SC 734

IN THE SUPREME COURT)
OF PAPUA NEW GUINEA)

CORAM: PRENTICE, J.
Monday,
9th April, 1973.

REG. v. POLHILL

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April 2, 3, 4, 5, 6 and 9.
PORT MORESBY
Prentice J.

On the night of 29th/30th August, 1972, four young indigenous women were badly cut about the head, while they were inside a one-room flat occupied by the accused. If they themselves are to be believed, apparently this happened when they were insensible from heavy sleep. There is however a suggestion that the depth of their sleep was induced by drink or some other cause. As far as the evidence goes, there were no witnesses to their being injured. Each woman swore that she woke up from sleep, to find that she had been assaulted while asleep.

The accused, finds himself arraigned on two charges of inflicting grievous bodily harm to two of the girls, and two charges of unlawfully wounding the other two. The evidence led against him is circumstantial - he has made no statement admitting guilt, or knowledge of how the injuries were inflicted. The case presented many fantastic features. The accused, a chemist from Kent, United Kingdom, with a University degree, admits to being married with a family in Australia. He states his ambition to have been to acquire an indigenous "wife" (short of offending against the laws relating to bigamy) and a mixed race family; and that his lawful wife agreed in this course. It appears that he had had numerous young women living in his flat over a period of months. They slept on the floor. He endeavoured to place one of them, Theresa Miria, on the footing of a wife - apparently had relations with her, and negotiated with her parent over a bride price. The accused endeavoured to establish by crossexamination that his association with these four women and perhaps others, had been turbulent, involving his chastising them (his relationship he described as a "fatherly" one), and some of them of beating him on occasions about the head (Theresa, he suggested, doing it with "monotonous regularity"). He asserted that on one occasion he was given a black eye

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with an injury to its retina. In the course of defending himself without representation in this Court, the accused sought to adopt as factual, the description of the girls as "known prostitutes", put to him by the police prosecutor in the District Court, with which he did not in that Court agree. On the other hand, it was made clear in the evidence, that some of them had continued to live in his flat immediately after the assaults, at about the time of the District Court hearing, and apparently recently.

During the adjournments of this Court, it was apparent to me and counsel, that the accused was still fraternising (perhaps "paternising" would be his word) with the female witnesses. At various stages I became concerned as to whether the Crown witnesses were not being tampered with. Julie Pukari, in particular, seemed to become a most reluctant witness, who gave me the appearance of being afraid of giving evidence against the accused. I warned the defendant against the possible prejudice to his case of his seeking the company of the witnesses during the trial. At the conclusion of evidence he asked of me was it possible for him to resume intercourse (I use the word neutrally) with the witnesses.

The four women are young; medical authorities place their ages at sixteen. I should think Lucy and Laika a year or so older, and Theresa, perhaps closer to nineteen or twenty. Their actions not only on this night, but before and since then, not only in relation to living with Polhill but in freely seeking lifts by car on Port Moresby roads on the night concerned, without any circumstance of emergency, lead me to the conclusion that they were at the least, exposed to moral danger.

I mention these matters at some length, to indicate that I approach a consideration of the evidence with the very greatest reserve, in what can only be described as a setting of a fantastic story of human behaviour.

In addition to denying any assault on his part, the accused in his defence, suggested as alternatives, that the four women being, he suggested, of

violent disposition, attacked one another; that an unknown assailant gained entry to the flat and attacked each of them in a similar manner. It was not suggested that any particular person had any motivation for injuring any one, let alone each, of the young women. It was not suggested that any forcible entry had been made to the premises. It was shown that the premises were guarded with arc mesh and fly wire (both undisturbed) over all windows, and "dead locks" (which require a key to open them either from inside or out - unlike the older type "Yale" locks) on both front and rear doors.

It was sought to suggest that the landlady had lost her spare key to the back door. And the statement of the evidence of Mrs. Horrocks, the landlady, in the District Court, which I admitted at the defendant's instance and with the consent of the Crown, (I query with respect whether Amdjuonye's case (1), in holding an implied repeal for all purposes of Sec. 31, the Criminal Procedure Ordinance, by Sec. 109 of the District Courts Ordinance, may not have been stated too widely), confirms this suggestion. But this person lived in Korobosea and there was no basis suggested for linking her loss of a key, apparently in her premises at Korobosea, with the use of that key some miles away, by a stranger, at the Hohola flat. Nor was there any suggestion that the landlady herself had been at the premises on the night in question, of course.

At the committal proceedings in January, 1973, the accused belatedly suggested that one of the front door keys had been lost a few days before the assaults and a new one cut. No stranger or person other than the accused and the four girls were shown to have gained entry to the flat, or to have been in the vicinity thereof on the night in question. Some relatives of Theresa and Lucy had been accustomed to visiting there from time to time. But there seems no basis for suggesting positively that any such person was in the vicinity of the flat on this night.

The four girls gave evidence and I watched them closely. Julie was, to my observation, under some strain of the kind I have described. None of the other three gave me any impression of lying or conspiracy or lack of frankness. There are however many discrepancies in the items of their evidence. I instance: (a) the question as to which of them had drunk rum out of the bottle bought by the accused

(1) Unreported Full Court judgment FC10 of Oct. 1970.

that evening and how much respectively, (b) the matter of where they went after going out (whether one or two drivers gave them lifts), (c) the time they went out, (d) whether the flat's lights were on or off when they returned, (e) as to who opened the door on their return, (f) as to whether there was then a conversation with Polhill on their return. In addition, the medical evidence is such as to suggest they may have been under the influence of alcohol (or something akin to an anaesthetic), when they were admitted to casualty at the hospital at 1.30 a.m. Their behaviour must be considered irresponsible, at any time.

I feel that the injuries to the women and their consequences - dizziness, confusion, pain, vomiting, distress - were such that these discrepancies and the confusion can be explained thereby. However, despite my impression that the women were trying to be truthful (I have mentioned a qualification regarding Julie), I should I think, be reluctant to rely on their evidence if it were unsupported. After scrutinising it with care, I do find it supported in the main elements which implicate the accused, by the evidence of the neighbours.

The neighbours Unold, and Uru and Mary Tau established, to my mind, beyond any reasonable doubt, that: -

(1) The accused drove away from the flat in his car at approximately 8 p.m. - returning something like an hour later;

(2) The accused's car drove away again from the flat about midnight - the light in his flat then being off;

(3) Some time thereafter a girl was heard crying in the accused's flat which then remained under observation by Mrs. Tau, continuously until the police and ambulance arrived;

(4) When the accused drove off the second time that night (approximately midnight) the four girls were then in his flat;

(5) The accused came back in his car and used his key to open the front door of the flat - its lights then being on, that he looked around and then went away again and brought back the police and the ambulance.

I accept as being true the evidence of the girls that when they returned, the accused was in the flat lying down in his pyjamas (the accused does not deny that this may have been so), that in effect, the accused had been and was annoyed with Theresa in particular, that they all went to sleep with their front and back door locked, that they later awoke to find themselves cut and bleeding profusely from scalp wounds - the light off and the accused gone. I accept Theresa's evidence that she said to the accused on his return, "You have fought us," to which he replied, "Shut up." I find this significant alone, and more so, alongside his failure to comment when Theresa said in the presence of the accused and Constable Kadka, "That old European man" in reply to the question, "Who cut the girls."

The accused told the first policeman on the scene, Kadka, that he left the girls and went alone to the concert at the University - to which Theresa had refused to go. He gave the same explanation to Sub-Inspector Gawi early next morning. In the light of the neighbour's evidence this must have been untrue. To Sub-Inspector Hilder and Inspector McCombe the next day he said that after sleeping, he went for a drive to the University, Bomana and Boroko - about 11 p.m. (because he was upset Theresa had not gone with him); and that he returned about midnight. At one stage he appears to have accepted as a possibility that the four girls were in the toilet in the corner of the small flat at a time when he "went out to look for them". He suggested in his record of interview that they were not in the flat at 11 p.m. when he drove away. He does not deny the possibility of his having changed from pyjamas to shorts, shirt, shoes and socks. Then again, as far as he can remember, he had some difficulty finding his shorts. At another place he agreed he did so get dressed.

Even allowing for the fact that he was apparently to a marked degree under the influence of alcohol after midnight when seen by the police, I find it impossible to believe that he did not know the girls were in his flat at the time he went for a drive (as is indeed established by Mrs. Tau's evidence). I find as facts that he had been on the bed in his pyjamas and changed his clothes in the dark and went out in his car leaving the girls in the flat.

There are other aspects, each of which standing alone might not carry overwhelming conviction. I cite:

(a) the fact of blood being found on the accused's pyjamas which he discarded on the chair at the time he left the flat; (b) his washing of the flat and the bloodstained articles after he had been twice warned to leave them as they were until the C.I.B. arrived in the morning; (c) the finding of the bloodstained shears in a hidden position under books and clothing (where they could not have become spattered with blood say, from a fight). But these matters, in conjunction tend to confirm the picture built up by the circumstantial evidence and the accused's false and contradictory accounts of his movements. I ask myself whether there is any reasonable hypothesis consistent with the innocence of the accused (Peacock v. The King (2), Reg. v. Gordon (3), Plomp v. The Queen (4)). I can envisage none.

It is clear to my satisfaction beyond reasonable doubt, that the accused felt himself very badly used by Theresa on the evening, and that he associated the other girls with her recalcitrance ("They were all in it together," he said); that he regarded himself as humiliated and tricked; and that, motivated by anger against their behaviour, he inflicted the injuries on them with the shears exhibited in this Court.

I am satisfied the accused unlawfully wounded both Theresa Miria and Lucy Miria.

The girl Julie Pukari received quite serious head injuries including a comminuted fracture of the right parietal bone with a slightly depressed fragment, which will be permanent. She suffered the loss of approximately half her body's blood content. The injuries were such as were likely to endanger life and were likely to cause permanent injury to health. There remains the possibility that she may develop epilepsy from her injuries. I am satisfied that the accused unlawfully did grievous bodily harm to her.

The injuries which I find the accused to have done to Laika Kaivi consisted of concussion, and lacerations to the left side of the head, right eyebrow and forehead. As Dr. Teague evidenced, there is a hundred per cent risk of infection with such head wounds which can lead to cellulitis and osteomyelitis and presumably, infection of

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(2) (1912) 13 C.L.R. 619
(3) (1964) 80 W.N. (N.S.W.) 957
(4) (1963) 110 C.L.R. 234

the brain, if untreated. However, in Port Moresby one would expect a person so injured to seek and obtain medical assistance. I do not think I am justified in holding that the injuries she received, being received in Port Moresby, were such as to endanger or be likely to have endangered her life (Sec. 1 of the Criminal Code), or to cause or be likely to have caused, permanent injury to her health. With some doubt therefore, I consider that I must acquit the accused of the charge of causing grievous bodily harm to Laika Kaivi. It was but faintly suggested by the Crown that an alternative finding of guilty to a lesser charge could have been found with the aid of Secs. 579 and/or 584 of the Code. Neither of these sections appear to me to be relevant. I am of the opinion that the Code retains the position apparently obtaining heretofore at common law, that on a charge of doing grievous bodily harm (without alternative counts), no lesser offence could be found against an accused. The historical reason for this does not now present itself to me (but see the passing reference in Reg. v. Saylor (5)).

The accused is acquitted on the first count and convicted on each of the other three counts.

Solicitor for the Crown : P.J. Clay, Crown Solicitor

Accused in person.

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(5) 1963 Q.W.N. 14