

48

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

THE QUEEN v. JOHN THEODORE MUMFORD

JUDGMENT OF HIS HONOUR MR. JUSTICE E.B. BIGNOLD
DELIVERED ON 21ST DECEMBER, 1953.

I propose saying as little as possible about this case for reasons which will become apparent later.

The accused comes before this Court charged that he JOHN THEODORE MUMFORD on the Ninth day of November 1953 in the Territory of Papua unlawfully and indecently assaulted one SEARA.

The unlawful and indecent assault complained of by the native woman (who is the wife of the native employed by the accused) is that when she was bending down, or just going to put away the clothes in a sleep-out room, the accused put his hands on her genitals.

The accused was defended by Mr. Norman White and with him Mr. Sturgess of counsel. The accused pleaded "Not Guilty", thus putting the Crown to strict proof. The Crown must prove the case beyond a reasonable doubt. Every element of the offence has got to be proved beyond a reasonable doubt, and if the Crown fails to reach that high standard of proof, the accused is not only entitled to acquittal, but it is my privilege to acquit him.

It is well to remember two matters which have a grave bearing on trials of this nature. The first is that on a charge of this kind, Judges, as a matter of practice, warn juries not to convict unless there is some corroboration of the evidence of the Complainant: The Criminal Code defines uncorroborated evidence as meaning testimony which is not corroborated in some material particular by other evidence implicating the accused person.

There is also another matter. It sometimes happens that an accused won't be believed by the Court and yet his

story might raise such a doubt as would entitle him to be acquitted.

Now in this case, at the very outset the Defence objected to the admission in evidence of a confession upon the grounds that it had been extorted by highly improper methods from the accused, namely, first by threats, and secondly by assaults.

Those matters were completely denied by the Police. Since this Court determined that upon the evidence before it the confession should be admitted in evidence, fresh evidence of a startling nature has been brought forward. That evidence is of a direct witness to the assaults. The further evidence doesn't tie in completely with the evidence given by the accused, but the witness, as the learned Crown Prosecutor admitted, gave his evidence with firmness and with no hesitation. I think that in the circumstances I should try to place myself in the position as though that evidence had been made available to the Court, when it decided the question of the admissibility of the confession.

I am sure that had the evidence been forthcoming when the confession was tendered by the learned Crown Prosecutor, I should have unhesitatingly rejected it and so for the purposes of this case, that confession must now be disregarded by me.

The absence of the confessional statement, as the learned Crown Prosecutor pointed out, leaves the Crown case without corroboration.

Accordingly I warn myself in relation to it of the danger of conviction on the evidence without some corroboration. I have to remember that in relation to what is charged by the Crown, the only two people who know with certainty what took place are the Complainant, the girl herself, and the accused.

Now the girl and the accused have different stories about it. The accused admits to having hit her on the buttocks. It may well be that that admission itself might have constituted something in the nature of corroboration, but I do not feel satisfied that the proper degree of certainty of the fact has been established by the Crown. I cannot overlook the possibility of the complainant having been struck suddenly without warning, in that way, may have honestly imagined more than actually happened.

For that reason, as a jury, I must come to the conclusion that the accused is entitled to the benefit of the doubt, and I ask him to stand up.

I find you "Not Guilty," and you are discharged. I will get you to take your place in the body of the Court.

I am sure that the evidence that has been adduced in this Court as to allegations of wicked malpractices by two members of the Police will come as a great shock to the community. The powers and duties of the Police are such as to require in their exercise and performance the greatest integrity and the strictest supervision.

The redeeming feature, it appears to me, is the exposure by production of further evidence which has been made possible by the diligence and strong sense of duty of Mr. Acting Police Commissioner Normoyle, who, with advice of the Crown Law Officer, Mr. Watkins, has done all in his power to see that the members of his own Force are painted in their true colours.

His action will do much to allay the natural anxiety of the public as to the Police Force generally, and I am going to call upon Inspector Evans to come into the dock.

O'LOGHLEN: He is not present, Your Honour.

Is Sub-Inspector Young present.

By the Court: Sub-Inspector Young, it has appeared to this Court that you have knowingly given false testimony touching a matter material to a question pending in the Trial of JOHN THEODORE MUMFORD namely as to whether or not you assaulted the said JOHN THEODORE MUMFORD.

THIS COURT DOTH ORDER therefore that you be committed to stand your trial before the Supreme Court in its Criminal Jurisdiction at a time and place to be fixed upon an indictment to be filed by the Crown Law Officer.

Do you wish to make application for bail?

YOUNG: Yes, Your Honour.

By the Court: I allow you bail in the sum of £100 with two sureties in like sum and I shall require all the witnesses upon the trial of JOHN THEODORE MUMFORD to enter into recognizances in the sum of £100 without sureties

conditioned to appear upon your trial and to give evidence at a time and date to be notified.

I shall wait until Inspector Evans comes.

By the Court: (Inspector Evans appeared.) It has appeared to this Court that you have knowingly given false testimony touching a matter material to a question pending in the trial of JOHN THEODORE MUMFORD, namely the question of whether or not you assaulted the said JOHN THEODORE MUMFORD.

THIS COURT DOTH ORDER therefore that you be committed to stand your trial before the Supreme Court in its Criminal Jurisdiction upon an indictment to be filed by the Crown Law Officer, the trial to take place at a date and time to be fixed.

Accused, do you apply for bail?

EVANS: I do, Your Honour.

By the Court: You will be given bail in the sum of £100 with two sureties in the same amount. I have already bound over all the witnesses to appear upon your trial.

J.