

Criminal Case No. 4 of 1977

The Republic v. Taunteang Katatia

12th January, 1978.

Sexual offences - corroboration - what is required
Sexual offences - complainant's evidence uncorroborated-
when conviction is proper

The accused was charged with raping a girl aged about 12 years and with detaining her upon premises against her will for the purpose of her being unlawfully carnally known by a man. He is a Gilbertese adult male and was living in a room in the Nauru Phosphate Corporation Location. The prosecution case was that the girl, who had gone with her older sister, a male relative and a Gilbertese man to the accused's room to drink beer there with him, was forcibly detained there by him and raped by him, after the others had left. When the sister returned, the accused refused to release the girl and the police were called. When the police arrived he released her and she ran from the room to one of the police officers and complained that she had been raped. The defence case was that the accused detained the girl in the room because her sister had refused to pay for the beer she had consumed and had left after quarrelling with the accused about it. The girl was not immediately examined, nor was her clothing or that of the accused checked for blood or seminal stains.

Held: (1) The evidence required as a matter of practice to corroborate that of the alleged victim of a sexual offence is evidence which confirms in some material particular that the accused committed the offence. Recent complaint does not constitute corroboration; the distressed condition of the alleged victim may do so, depending on the circumstances. In this case, it did not do so.

(2) Where there is no evidence corroborating the evidence of an alleged victim of a sexual assault, but her evidence is believed, it is possible to convict the accused on her evidence alone. But cases in which it is proper to do so are rare.

Accused acquitted of both offences.

D.G. Lang for the Republic

P.H. MacSporran for the accused.

Thompson C.J.:

The accused, a Gilbertese adult male, is charged with two offences. The first is rape; the second is the offence of detaining a girl upon premises against her will in order to her being unlawfully carnally known by a man.

The prosecution case is that late on 22nd November last year a young Nauruan girl and her older sister, apparently a young adult, went with a male relative and a male Gilbertese to the room then occupied by the accused at the Nauru Phosphate Corporation Location. The young girl was named Eriwuti and also known as Eruita. Her sister was named Soanna. The male relative was named Wein. None of the witnesses knew the name of the male Gilbertese. The three of them other than Eriwuti allegedly went to the accused's room to drink beer with him and did so. After some time the Gilbertese male left; then Wein left; and finally Soanna left. As a result Eriwuti was alone in the room with the accused. It is the prosecution case that he immediately locked the door and then, by threatening Eriwuti with a knife, forced her to lie down, and to remain lying down, on a mat on the floor, where he removed the shorts she was wearing and, after taking off his own lavalava and shorts and putting coconut oil on his penis and Eriwuti's genitalia, had sexual intercourse with her, to which she submitted because of her fear of his threats and the knife. It is the prosecution case that he discontinued the intercourse when Soanna returned and knocked on the door of the room but that he refused to allow Eriwuti to leave the room. The police were then called and it is the prosecution case that, as soon as the door of the room was opened, Eriwuti ran out to one of the policemen, complained that she had been threatened by the accused with a knife and raped by him and that she then showed the police officer the knife, of which he took possession.

The principal prosecution witness was, of course, Eriwuti. She is a small girl probably twelve years old, although her age was not conclusively established. She gave her evidence well, although she had some difficulty and embarrassment describing exactly the act which she referred to by the Nauruan popular word for sexual intercourse, "pumping". She explained that this was because she could not see exactly what the accused did but could only feel it.

There were some discrepancies between the evidence of Eriwuti and Soanna, notably regarding the circumstances in which Soanna left the room. Both witnesses stated that the accused was annoyed because Soanna had not paid for the beer she had consumed. But, whereas Eriwuti gave evidence that she believed that Soanna had left to go to the lavatory, Soanna gave evidence that she left the room after the accused became angry and that she tried to take Eriwuti away with her but the accused dragged her back. Soanna did not impress me as being a truthful witness. The conflict between her evidence and Eriwuti's relates to actions which, if Eriwuti's evidence is true, reflect no credit at all on Soanna. It does not affect adversely the credit-worthiness of Eriwuti's evidence.

I accept Eriwuti as a truthful witness. However, in respect of both the offences charged - and the other offences of which the accused might be convicted on the first count by virtue of the provisions of sections 130 and 135 of the Criminal Procedure Act 1972, namely the offences of attempted rape and of indecent assault on a female - it is a rule of practice that I should direct myself that it is dangerous to convict on the uncorroborated evidence of the alleged victim, because experience in the Courts has shown that women and girls, for all sorts of reasons and sometimes for no reason at all, tell a false story which is very easy to fabricate but extremely difficult to refute. I do so now direct myself in this case.

The corroboration in relation to the offence of rape must be sufficient to confirm in some material particular that sexual intercourse took place, that it was without Eriwuti's consent and that the accused was the man who committed the crime.

In relation to the other offence charged it must confirm in some material particular that the purpose of her detention was that she might be unlawfully carnally known by a man, and that it was the accused who committed the offence. There is ample corroborative evidence of the identity of the accused as the man who was alone in the room with Eriwuti. But is there corroboration of her evidence of what took place in the room?

Recent complaint cannot constitute corroboration. The distressed condition of the alleged victim may in certain circumstances do so. (R v Redpath (1962) 46 Cr. App. R. 319; R v Richards (1965) Qd. R. 354) But in this case Eriwuti's distressed condition was witnessed only contemporaneously with her complaint being heard. It cannot, therefore, properly be given any weight as corroboration that a sexual assault had been made on her.

She was not medically examined after the alleged offences. She gave evidence that she refused to be examined because she was too shy. That may well be true; she is young and gave evidence that that was the first occasion on which she had had sexual intercourse. If she was sexually assaulted, it would be natural for her to wish not to be further embarrassed by medical examination of her genitalia. However, not only is there an absence of medical evidence but there is none of the other evidence which often affords in such cases corroboration that sexual intercourse took place, e.g. clothing stained with seminal fluid or with blood from a ruptured hymen. The police officer who went to the scene has given evidence of finding the knife where Eriwuti pointed it out to him; that may possibly corroborate her evidence that she was threatened and forced to act against her will but it does not confirm in a sufficiently material particular that sexual intercourse took place or was attempted or that a sexual assault was committed.

I find, therefore, that Eriwuti's evidence that sexual intercourse took place, or that it was attempted, or that she was indecently assaulted, has not been corroborated. Likewise, as the accused's alleged intent in detaining her in his room is not proved unless it is inferred from the actual

sexual assault which he allegedly made on her, the corroboration required in relation to that offence is corroboration of Eriwuti's evidence of the rape, attempted rape or sexual assault. There is no such corroboration.

It is now necessary to consider whether, in spite of the lack of corroboration that sexual intercourse took place or that any sexual assault occurred, the evidence of Eriwuti is of such a quality that, having directed myself as to the dangers of convicting on her uncorroborated evidence and having given due weight to that warning, I should nevertheless come to the conclusion that without doubt she was speaking the truth. In considering the quality and weight of her evidence, I note first that her evidence has not been contradicted or refuted by the defence. The accused made an unsworn statement, in which he said that he could not remember what he did as he was "fully drunk" at the time. He called no witnesses to give evidence on his behalf. His failure to deny specifically that he committed the offences does not amount to corroboration of Eriwuti's evidence. But it affords no counterweight to reduce the weight of Eriwuti's evidence.

Next I note that she made her complaint of rape to the police officer as soon as he came to the scene. She has given evidence that she had earlier complained to Soanna on her return to outside the room but Soanna's evidence is only that, although Eriwuti was "crying out loudly", she was not saying anything. According to both Eriwuti and Soanna the accused was dragging Eriwuti back inside; so that doubtless the scene was one of some confusion. I, therefore, do not regard the discrepancy as significant; both witnesses may well have given a truthful account of what they did, observed and heard. But, of course, while the discrepancy does not vitiate Eriwuti's evidence, her own evidence of her complaint to Soanna does not increase the likelihood of the veracity of her evidence of the sexual assault, as the police officer's evidence of her complaint to him does.

Mr. MacSporran suggested to her that she trumped up

the story because she was annoyed that the accused detained her against her will when Soanna refused to pay for her beer and left. He has drawn attention to the fact that, although Eriwuti gave evidence that the accused was in the act of having sexual intercourse with her when Soanna returned and knocked on the door of the room she was fully clothed, and the accused had his shorts and lavalava on again, immediately afterwards when the accused opened the door.

I was favourably impressed with Eriwuti as a witness and at the end of the prosecution case I was inclined to consider her evidence strong enough to base a conviction on it without corroboration. Upon considering it more fully now, however, particularly in the light of the arguments addressed to me by Mr. MacSporran, I have come to the conclusion that this is not one of those rare cases where that is the proper course to be taken. Let me stress that I am by no means satisfied that the accused is innocent; if the investigation had been more thorough, if all available evidence had been obtained, and particularly if the complainant had been persuaded to submit to a medical examination, the prosecution might well have succeeded. But the offences charges are serious and the degree of doubt which can constitute reasonable doubt in such a case is small.

Accordingly, with some misgivings, I find the accused not guilty on both the remaining counts and acquit him of the offences charged in them.