

R. v. HARRY PASCOE LAWRY

JUDGMENT

In this trial the accused Harry Pascoe Lawry is charged under Section 219 of the Criminal Code with taking an unmarried girl under the age of 18 years out of the protection of one John Guise who had the lawful care of the girl, against the will of the said John Guise, with intent that she may be unlawfully carnally known by a man, to wit, the accused Harry Pascoe Lawry himself.

The first question to be considered is whether she was in fact under the care and protection of John Guise at the time of the alleged offence. The girl Rona Talbot is the daughter of John Guise's sister who was married to a man named Talbot. This man died soon after the last war and the mother died about 2 years ago. The Talbot family lived somewhere in the Samarai District. The daughter Rona appears to have been at school at St. Agnes' School at Doubina and left there towards the end of October last year. In January 1958 Rona came to Port Moresby to take employment as a trainee typiste in the Public Service. She came to live with John Guise, her uncle, and his wife in their house at Kaugere near the golf links on the Pari Road and she has lived with John Guise and his wife ever since. John Guise declared in his evidence that he is her guardian and the girl herself said that she lives with uncle John Guise. There is no doubt in my mind that this orphan girl was under the care and protection of John Guise to satisfy the requirements of the Section.

Of course the Crown must prove the various elements constituting the offence set out in Section 219 beyond a reasonable doubt. It is a defence under that section to prove that the accused believed on reasonable grounds that the girl was of or above the age of 18 years. The accused might show, therefore, reasonable grounds for such a belief thus creating a reasonable doubt the benefit of which he is entitled to have.

In the case of such a girl as the complainant one cannot have the best evidence as to age by the production of a certified copy of the registration of the birth because there is no registration of births provided for them. It cannot be that the complainant, because she is a half-caste and without her birth being registered, is to lose the protection of the Section because particular methods of proof are not forthcoming; but on the other hand the accused is entitled to whatever protection the law of evidence allows him, so that sufficient proof of age must be given, whatever may be the manner of such proof.

John Guise was living in Samarai from the year 1928 to the end of 1941, as an employee of Burns Philp Limited at their premises in Samarai.

He saw the Talbots once or twice a month for a long period of time when they used to come to Samarai for stores. He has told this Court that in June or July 1941 he saw Rona Matilda Talbot as an infant in arms, she was a baby of 1 or 4 weeks old. There was no other girl child of the Talbots; they did have an elder son. He is quite definite about the time when he first saw the girl Rona. I was invited by the Crown Prosecutor to look at the girl Rona Talbot and form my own judgment as to her age as I am entitled to do under the Evidence and Discovery Ordinance.

I have observed Rona Talbot and my conclusion was that she is under the age of 18 years, but Guise's evidence is sufficiently strong without my determination and I find that she was at the time of the alleged offence under the age of 18 years.

Mr. Kirke for the Defence declared that in one important element of the offence, the Crown has failed to prove that Rona Talbot was an unmarried girl. She was not asked whether she was unmarried, but no doubt if she had been asked the question, a simple negative would have settled the matter. This is an omission which I do not think should go to the root of the case, for there appears to me to be circumstances arising out of the evidence which are sufficient proof of her unmarried state. She was a school girl until the end of October 1957. She came to train as a typiste in January 1958. There was the conversation with the accused in the bedroom at Agonias house on the afternoon or early evening of 20th April about love and marriage and there was nothing then said by Rona suggesting that she was married. John Guise claims to be her guardian and that is what I have found he is. There is no suggestion by him in relating the earlier history of the girl that she came to him to be in his care as an already married woman. I have no doubt she is a single girl. Her whole attitude and appearance show it.

Another point in the case put forward by Counsel for the Defence is that at the time of the alleged taking out of the custody or protection of John Guise the girl was not in fact in his custody or under his protection. There is to my mind nothing in this submission. The mere temporary absence from the guardian's home does not displace his condition of guardian or protector. Whether she was under his protection or not is a question of fact. Here the girl Rona is accompanied by her uncle on Sunday 20th April from where she lived with him to the home of the Agonias who were considered relatives. They walked down as it was not far. The uncle left her at a point close to the Agonias home and returned. The girl was carrying a parcel which it was presumed by Guise contained the dress material he had purchased for her. She had often gone to the Agonias. Elsie Agonia was her aunt by marriage to a former husband. She was told by her uncle John to return in the morning, a practice she had followed on other occasions when she visited her Aunt Elsie and stayed the night. Her uncle expected her to return on the Monday morning, but she did not. She did not because the accused had taken her to his own place the night before. She had spent the night there, being driven direct to her working place by the accused. She was still in the custody or protection of the Agonias. It was a sorry day for this girl that she was to stay merely for the night with this unsavoury couple. I find that Rona Talbot was in the custody and under the protection of John Guise as her guardian

The accused was the seducer, the prime mover if you like, in this matter. The girl's apparent willingness is not relative in the circumstances.

The defence naturally took advantage of the proviso to Section 219 in an endeavour to show that the accused believed on reasonable grounds that the girl was of or above the age of 18 years. His foundation for this belief was lamentably weak. He says himself he never once thought about the age of the girl. He also said the first he thought of her age was when Guise came on the Wednesday morning and accused asked Jack Agonia what it was all about. I find that this defence is groundless. He did not advert to her age at any time, his thoughts were turned to the satisfaction of his greedy sexual appetite through the medium of the young girl.

The difficulty I find in this case which is to me insurmountable for the Crown is this. The accused came to the Agonia home on the afternoon of Sunday 20th April 1958 to find Rona Talbot there. He had not met her before. He had not met John Guise before the following Wednesday. There is no evidence to show that accused knew that Rona lived with the Guises and John Guise was her guardian or protector and that she was connected with any others but the nasty Agonias. The Crown has not shown that he did not know that she was under the protection of John Guise. Accused himself says that he did not know that Rona was living with John Guise until Jack Agonia told him on the Wednesday. There is nothing to show that he did. The Agonia pair appear to have launched the accused on his happy voyage of seduction and it could be that he accepted their right to cast the girl into his lascivious clutches.

The girl Rona was taken away against the will of her protector John Guise, it is true, for he gave no consent to it. I am unable to see, however, that the accused can be convicted of taking the girl away from her protector if he did not know she had a guardian. This is apart from authority, but there is authority for this statement. I find the Crown has not proved the case against the accused. I find the accused Not Guilty.

Gore J.

26/6/58.