JUDGMENT NO. 118.

IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA. } CORAM:

B E T W E E N

THE QUEEN

and

HEAI MEALA.

J U D G M E N T

The Complainant in this case is a youngish matron about 5 feet 4 inches in height, slim and svelte in figure, being about 7½ stone in weight. She has a clear, fair skin and delicate features with hazel eyes. Her hair is light brown to auburn, clipped fairly short with what I believe is known as a wave imparted by one of the processes affected by women to that end.

I took particular heed of the Complainant, as the only evidence afforded by the Crown relating to her status was that she was born in South Australia and had spent most of her life there. Mr. O'Connell submits that there is no evidence of her status and therefore I can not determine her status from my view. Where there is no evidence at all I still think it falls within the description and is sufficient and I hold her to be a European woman.

Upon my observation she appears an average Australian young woman, perhaps more attractive than the average. I have no hesitation in classing her as a European for the purposes of the Ordinance under which the accused is indicted.

The accused is charged with attempted rape, and as I understand the law, this entails the Crown satisfying the Court beyond a reasonable doubt that the accused at the time charged laid hold of the Complainant and did so with the intention to satisfy his passions upon her person notwithstanding that he knew that it was against her wish. "Rape" is defined in Section 347, and "Attempt" is defined in Section 4.

Corroboration: There is a rule of practice that Judges warn juries that where indecencies are involved it is unsafe to convict without corroboration, but it is a rule of practice and not a rule of law. And in this case in any event there is ample corroboration. ../2/

On the day in question at about 5.30 she left her work at the Boroko Hotel and carrying two hand baskets, proceeded by a track through the long grass towards her home about 400 yards from the Hotel or thereabouts.

Half way home she was struck on the head from behind, seized around the shoulders and thrown to the ground beside the track in the long grass. She found her assailant to be the accused whom she saw plainly as it was still broad daylight. The accused was dressed in shorts and shirt and wore shoes. He seized her by her legs as she lay on the ground and tried to force her legs back. He stood over her as he did so, leaning slightly forward as he applied the pressure. She screamed and kicked. She felt his hand over her upper leg near the knee. The accused said something to her which she did not understand. Her prolonged screams attracted some indigenous people who came rushing to her assistance, one from a very considerable distance. The accused took fright and ran off, pursued by natives, two of whom arrested him.

The Complainant was undoubtedly the subject of a horrifying assault, and put up a spirited and necessary resistance. As a result of this assault she was frightened, upset and verging on being hysterical. A stimulating feature of the shocking circumstances of the assault was the ready aid rendered by the native witnesses called, who fearlessly and promptly ran to her assistance.

The evidence satisfies me that at no time did the accused remove his short trousers or indeed lower his genitals in the direction of the recumbent Complainant.

The facts do not satisfy me of the requirements of the charge as framed, and I find him Not Guilty, but I find her to be a European woman, and I am well satisfied that she was the subject of an unlawful and indecent assault under the White Women's Protection Ordinance of a particularly bad and brutal kind. I find the accused Guilty of an unlawful and indecent assault pursuant to Sections 4 and 7 of the White Women's Protection Ordinance and I sentence him to imprisonment for twelve years with hard labour.