

IN THE SUPREME COURT OF THE )  
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GUINEA. )

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B E T W E E N

THE QUEEN

- v -

AUWA

J U D G M E N T

In this case there can be no doubt that the complainant was the subject of a shocking attack upon her by a native male with the object of gratifying his passions upon her person, notwithstanding her plain want of consent.

The real difficulty to resolve in this case is the problem of whether the attacker was, beyond reasonable doubt, the accused, and nobody else but the accused.

It must be remembered that the attack took place on the morning of the 19th February, 1957 at about 9 o'clock. The complainant was alone at the time, and I accept her account of what took place, given to the best of her recollection, and supported in some respects by Inspector Dix's visit to the scene and her own condition as observed by Mrs. Joubert.

The complainant appears to the Court to have given her evidence with scrupulous fairness. The complainant who, it should be noted, had not previously seen the attacker to her knowledge before the time of the alleged attack, could give the Police, the very day of the attack, no better description of her assailant than that "he was a young native with a good skin."

She never saw him again until there was a line-up at the Police Station on 8th July, 1957, when she was unable to pick out the present accused as her attacker from amongst eight other natives.

She then saw the present accused in the dock in the lower Court on the 9th July, 1957, then knowing that a native had confessed to the attack upon her and that the present accused was being charged. She identified the present accused as her attacker at the lower Court and has testified in this Court that from her independent recollection of the attacker, it was the accused.

It is necessary to remind oneself that she very fairly admits that on the 8th July, 1957 she could not identify him with

certainly, a date five months approximately after the alleged offence. She says that at the lower Court and in this Court she recognised the present accused as her attacker by his jaw and side face, though she never told the Police or anyone else why and how these features of the accused distinguished him from any other native.

At the request of Counsel for the Defence, at a line-up, she identified, without hesitation, the present accused as her attacker from a line of ten to twelve natives, similarly dressed; but she admits that naturally her view of the accused in the lower Court assisted her to identify him on this occasion.

Apart from her evidence of identification, there is nothing whatever to link the accused with the alleged offence, other than his confession to Inspector Dix on the 8th July, 1957, in response to questions by Inspector Dix, after proper warning, at a time nearly five months after the date of the alleged offence, plus his statement in the lower Court that the evidence given in Court was true; but in this Court the accused, in a statement, alleged that he was frightened when the Police questioned him, and was frightened too, at the lower Court proceedings, and that on both occasions he had only told half the truth. It is a matter of some surprise that in that statement he did not deny outright the whole truth of what he had said.

But be that as it may - it is well known that people are wont to confess to crimes which they have not, in fact, committed, from all kinds of motives, including for the purpose of shielding the real perpetrator of the crime. Of course, at first consideration, it would seem that anyone who gave an account of the alleged offence which approximated so closely to the complainant's own account, would seem to be the offender, but this by no means follows, because natives talk amongst themselves and he might easily have heard it from some other native or, indeed, he might have been a witness to the offence. One is inclined to think that a person will not confess to a crime that he has not committed, but unfortunately, in practice, this<sup>is</sup> not always found to be true.

The Court must ask itself, in view of the fact that except for the quite unsatisfactory identification of this accused by the complainant, and his own admissions after questioning by the Police, and the not very satisfactory admission in the lower Court, as there is nothing else to link the accused with the offence charged, whether the Court can feel satisfied beyond a reasonable doubt of his guilt.

I am not satisfied on the whole evidence that the Crown has sustained its heavy burden of proof, and must therefore find the

accused "Not Guilty" and he is discharged from custody in respect of this charge. The accused is now remanded to his former custody in respect of some other offence.