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THE QUEEN - against - JOHN MILLER.

J U D G M E N T.

Delivered by Bignold J. at 10 a.m.
on 1st July, 1955.

The accused, John Miller, is presented to this Court upon two charges arising out of the same series of events, namely, firstly, that he attempted to procure one MIARI-EROGO a girl under the age of twenty-one years who was not a common prostitute or of known immoral character to have unlawful carnal connection with a man, and secondly he attempted to procure one VAGI GAUDI a girl under the age of twenty-one years who was not a common prostitute or of known immoral character to have unlawful carnal connection with a man.

The accused, represented by Mr. Sturgess of Counsel, has pleaded Not Guilty to each count in the indictment, thus putting the Crown to strict proof beyond a reasonable doubt of every element of the offences charged.

The Crown case is that the accused, having on Good Friday night two European house-guests, tried to procure for their sexual enjoyment two native girls named in the indictment, the overt act constituting the attempt being the use of the Motu words "Vagi vagi maiari maiari sihari Taubada ida" - or words to the like effect.

The evidence adduced before the Court over a number of days has been distinguished by distortion of the truth on both sides, but quite plainly it is the duty of the Court first to see whether the evidence furnished by the Crown, in the light of the evidence given for the Defence, as to the utterance of the words concerned, has provided proof beyond a reasonable doubt.

The adjournment had given me opportunity to consider the direct evidence of the alleged user of the words, and my notes disclose that of six witnesses called for the Crown, not one version agrees exactly with the version of any other witness for the Crown. The learned Crown Prosecutor, Mr. Lalor, contends, of course, that from the class of evidence available, nothing else can be expected.

I do not propose reading out the various versions, except to observe that one enthusiastic witness had no difficulty in testifying that the word used was "Gagaia", a much stronger word, of course, and a more objectionable one than the word "Sihari.".

The evidence placed before the Court has established satisfactorily that there are certain Roku villagers concerned in this case who would welcome the accused being compulsorily resident elsewhere, and this is not surprising. With this in mind, and taking into consideration the denials of the accused, and especially his original denial to the Police, together with the evidence of some of his witnesses (excluding any member of the canoe party) it seems to me that the standard of proof would not satisfy a Jury beyond a reasonable doubt on this aspect of the case, although it is only right to add that it seems clear that the learned Crown Prosecutor has discharged fully his duty and has placed before the Court all the evidence that was available to him.

The accused's evidence has been unsatisfactory. He was at pains to emphasise his lack of knowledge of Motu in support that he could not have used the word "Sihari", but I think that his knowledge of Motu, from his manner of living, must be considerably greater than he would have the Court believe. He was reluctant to admit that he had invited the natives to dance at his house, but the evidence leads me to suppose that he did. His evidence as to the violence that arose that night, I cannot accept, in view of the other testimony, and I think it plain enough that he had a hand in pushing the native, Iramo, down off his verandah, and when assailed by an angry group of natives on the ground, declared his intention of getting his gun.

These, of course, are all matters of suspicion and tend to affect his credibility unfavourably.

The Defence dropped all pretence of attacking the Crown case, either on the grounds of the age of the girls (who were obviously sophisticated ones) or upon the question of their immorality.

The Court felt that there was much substance in Mr. Sturgess' contention that a European engaging in such a wicked plan as procuring the girls for carnal knowledge by the Europeans, would hardly be likely to cry out his intention before a number of natives, some of whom he knew to be, possibly for good reason, hostile to him, and that such intention would be much more likely to be evinced by some clandestine approach to the girls, the object of his evil intentions.

Lastly, even had the facts supported the Crown case in relation to the use of the word "Sihari", I think that, as it is a word not necessarily implying sexual intercourse, a Jury would require proof of some other circumstance supporting the inference that the word was used in its graver sense, though it would seem that only a slight circumstance would be

required to turn the scale in favour of the graver construction.

In my view, the evidence, as it stands, falls short of enabling a Jury (assuming for this purpose the use of the word) to be satisfied beyond a reasonable doubt of its use in the secondary meaning of sexual intercourse, and it seems to me that the sense in which some of the natives who heard the words understood it could not be evidence against the accused unless it were shown that he knew or should have known that they would so understand it.

In view of the foregoing, I find the accused Not Guilty and he is discharged.

(Sgd.) Bignold J.