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

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CORAM : MANN C. J.

REGINA v. OBAKA-GASE  
of BOKU.

J U D G M E N T

Pt. Moresby.  
19th and  
26th  
August,  
1966.

In this case of OBAKA the questions involved are essentially questions of fact and we have had a curious array of personalities amongst the witnesses. The offence with which OBAKA is charged is a minor one of an act of indecency in relation to a small girl. It appears that no harm was done to the child, who was asleep at the time, and had been disturbed during the night by the not unusual process of wetting the bed. The accused was asleep in the same room and there is obscurity about the precise facts.

On the Crown case there was room for doubt and the evidence depends very largely on the witness WEIRAGE, the mother of the child. She and other witnesses were outside by a fire, but quite close to the house where the accused and the children were sleeping. She was disturbed by sounds of crying and, as I have indicated, there were reasons other than anything done by the accused which might well have produced those sounds. At all events, WEIRAGE went to attend to her child and when she got to the house found that it was in darkness. It should not have been so, because there was a lamp left burning in the room. She came back to the fire, where the other people were, and got a lamp belonging to the witness LEJUOM. Whether LEJUOM was impelled by curiosity, as he explained, to find out why it was necessary to take another lamp into the room, or whether he sensed a note of alarm is by no means clear. But it is clear that he did at some stage follow the witness WEIRAGE and enter the room.

One thing that is perfectly clear is that WEIRAGE saw, or thought she saw, OBAKA committing an act of indecency with her child. She was apparently enraged about this and a hue and cry was immediately raised by her. Now on her evidence the behaviour of

the accused in this situation was curious in many ways because she said he remained in the vicinity of the child's bed for quite a period of time and then came away when she protested at his presence.

According to the supporting witness, MENSUO, the circumstances were slightly different when she entered the room but, in the main, she does support what WEIRAGE said and her evidence conflicts in many instances with that of LEJUOM. I think that it is clear that MENSUO either entered the room, or became concerned about the behaviour of the accused, after WEIRAGE had raised a loud protest, and it is possible that she did not see exactly what happened. In fact it is possible that WEIRAGE herself was not at all clear about what the accused was doing, but drew inferences from the position in which she first saw him.

On that evidence, as I say, there is room for doubt, but the accused himself and his supporting witness, LEJUOM, throw further light on the conduct of the accused.

LEJUOM is married to the sister of the accused and his mental attitude towards the accusation seems to me to be pretty clear. Taking the view that his brother-in-law is concerned with an accusation of conduct which has done no physical harm to anybody, LEJUOM refuses to believe that he did anything improper. I think that as he sees it, there would be no sense in stirring up family strife when the girl was, at all events, unharmed. I think his evidence, his recollection and his observation of the facts were influenced by this attitude of mind and I think that it is plain that in having that attitude he has applied to the situation quite the wrong test of criminal responsibility. I think that LEJUOM is a responsible and reliable citizen, and he gave his evidence very well and quite frankly. But he does appear to have this firmly based prejudice which, considering the problems of the society in which he lives, is by no means an unreasonable attitude for him to bear.

However, if LEJUOM entered the room when he said he did he should have seen the accused much

closer to the bed occupied by the child. The alternative is that he entered the room after WEIRAGE had raised her quite loud protest and at that stage, of course, the accused would have returned to his own bed. It may be significant that it is common ground all round that when the accused was near his own bed he was sitting on it and was not in an attitude of sleep. He was wide awake.

The evidence of the accused himself reveals, I think, a sense of guilt, which is not always easy to distinguish from a sense of shame or a feeling of apprehension. It appears that the lamp was left on in the room on purpose, and the weight of evidence indicates that when WEIRAGE entered, the lamp was completely extinguished. The accused says he did not turn the light off, he turned it down, and in that condition the lamp was giving off adequate light to enable people to see other people in the room.

Now WEIRAGE is accustomed to getting about in the darkness or semi-darkness and there would be some reason for thinking that the accused is right in saying the lamp was still on and not extinguished and that WEIRAGE may have seen him in one position at that time in the subdued lamp light and then went out to get the other lamp in order to see better what was the position. This may account for some of the confusion in WEIRAGE's mind and some of the minor verbal inconsistencies in her evidence.

At all events, when WEIRAGE did go back to the position near the bed she says she saw the accused there quite plainly in the lamp light. On the evidence of the accused himself I cannot be convinced that his account of turning down the lamp was correct. I think that he is in a position where there was no justification for turning the light off and, in view of the accusation made against him, he is seeking a situation in which he would not have to explain why it was necessary to turn out the light.

When the accusation was made against him it appears that all the children were taken out of that room and the accused was left there alone, in

a position in which he could overhear angry conversations and angry accusations against him. He thereupon left the house, apparently by the window, and went out and slept in the bush - a thing he would not be able to do without considerable fear, but the pressure of the situation was such as to drive him away from people, who included several people closely related to him.

When the Police were notified, it appears that MENSUO went out into the bush and found the accused and warned him that the Police were coming and told him that he would be wanted for questioning. I think that all of this shows the serious view of the situation taken by the people in consequence of WEIRAGE's accusation.

The behaviour of the accused after the accusation was made is enough to convince me that he was conscious of having done wrong. It may be that WEIRAGE is not able to specify precisely the act that he committed, but the charge is one of indecent dealing and it does not matter a great deal what he did, and it would not matter a great deal if the witnesses were mistaken in detail as to precisely what he was doing. I think it is clear that he was either on, or in the vicinity of, the child's bed at the stage when WEIRAGE first saw him and that he remained there for some time, possibly not knowing what to do. He has since tried to reject the whole matter from his mind, with the support of LEJUOM, who, I think, would feel that it would be the best solution to an embarrassing situation. So I am convinced that the accused has committed some minor act of indecency towards the child, but at the same time he has at least been careful not to do her any harm. I feel that the best explanation of this conduct is that the accused, being a youth left on his own, and filled with the normal curiosity of people of his age, probably behaved in the way he did on the spur of the moment and without any intention or desire to do any harm.

I think that the view that I should take is that the accused, on his own case, has created a situation which he cannot explain and that if the inference which I draw against him is not in fact

justified, it is directly caused by the peculiar behaviour of the accused in the situation in which he was when the accusation was made against him. I think that this is a case for a warning. I do not think that the accused should suffer for his adolescent folly. I think that he should see in this situation a warning to behave himself with strict rectitude in these matters. I think he is young enough to see the position in which he has put himself and the harm that can arise, not only amongst his friends and relatives, but also in respect of criminal responsibility, if he gives way to temptation or curiosity. I do not think that this is a case for punishment in any substantial sense.

Later : Sentence : Since the accused has already had some experience of being in trouble and in custody for a while, I think I will sentence him to the rising of the Court.

I would put him under a bond, except that I think that too much reminder of this sort of thing can sometimes do a person of his age a certain amount of harm. I think that at his age and in his situation he would be wiser to put this out of his mind and forget it altogether and treat it as some abnormal thing which must not go any further, or he will get himself into all sorts of trouble. If that happens he will be dealt with very severely. I think it should be made possible for him to go back to these people determined to set for himself a different standard of behaviour, and earn their respect.

I record a conviction and sentence the accused to the rising of the Court.

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