

THE QUEEN

v.

GEBU ARI

of Ligua Village, C.D.

J U D G M E N T

Bignold, J.

In this case the accused GEBU ARI, a native of Ligua near Abau in the Central District, appears before this Court charged under the provisions of the White Women's Protection Ordinance 1926 1934 that on the Fourteenth day of September, One thousand nine hundred and fifty two in the Territory of Papua he GEBU ARI attempted to commit rape upon one MIRIAM ELIZABETH SCOTT a European woman contrary to the provisions of Section 3 of the White Women's Protection Ordinance 1926 1934.

Mr. A. O'Driscoll appears to prosecute and Mr. Eric Flower as Defending Officer.

The Court has entered a plea of NOT GUILTY in view of the extreme gravity of the charge, thus throwing upon the Crown the burden of strict proof of every element of the offence.

The Crown must prove every element of the offence beyond a reasonable doubt, and if it does not attain that high standard of proof, the accused is entitled to the benefit of the doubt and to his acquittal. There is no obligation lying upon the accused to disprove anything, but upon the Crown to furnish positive proof inconsistent with anything but the guilt of the accused.

It is necessary, first, before proceeding to examine the facts, to consider the nature of the charge, and before doing so, it is to be noted that in the White Women's Protection Ordinance the terms used bear the identical meaning assigned to them in the Criminal Code.

An Attempt is defined in Section 4 of the Criminal Code as follows:

"4. When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

" It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

" It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

" The same facts may constitute one offence and an attempt to commit another offence."

The offence of RAPE itself is defined by Section 347 of the Criminal Code as follows:

"347. Any person who has carnal knowledge of a woman, or girl, not his wife, without her consent, or with her consent, if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime, which is called rape."

CARNAL KNOWLEDGE is defined in Section 6 of the Criminal Code as follows:

"6. When the term 'carnal knowledge' or the term 'carnal connection' is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration."

In the definition of RAPE the words "without her consent" are to be taken as meaning without her free and conscious permission. Upon a charge of Rape and Attempted Rape, the Crown must satisfy the Court of want of consent.

Finally, upon a charge of Attempted Rape as laid, it is open to the Court, if the evidence establishes it, to find the accused NOT GUILTY as charged but Guilty of unlawfully and indecently dealing with the European woman. See Section 7 (2) (a)

So much for the statutory provisions relating to the present charge.

The facts of the case are as follows: On the Sunday in the early morning on the date charged, the complainant was in bed in a bedroom of her house on the Epo Rubber Plantation. On that day, the only Europeans on the property were the complainant and her husband, the Manager and his wife being on a visit to Kerema about six miles away and about half an hour's journey.

Mrs. Scott, a European woman, the complainant, was in bed on her own because her husband had, unknown to her (she being asleep) proceeded down to the rubber factory about six minutes' walk away to attend to the business of the plantation.

Mrs. Scott has described in evidence that she awoke and became aware that there was someone in her bed with arms around her waist and a cold hand upon the flesh near her hip. Turning over in the belief that it was her husband, she found to her alarm that it was her house boy the accused, who at once pulled the sheet from over her and got on top of her. He was, she noticed, stark naked.

Mrs. Scott struggled with her assailant, who is a powerfully built native, whilst she is slender and frail in appearance. The accused had by this time straddled her body with his knees and Mrs. Scott started screaming and calling to her husband.

By this time the accused had, she has testified and I accept her evidence throughout as being worthy of the greatest credence, placed his knees between her legs and was trying to pull off her short pyjama pants by placing his hands up the legs of them and grabbing their crutch. She, on the other hand, was trying to prevent him effecting his purpose of removing them. Those pants have been produced in evidence and were seen by the Court to have the whole crutch torn.

At this time a pet dog made a noise with some double doors, upon which the accused, disturbed, jumped down from the bed and ran into the adjoining dining room.

Mrs. Scott got off the bed and made towards the front verandah of the house towards the double doors, but as she did so, the accused ran at her from the dining room and pushed her down on to a bed on that verandah.

Mrs. Scott was then diagonally across the bed, which is of a stretcher pattern, with her left foot off the ground and her right on the ground; she managed, as the accused still naked straddled her, to bring her right knee up and hit with her right hand, so that the accused was, as he bent over her, caught a severe blow in the region of the stomach. He staggered back from the bed, and she escaped from the house. As she ran out, she heard a door shut and saw under the house which is on stilts the outline of the legs and feet of a native running down the back steps.

Mrs. Scott entered the house, snatched up a dressing gown and shoes; she donned the former but ran barefoot down the track towards the factory. On the way she met a New Guinea native and spoke to him and they both proceeded in the direction of the factory where Mr. Scott was at work.

Near the packing shed Mrs. Scott became faint and she sat on the steps, where her husband found her crying and hysterical; with difficulty she told him of the event.

He returned to the house, but could not find the accused, though he spoke to two other natives MEGARAGA and SIOSA who were in the boy house. Each of these boys have testified that after the accused left the boy house and went to the house, they heard a scream, but they do not seem to have taken any action.

Those natives have testified that the accused told them, not long after the screams and when he returned to the boy house, that he was in trouble, that they must say that Mrs. Scott swore at them and insulted them by reference to the colour of their skins. It is significant that

this was the first account given by the accused to Mr. Patrol Officer Pegg when he was investigating the matter, though later he told him that MEGARAGA had forced him to do it, saying "If I were a man I would do it."

The accused in both the Lower Court and in this Court on this statement has not denied the allegations, but submits that the native MEGARAGA has pushed him to attempt to have sexual intercourse with Mrs. Scott, though this was denied by MEGARAGA in this Court after due warning that the question put to him need not be answered on the ground of its incriminatory nature.

Now, on the facts as above set out, a jury can not, in my view, come to any conclusion other than that the accused, who was most positively identified by Mrs. Scott, was attempting to have carnal knowledge of Mrs. Scott without her consent in the bed in her bedroom, though her conduct could have left no doubt whatever that such a thing was abhorrent to her; for what other purpose could he have been naked on top of her and subsequently kneeling between her legs and tearing at her short pyjama pants.

I find the offence proved beyond any reasonable doubt and I find the accused GUILTY As charged.

E. B. BIGNOLD.

J.