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IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA

THE QUEEN v. HAPA-VETAGI

JUDGMENT

In this case the accused comes before the Court charged under Section 420A of the Criminal Code that on the Third day of October, 1957 in the Territory of Papua he was upon the dwelling house of one Allen Lewis de Groen with intent indecently to insult a female inmate of such dwelling house, to wit, Inez Clare de Groen.

The accused was committed for sentence, but upon hearing the manner of entering the plea of Guilty in the lower Court, this Court ordered a plea of Not Guilty to be entered in favour of the accused, as provided in Section 600 of the Criminal Code.

The facts in this case are not in dispute. The complainant, a married woman living in her husband's house at Lawes Road, asked the accused, her employee, to make a hot shower for her in a bucket which was pulled up in the bathroom.

She also asked the accused to clean some shoes, and then she went to have the shower, but the accused left his work and went to the outside wall of the bathroom, placed a box against it, and from the box stepped on to a roof support to look at the complainant over the bathroom wall as she showered in the nude. Whilst he was in the act of looking over the wall at her, she saw his head and was much shocked and annoyed.

Mr. Mallon of Counsel has appeared to prosecute, and Mr. Smith of Counsel has appeared for the defence.

Besides having the advantage of their argument, I have had the advantage of considering the Judgment of the learned Chief Justice in The Queen v. Kaim Kaim.

Mr. Smith's defence, as I understand it, turns on the question really of the burden of proof, and he contends that where a specific intention is charged (as it is under this indictment) the Crown must prove that intention beyond a reasonable doubt, and it is not permissible to use the presumption that a man intends the natural and probable consequences of his act in order to afford that proof. Smyth v. The Queen (1957) A.L.R.441.

Mr. Smith contended that the facts of this case indicate that the accused desired to see the complainant and not be seen himself and in consequence had no intention whatever of indecently insulting her.

As a jury it is open to me to look at all the circumstances, and I have to consider that the accused was upon the house, and his own admission shows that he climbed into a position on the wall to look down at the complainant as she stood in the nude under the shower; in fact it was for that very purpose he climbed there.

It seems to me highly probable and almost certain that she would see him looking over the top of the bathroom wall as, in fact, she did, and was thereby greatly insulted.

I am unable to subscribe to Mr. Smith's ingenious argument that women in the shower in the nude are not insulted by being looked at by a male, but are perhaps even flattered.

As a jury, I am satisfied that he acted in such a manner that he must have known would indecently insult the complainant, and there are no facts that appeal to me as leading to any other conclusion; I therefore find that his intent was as charged. I therefore find the accused Guilty.

J.
29/10/57