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No. 76

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

THE QUEEN v KILA-JIMI

JUDGMENT OF HIS HONOUR MR JUSTICE E.B.BIGNOLD  
DELIVERED AT 10.30 a.m. on WEDNESDAY,  
2nd NOVEMBER, 1955

In this case the facts seem not to be in dispute. On the morning of the date charged, the accused, employed at the Hotel Moresby, without authority, entered the bedroom of the complainant.

She was asleep in bed and awakened by the accused tugging at her clothing - whether her bed-clothing or her night attire or how he tugged, she is unable to say.

She awoke to find him close beside her bed and slightly bending. She ordered him out, and after making an excuse that he was there to get her shoes, he went towards the dressing table where there was a water bottle. He went out, but whether he took the water bottle or not, she cannot say. It is obvious that she was much shocked by the discovery of the accused as above, and nothing done by him was with her consent. Afterwards he admitted to the Police that he was there to have the Sinabada, i.e., to have sexual intercourse with her.

The accused is charged under the provisions of the White Women's Protection Ordinance with unlawful and indecent assault upon a European woman. Mr Kirke of Counsel, who has ably defended the accused, has argued that what occurred may be an assault, but not an indecent one, and the learned Crown Prosecutor, who has been most helpful, has frankly admitted his doubt upon the matter.

My mind has, I must admit, fluctuated upon the question, but I have come to the conclusion that the pulling at the bedclothes or night dress does, of itself, constitute an assault, but not an indecent assault, and that it must be judged upon his overt act alone, and the case for the Crown cannot be assisted by any recourse to his intention.

I have been invited by the Crown Prosecutor to bring in a verdict of common assault, but this I do not consider is open to the Court, as the charge is under the White Women's Protection Ordinance, which does not import offences under the Code.

Accused Not Guilty.

J.