

13th February, 1987.

Republic

-vs-

Sakalia Iosefa

The accused is charged with abduction c. to S. 132 of the Penal Code, with an alternative charge of indecent assault c. to S.133 of the Penal Code.

The offences are alleged to have been committed on 3rd January 1986 at Bikenibeu in respect of Nei Tita Monokoa a girl under the age of 18 years at that time.

It is for the prosecution to prove the guilt of the accused beyond a reasonable doubt. There is no onus on him to establish his innocence. Since Count 2 is a sexual matter corroboration should be looked for as a matter of practice and I warn myself it would be dangerous to convict without it.

There is little dispute about the general facts. PW1 Nei Tita and PW2 Nei Tareiti were living at Bikenibeu. They are not related but are friends. PW1 was told by her mother to go to Betio to visit relatives and to be home before dark. She left with Nei Tareiti and they travelled on the ferry with the accused arriving about lunch time. The accused got into conversation with the girls and took them to lunch at the Beru Cafe and suggested that after visiting the relative they should come to the Seamens Hostel which they did.

They stayed there for some hours and caught the 9 p.m. ferry. On arrival at Bairiki they caught a bus to Bikenibeu. They got off the bus early and walked towards Nei Titas home. The accused and Nei Tita went to a breadfruit tree while Nei Tareiti went to tell Nei Titas mother.

Under the breadfruit tree the accused and the complainant kissed.

The complainant cried out causing PW3 an old man to come and he took the complainant away and later handed her over to her mother. These facts are undisputed. The only dispute between the parties is as to whether the complainant went willingly to the breadfruit tree and what happened when she was there.

The complainant and Nei Tareiti say she was pulled to the tree. Accused said she came willingly.

In assessing credibility I have noted that it is common ground that the complainant and the accused were together for some hours at the Seamens Hostel. What they were doing there is not in evidence. It is agreed that they were kissing on the ferry although the complainant says she was forced to kiss the accused. This is difficult to imagine. If she protested she did not say so.

On the bus instead of sitting with N. Tareiti, she sat with the accused in the back seat. Instead of getting off the bus at the stop nearest to her house on her own admission she got off early and walked down the road holding hands with the accused. These are not the actions of a girl who was hostile to the accused and yet she told the Court she does not like him. It is clear she deliberately overstayed the time allowed her by her mother and both she and Nei Tareiti must have known they would be in trouble for being late home. She did not shout or call for assistance when as she claims the accused dragged her to the breadfruit tree. The accused gave his evidence in a straight forward manner. He says he wanted to have sexual intercourse with the girl who he believed was mature. She did not object to coming beneath the breadfruit tree. She did not object to the preliminaries before sexual intercourse but she did object to sexual intercourse itself. She shouted and he stopped.

I believe the accused on most points and have no doubt that his evidence in almost all points is to be preferred to that of the girls. I am sure Nei Tita went willingly to the breadfruit tree and only objected when accused tried to have sexual intercourse with her where upon he desisted. Both the girl and Nei Tareiti had interests of their own to serve by saying that Nei Tita was pulled to the breadfruit tree. Why did she not resist or shout for help? Has the prosecution proved its case to the required standard on the abduction charge. I do not think that it has. There is no evidence that N. Tita left the care and control of her mother at any time. She went to Betio with her mothers consent and returned, albeit late. The accused is not shown to have done anything to interfere with the care and control of the mother over the girl. He exercised no control over her girl. I am satisfied that he did not pull the girl. She went with him willingly as she did throughout the day. No force was used either physical or mental nor did the accused take her away in the sense necessary for abduction nor at any time did he prevent her returning to her mother. This 'taking' is a basic ingredient of abduction and the prosecution have not proved it to the required standard.

For these reasons the charge of abduction fails and the accused is acquitted. On the charge of indecent assault, it is again clear on the evidence that the girl consented. I accept what the accused said that she only objected when the accused tried to have sexual intercourse with her. As she had previously consented to touching of an indecent nature there cannot be a conviction on the alternative charge. The act of which the girl complains was the act of raising her T. Shirt after various other familiarities of an indecent nature had taken place to which she consented. When she complained the accused stopped what he was doing.

Quite apart from the question of consent it is necessary that corroboration of the complainants evidence be sought as a matter of practice. However since I do not find the complainant to be a credible witness on the question of consent it is pointless to look for corroboration.

If the complainant had been a credible witness the evidence does not show any corroboration and in view of the fact that it would be dangerous to convict without it the accused must be acquitted on the alternative count as well.

R. G. TOPPING
JUDGE.