Privy Council Appeal No. 37 of 1969

Eric James – – – – – – – – – – *Appellant*

v.

The Queen – – – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,

DELIVERED THE 2ND NOVEMBER 1970

Present at the Hearing:

LORD DIPLOCK

LORD DEVLIN

VISCOUNT DILHORNE

(Delivered by VISCOUNT DILHORNE)

The appellant was convicted on 4th March 1968 of having had on 18th April 1967 sexual intercourse with Elsada Hall without her consent. It was alleged that he was then armed with a gun and a knife. He was sentenced to ten years hard labour and twelve strokes by an approved instrument.

Miss Hall testified that at about 10.30 p.m. on 18th April 1967 as she was about to go up the step leading to the door of her bedroom at the back of 10 Coolshade Drive a man came up to her with a revolver in his right hand and a knife in his left and said "If you scream out, I kill you". He took hold of her by the waist and with his knife pointing at her, compelled her to open the door to her room and to enter it with him. When inside she managed to turn on the light but only got a slight glance at his face before he turned it off. She said that he was not wearing a shirt and that one leg of his trousers was rolled up. He made her remove some of her clothing and get on the bed. He put the revolver on the table by the bed, took off the "water-boots" he was wearing, unzipped the front of his trousers which he did not take off and raped her. While doing so he held the knife pointed at her neck. After about half an hour he told her to get up and put her clothes on. For the rest of the night, she said, she sat on the edge of the bed with him standing in front of her facing her with the knife on one hand and the revolver in the other. At about 5.10 a.m. on 19th April when it had begun to get light he left her. She waited a little and then went round and told her employers what had happened. The police were called. Some of her clothing and a sheet and spread from the bed were taken for examination and later that day she was examined by a doctor.

That examination of the clothing and sheet and spread and the examination of Miss Hall confirmed that intercourse had taken place with her on the bed.

At about 4.45 p.m. on that day Miss Hall was standing on the back verandah of 10 Coolshade Drive when she saw three men walking down Fairfax Drive. One of them she recognised as the man who had raped her the night before. He was then about two chains away. She spoke to a Mr. Lyn who also lived at 10 Coolshade Drive. He went to his car and she ran down Coolshade Drive towards the three men. Mr. Lyn caught her up before she had got to them and she got into the car. They then drove up in front of the appellant and Mr. Lyn asked him if he knew Miss Hall. He replied " No, sir, is the first I see her ".

Mr. Lyn asked him for his name and address. He gave them. Mr. Lyn and Miss Hall then went to the address he had given, 181 Border Avenue. From there they went to 10 Coolshade Drive. They then went to the Constant Spring Police Station where they saw Detective Hohn and then they and Detective Hohn went to 181 Border Avenue.

When they got there, the appellant was watering the garden and had a hose in his hand. In his presence and hearing Miss Hall told the detective what had happened to her the night before. The appellant then said " No, no, you must be a mad woman, for is the first time I see you " and turning to the police officer, he said " Officer, this girl tek me for the wrong person yah sah. Me sleep a me bed whole night ".

The appellant's room at 181 Border Avenue was searched and also the building site where he worked. No revolver or knife was found at either place and the appellant said in evidence that he had not possessed a revolver or knife. No " water-boots " were found but the police took possession of a pair of trousers which he said he had been wearing on 18th April and which Miss Hall said were the pair her assailant had been wearing, and also of some of his underclothing.

Examination of his trousers and underclothing did not reveal any indication that their wearer had recently had sexual intercourse.

The appellant appealed against his conviction to the Court of Appeal in Jamaica. Convicted on 4th March 1968, he gave notice of the grounds of his appeal on 7th March and 16th April 1968. His appeal was dismissed on 27th February 1969, nearly a year later. He now appeals with the leave of the Privy Council.

The main ground of his appeal to the Court of Appeal and to the Board is that the trial Judge wrongly directed the jury with regard to corroboration.

The passage of the summing up where the judge dealt with this reads as follows: —

> " On the question of corroboration, members of the jury, I must tell you that though corroboration of the evidence of the prosecutrix, Elsada Hall, is not essential in law, it is in practice always looked for, and it is the practice to warn the jury against the danger of acting upon her uncorroborated testimony, particularly where the issue is consent or no consent. In other words, members of the jury, if you believe, the law permits it, that if you believe what Elsada Hall has told you, and if you feel sure on the material facts as to what she has told you, you can act on it; but my duty is to warn you of the danger of acting upon her uncorroborated testimony.
>
> What is corroboration? Corroboration is independent evidence which affects the accused by connecting him with the crime. It must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it."

No criticism can be made of the Judge's direction as to the meaning of corroboration. In the warning he gave against acting on uncorroborated evidence, he stressed that corroboration was particularly necessary where the issue was consent or no consent.

Where the charge is of rape, the corroborative evidence must confirm in some material particular that intercourse has taken place and that it has taken place without the woman's consent, and also, that the accused was the man who committed the crime. In sexual cases in view of the possibility of error in identification by the complainant, corroborative evidence confirming in a material particular her evidence that the accused was the guilty man is just as important as such evidence confirming that intercourse took place without her consent.

The Judge then proceeded to review the evidence of the doctor who had examined Miss Hall and the evidence of what was found on the examination of her clothing and the articles taken from her bed and then said:—

> "So, as I say, members of the jury, the doctor seems to me to corroborate the complainant that intercourse had taken place. It is a matter for you. Whether you regard the doctor's evidence, in relation to the finding of the semen on these various garments and on these various objects, whether it amounts to corroboration, is a matter for you. So that, as I said before, if intercourse had taken place, the question is, was it without consent of the complainant Elsada Hall? The next question would be, was the prisoner the man? Was he the man that had intercourse with her without her consent?"

Towards the end of his summing up the Judge made a further reference to corroboration. He said:—

> "In dealing with corroboration this morning, members of the jury, I pointed out to you, and this is a matter for you, but I pointed out to you that it seemed to me that the doctor corroborates the complainant that intercourse had taken place. As I say, it is a matter for you; but I went on to say, and I repeat, if intercourse had taken place you will have to decide on what facts you accept, was it without consent. If intercourse had taken place without consent of the complainant, then who was the man that had intercourse with this complainant? In other words was it the prisoner that had intercourse with her as she alleges?"

True it is that the medical evidence and the evidence of what was found on Miss Hall's clothing and on the articles taken from her bed confirmed her testimony that intercourse with her had taken place on her bed but there was no medical evidence that the intercourse had taken place without her consent; and the Judge directed the jury that if they accepted that evidence it could amount to corroboration in the sense in which he had already explained to them that the word was to be understood.

In their Lordships' view this direction was entirely wrong. Independent evidence that intercourse had taken place is not evidence confirming in some material particular either that the crime of rape had been committed or, if it had been, that it had been committed by the accused. It does not show that the intercourse took place without consent or that the accused was a party to it.

There was in this case no evidence capable of amounting to corroboration of Miss Hall's evidence that she had been raped, and raped by the accused. The Judge should have told the jury that. His failure to do so was a serious misdirection, so serious as to make it inevitable that the conviction should be quashed.

Not only did the Judge fail so to direct the jury. He went on to tell them wrongly that the medical evidence could amount to corroboration and having said that, he said that two questions had to be considered, was it without her consent and was he the man? Despite what he had said earlier about corroboration being particularly necessary where the issue is consent or no consent, he failed to direct the jury as to the need for corroboration on both these questions. Indeed the passage cited above suggests that the jury might well have thought that if they accepted the medical evidence they were entitled to disregard the warning he had given against the danger of acting on uncorroborated evidence.

One further criticism must be made of the summing up. Although the Judge in the course of his summing up reminded the jury very fully of the evidence that had been given, he failed to relate that to the issues in the case which the jury had to determine. In particular he failed to stress the need for care on questions of identity and to put the evidence in relation to that together in one part of his summing up for the consideration of the jury.

Miss Hall said that she only had a slight glance at the man's face when the light was turned on. No doubt she got a better view of him as it became light in the morning. She described him to the detective as a man with a black complexion, medium built, 5 ft 8 or 9 inches tall, with black croppy hair, a description which the detective said fitted the appellant and " fitted almost everybody ". She said she recognised the accused the next day when he was two chains away and she identified the trousers taken from the appellant's room as those her assailant had worn.

The appellant when spoken to by Mr. Lyn said he had never seen her before. He gave his correct name and address. He made no attempt to run away. After being stopped in the street he returned to his home and watered the garden. He was not found to be in possession of a revolver or knife or " water-boots ". His trousers and underclothing when examined had no seminal stains on them. Before the trial and in his evidence he stoutly maintained that he was not the man and in the course of his trial it emerged that some days after his arrest a man answering the description given by Miss Hall had been arrested for a rape in Fairfax Drive similar in pattern to that testified to by Miss Hall except that no gun was involved and had escaped from custody.

If the summing up had focussed attention on this evidence, it is most improbable that the jury would have been satisfied that the appellant was the man and would have found him guilty.

Their Lordships are for the reasons stated unable to agree with the view of the Court of Appeal " that in the particular circumstances of the case the directions of the learned trial judge were adequate " and that there was no fault to be found in the summing up with regard to identification.

Their Lordships learnt with astonishment that after the appellant had been given leave to appeal to the Privy Council, the sentence of corporal punishment imposed on the appellant was carried out.

It should be recognised that their Lordships do not lightly give leave to appeal in criminal cases and only do where it appears that a serious miscarriage of justice may have occurred.

For the reasons stated, their Lordships humbly advised Her Majesty that the appeal should be allowed and the conviction quashed.

11222—3 Dd. 178169 11/70

In the Privy Council

ERIC JAMES

v.

THE QUEEN

DELIVERED BY
VISCOUNT DILHORNE

Printed by HER MAJESTY'S STATIONERY OFFICE
1970