

Republic

-v-

Reere Tuen

The accused is charged with indecent assault o. to S.133(1) of the Penal Code. It is said that on 14th day of June 1986 at Ambo he unlawfully and indecently assaulted Nei Reeti Takuia.

It is for the prosecution to prove the guilt of the accused beyond a reasonable doubt.

There is a relationship of sort between the accused and Nei Reeti. The accused described her as a sort of daughter to him and technically she is the daughter of his wifes brother and not related to the accused by blood.

The accused and his family lived and slept in a house at Ambo on the date in question. The accused slept in one mosquito net with Nei Reeti and others. The net could hold about 6 persons.

Complainant said that the incident about which she complained occured in the early morning. The accused pulled her by the thighs and she said to him 'Reere you are sleeping badly'. The hand continued up her leg until it reached her pants and she started to cry calling for Nei Bwewa. The accused grabbed her by the hair and threatened to kill her. One of the accuseds children came and punched him in the stomach and N. Reeti ran away. She complained to the police.

She said she knew the hand was the accused as he was sleeping near her.

Nei Bwewa the accuseds daughter gave evidence that she was woken up by Nei Reeti who complained about what the accused had done to her.

She said Tebweiatake hit his father. PW1 gave her evidence well. Tebweiatake Reeti gave evidence against his father with very great reluctance. He did not assist at all.

Accused gave evidence on oath and denied the offence. He was exhaustively cross examined.

When asked why Nei Reeti Nei Reeti was crying he said it was because Nei Reeti thought he was going to rape her. He could not explain why if he had done nothing she should think that. He claimed that he was drunk on that night and was unable to recall if anything happened.

Accused was not an impressive witness in his own defence and was confused in cross examination, not I think because his memory was at fault, but because he was trying to run a number of different incompatible defences and was in any event not telling the truth.

His first defence was that the incident never happened. His second defence was that if it did happen he did not know of it as he was asleep. His third defence was that he was drunk and could not recall if the incident happened or not.

The evidence of PW1 and 2 contains no basic conflict. I am sure PW1 was telling the truth. PW2 knows more but is not telling all that she knows as

the accused is her father. PW1 was an impressive witness.

I have no doubt that in the morning of 14 June 1986 PW1 felt a hand pulling her legs apart and touching around the area of her pants. She believed this was the accused and she called out to him. As the incident continued she cried and Nei Bwewa PW2 woke up where upon PW1 complained to her.

There is no doubt too that accuseds son PW3 hit accused eventhough he does not mention it in his evidence. There is no corroboration for the sexual assault and I remind myself that it is a rule of practice that it must be looked for. Nonetheless, having warned myself I feel obliged to convict on the evidence of PW1 uncorroborated in the sexual aspect because it is so obviously true, and the accuseds defence so patently false.

Nei Reeti has no reason to lie in a serious case like this. I reject the accuseds suggestion made in re-examination that she did so because she was in trouble over an incident the night before when she went out without permission. The accused and Nei Reeti had lived together for a number years. She is an attractive young girl. Doubtless the accused yielded to a strong temptation to touch her. Why else should she complain? The accused slept near her and was in a position to do what she says he did not with standing the small child between them. He grabbed her by the hair when accused by her and had to be punched by his own son to secure her release. These are not in my view the actions of a man who is innocent. I find the accused guilty as charged and convict him.

R.G. TOPPING
JUDGE

