

JOINT COURT OF THE NEW HEBRIDES

CONDOMINIUM

v.

JOSEPH DAVIDSON and
FRANCIS BUNGA

JUDGMENT

The two accused are charged that on or about the 24th day of January, 1967, at Vila, with intent to procure the miscarriage of a woman, Gitagoro Mary, they supplied her with a drug called Codeine, to which charge they have pleaded not guilty.

The facts in this case are very simple. GITAGORO MARY, suspecting that she was pregnant, wrote to the accused, JOSEPH DAVIDSON (who, it would appear, she considered responsible for her condition) and told him of her suspicions. He told his friend, the second accused, FRANCIS BUNGA who, having received money from the first accused, asked an employee in the British Clinic to get him some Aspro believing, it is alleged, that Aspro is an abortifacient. It transpired that this employee (who was unaware of the intended use of the medication) being unable to find Aspro, decided to provide Aspirin, a similar substance, but in error provided Codeine, which he placed in a bottle and labelled it Aspirin. This was given to the first accused.

GITAGORO MARY told of a conversation she had with the second accused in which he asked her about missed periods, and told her he knew of a medicine which would cause them to recommence. In the course of the conversation he is alleged to have asked this girl if she knew how to kill the baby. When she said no, he said he would get the medicine from the Clinic. She said that on the 24th January this year he gave her pills similar to those produced in Court, and told her to take one pill per day. She said, in reply to a question from the Bench, that she never at any time intended to take them.

The charge here is of attempting to procure an abortion. Assuming that the accused did, together, procure Codeine deliberately with the intention of terminating the pregnancy of GITAGORO MARY, who never intended to take it, does this constitute an attempt to procure an abortion?

10 Halsbury (3rd Edn.) 307 defines an attempt as "Any overt act immediately connected with the commission of an offence and forming part of a series of acts which, if not interrupted or frustrated, would end in the commission of the actual offence, is, if done with a guilty intent, an attempt to commit the offence."

The act or acts necessary to constitute the offence must be overt and immediately connected with the commission of the offence. Where the act or acts done are merely preparatory there can be no attempt; they "must be immediately, and not remotely, connected with and directly tending to the commission of an offence." (Op. Cit. 308). Thus it is not an offence of attempting to procure an abortion if the accused merely buys the

necessary instruments or the noxious drug. In each of these cases he must have a victim who is willing to be treated, or that he intends to treat forcibly if necessary, and he must proceed to put his intention into effect. The footpad who sets out at night prepared to rob someone if he should meet a suitable victim is not guilty of attempted robbery until he meets the victim and proceeds to put his intention into effect. Mere intention to commit an offence does not constitute an attempt.

There are two cases which the Court considers in point on the question of mere intention to commit an offence and acts preparatory to committing the offence which are apt in the present case.

To quote from the headnote to the first, R. v. Robinson (1915) 2K.B.D. 342. "A jeweller who had insured his stock in trade against burglary, with the object of obtaining the policy money from the insurers, falsely represented to the police that a burglary had been committed on his premises and the jewellery stolen, in the hope that the police would make a report by which the insurers might be induced to pay ; but before he had made any communication about the pretended burglary to the insurers the fraud was discovered and he was arrested -

Held, that on those facts he could not be convicted of an attempt to obtain money from the insurers by false pretences."

The second case is Hope v. Brown (1954) 1 A.E.R. 330. The headnote reads "Enforcement Officers of the Ministry of Food found in a refrigerator in a butcher's shop, of which the respondent was the manager, packages of meat bearing tickets correctly specifying the contents and price. In a drawer, however, there was another set of tickets marked with higher prices, which were above the maxima chargeable. The respondent admitted that he had instructed an employee to change the tickets before delivery of the meat.

The respondent was charged with attempting to sell meat at a price exceeding the maximum.

Held : Until the false tickets were affixed to the meat there was merely an intention and preparation to commit the offence of selling at a price above the maximum and not an attempt ; the acts of the respondent were not sufficiently connected with the offence to constitute an attempt to commit it ; and, therefore, he was not guilty of the offence charged against him."

There is a French decision which is equally apt and the headnote is well worth quoting. "Cour de Cassation (Chambre Criminelle), 13 Janvier 1954. AVORTEMENT .. complicité, conseils, insuffisance, Remise d'objets, L.31 Juillet 1920 Art 2. Les simples conseils donnés par un particulier à une femme reconnue coupable d'avortement ne suffisent pas à caractériser la complicité du delit principal commis par cette dernière (1) ; Il en est de même de la remise d'un objet non utilisé (2) ;"

In the present case, assuming the Court were to accept the evidence as being correct, there is established the intention to commit an abortion and acts preparatory to putting the intention into effect. There is missing, however, a person on whom the intention could be put into effect. Had GITAGORO MARY accepted the Codeine with the intention of taking it, the matter might have been (and this Court goes no farther than that) different, but as she never intended to do so the

gap between the intention and the preparation on the one hand, and the putting it into effect, is unbridgeable, and the case must be dismissed ./.

DATED at Vila this seventeenth day of February, 1967 ./.


French Judge


British Judge


Registrar

JOINT COURT OF THE NEW HEBRIDES

CRIMINAL JURISDICTION

CONDOMINIUM

v.

JOSEPH DAVIDSON and
FRANCIS BANGA

F E E S due to Mr. O. HONEGGER, Bailiff, residing at Vila.

SUMMONS TO ACCUSED :

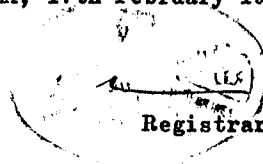
Original	£S. 0. 4. 6	
2 copies	0. 1. 6	
Transport	<u>0. 6. 0</u>	
	£S. 0.12. 0	£S. 0.12. 0

SUMMONS TO WITNESSES :

Original	£S. 0. 3. 0	
5 copies	0. 3. 9	
Transport	<u>0. 6. 0</u>	
	£S. 0.12. 9	£S. 0.12. 9
		£S. 1. 4. 9

ONE POUND FOUR SHILLINGS AND NINE PENCE STERLING ./.

VILA, 17th February 1967.



S E E N


French Judge


British Judge