

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

50 373
CORAM : OLLIPHANT, J.
Monday, 28th February, 1966.

THE QUEEN

v.

KUMAN - VITNE

FOR SENTENCE

The offender has been convicted of the crime of rape for which the Code provides a maximum punishment of imprisonment with hard labour for life.

He is a well built Chimbu, aged about thirty years, from the village of Pari, situated about two miles, and under strong influence from the long established Station at Kundiana.

His victim is a respectable married native woman who was living with her husband in the domestic servants' quarters of a European home in the Port Moresby suburb of Boroko. She and her husband were employed by the occupiers of this home, who were away on leave at the time.

So, too, was her husband absent. He had left about five o'clock in the morning to go to the Brown River and she was alone in their home with their son, aged six.

She was still asleep in the morning when, at about six o'clock, the offender came into the house and raped her as she slept.

She awoke while he was taking this intercourse and although she struggled to free herself he forcefully restrained her and completed his satisfaction. She appears to have been considerably distressed and remonstrated with him that his conduct was against their custom - so it appears in her deposition - particularly because of some marriage relationship which is mentioned in her evidence.

He was a close acquaintance, if not a friend of her husband and had been a frequent visitor to their home. I have no doubt that so

he had become aware of the absence of their employers and of the husband's proposed absence.

He took advantage of the husband's absence and the sleep of the wife to commit this grave crime upon her.

When questioned by the investigating Police Officer he admitted his rape upon the sleeping woman. However, in the public statement which he made at the committal proceedings he claimed that, although she was sleeping on her side when he first entered the room, she saw him and rolled on to her back in an inviting posture and that it was this that stimulated him to have intercourse with her and he otherwise endeavoured to explain that she had been a willing partner. Perhaps it is not surprising that a person who had acted so contemptibly should take such a contemptible way in an endeavour to escape the consequences of his conduct. He did not give evidence in his trial, in which the issue of consent was raised, nor did he make a statement from the dock or speak in response to the allocutus. He did instruct his Counsel to say that he relied upon the statement which he had made to the Magistrate.

It is said for him that during the few months he was in domestic service in Port Moresby his employer found him to be a reliable worker.

I do not overlook his native background and little education. Apart from his year at school, including attendance at Church, and eight months' domestic employment at Mount Hagen some years ago, he appears to have lived in his village until he came to Port Moresby not long before this crime.

All the circumstances show that he was well aware of the wrongfulness of his conduct and I have no doubt that he was aware that it was a serious crime. He must be punished and he and others with like impulses must be deterred.

He has no prior convictions.

I impose a sentence of imprisonment with hard labour for ten years.

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