Appeal allowed, conviction quashed, new trial on same charge.

16

THE QUEEN

-v-

WILLIAM MERVYN CREIGHTON.

GORE, A.C.J.
Madang.

CHARGE TO JURY - 29/8/52.

Gentlemen,

As has been said, this is the first occasion in the history of the Territory of New Guinea that there has been trial by jury. You may or may not be familiar with the jury system, but I am sure you are aware of the importance of it in a British community, where it operates mostly for the trial of Europeans and there is almost no conflict between white and black, and I am sure you will appreciate the system when it is now applied where there may be such a conflict.

You have heard the addresses of Counsel for the Crown, the Crown Prosecutor and of the Counsel for the accused, and I am going to be brief. You have listened to the view of the law which each has put to you. Whatever statements on the law, however, which Counsel have made are subject to my direction to you. The law is peculiarly my province and it is my duty to instruct you on the law applicable to the case. It is also my privilege to assist you by comment on the facts adduced, but the facts are your province. You, and you alone, are the judges of the facts.

In the system of criminal justice under which we have the great privilege of living, there are two elements which stand out:

(1) The burden of proving the guilt of the accused is always on the Crown. The Crown must prove that the offence was committed and the accused committed it. The accused is not called upon to prove that he did not.

(2) If there is a reasonable doubt, you must give the benefit of it to the accused. That is to say, if, having heard the evidence, there is a reasonable doubt of the guilt of the accused in your minds, then you must acquit him.

Now this is a charge of rape. You perhaps have a general idea of what the term "rape" means, but it has a wider meaning in law than is known to the man in the street. Rape as defined by the Criminal Code is 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 as to 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."

Now out of that definition I will extract for you the portion which really has application to this case. It is that portion which says, carnal knowledge with her consent if the consent is obtained by force or by means of threats or intimidation of any kind.

You have heard the evidence and so you know that the complainant alleges that she submitted to the carnal knowledge or the sexual act if you like. And you have heard the evidence of the Crown that the submission was obtained by means of threats or intimidation. You can see, therefore, that the Crown case rests upon whether or not there were threats or some intimidation sufficient to cause the complainant WALINBINMUNGI to give herself to the accused. The Crown must prove that her consent was obtained in this way.

In cases of this nature, sexual cases, I must tell you that you should have corroboration of the complainant's story. You could convict the accused without corroboration of her story, but I must warn you of the danger of convicting on the uncorroborated testimony of the complainant. So, Gentlemen, you will look for corroboration - some independent testimony which affects the accused by tending to connect him with the crime. You might find corroboration in the evidence of ANSON, if you believe his evidence, or in the evidence of MAKAU, if you believe her. You will remember that

/MAKAU

MAKAU is the woman who was referred to as MARIA by the complainant WALINBINMUNGI in her evidence of what happened at the house when she was engaged in passing on to the complainant the suggestion by accused that she should have sexual intercourse with him. And you will remember, too, that ANSON brought the woman to the house on the night when intercourse is said to have taken place.

There is the evidence of the husband NUMUK to whom the woman made a complaint. His evidence of the complaint and what his wife actually said to him is not evidence of the fact of rape. Nor is it evidence in corroboration. Its value lies in that it is evidence of the consistency of the complainant's story and as showing that there was in reality want of consent.

The defence is a complete denial of the intercourse and of the whole story related by WALINBINMUNGI. It becomes, therefore, a contest in the matter of truth. You have, on the one side, a native complainant and native witnesses. You have, on the other, the accused and his witnesses, some white, some native. The woman is a native and her witnesses are natives, but because their skins are black, it does not necessarily follow that they should not be believed. They may lie; natives do lie - so do whites. It seems to me that the same tests of truth should be applied to them as in the case of Europeans.

The defence puts forward, got from the accused in cross-examination, a reason why such a story as the complainant's should have been told. It was that there was a conspiracy on foot engineered by certain persons, some named, to get even with him for his conduct towards the natives. You may believe the accused when he maintains that he was the object of a conspiracy for injury. Such things do happen, and it will be for you to determine whether or not WALINBINMUNGI, as the medium in the conspiracy, could have done her work in making up the story of intercourse with the accused. It might appear to you that her story is too fantastic to be believed. It might appear to you that the threats by the accused to withhold treatment

/for the

for the child who was seriously ill, and the carrying into effect of these threats by the orders to the medical orderly to cease treatment so that he could force the woman to have intercourse with him, is beyond reason. On the other hand, you might be impressed with the consistency of her story. You will remember that she did, in fact, make a complaint to her husband, and if you believe that, is it consistent with a fabricated story. As I said before, it is a contest in the matter of truth.

I do not intend to weary you by traversing the whole of the evidence. You have heard the medical evidence and you will, I am sure, be able to determine whether or not the child received the treatment necessary during the two months it was alleged to have been denied to it, a factor to substantiate her story or not. BENO might possibly have thrown light upon this if he had been called.

You have heard the accused's evidence of his desire to have the accusations investigated, even when the first accusation - the breast touching incident - had been made. You have had the opportunity of observing the demeanour of the witnesses in the witness box.

If the story of the complainant be true, then I must direct you that there is sufficient in law to constitute rape.

By the Criminal Code the charge of rape may be reduced, by the finding of the jury, to certain lesser offences. In this case it is either rape or nothing at all.

Sentenced to 4½ yrs IHL.