. Rogers* (1914) 10 Cr. App. R 276; 111 L.T. 1115.

[Editorial note: As is stated in the passage from Halsbury's Laws of England quoted in the judgment, the age may also be proved by any lawful evidence.]

M. V. Pillai for the appellant.

H. R. J. Lewis for the respondent.

The facts sufficiently appear from the judgment.

MACDUFF C.J.: [30th November, 1962]—

The Appellant was convicted by the Magistrate, First Class, Ba, of—

“ *Statement of Offence*

Defilement of a girl between 13 and 16 years of age contrary to section 147(1) (a) of the Penal Code.

Particulars of Offence

OPETAIA BAKEWA TUIVUYA between the 26th day of May, 1962, and the 5th day of June, 1962, at Bula District School, in the Western Division, had unlawful carnal knowledge of ANASEINI VOKAVOTU a girl aged 13 years and 7 months”

and was sentenced to serve a term of fifteen months' imprisonment.

A number of grounds of appeal were urged but I find it necessary to refer to one only—

“(d) that the age of the complainant was not proved strictly and and in accordance with law.”

The evidence as to the age of Anaseini Vokavotu consisted of that of the girl herself and was as follows—

“I am 13 years of age. I was born on 8.10.48. My full name is Anaseini Vokavotu. This is my birth certificate from the Provincial office.”

The birth certificate produced was in this form—

“AI VOLA VAKADINADINA NI SUCU NI GONE VULI

Au se vakadinadinataka oqo ni sa sucu mai Cautata e nei ka 8th October, 1948, Ko ANASEINI VAKAVOTU e dua na lewa ni koro ko Cautata Tikina ko Bau Yasana ko Tailevu

Na luvedrau ko Sakiusa Yabia kei Ruci Rokowati

Kai au,

Ko?

Na Vunivola ni Yasana, Tailevu.”

It is the contention of the Appellant that the prosecution failed to identify Anaseini Vokavotu with the Anaseini Vokavotu referred to in the birth certificate. In *Halsbury's Laws of England* (3rd Edition) Vol. X at para. 1449 page 752, the law is set out in these words—

“Evidence of age. An extract from a register of births, which is proved to be an examined copy or extract, or which purports to be signed and certified as a true copy or extract by the officer entrusted with custody of the original, is sufficient evidence of the age of the prosecutrix, if she is identified as the person named in the extract. But her age may also be proved by any lawful evidence.”

The notes to that paragraph refer to the case of *R. v. Weaver*, 29 L.T.R. N.S. 544, where Kelly, C.B. at p. 545 referring to the requirement of identification, said—

“The only questions raised in this case were, first, whether there was evidence of the identity of the girl Jane Watkins, upon whom the offence was committed, with the Jane Watkins named in the certified copy of the entry and the baptismal register produced, about which there is no doubt.”

The sufficiency of the evidence of identification of the complainant with the person named in the birth certificate was considered in *R. v. Bellis*, 6 Cr. App. R. 283, where the evidence was that the clerk to the guardians had satisfied himself on this point five years after the complainant was born and the Lord Chief Justice held—

There was therefore evidence that this girl had always been treated as being the girl mentioned in the certificate. This was in our opinion sufficient for the jury.”

The learned Solicitor-General has argued that the girl ANASEINI VOKAVUTU has herself identified herself as being the person to whom the birth certificate refers. To my mind this begs the question as to what her means of knowledge were, and in any case it is not sufficient identification merely to say "This is my birth certificate". The same argument was put forward in *R. v. Rogers*, 10 Cr. App. R. 276, that there was sufficient internal evidence in the certificate to identify the girl as the child mentioned therein, coupled with the girl's own testimony. That argument carried no weight with their Lordships, Reading L.C.J. in the judgment of the Court holding at p. 278—

"The appellant was charged with having committed the offence on a girl who was called as a witness and gave the age of Evelyn Trewin. A certificate was produced of the birth of a girl named Rosalie Evelyn Gwendoline Trewin, whose mother was Loveday Ann Trewin. No evidence was given identifying the child with whom the offence was alleged to have been committed with the child whose birth was registered in the certificate produced. Some evidence is necessary to connect the girl with the certificate, and that evidence is entirely absent, although it could obviously have been given apart from the mother. On that ground we must give effect to the law which has been laid down in previous cases, notably *Weaver*, which was considered in *Bellis*. It was argued by Mr. Lawrance that, if we rule as we have done, it will be impossible to prove the offence in many cases; that is a view which the Court does not take. The conviction must, therefore, be quashed."

In my view there must be admissible evidence identifying the person referred to in the birth certificate with the person whose age is required to be proved. There was none in this case so the appeal must be allowed.

What astounds me is that one of the witnesses called by the prosecution was a sister of the girl's mother and she was not asked one word in an attempt to identify the girl with the person referred to in the birth certificate.

Conviction and sentence are quashed.

Appeal allowed.