

3. That defendant Fupi shall and hereby is granted right to exclusive occupancy of the land and shall take care of it in her own behalf and in behalf of other lineage members including plaintiff and her husband.

4. Plaintiff and her husband, Olingar, may not occupy the land nor shall they interfere with Fupi's occupancy, but they may gather food and make copra on the land after giving Fupi notice.

5. This judgment shall not affect any rights-of-way over the land.

6. Time for appeal shall be extended for ninety (90) days from date hereof.

TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

PIO ONA

Criminal Case No. 254

Trial Division of the High Court

Truk District

March 27, 1972

Prosecution for rape. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where the victim made complaint to her mother, reported to the police, submitted to a medical examination all on the same day the offense occurred, it was significant corroboration of her testimony.

1. Rape—Consent

In a rape case consent is largely a subjective state of mind, difficult of proof. (11 T.T.C. § 1302)

2. Rape—Force

In a rape case force is a relative matter because the law implies force when the female does not consent and the act need be accomplished only with sufficient force to be against the woman's consent. (11 T.T.C. § 1302)

3. Rape—Elements of Offense—Corroboration

Corroboration is necessary even though the Trust Territory statute relating to rape does not require corroboration. (11 T.T.C. § 1302)

TRUST TERRITORY v. ONA

4. Rape—Consent

In a rape prosecution, if there was resistance, it is evidence consent was not given because resistance is incompatible with consent, and the extent of resistance depends upon the surrounding circumstances. (11 T.T.C. § 1302)

5. Rape—Consent

Evidence that the garments of the prosecutrix are torn or injured is important in ascertaining whether the prosecutrix is to be believed when she says she did not consent. (11 T.T.C. § 1302)

6. Rape—Consent

In a rape case failure of the female to cry out for help tends to show consent, however, if the act occurs at a place so remote from all human help that all outcry must be unavailing, then outcry need not be made. (11 T.T.C. § 1302)

7. Rape—Elements of Offense—Corroboration

One of the elements of corroboration the courts invariably look for in rape cases is how soon the alleged victim reports what happened. (11 T.T.C. § 1302)

8. Rape—Elements of Offense—Corroboration

Where alleged victim of rape made complaint to her mother, reported to the police who took and retained her torn clothing and submitted to medical examination all on the same day the offense occurred, all of that was significant corroboration of her testimony as to the rape. (11 T.T.C. § 1302)

Assessor: F. SOUKICHI, *Presiding Judge of the District Court*
Interpreter: ROKURO BERDON
Reporter: NANCY K. HATTORI
Counsel for Prosecution: LYLE L. RICHMOND, ESQ., *District Attorney, Truk*
Counsel for Accused: MICHAEL D. JONAS, ESQ., *Assistant Public Defender, Truk*

TURNER, *Associate Justice*

After the defendant had been found guilty of rape, as charged, and upon imposition of sentence of two years' imprisonment, the last eighteen months being suspended on conditions, defense counsel filed notice of appeal. Accordingly, it is desirable to supplement the record on appeal by

including a formal written judgment containing findings of fact and conclusions of law.

The accused, a 36-year-old married man, was charged with rape of a 14-year-old school girl not his wife. Both were residents of Foup Village, Tol Island. The victim was returning home from school when she met the accused on the mountain trail up to the village. He had been cutting copra alongside the trail when he left his work and accompanied the girl on the trail to the village. The offense took place on the trail before the couple reached the village on top of the mountain.

[1, 2] The offense of rape under 11 T.T.C. 1302 constitutes sexual intercourse by a man with a female, not his wife, by force and against her will. Consent is largely a subjective state of mind, difficult of proof. Force is a relative matter because the law implies force when the female does not consent and the act need be accomplished only with sufficient force to be against the woman's consent. 75 C.J.S. Rape, § 12.

In the present case, the testimony of the prosecutrix and of the accused was in direct conflict. The girl declared she did not consent and that she resisted the efforts of the accused. He, in turn, declared the girl consented and did not resist.

[3] Before the court may determine guilt beyond a reasonable doubt, there must be something more than the contradictory statements of the two principals. Corroborative or supporting evidence is necessary to help the court in determining which of the two people to believe. They both can't be right on the crucial issues of force and consent. If the accused is found guilty, corroboration of the prosecutrix' testimony is almost essential to establish guilt beyond a reasonable doubt. Corroboration is necessary even though the Trust Territory statute does not require corroboration.

[4] The crucial element in this situation is whether or not there was consent. If there was resistance, it is evidence consent was not given because resistance is incompatible with consent. The extent of the resistance depends upon the surrounding circumstances.

In *Trust Territory v. Ngiraitpang*, 5 T.T.R. 282 at 289, the defense argued because there was no apparent evidence of resistance then it followed the act was consensual. This court held, however:—

“The theory that a 50-year-old woman consented to intercourse in her home with a man she had never seen before at 4:00 o’clock in the morning is not credible.”

Reliance was had upon the California case of *People v. Lay*, 153 P.2d 379 that:—

“It is primarily for the woman who is attacked to decide to what extent, if at all, she can safely resist.”

To the same effect is *Bulls v. State* (Okla.), 241 P. 605, 606:—

“The law does not require that the woman shall do more than her age, strength, the surrounding facts, and all attending circumstances make it reasonable for her to do in order to manifest her opposition.”

In view of the medical report that: “Examination of the genital organs and the area surrounding it revealed no evidence of trauma.”, the statement in another California case is especially significant. It was said in *People v. Cline*, 3 P.2d 575:—

“The female need resist only until physical penetration occurs, when the crime is complete, and her failure to resist after that is immaterial; and she need only resist until resistance becomes so useless as to warrant its cessation.”

[5] The courts have laid down certain tests by which to be governed in ascertaining whether the prosecutrix is to be believed when she says she did not consent. These include

whether the garments of the prosecutrix are torn or injured. In the present case, both the dress and panties were torn.

The prosecutrix testified the accused did not bother to remove either the dress or the panties but that he forced his way "through them" by tearing them. The defendant's only challenge to the testimony and the introduction of the torn clothing was his claim the prosecutrix consented to intercourse and that he removed the panties from one leg only.

[6] Another test is whether the female cries out for help and failure to do so is held as tending to show consent. However, if the act occurs at a place so remote from all human help that all outcry must be unavailing, it is held outcry need not be made. 44 Am.Jur., Rape, § 103.

The complainant, in this instance, testified she began to cry when defendant began to force his attentions upon her. Also, she said, the defendant told her not to cry because "someone might hear her." She was crying when first seen in the village after emerging from the trail. The girl's mother testified the prosecutrix was crying when she approached the house. The mother also said the girl's clothing was wet.

The prosecutrix had testified defendant offered to wash her at a stream after the act but she refused and later washed herself and her clothing in a stream.

The defendant denied the girl cried. He also called the accused's brother, under the custom, who was at the house of the prosecutrix when she returned. He said he did not see her crying until she was entering the house. He also admitted he heard the girl tell her mother what had happened.

[7] One of the elements of corroboration the courts invariably look for in these cases is how soon the alleged victim reports what happened. In this case it was immediately upon the girl's return home. The complaint was

verified by the defense witness. Report was then made to the police and that same day, the mother and the prosecutrix went in a boat from Tol to Moen where the girl was given a medical examination.

Unfortunately the medical officer did not testify. His report and his answers to written interrogatories were introduced upon stipulation. The written report and answers are most equivocal. The medical officer declined to commit himself. For example, he stated that "multiple but small scratches on her upper posterior chest and a small bruise on her right leg" indicated a certain amount of struggling, but in the alternative, he said, this could have been caused not by "struggling" but that "reaching climax and excitement in a rough and sharp edged grasses could also produce similar type of scratches." We note, however, there is nothing in the record nor in the medical findings to show the girl did in fact reach "climax and excitement."

[8] The only firm conclusion to be drawn is that the girl made complaint to her mother, reported to the police (who took and retained the torn clothing) and submitted to medical examination all on the same day the offense occurred. All of this is significant corroboration of her testimony. A typical case is reported in *State v. Vail*, 275 P. 578, in which the court said:—

"We are therefore confronted with the proposition whether 'the circumstances surrounding the commission of the offense are clearly corroborative of the statements of the prosecutrix' In this case there is proof of the complaint made by the prosecutrix shortly after the commission of the offense, which is a corroborating circumstance. (Citing) There is proof . . . that prosecutrix and appellant were alone under circumstances showing an opportunity and a disposition to commit the offense. While none of these facts and circumstances standing alone may be said to be sufficient to furnish the quantum of corroborative proof necessary, when taken and considered together they furnish sufficient evidence of corroboration within the meaning of the rule."

From all the attending circumstances disclosed by the evidence together with the law applicable to that evidence, the court is convinced beyond a reasonable doubt that the defendant committed the crime of rape upon the person of the 14-year-old prosecutrix.

The defendant, Pio Ona, is found guilty as charged.

TEKLA PAUL, Plaintiff

v.

EDWIK MESANAUAL, Defendant

Civil Action No. 577

Trial Division of the High Court

Truk District

March 31, 1972

Action to determine ownership of land in the Mortlock Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while decedent had given control of lineage land to a member of the lineage, such a transfer would not raise the presumption of individual ownership and all involved were obliged to cooperate with each other in regard to the land.

1. Truk Custom—Lineage

Under Trukese custom lineage members are obliged to cooperate with each other in the use of land and to generally advance each other's interests.

2. Truk Custom—Succession

Under Trukese custom an adopted child is treated in the proper order of succession the same as a natural child.

3. Truk Land Law—Mortlock Islands

In the Mortlocks, granting control of lineage land to a member of the lineage does not raise a presumption of individual ownership.

TURNER, Associate Justice

This action was filed in the District Court on Lukunor Atoll in the Mortlock Islands, Truk District. It involves a dispute between "mother and child", under Trukese custom