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v

J U D G M E N T

In this case the Headmaster of the Bulolo Administration School appears before this Court charged that on or about the 19th June, 1950 in the Territory of New Guinea he unlawfully and indecently dealt with one TONI WYLIE a girl under the age of seventeen years.

The accused, who is defended by Mr Dudley Jones of Counsel, has pleaded NOT GUILTY to the charge thus the Crown is put to strict proof of every element of the offence alleged.

The Crown must prove every element of the offence beyond a reasonable doubt and if it fails to attain this high standard of proof the accused is entitled to what is known as the benefit of the doubt and to his acquittal.

I must remind myself as a jury that the story told by the accused might be disbelieved and yet raise sufficient doubt to secure his acquittal.

As both learned Counsel engaged upon this case have pointed out there are some special matters of law peculiarly applicable to cases of this nature, to which the Court must direct its attention, when addressing the matter as if it were a jury.

The first matter to be noticed is that of consent arises in a charge of this nature due to the tender age of the complainant.

The second matter is that it is a rule of practice for the Judge in summing up to a jury in charges of a sexual nature to warn the jury of the danger of convicting upon the uncorroborated testimony of the complainant.

It is as I have said a rule of practice and therefore a jury can if it wishes convict in the absence of corroboration, but it should only do so after taking full heed

of the warning.

The warning is administered to the jury because as Mr Jones remarked long experience has shown the danger of a miscarriage of justice where charges are made which are so easily made and so difficult to meet.

Whilst a jury must dispassionately weight the testimony before it clearly no jury will lightly reject the warning having regard to the terrible consequences of conviction in cases of this nature.

The Criminal Code defines uncorroborate evidence as testimony which is not corroborated in some material particular by other evidence implicating the accused person .

What in fact is required is some additional evidence rendering it probable that the story of the complainant is true and that it is safe to act upon it. The corroborative evidence must be some evidence which goes to fix the guilt upon the accused.

There is one final matter of law and this relates to the admission of verbal evidence in the absence of the accused being in the nature of a fresh complaint by the prosecutrix.

Such evidence can not constitute corroboration because a person can not corroborate him or herself nor can it be evidence as to the facts, but its narrow limits must be grasped clearly.

It is only admitted to show consistency of conduct of the complainant and must be made at the earliest opportunity,

Lastly it should be noted that mere opportunity to commit the offence does not constitute corroboration.

Passing now to the facts:-

On the 19th June, 1950 classes two to eight inclusive of the Bulolo Primary School assembled in a room used for a weekly showing of educational films in a room used for the purpose. The audience consisted of roughly 37 children of varying primary school ages and of varying sexes with

the accused Cook in charge, but no other adult being present.

The room used and the projector both need some description to an understanding of the circumstances of the case.

The room is approximately 20 by 30 feet with mosquito wired spaces round the room and at the tops of the two doors placed opposite each other half way down the building.

Sufficient light is excluded by means of sisalcraft blinds, which have at the foot a 2 x 1 inch wood roller. In spite of these blinds the evidence shows that they do not make a very good junction with the wall owing to some batons being placed to protect the fly wire also trouble is experienced with the wind blowing the blinds out from the wall.

The accused assures the Court that the room does not become sufficiently dark for conditions favourable for good projection of films.

The projector is situated at the back of the hall, it is not a moving picture projector but projects at a quarter turn of a handle "stills" which the education department supply sometimes with a written commentary for use of the teacher in charge.

The reels of film when new have blank strips at the beginning and end, which the accused customarily tore off and gave to pupils but nobody seems to know for what purpose.

On the day in question the film was all new and they had no script so that the accused made up as they were projected suitable comments in explanation of the film.

On the 19th June when the audience assembled it was found that two girls, the complainant TONI WYLIE and PRISCILLA KNIGHT were left standing without seating accommodation.

A boy pupil brought two small kindergarten seats for the two girls but Toni says she did not sit down until

Mr Cook told her to do so, when he brought a similar small chair up apparently for himself and which he placed next to the other two chairs so that all three chairs were abreast.

Priscilla Knight sat on the right of Toni, Toni Wylie, the complainant, next to her and then next to Toni Wylie on her left the accused. All three chairs were close together.

The evidence shows that the accused went to the projector and later returned to find it occupied by Shiela Thomas.

He lifted her up then whilst the film was being shown and placed her back in her own seat in front, but said nothing to her and sat down on his seat next to TONI WYLIE.

The complainant says the accused then placed his arm around her shoulder and shortly after Priscilla Knight got up to hold a blind that blew up admitting light.

The complainant then swears the accused undid the fourth button of her frock, which does up in the front and put his fingers in her pants, the only undergarment she was wearing that day.

After she says he did up the button and apparently all that was done was done with the right arm and hand which was around her body.

The complainant then says the accused got up went to the projector, which after being started was operated by her sister Robin, and tore off some film and gave it to children nearby,

On returning whilst the film was being shown the persistent Shiela Thomas had placed herself in the chair lately occupied by the girl Knight with whom the complainant was talking.

Shiela asked for a piece of film and the accused told her that she could only get some if she resumed her own seat, which after some demur she did.

On this occasion the complainant Toni Wylie says the accused Cook put his arm around and under her own right arm and put his hand in between the buttons of the dress and up the leg of her pants close to top of her privates but not on them, when he made movements of two fingers.

After which he got up and went to the projector to box it and gave Shiela the piece of film. It is to be observed that when the act complained of took place Toni was on the chair with the accused and nobody on her right.

On the way out the complainant says she said to Shiela "Something terrible has happened and as Cook was close behind told her to wait for the complainant outside.

She says that she told Shiela what had happened and there is no doubt that at the earliest possible moment she complained to her mother, but in telling her described the act of the accused as placing his two fingers up her vaginal passage.

There has been a good deal of evidence as to the light in the room when the projection was in progress, but I am quite satisfied that there existed on that occasion a good opportunity for the accused to do what the girl Toni alleges, since the other children would be watching the film for which express reason they had assembled.

The accused offered suitable comments on the films but this would in no way stop him from having the opportunity which as I say I am sure existed.

I do not agree with learned Counsel that it was a highly improbable occasion for such a thing as alleged to occur.

Each reel occupied five to six minutes in showing and altogether five reels in all were exhibited on the afternoon in question.

Toni puts the first interference with her as during the first film, but in this I think she is mistaken and that the first incident must have taken place later, as

the evidence seems to show the accused at the projector most if not during all of the first film.

Now the accused is a married man with his wife and two children residing with him at Bulolo and a man of unquestionable good character and history. He has denied the allegations made by TONI WYLIE consistently from the first that he became aware of them. He has given oath both in the Lower Court and before me, when he categorically denied every element of misconduct relied upon by the Crown and he assigns no reason at all why this girl should fabricate such a wicked story against him.

The complainant has been medically examined without any useful result as far as this case is concerned, because what is alleged would hardly be expected to leave any physical traces.

The Doctor told the Court that he found a certain condition of the hymen, but the laxness he observed was such that he could draw no certain conclusion from it.

The child who is in her 13th year is a normal child in appearance of good mental development, there are as yet no signs of menstruation.

A jury would note that she had previously had an experience of the kind alleged here when some man at the baths touched her privates and when she complained of it to her mother.

The Learned Crown Prosecutor with that fairness which should characterise Counsel for the Crown, stated that there was no evidence here that he could rely upon as corroboration so that he relies simply upon the undoubted truthfulness of the young complainant. He further very properly agrees that in such circumstances it is incumbent upon this Court to be particularly cautious if injustice is to be avoided.

Learned Counsel for the Defence made a feature of the girl's evidence in this Court differing from what she told her mother, but I think it not improbable that motives of modesty may as the Crown Prosecutor suggested have operated on her mind in this Court, and it is easy to see that bearing in mind the movements of the fingers she alleged that there in fact be little difference, she drawing a distinction between the hand and the fingers.

Warning myself as a jury I could not fail to observe the ready way the complainant adjusted herself to the questions she was asked about telling Shiela, when she first came over to occupy Priscilla's chair. I could not believe her account of that matter.

The complainant's account of placing the hand through her dress with the buttons done up did not ring true to me as I observed with some care that the space between the buttons is too small for such to be possible.

Finally making all allowance for her natural embarrassment I thought her demonstration before this Court a weak one.

In favour of the accused two matters struck me particularly, the first is that it is hard to suppose that the Headmaster fresh from sexual excesses with his pupil would continue to sit as Priscilla Knight observed him when the lights came on he having amply notice that they would come on.

Secondly, his frank admission that he knew that his incredibly foolish conduct in embracing the girls had been the subject of discussion before the incidents the subject of this charge, but it is surprising to me that he treated the matter so lightly to his cost.

In the present case I am satisfied that it would not

be safe to convict in the absence of corroboration and
and that I should arrive at this conclusion will be
no surprise to the complainant who, according to the
evidence, has rather promptly formed the view that I
did not believe her.

The accused has acted consistently as one would
expect an innocent person to act and he is entitled
to the benefit of the doubt I entertain.

Accused I find you NOT GUILTY - YOU ARE DISCHARGED.

E. B. BIGHOLD.

J.

16/8/50