

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

CORAM : OLLERENSHAW, J.

Monday,
21st February, 1966.
9.30 a.m.

THE QUEEN v. OPU-AME.

FOR SENTENCE.

The offender has been convicted of the crime of attempting to commit rape for which the Code provides a maximum punishment of imprisonment with hard labour for fourteen years.

He is a well-built native, about thirty years of age. The victim of his attack is a European girl aged fifteen, the daughter of his employer.

The attempt took place when she was alone in her home, an isolated residence at the end of a track that goes through the bush for about a quarter of a mile from the road to Sogeri and some twelve miles from Port Moresby. He was employed there as a domestic servant. The time was shortly after 1 o'clock on a Saturday afternoon.

He would have known that she was alone and without hope of attracting any help by screams or otherwise.

His own quarters were about 200 yards from the home and, although he had finished his work for the week-end some hours before, he came up to the house, opened the door into the bathroom, where she had just taken a shower, and accosted her while she was naked there

having his penis exposed and erect through the opened front of his shorts and an, at least, frightening, expression upon his face. There ensued a swift and protracted encounter characterized by great determination upon both sides, commencing in the bathroom, where he threw her against a wall and to the floor, and ranging through other rooms of the house. I will not repeat the details of this, for her, terrible experience. Perhaps her most dangerous moment was when he had her on her back on the living room floor and was over her trying to force his knees between her legs. In the kitchen he had her against the wall facing her with his body flat against hers and violently trying to kiss her while she tried to bite him.

Throughout their struggles she was possessed by a sort of defensive frenzy, not uncommon, from my experience in trials of this nature, in European women in similar situations, a frenzy which gives to them a strength beyond all normal expectation. She was only fifteen and small of stature and it is probable that some training she had had in the art of unarmed self defence, including defence against attacks of this very nature, also assisted her. She escaped him on some four occasions but could not get out of the house. At one time she pleaded with him to desist and offered not to tell the Police if he did so. He did not take this or any other opportunity of breaking off his attack and it seems to me that it was the timely arrival of the two dogs of the family, gaining entrance to the house through a door, opened by her in one of her attempts to escape and left open when he grabbed her there, that ultimately led to her saving herself from his purpose and saving him from the graver crime of rape itself.

I agree with Counsel for the offender that it would not be proper for me to include punishment for the obvious ordeal this girl has endured in giving evidence and otherwise during two public hearings, but it was in all its circumstances a most grave attack cunningly conceived for the first occasion she was alone in the house since the commencement of his employment some five days before.

It is true, as his Counsel has said, that apart from minor scratches and bruises she suffered no physical injuries nor did he directly try to inflict any. He did inflict upon her an experience from which it is manifest she has not recovered. However, time can be a great healer and she should be assisted by the reflection that her young but successful resistance against a determined man twice her age is something of which she, her parents and all others concerned may be justly proud.

As is well known European women and girls in this community are constantly in danger of this sort of attempt when they are alone in their homes, in danger from native intruders and more particularly native servants who have the advantages associated with their employment in the homes.

There is a suggestion that crimes of this nature are increasing and taking the last twelve months that may appear to be so, but whether that is a part of a general increasing trend or merely epidemic in a general rise and fall I do not know nor do I know if it may be reconciled with population increases or similarly explained.

What is clear is that there is need to protect women and girls from an ever present danger and the Courts must play their part in deterring natives from these attacks.

On the other hand I do not overlook that the offender is a native without all the controlling influences of a completely European up-bringing and subject to a special attraction for white women.

However, in this trial there has not been, nor could there be the slightest suggestion that there was anything in this girl's dress or behaviour that might have added any other special temptation or given to him any form of encouragement. Indeed there had been no occasion for her even to speak to him and she had not

spoken to him during the previous five days that he had been employed at her home. She is obviously a very modest girl who has been carefully and strictly brought up.

Furthermore, he is not an uncivilized or untutored village or labouring native. He comes from a village that has long been subject to Administration and Mission influence and he himself has had close association with European influences. He had eight years schooling, attaining Standard 7 and a reasonably good understanding of and ability to speak English.

In December 1960 he enlisted in the Pacific Islands Regiment, presumably without disclosing the convictions I will mention later. He served until March 1965 and during that period, doubtless because of his educational standard, was sent to and qualified at medical orderly courses conducted in Australia. He was discharged on disciplinary grounds being described as a poor soldier.

He has two previous convictions in this Court at Port Moresby. On the 8th September, 1952, he was convicted upon a charge of breaking and entering a dwelling house in the night time and sentenced to three years imprisonment with hard labour and on the 13th July, 1955, he was convicted upon a charge of entering a dwelling with intent to commit a crime therein and sentenced to nine months imprisonment with hard labour. He was deported to his village for five years at the termination of the latter sentence.

The second offence for which he was convicted, sentenced and banished from Port Moresby must have occurred shortly after his release from his first sentence and his deportation would have kept him out of Port Moresby until about the time he joined the Pacific Islands Regiment after which he would have lived in barracks until about six months before his present crime.

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It seems to me that not only must he and persons with impulses like his in this case be deterred but also that he particularly is a person from whom the community must be protected. His knowledge of the wrongfulness and the criminal nature of his conduct and his experience of punishment for crime have not deterred him from an even worse crime than those for which he has already suffered imprisonment. However, I have no information indicating that there was any sexual purpose involved in his earlier offences and I do not overlook that they were not of the same type as his present crime.

It is also to be mentioned that amongst his own people in his own village area this sort of crime is regarded very seriously and I would add that I am sure that it is one of which the great majority of native people in this community, both sophisticated and unsophisticated, are ashamed and regard with great disapproval. However, I think the sentence that I am about to impose by way of deterrence and punishment will sufficiently express the disapproval of the community.

He has been in custody since the 28th October last.

After long and anxious consideration since the conclusion of this trial I have come to the conclusion that the sentence I should impose is one of nine years imprisonment with hard labour and that is the sentence I do impose.