

CRIMINAL CASE NO.13 of 1966

THE HIGH COURT OF THE WESTERN PACIFIC

(CRIMINAL JURISDICTION)

BEFORE: The Hon. Mr. Justice J. Bodilly exercising jurisdiction under the provisions of the Western Pacific (Courts) Order in Council, 1961.

HOLDEN: At Gizo in the British Solomon Islands Protectorate on Monday the twenty first day of March, 1966 at 2.30 o'clock in the after noon.

REGINA

versus

MICHAEL IRO

For the Crown: A.S.P., M.R.T. Oldcorn.

For the Accused: Accused in person unrepresented.

Interpreter: John Lae (Pidgin Language) Sworn on Bible.

Charge explained to the accused: J.B.

Accused when called upon to plead says:

FIRST COUNT: Guilty

SECOND COUNT: Guilty

Court enters a plea of:

FIRST COUNT: Not Guilty

SECOND COUNT: Not Guilty.



Acc. I have nothing to say.

Finding: Guilty. Both charges.

Jocelyn Bodilly.

Judgement

The Accused is charged with two counts -

- (1) Burglary contrary to s: 292(a) of the Penal Code, and
- (2) Attempted rape contrary to s: 130 of the Penal Code.

The first count covers the breaking and entering of a dwelling house with intent to commit a felony and the second count covers the commission of that felony.

As regards count (1): The evidence against the Accused is overwhelming. The onus is on the prosecution to establish a felonious entry and this beyond any reasonable doubt has been done. Firstly there is the evidence of the Accused's own admissions made to Police Constable Faramoa (P.W.5). That statement was unrecorded because the Police Constable had not his note book handy at the time, but it was made under caution. The circumstances were that the Accused and another prisoner were visiting the latrines under escort of P.C. Faramoa. On the way back the Accused indicated that he wished to talk and the Constable immediately, and quite rightly, cautioned him. Nevertheless the Accused insisted on telling his story. This is as good an admission as can be made. Immediately after returning to the Police station the P.C. reported this conversation and the Accused made a further statement under caution, which from the evidence of A.S.P. Oldcorn, I am satisfied was properly taken and recorded. In these (Ex. I and II¹) the Accused admits that he went to the house of the Prosecutrix. His manner of entry is established by his own reference to the finger prints on the louvre pane, and this is corroborated by the evidence of the finger prints tendered by Cpl. Tahisau. In addition there is the evidence of the Prosecutrix herself that when she went to bed she had shut the back door of the house which has a Yale automatic lock which can only be opened by means of a key from the outside or a latch from the inside. However, her evidence and that of Mr. Oldcorn (P.W.3) is that owing to the absence of one louvre pane at the bottom of a window immediately beside the door, and the fact that in order to admit air to the house during the night the louvres were only partly closed, it was possible to reach inside the window and release the catch on the lock. The evidence of the finger prints on the louvre pane and the admission of the Accused of his entry, make it clear beyond any doubt that this is how the entry was effected - and that constitutes burglary, the time being night. I therefore convict the Accused of the first count.

As regards count (2): Here we have the evidence of the Prosecutrix. It being a case of a sexual offence her evidence must be corroborated. There is to be found ample corroboration in the statements of the Accused himself, which I have referred to above. The only question which arises is whether the intention of the Accused was to effect penetration or merely to indecently assault the Prosecutrix by interfering with her in some lesser manner. I have no doubt whatever on the evidence that the full offence of rape was intended. The initial intention of the Accused was, to use the local expression, to "creep". In the evidence it is explained that to

"creep" means

"creep" means to enter a house and to seek sexual intercourse with a female inmate who seems suitably disposed. However, "creeping" also includes, as a deduction from the evidence given, the use of threats if the female selected is not favourably disposed. Now, that is exactly what happened in this case beyond any reasonable doubt, both from the evidence of the Prosecutrix and also from the admissions of the Accused. The Accused set off on this expedition of "creeping" armed with a knife belonging to the witness Henry (P.W.12). When the Prosecutrix resisted he threatened her with it. In the meantime, having effected entry to the house and finding the Prosecutrix asleep he lay on top of her with his penis exposed and endeavoured to effect entry. Naturally this woke the Prosecutrix up and she struggled with him. I have had the opportunity of seeing the Prosecutrix and the Accused. She succeeded in fighting him off - comparing the two, in my opinion she was capable of doing so. But according to her evidence it was not without a severe struggle. I have absolutely no hesitation in accepting the truth of the Prosecutrix' evidence, supported as it is in more general terms by the Accused himself. Firstly the Accused asked her, within the meaning of "creeping", for intercourse and when she refused he threatened her with a knife which he had in his hand. There can, in these circumstances, be no question but that the Accused fully intended to effect penetration and complete the act of sexual intercourse if he could. That constitutes the offence of attempting to do so. I find the above facts and accordingly I convict the Accused of attempting rape - the second count.

Jocelyn Bodilly.

Judgement delivered.

J.B.

Acc. in mitigation

I have nothing to say.

Jocelyn Bodilly.

Acc. does not wish to call W's. to character.

PROS.

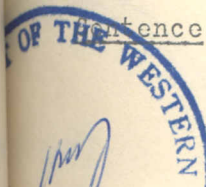
Acc. is 22 years old. Born 1944. (Acc. admits this). He comes from Suava District, Malaita. He is single. Both parents are dead. He has had no formal education. In 1964 he took a job as cook boy in Honiara. He then came to Gizo as cook boy to Mr. Burt. He is now cook boy to Mr. Bengough at \$9 per month.

Acc. was arrested on 25.2.66 and has been in custody since then.

Acc. has no previous convictions.

(Acc. agrees above is correct).

Jocelyn Bodilly.



Two years imprisonment on first count.
Five years imprisonment on second count.
Sentences to run consecutively from to-day's date 23.3.66.

Jocelyn Bodilly

Reasons for Sentence

Burglary is the more serious offence in that it carries the higher penalty. However in this case it was a mere accessory to the attempt at rape. And so I regard it.

Attempted rape on the other hand carries a sentence of seven years maximum. It is therefore to be presumed that the Legislature have elected that such a sentence is appropriate to the worst circumstances in which such an offence is committed. I have carefully considered the circumstances of this offence and I find it hard to conceive of circumstances worse than those proved in this case. A deliberate and carefully planned entry, an assault upon a sleeping woman, the use of a knife to threaten her into submission and thereafter a second assault with violence when the woman, thinking the house was clear and the Accused departed, left her room to try to turn on the lights. The Accused may or may not have been drinking beer, there is only his own word for that, and it is likely, but I see no mitigating circumstances in that whatever. In my view the circumstances of this attempted rape could not easily be less deliberate or less rigorously carried out. It is an offence which must be firmly suppressed.

I consider that two years imprisonment for the burglary and five for the attempt at rape, to run consecutively, is in no way excessive.

Jocelyn Bodilly.

