

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.21 of 1992

BETWEEN:

LETSON DAVIS

Appellant

and

THE QUEEN

Respondent

Before: The Honourable Mr. Dennis Byron - Justice of Appeal
The Honourable Dr. Nicholas Liverpool - Justice of Appeal
The Honourable Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. Arthur Williams for the Appellant
Mr. Carl Joseph, D.P.P. for the Respondent

1992: December 10th;
1993: April 5th.

JUDGMENT

SATROHAN SINGH J.A.

On October 28th, 1992, the appellant was convicted by a jury before Joseph J of the offence of rape, contrary to section 123(1) of the Criminal Code, Act No.23 of 1988 and sentenced to imprisonment for nine years. This appeal is from that conviction and sentence.

The case for the prosecution was that on December 13, 1991, the appellant who was transporting passengers in his van to their respective homes, having dropped off all but one of his passengers continued on his journey to drop the victim of this alleged assault at her home at Calder Ridge. The victim gave him directions to her home. Instead of following these directions, he went in a different direction off the main road onto a dirt road. The victim on realising this cried out. He stopped the van, jumped around over the seat to where the victim was sitting behind him and began "wrestling" with her. The victim ran out of the van. He ran behind her, pulled her by the shirt she had on and she fell on the ground. He sat on her stomach pulled off her pants and panties then his pants and his briefs and had sexual intercourse with her. He got up when he was finished and the victim ran away from him towards her home. On the way, the appellant's van sped past her. The victim did not agree to have sex with him and the act was

committed in a lonely place. Before she ran away, the appellant complained to her that she caused blood to get on his pants. When the victim reached home she saw her mother sitting in a chair with a belt. The victim started crying. Her mother asked her what happened. She told her mother of the incident. Her mother started crying and gave her two lashes with the belt. The mother testified that she did not beat her for what happened only because she came home late. The victim's evidence was that the zipper of her pants was spoilt when the appellant pulled down her pants and that as a result of sexual interference there was blood on the crotch of her pants which got there after completion of the act. Her top was torn by the neck, shoulder and arms. Dr. Bhardi Patel's evidence confirms the victim's evidence of sexual intercourse. The doctor's testimony is that this probably was her first time, there was penetration, but whilst the wall of the hymen was bruised and bleeding, the hymen remained intact.

In a statement under caution given to the police on the day after the incident, the appellant denied the victim's allegation. He said he was by his girlfriend Jacintha Hooper. In his sworn testimony before the jury he said he gave that statement to the police as he was frightened and he did not want to tell them that she consented as he thought she was under age. The case for the appellant was an admission of sexual intercourse but with the consent of the victim.

The appellant filed five grounds of appeal. Mr. Arthur Williams for the appellant argued grounds 1, 2 and 4 as one ground and grounds 3 and 5 separately. Grounds 1, 2 and 4 read as follows:-

1. The verdict of the jury is unsafe and unsatisfactory.
2. The case for the Defence was not properly put to the jury.
4. The learned trial Judge erred in law in that she allowed prejudicial questions to be put to the appellant thereby preventing the appellant from having a fair trial.

In arguing these grounds, Counsel for the appellant prefaced his arguments with the fact that in a previous trial for this same offence, the jury failed to agree and that in this trial after deliberating for just over two hours, they returned with a majority verdict. This preface he contended had some relevance to ground 1. I do not disagree. Counsel then referred to certain aspects of the evidence which he also contended was relevant to ground 1. He referred to the circumstances under which the prosecution alleged

the intercourse took place and argued that in those circumstances penetration would have been impossible. He then referred to the evidence of the victim that she went in the van at 6 p.m. and did not return home until 9.25 p.m., that even though she alleged that the appellant wrestled with her, the only injury found on her was injury from the belt assault on her by her mother, that her pantie was not torn and that she washed her clothes after the alleged assault. Counsel also made reference to the doctor's evidence that he cannot say if there was forced penetration and that the injury he saw to the vaginal wall was consistent with normal sexual intercourse and to the fact that there was no evidence to corroborate the victim on the vital issue of consent. He then reminded the Court that the defence was one of consent and in that context the abovementioned circumstances were inconsistent with common sense and good reasoning. Learned Counsel did not elaborate on ground 2, but coupling what he said in relation to ground 1 with what he argued in relation to ground 4 he asked this Court to find the verdict of the jury unsafe and unsatisfactory.

As regards ground 4, Learned Counsel for the appellant referred the Court to certain answers given by the appellant to questions put to him by the jury, and urged the Court to find that from those questions, the jury were not concerned whether or not there was consent but were more concerned with the fact that the victim was a schoolgirl who was wrongly kept out late by the appellant. Learned Counsel contended that these answers were highly prejudicial to the appellant's case and that the trial Judge should have warned the jury that the issue was consent and not the fact that the victim was a schoolgirl that was kept out late. Whilst I agree that the trial Judge at no time told the jury that the issue was not that of a schoolgirl being kept out late, I do not find merit in this ground of appeal. At least on three occasions in her summation to the jury, the learned trial Judge told the jury that the sole question to be decided was one of consent.

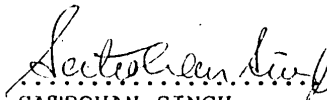
Taking these three grounds together, I do not find myself in the position where I can say the verdict of the jury was unsafe and unsatisfactory. The jury had before them, all the facts referred to by Counsel for the appellant in relation to ground 1, including the additional facts, that the 15 year old victim at the time of the incident was virgo intacta, a fact from which a powerful inference can be drawn that she was not a person that was sexually active, that she ran away from the appellant immediately upon the completion of the alleged assault and that immediately upon arrival at home she complained to her mother of the alleged assault on her by the appellant. In relation to ground 4 they were told by the

trial Judge that consent was the sole issue and I do not find anything in the summing up to justify the allegation in ground 2 that the defence was not adequately put to the jury. The learned trial Judge left with the jury for their consideration, the appellant's statement under caution to the police and his sworn testimony to the Court. This ground accordingly fails.

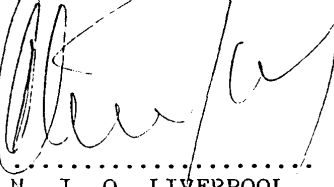
The complaint under ground 3 of this appeal is that the learned trial Judge misdirected the jury on the question of corroboration. Learned Counsel for the appellant could not have pursued this ground with any vigour as the learned trial Judge in no uncertain terms told the jury that the only question in issue was that of consent and that there was no corroboration on that issue. She gave adequate directions on the law of corroboration and properly dealt with the issue in so far as it related to the accepted false statement made by the appellant to the police. I find no merit in this ground and accordingly I find no merit in the appeal against conviction.

The final ground argued was on the question of sentence. Counsel for the appellant could not put before us anything new or different to what was before the Judge when she imposed the penalty. In those circumstances, we find no justifiable reason to interfere with the sentence imposed.

The appeal is dismissed. The conviction and sentence are affirmed.


 SATROHIAN SINGH
 Justice of Appeal


 DENNIS BYRON
 Justice of Appeal


 N. J. O. LIVERPOOL
 Justice of Appeal