THE QUEEN -v- ERNEST JOSEPH MULLANEY

JUDGMENT

Delivered by His Honour the Chief Justice on Wednesday, 12th March, 1958.

I have had two versions of the facts and neither is entirely satisfactory. There is considerable doubt about precisely what was said and done, but the main substance of the evidence is clear.

The accused has given evidence and given a detailed account of his actions on the occasion in question. Some parts of this are undoubtedly correct, and other parts carry sufficient probability to warrant accepting them for the present purpose, but at the critical points of time and place the evidence of the accused does not satisfy the normal tests of rational behaviour. If his account of the dispute over 2/- was correct, it is remarkable that he did not immediately approach the Police and request them to investigate the dispute. He knew that the Police were sent for and the conclusion that it was because of a substantial complaint against him is irresistable. If his account was true, it is remarkable that the accused should think it proper to go on to the land where the woman lived. If he went to wash his hands, it seems strange that he should stop to smoke a cigarette or risk soiling his clothes with motor grease and battery acid by urinating or that he should urinate where he did.

It is established beyond question that native women and not men went for the Police and that they and not he took the initiative. The account given by the accused bears many signs of an attempt to explain away a series of facts.

The Crown case in the main is well supported by evidence and corroborative details from reliable sources. In view of the language difficulty, I entertain considerable doubt about the precise words used, but I think that it is plain beyond doubt that the accused went to the house to put a clearly immoral proposition to the native women. Whether he had thought he had some prospect of securing the services of some particular woman or not, I cannot say, but I do not doubt that with the aid of the Kerema boy he

put a proposition that he would pay for IVAK to be allowed to go to his house for an immoral purpose. The proposal was put to the girl's mother who took charge of the conversation from her end, in the presence of the other two women.

The native women refused and showed their resentment, but the accused was strangely persistent and remained there long after the Kerema boy had decided that discretion called for his departure.

The native women plainly showed that they did not want relations with Europeans of the kind proposed by accused, and took the only possible course open to them in seeking Police protection.

I find therefore that accused was on the premises with the intent of putting a proposition to these inmates of the house which involved an immoral and indecent purpose and which was calculated to offend and annoy them and to convey a most insulting inference.

I must therefore find an offence proved.

There are two charges laid, and it is argued by the Crown that a separate offence is committed against each inmate if several are addressed together. I cannot take that view. A person uttering one insulting and indecent word before a large female audience might on this view commit thereby a hundred separate offences. I would not be disposed to take this view if a more reasonable construction is open. Under the Ordinances Interpretation Ordinance singular words may include the plural and I see nothing to indicate that when several female inmates are collectively addressed, the offence should not be read as ".....insult and annoy all or any female inmates ....." I think the elements of the offence are, first, being on the premises, and second, having an intent of a certain kind. In my opinion it is an intent of precisely the same kind, whether it would be insulting or offensive to one or a dozen people. On the evidence I cannot find that the accused addressed any particular words to any particular woman, but rather I find that what he said was equally addressed to and equally insulting and annoying to all three.

Accordingly I find the accused guilty on the first count, and not guilty on the second count, on the ground that this constitutes the same offence for which he is convicted on the first count.

For many years the Judges of this Court have pointed out

the very unsatisfactory wording of the Section under which the prosecution is brought, and have many times recommended that the wording be revised to avoid obvious legal technical difficulties which ought to have no place in a criminal code.

CHIEF JUSTICE.