

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

CORAM : KELLY, J.

THE QUEEN against JAMES HERBERT JEFFREY

JUDGMENT: 22ND AUGUST 1952.

The accused, James Herbert Jeffrey, is charged that on 20th July 1952 he unlawfully and indecently assaulted Patricia Margaret Yarrow, a European woman, contrary to the provisions of Section 4 of the White Women's Protection Ordinance 1926-1934.

The charge arises out of happenings on the evening of 20th July last. Previously the accused and the complainant had been keeping company, but that had been broken off. On the evening of 20th July the accused induced the complainant to go for a drive with him. He drove through Port Moresby, then through Iduabada Village and parked the car on a by-path near Tatania causeway.

The couple entered into conversation, a fair share of which was in a semi-bantering manner. After two kisses, the second allowed by the complainant on the understanding that the accused would drive her home, the accused started up his car and backed for about 20 yards. He then, apparently on a change of mind, stopped the car.

At this stage the complainant leaned out of the window of the car. The accused stroked her back and ran his fingers through her hair; during which time there was a little more semi-bantering. The complainant finally objected to the accused's approach; whereupon he informed her, to the effect, that a good spanking would do her good. Thereupon he put his suggestion into effect by pulling the complainant across his lap, lifted up her skirt and commenced to smack the cheeks of her buttocks. According to the complainant she informed the accused that it was not hurting her; "because she did not want to let him know that he was hurting her". Thereupon accused pulled her bloomers down and administered a severe spanking; to the extent that the complainant cried and objected, and finally screamed.

The accused in evidence admitted the spanking, but claimed at the outset the complainant did not object. However, on the evidence before me the complainant did object, even though during the later stages of the spanking. In addition to the spanking the complainant alleged that the accused further indecently assaulted

her by putting his hand on her private parts. The accused denied this allegation.

The complainant was residing at Badili and occupying women's quarters shared with her by another single girl. There were also married women residing at Badili.

The couple drove to Badili, and the accused dropped the complainant at her quarters at about 11.30 pm.

The complainant did not complain to the other single girl sharing her quarters - she "did not think of it" - nor did she complaint to any of the married women at Badili. She explained that, in effect; "she did not know them well enough." She went across the Badili settlement to the quarters of a male friend, John Harrison, some 120 yards distant. There she complained to Harrison that the accused "wanted to kiss me and I refused. He pulled me across his knee and beat me and pawed me." Thereupon she bared her posterior for Harrison's inspection.

Harrison gave evidence of the complainant's complaint to him, but at the conclusion of his evidence in chief he added that the complainant informed him that the accused had "interfered with her". He admitted on cross-examination that he had forgotten to give this piece of evidence earlier in his evidence in chief.

On the following morning, apparently at the suggestion of one of her co-employees, the complainant visited Dr. Hazzler for examination. On Dr. Hazzler's evidence I cannot find any definite complaint that the accused had placed his hand on the complainant's private parts. Dr. Hazzler's examination disclosed a bruised left mastoid, and the cheeks of each buttock severely bruised and swollen.

On the following morning, 22nd July 1952, Mrs. Yarrow, the complainant's mother, telephoned Dr. Hazzler. In response to that telephone call Dr. Hazzler and Dr. Craggs made a further examination of the complainant, extending their examination to her private parts. No evidence of injury to her private parts was discovered, and the examination proved her to be a virgin.

On the following day, 23rd July 1952, the complainant interviewed Police Inspector Woodmansey. On 25th Jul , 1952 the accused voluntarily called on Inspector Woodmansey and in reply to a question by the accused; "what is the complaint exactly?", Inspector Woodmansey replied "she says last Sunday night you took her for a drive in your car and that you assaulted her". In his evidence Inspector Woodmansey stated that the complainant had informed him that the accused placed his hand on her private parts, but on cross-examination Insp ctor Woodmansey stated that he did not convey to the accused any direct accusation that the accused had placed his hand on the complainant's private parts; and that the accused had mentioned something about stroking the complainant, but not stroking her private parts.

In such allegations as this - that the accused placed his hand on the complainant's private parts - it is not a statutory requirement, but it is a rule of law that some corroboration is to be expected. Generally that corroboration takes the shape of a complaint by the wronged person at the earliest opportunity to some person in a position to receive that complaint. On the evidence of both the complainant and Inspector Woodmansey the complainant did make some direct form of complaint to Inspector Woodmansey, but it must be remembered that such complaint was made three days after the alleged act, and after the complainant had passed over four others who would have been willing to listen to her complaint.

The complainant admitted that she did not make any strenuous efforts to struggle free from the accused in the car. She contended that he had her pinned down on his lap. On cross-examination she said: "I wriggled round and tried to get free and I scratched his hand as best I could in the hold he had on me. I was longer than the seat of the car, and I did not want to wriggle round too much and I did not want to bend my knees because I did not know what Mr. Jeffrey intended doing, and I was frightened. If I bent my knees I would have had to put my legs apart, and I did not know what he intended doing. I kept my legs together all the time".

As a jury I would expect that the complainant would have struggled to free herself from her predicament, even if in fear. The medical evidence did not disclose any injuries or bruises to the complainant, particularly to her legs protruding through the car window, as would have been expected had she made any serious efforts to struggle free.

On the evidence directed to this particular allegation I am not sure that the accused placed his hand on the complainant's private parts, and I find in favour of the accused thereon.

This still leaves the question of the spanking. Mr. White, counsel for the accused, submits that such spanking does not amount to indecent assault within the meaning of the White Women's Protection Ordinance. Indecent assault is difficult of definition. Each case must depend upon its own facts. As a jury it is not for me to be narrow-minded or, at the other end, loose in my moral assessing, but I cannot escape convincing myself that for a man of twenty odd years of age to have a girl of eighteen years of age across his knees, remove her clothing and strike her, is anything but indecent assault. On that I must find the accused guilty.

SENTENCE: I impose upon you a fine of £100 in default of payment six months' imprisonment with hard labour.

Accused asks for time to pay. Time allowed - one month.