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Judgment 27.

REGINA v. JOHN HENRY JONES

The accused John Henry Jones comes before this Court charged that he on or about the fifteenth day of September, 1949 in the Territory of New Guinea committed rape upon one Doris Wood.

The crime of rape is defined by Section 347 of the Criminal Code as follows:-

Any person who has carnal knowledge of a woman or girl, not his wife without her consent, or with her consent, if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations of the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime, which is called rape.

A person charged with the crime of rape may be found guilty of the lower charge of attempted rape and by virtue of section 578 of the lower charges therein set out, if the evidence justifies such a result.

It is necessary at the outset to remember upon this charge of rape that the Crown must prove:

- (a) carnal knowledge of the prosecutrix, which by section six of the Criminal Code requires penetration, but even the slightest penetration suffices.
- (b) want of consent i.e. that her free and conscious permission to the act was lacking and that the accused knew of this lack.
- (c) and of course that it was the accused who at the time and place alleged in the indictment committed the act complained of.

It is a rule of practice for the trial Judge to warn the Jury, as learned Counsel for the defence pointed out, against the danger of convicting on the uncorroborated evidence of the prosecutrix. The Criminal Code defines "uncorroborated testimony" as testimony which is not corroborated in some MATERIAL PARTICULAR by other evidence IMPLICATING THE ACCUSED. Accordingly sitting as Judge and Jury I take heed of such warning.

This brings me to the standard of proof required of the prosecution. It rests upon the prosecution to prove the guilt of the accused beyond a reasonable doubt otherwise the accused is entitled to his acquittal. It follows from this that the Crown must negative any defence open to the accused except insanity. Insanity may be produced by excessive consumption of alcohol and it lies upon the defence to establish that defence, but not with the high standard of proof required of the prosecution, but upon the balance of probabilities. This defence has not been seriously raised in this case and the facts satisfy me that as a defence fails.

It may lastly be added before turning to the facts that sometimes an accused may give an account disbelieved by the Court and yet such an account may raise a sufficient doubt to secure the acquittal of the accused.

The prosecutrix in this case DORIS WOOD is a married woman residing with her husband an Able Seaman at Tarangau Naval Depot.

On the night of the alleged offence her husband was on duty at the gangway - his tour of duty being from 11.45 p.m. on the 14th September until 3.45 a.m. the next day. Mrs. Wood saw her husband off on the night in question being then left in the house alone. Shortly after he left she latched the kitchen door leaving

the front door unlocked as was her custom for her husband's entry after his tour of duty was over. She then retired to bed.

The Wood's house is about 74 yards away from one occupied by Chief Petty Officer Dalton's house, though there is another house a little closer in distance but not so accessible from the Wood's house. There is a boy-house about 40 yards to the rear of the house. The house is close to the main administration area, all being on a narrow point.

The house itself which abuts on Lae Road consists chiefly of a large sleeping room, a room, a lounge and a kitchen. In the kitchen there is a refrigerator backing on to the lounge, which gives off some light from the lamp and in the lounge there is a cupboard for drying clothes, which is heated by electric lamps which give off a considerable degree of light into the lounge from under this cupboard especially at floor level.

Mrs. Wood says that after she had been asleep a considerable time someone shook her awake and said "It is Max here I want you. " She described how she got out of bed and thought that it was not the Max she knew. though not sure of it until in the lounge, and that noticing that the intruder was wet she threw him a towel.

Whilst he was drying himself- he was clothed only in blue trousers known as No. 8's in the Navy - she slipped into her dressing gown and preceded the intruder into the lounge, but in doing so did not put on the light which is a matter of some surprise.

When she again saw the intruder in the lounge she could see that he was a man she had never seen before and told him that he had better get back to the depot before he was missed and that he would get into trouble if a bed check was made.

The man then replied "I have come here for one thing and I am going to get it. " She then said to the man, who appeared to her very drunk "Don't be silly my husband will be home soon, " and he replied, "No, he won't he is on watch. " The prosecutrix then said "You had better go" and moving towards the front door to let him out she found that it had been locked and the key taken. At the same time the accused grabbed her and she started to scream. She was grabbed by the throat and thrown to the floor. She continued to scream and saw a light go on in the Dalton's house, but later this went out. At the time there was a heavy downpour and the noise on the roof made it difficult to hear.

The prosecutrix said then she asked for a drink with a view to escape but the man said "No you don't. "

The prosecutrix describes a conversation which took place whilst her assailant was on top of her. She asked, "Who are you?" He did not reply. He said "Where is my mate?" She replied - "I don't know your mate, who is he?" He replied, "Roach" He was here before me. " She replied "There has been no one here. "

He said "Who are you?" She replied "Mrs. Wood." He said "No, you are not the girl who was here a minute ago. " She said "Where do you come from?" He replied "Toowoomba. " Again she asked "Who are you?" and got no reply.

The prosecutrix assigns two reasons for the conversation -

(1) To spar for time.

(2) To ascertain the identity of the accused.

He then said, so the prosecutrix alleges, "You are nothing but a bag like the rest of them - I know because I married one. "

Mrs. Wood says that in spite of her resistance the accused when he was on top of her spread her legs with his knees and had complete sexual intercourse with her and that she was thoroughly frightened then as he had her by the throat.

Managing to get free she ran out just as she was over to Dalton's house, where she arrived (so Dalton testifies) in a very hysterical condition, she told him that she had been raped and asked to be taken to her husband.

Dalton dressed and drove in the jeep stopping first at Wood's house which was in darkness. This was a little after 3 o'clock. The front door was till locked and he came away and drove her to the Navy Administration block reporting to the Quartermaster and then the Duty Officer. Then she was taken to the Regulating Petty Officer where she gave a description of her assailant. Dalton then drove Mrs. Wood and her husband home, when it was noticed that near the front door the coir mats were disarranged, a table top disturbed and two buttons off her dressing gown remained as evidence of the struggle she described.

Lieutenant Harrington the Duty Officer described having been awakened by C.P.O. about three o'clock and speaking with Mrs. Wood. He made a search of the mess decks speaking in turn to Steward Roach, Stoker Cant and he noted some of the bunks empty. In a corner of the dormitory he took possession of a pile of clothes, some dry and some wet. The wet ones were a pair of trousers marked JHJ, which are now identified as the property of the accused and are of the kind of blue trousers known as No. 8's. A shirt and shoes were also wet and belong to the accused. The other clothing was damp but not wet like the accused's was.

The accused was then awakened and he was found to be in the nude and he had obviously been drinking. Lt. Harrington asked him when he went to bed and he said "before lights out."

On being asked his home town he replied "Toowoomba. " Asked what tobacco he smoked he replied "Log Cabin." He was then asked to get his No. 8 trousers. The accused then walked down the centre of the dormitory, stood near his bunk, looked at some clothing hanging up, came back and said "They are not there, I suppose you have them now."

The next morning at a line up of twelve ratings, four of whom were already known to the prosecutrix, she picked out the accused from the second line and said without hesitation "That is the man, that is him." The evidence makes it clear that the accused was averting his gaze and it is a matter for the jury to consider whether or not this was because he could not meet the eye of the prosecutrix because of his guilty mind.

The accused was then placed under formal arrest by Lt. Harrington.

The evidence establishes that later that morning the prosecutrix attended a New Guinea day celebration and that night the pictures, and the defence urges that this might not be expected of a woman who had undergone the terrible experiences described by the prosecutrix.

At 8 o'clock that night the prosecutrix was medically examined; of course she should have been medically examined at once after the offence, and this examination disclosed that she had abrasions on her knees and elbows and also bruising each side of her windpipe, and a small scratch on her upper arm (right). There were no marks or abnormalities about her lower abdomen, upper thigh, or her genitalia either internally or externally.

The accused being medically examined was found to have scratches on the right cheek and over the jaw bone such as could have been produced by fingernails. These were recent scratches received in the preceding 24 hours. His breath smelt strongly of alcohol, that is at 10 o'clock on Thursday afternoon. The doctor stated that with a strong, stoutly built healthy woman like the prosecutrix in rape he would have expected to find some degree of trauma, but these signs were absent. No swabbings were taken because she had had a vaginal douche.

C.P.O. Dalton described Mrs. Wood as being clothed only in a dressing gown wide open and a nightdress when she came to his house to complain. That garment is in Court as also is the nightdress. It is obvious from the evidence that the attack upon the prosecutrix took place between 2.15 a.m. when the rain started and a little before 3 a.m.

Now the evidence for the defence denies that the accused was ever in the vicinity of the Wood's house at the material time. In support of the alibi thus set up the accused gave evidence on oath. His story is that he stayed at the wet canteen having beer until it closed at 8 o'clock on the night in question. Then at 9 o'clock went to the dormitory and got a bottle of wine which he and Kelly took to the back of the drill hall to drink. The accused Jones says that it was his bottle of Port obtained from Davy, whilst Kelly, his witness, says that it was sherry bought by himself from the store - this is a somewhat remarkable discrepancy as at this time they had only each of their own evidence had one bottle of beer, their ordinary issue. After consuming the bottle of wine Jones and Kelly testify that they joined the rum drinking party at the back of the showers, where they stayed until close to 2 o'clock in the morning. He states they then repaired to the football field where wrestling ensued and a race. All of them took off their clothing except Lankford who retained his underpants. They, that is Lankford, Davy, Kelly and the accused remained on the football field about half to three quarters of an hour. The discarded clothing was in a pile and was taken up by Davy to the dormitory.

The accused states he felt a bit sick and stayed behind to be sick and went into a native latrine - an old one - after he had vomited. The accused denies ever having been out to Mrs. Wood's house the night of the assault. Kelly and Lankford gave confirmatory evidence about the games on the football field. I am not impressed with any of them as witnesses and I have come to the conclusion that they are unreliable. Nobody can say who suggested going to the football field. Nobody can

recall who suggested the race and I treat their evidence as untrustworthy. I accept Lt. Harrington's evidence that the article marked J.H.J. the initials of the accused and in fact belonging to him were much wetter than the other clothing. It is incomprehensible on the story told by the defence as they were all on the football field the same time according to the witness Lankford, why the accused's clothing should be so wet and the others just damp.

Now the first matter for consideration by the court is who was the man who entered Mrs. Wood's house on the night of the alleged offence. Can a Jury be certain that it was the accused to an extent excluding any reasonable doubt. As to this we have the identification of the accused by Mrs. Wood herself. We have the evidence that the accused was averting his gaze at the line up. We have too the fact that he bore scratches on his face, which were such as might have been made by finger nails. Mrs. Wood thought she scratched him in the struggle though the accused says he might have got it at football. Finally we have the evidence that the person entered Mrs. Wood's house about the time of a very heavy downpour and later that night the accused's clothing, which included trousers of the kind described by Mrs. Wood, were quite wet, whilst the clothing of his other companions was only damp. We have too the fact that the intruder had been drinking and finally we have the evidence that the intruder told Mrs. Wood that he came from Toowoomba and the accused, we find, comes from Toowoomba. We have also the strange fact that the accused when asked for his No. 8 trousers looked for them, could not find them and then said to Lt. Harrington "I suppose you have them now." It is a matter that a Jury may well take into consideration that the accused was never asked the exact nature of the allegations against him in respect of Mrs. Wood and has never sought to make any denial as might be expected of a man wrongly accused. I am satisfied that in spite of his reference to marriage made to the prosecutrix (he is a single man in fact) the Jury would feel no doubt that the accused is, as Mrs. Wood swears, the man who attacked her after unlawfully entering the house. It is a common experience that people are able to identify a person accurately and yet are unable to give any description, which described that person in unmistakable terms. And so it is here.

Coming now to the alleged offence I am satisfied by the evidence that the Crown has amply proved want of consent, the bruises on the prosecutrix's throat and her conduct from the moment of the attack bears that out. I am not satisfied however in the absence of some medical evidence that there was penetration, though I am satisfied that the prosecutrix believes there was. The doctor testifies that with a woman of Mrs. Wood's build some trauma could be expected to evidence the intrusion into her person of the accused. The whole circumstances satisfy me that the accused was attempting to have carnal knowledge with the prosecutrix though he had ample indication that she was not consenting, and there is ample evidence that he was determined to gratify his passions on her person without regard to her wishes.

I therefore find the accused guilty of attempted Rape.