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THE QUEEN v. GOROGO-GARI.

JUDGMENT DELIVERED BY MR. JUSTICE R. T. GORE ON
2ND JULY, 1958.

The Crown has presented an indictment in this case charging the accused with the attempted rape of an European girl. The charge, therefore, is under Section 3 of the White Women's Protection Ordinance 1926-1934.

Being a charge under that Ordinance it is necessary that it be shown that the complainant is in fact an European girl. It has been shown that Nancy Clare Ure, who is the complainant, is without doubt an European girl. Her father and mother are both Europeans as their history shows and Nancy Clare Ure was seen to be by me a fair white girl and I have no doubt on this point.

On the night of 22nd May about 5 minutes before midnight a taxi cab No. 014 picked up the complainant at the premises of the South Pacific Post at Konedobu after a phone call had been made to the Yellow Top taxi rank ordering a taxi. The driver of the taxi was directed to take Nancy Ure to her home at Hanuabada. She is the daughter of the Reverend David Ure of the London Missionary Society. The driver of the taxi drove at great speed all the way from the South Pacific Post through the village of Hanuabada and past the turn off to the Ure's home. He was told by Miss Ure to stop as he had missed the turn off, but he continued with no lessening of speed. Miss Ure was not very worried because when the driver went past the turn off and she had said to him "That is where we should have turned off", he had said "Sorry Sinabada" and she thought he would continue on to the end of the bitumen and then turn round. When, however, he got to the end of the bitumen which is at the turn off to the cemetery, he continued and branched off on to the road to the cemetery. He went to a point near the cemetery where a new road is being constructed, turned round and came back along the road. He brought the taxi to a stand still in the avenue of trees and switched off the lights. He got out of the driver's seat, came to the right hand rear door and opened it. At the same time Miss Ure opened the left hand door and got out on that side. She feared then that she was about to be attacked and had no chance of running away, so as the driver came round the back of the taxi she had both her high-heeled sandals in her hands, one held in each. Before she could deal a blow with either sandal, the driver caught both her arms below the shoulders. She did manage to deal one blow which hit the driver behind the head. She says she dealt other blows. The driver threw her to the ground and came down on top of her.

She screamed but the assailant put his hand over her nose and mouth. A struggle then ensued. Although the driver was strong, she struggled and managed to get to her feet and to the cab. During this struggle the driver put his hand inside and underneath her panties against her flesh and tore her panties across. The legs of her panties were very short. She was fighting all the time and his hands were more or less all over her. Before he tore her panties he had pushed her skirt and petticoat up above her waist. He pushed both skirt and petticoat up at the same time. After she struggled free and was standing beside the taxi, her assailant pulled her back and down on to the grass again. He pushed her down on to her back and he was lying on top of her. They kept struggling for a while, but she knew she couldn't fight much longer for she was getting very tired. She tried to think of something to say in Motu but all she could think of was the first line of the Lord's Prayer, which is TAMANAI E DIRAVA E. The driver said "Sorry Sinabada" and stood up. Then Nancy Ure got back into the taxi and started to pull the grass and burs out of her hair and clothes.

In the struggle the complainant's handbag had fallen off her arm. She had lost one shoe. The driver asked her if she had everything and she told him she had lost her shoes and he found one and gave it to her. He drove her to the bottom of the hill near her home. She ran the 200 or 300 yards to the house, went into her parents' room and threw herself on her father's bed, lay there a while sobbing and then told her father what had happened. She told her father in these words - "I came home in a taxi by myself. The taxi driver took me out to the cemetery and tried to rape me". She said more to her father giving him shortly the account of the taxi drive from the South Pacific Post, and what happened at the cemetery. The police were called and also Dr. Joan Refshauge who examined her at about 1.45 in the morning of the 23rd May.

Dr. Refshauge described what she had found upon examination. This disclosed that her pulse was raised, she was dishevelled, the hair on the back of her head was matted and full of grass seeds. She was excited. Her right eye was swollen and bruised. There was a lump on her forehead on the outer angle of the eye. The left side of her face had scratch marks on them. Her left shoulder was reddened and bruised and acutely tender over the shoulder blade. There were scratch marks on the back of her left arm and on the inside from the armpit and a small abrasion on the left forearm. There were scratch marks on the left thigh at the back under the buttock fold and inside from the groin. There were scratches behind her left knee, the soles of her feet were dirty and scratched. There was no trauma in the perineal region. Her condition suggested to Dr. Refshauge that she had been in a recent struggle.

Now it is a definite rule of practice that a Judge should always warn a Jury that there ought to be some corroboration of the complainant's story in cases of this kind. In this regard, I do warn myself sitting as a Jury of the danger of convicting without corroboration. But having warned myself, it is still open to me to convict, if corroboration is lacking.

The details of the complaint to her father are allowable in evidence if made immediately after the event. While such evidence does not go to the fact of the offence, it does indicate want of consent and it goes to support the complainant in that it shows that her story is probably true. It does not, however, amount to corroboration, for a person cannot corroborate himself.

At about 1.0 a.m. on 23rd May, Sub-Inspector Feeney went to the Police Station, Port Moresby, with Inspector Thomas. There they met the Reverend Mr. Ure and Mr. Johnson. From there they went to the Yellow Top Taxi rank. From there Inspector Thomas, Sub-Inspector Henney, Mr. Ure, two native constables and Sub-Inspector Feeney went to Mr. Ure's home at Hanuabada and from there they went to the cemetery, the scene of the alleged attack. There the witness Feeney found flattened grass in the middle of the avenue. There was found by Sub-Inspector Feeney and the others who were there, the numerous intimate articles which were the contents of the complainant's handbag. There Inspector Feeney found one of her sandals. There were found grass seeds or burs corresponding with the burs found in the girl's clothing. This surely corroborates her story that she had a struggle with someone there. That it was a struggle to avoid intercourse against her consent is supported by the condition of her body, the state of her pulse, the torn panties, her dishevelled state and her distress.

It was intended by Counsel for the Defence that the events as related by Miss Ure did not constitute an attempted rape. There is no mystery about the provisions of Section 4 of the Criminal Code where what constitutes an attempt is laid down. There is no difference between the ingredients of an attempt of rape than those of an attempt of any other offence. "When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence." These words are the first paragraph of Section 4.

Miss Ure's assailant manifested his intention by an overt act. She was taken in a taxi cab about midnight to a very lonely spot. She was grabbed by her assailant who threw her to the ground and got on top

of her. She screamed. He pushed her dress and petticoat up above her waist. He put his hand under her short panties against her flesh and ripped the panties across. She fought him, struggled with him. She received a blow on her eye. She had scratches and bruises on the various parts of the body described by Dr. Refshauge. He put his hand over her nose and mouth. His hands were moving more or less all over her body. He kept inviting her to kiss him. She struck him on the back of the head when he grabbed her the first time. She struggled up and got to the taxi. He grabbed her again, pulled her towards him and threw her on the ground again coming down on top of her. She kept fighting for a while and felt she could struggle no longer, as she was getting tired. Then she thought of the opening words of the Lord's Prayer in Motu, which she uttered. Then it was that the assailant desisted and allowed her to rise. Her story rings true and the probable truth of it is shown by the immediate complaint to her father in the terms related by him.

I am invited to find that here then was no attempt because there is no evidence that her attacker had his trousers down or unbuttoned. That does not affect the matter to my mind for her assailant could have removed his trousers or made his male organ available after she had become an exhausted victim as almost she was. I am quite satisfied that Miss Ure's assailant attempted rape upon her. I believe Miss Ure has told the truth.

Now who was this assailant? The accused was sent off at about 11.45 to the South Pacific Post lower DONGA at the request of Mr. Norman Johnson, Nancy Ure's fiance. He picked up Miss Ure at about 1 minute to 12 midnight. He was wearing dark short trousers and a white T-shirt. To the Committing Magistrate he made the following statement -

"I know a Taubada rang at 11.45 p.m. and Kevau sent me and I took the Taubada. I went to the Taubada at South Pacific Post, there Miss Ure came out and said "You wait 4 or 5 minutes." After about 5 minutes the Taubada and Sinabada came out. I opened the back door and the Sinabada got in, from there I took the Sinabada to her place. At the bottom of the hill I wanted to go to the top of the hill to the house but Miss Ure said "No, I will get out here." I stopped the taxi, she opened the back door and got out. I said to the Sinabada "Are you alright?" She said "Thank you driver". From there I went back to Koki Garage, from there I rang Kevau, he told me to wait there until he knocked off and came to Koki, from there I took Kevau and the other taxi drivers to Hanuabada. From there I went on to Kevau's house, then to my house and then I went to sleep. The taxi

stops there to await the duty taxi driver in the morning. I was asleep at about 3 o'clock when the police arrived, they woke me up, that's all I know. That's all."

It is true he took Miss Ure to the bottom of the hill just below her home. She agrees with that. It is a clever statement in a way, because he could not deny he had taken her home. Now according to the times he would have reached the bottom of the hill in 5 minutes at most. Then it would have been about 4 minutes at most 12 o'clock. Nancy Ure burst into her father's bedroom at a little before twenty past 12, for her father says he rang the police at that time. Is it supposed then that Nancy Ure went off immediately she was left by the accused at 4 minutes past 12, in another Yellow Top taxi to the cemetery where she had a struggle with someone else and was brought back by this assailant to the bottom of the hill near her home? It is fantastic. In his statement the accused leaves out the portion dealing with the attack on Nancy Ure. We know from Kevau that there were no other taxis there. Perhaps it is suggested that Miss Ure went herself by some means to that lonely spot at the cemetery, threw the contents of her handbag about the place, hit herself in the eye, made scratches and bruises on her body to make it appear that an attempt had been made to rape her. In my view the accused himself corroborates Nancy Ure's story sufficiently without more when he says he took her to the bottom of the hill and said similar words to her as she says he said to her when he took her back to the same place after the struggle. The man, a native, who attacked Nancy Ure at the cemetery was wearing dark shorts and white T-shirt for her story is that it was the same driver who picked her up at the South Pacific Post and he was wearing dark short trousers and a white T-shirt. The accused was wearing that night dark short trousers and a white T-shirt when he went to pick up Miss Ure. In Miss Ure's hair and clothes were burs of the same kind as the burs found at the scene of the struggle. Burs of the same kind were found in the trousers and shirt of the accused. That is corroboration.

The second paragraph of Section 4 of the Criminal Code is as follows -

"It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention."

The accused desisted of his own motion after Miss Ure had uttered in Motu the first words of the Lord's Prayer, but it is seen that that fact is immaterial. In view of Section 538 it might be regarded as a circumstance of mitigation.

I have no doubt the accused attempted to commit the crime of rape upon Nancy Clare Ure in the early morning of the 23rd May, 1958. I find him guilty of the charge under Section 3 of the White Women's Protection Ordinance.