

trust by the plaintiff for the benefit of the minor children of the parties and with right of immediate occupancy therein, and if at any time the plaintiff no longer has custody of the minor children the person having such custody shall hold the property in trust for them with right of occupancy.

4. That the defendant shall pay to the plaintiff as and for support and maintenance of the minor children of the parties the sum of fifty dollars (\$50.00) per month payable on the first day of each month commencing June 1, 1970, and continuing thereafter until further order of the court. Said payments shall be made through the Clerk of Courts.

5. That the 1968 Toyota automobile, now in the possession of the defendant, be and the same hereby is awarded to the defendant and he shall be obligated to make the payments remaining due on said vehicle.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

JUAN LEON GUERRERO MANALO

Criminal Case No. 242

Trial Division of the High Court

Mariana Islands District

June 4, 1970

Prosecution for rape and burglary. The Trial Division of the High Court, R. K. Shoecraft, Chief Justice, held that evidence failed to establish essential elements of crime of rape and acquitted accused of that charge, however, court found evidence was sufficient to support conviction of charge of burglary.

1. Rape—Elements of Offense

Elements of the crime of rape in the Trust Territory are that the act of sexual intercourse must be unlawful, by force, and against the will of the female. (T.T.C., Sec. 387)

TRUST TERRITORY v. MANALO

2. Rape—Elements of Offense

All of the elements must be proved beyond a reasonable doubt in order to sustain a conviction for the crime of rape. (T.T.C., Sec. 387)

3. Rape—Elements of Offense

In order for the crime of rape to be established it must be shown beyond a reasonable doubt that the act was accomplished against the will of the female and in the usual case this may be shown by some form of resistance on the part of the female or that because of threats or harm the female was so placed in fear for her safety that she felt resistance to be useless. (T.T.C., Sec. 387)

4. Rape—Elements of Offense

The utmost resistance doctrine will not be applied in the Trust Territory and certainly not in a case where the woman is placed in such fear of personal violence that her will is overcome. (T.T.C., Sec. 387)

5. Burglary—Felonious Intent

Upon consideration of all the evidence, the court was convinced beyond a reasonable doubt that the accused did unlawfully and by force enter the dwelling house occupied by the prosecuting witness with the intent to commit a felony.

Interpreters:

FELIPE A. SALAS, FELIPE RUAK
and FELIX SAKISAT

Reporter:

ELSIE T. CERISIER

Prosecutors:

ROBERT I. BOWLES, *District Attorney*, and MAMORU NAKAMURA, *General Attorney*

Counsel for Accused:

ROGER L. ST. PIERRE, *Public Defender*

SHOECRAFT, *Chief Justice*

OPINION

[1, 2] The defendant in this case is charged with rape and burglary. Section 387 of the Code of the Trust Territory provides that whosoever shall unlawfully have sexual intercourse with a female, not his wife, by force and against her will, shall be guilty of rape. Thus, elements of the crime of rape in the Trust Territory are that the act of sexual intercourse must be unlawful, by force, and against the will of the female. All of these elements

must be proved beyond a reasonable doubt in order to sustain a conviction for the crime of rape.

[3, 4] After a careful consideration of the evidence, it is the opinion of the court that the crime of rape has not been established beyond a reasonable doubt in that the evidence is insufficient to prove the element of force, and also that the act of intercourse was against the will of the victim in this case. While there was testimony that the prosecuting witness felt some pain in her jaw when she awoke and discovered a male person lying upon her, at no point is there testimony that the defendant had ever struck the prosecuting witness or that he was responsible for the pain she testified to, although she stated that she was uninjured at the time she went to sleep. She testified that she believed or realized that she had been subjected to violence prior to the time she awoke but she was unable to state the source of that violence. She also testified that she cooperated with the defendant because she was in fear for her life, but the evidence still falls short of establishing that the defendant, either by words or deeds, threatened or intimidated the prosecuting witness in any manner. For us to speculate concerning the cause of the pain felt by the prosecuting witness in the absence of testimony concerning it would not be justified. We are not unmindful of the fact that medical testimony in this case established that the prosecuting witness did suffer a broken jaw but that alone is not evidence of the causation of her injury. In order for the crime of rape to be established, it must also be shown beyond a reasonable doubt that the act was accomplished against the will of the female and in the usual case this may be shown by some form of resistance on the part of the female or that because of threats or harm the female was so placed in fear for her safety that she felt resistance to be useless. The utmost resistance doctrine will not be applied here and certainly not in a

case where the woman is placed in such fear of personal violence that her will is overcome. However, although the prosecuting witness in this case testified that she offered no resistance and cooperated with the defendant because of such fear, there is no evidence that the defendant exhibited a weapon, used force, threatened at any time to harm her, or committed any act to induce such fear. On the contrary, the testimony of the prosecuting witness was to the effect that their conversation during the encounter was friendly, although deliberately so on her part in an effort to induce the defendant to leave without harming her.

As to the charge of burglary, the prosecuting witness testified that when she refused to open the door upon hearing a knock at 2:00 a.m., both locks on the door were in place and locked, and that she later went to bed and went to sleep. She also testified that it was about 4:00 a.m. that she awakened and discovered a person lying on top of her and that in the course of the ensuing hour she was told by the defendant to turn on a light and was able to note the appearance of the defendant and two tattoo marks by which she later identified him. She stated that when the defendant left her house at about 5:00 a.m., she noticed that there were three holes in the door where the screws holding the security lock had been, and that there were marks on or near the other door lock.

[5] Upon a consideration of all of the evidence, the court is convinced beyond a reasonable doubt that the defendant did unlawfully and by force enter the dwelling house occupied by the prosecuting witness with the intent to commit a felony or an assault and battery therein, and that he did so commit assault and battery upon the person of the prosecuting witness.

As to Count 1, rape, of the Information, it is the finding of the court that the defendant is not guilty. As to Count 2, burglary, it is the finding of the court that the defendant is guilty.