JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 143/88

BEFORE: The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Miss Justice Morgan, J.A.

R. v. BALDWIN BIGBY

Application for leave to appeal against conviction and sentence

Miss Paulette Williams for the Crown

3rd April, 1989

CAMPBELL, J.A.

The appellant was convicted in the Hanover Circuit Court before Mr. Justice Wolfe and a jury on June 6, 1988 for the offence of Rape and was sentenced to 12 years imprisonment at hard labour. The complainant a Ruseas High School Student was at her sister's bar at Eglin in Hanover on 27th September, 1986 when at about 8.00 p.m. the sister fell ill and retired downstairs leaving the complainant upstairs to attend on customers who were in the bar. The applicant was a customer and during the course of the night he held her hand. She used inelegant language in rebuffing his familiarity, the appellant took affront and pulled a knife with which he menaced her. In the light of this development, she decided to close up the bar, she was assisted by another male customer to do so. When she was about to close the last door, the applicant who had just gone outside, forced himself back into the bar, grabbed her around her waist, forced her into a corner where there was a stool and there sexually assaulted her. The applicant in his unsworn statement admitted some amorous encounter but this he said fell short of

having sexual intercourse, with the complainant. His unsworn statement departed materially from the case which his attorney sought to establish under cross-examination of the complainant, because under cross-examination it was sought to be elicited from the complainant that the sexual intercourse which admittedly took place, was with her consent. The unsworn statement of the applicant is thus contrary to this case because, he is here saying that he never had sexual intercourse with the complainant, therefore any question of consent was totally irrelevant.

The learned trial judge warned the jury of the dangers of convicting on the uncorroborated evidence of the complainant, he directed the jury that there was in fact no corroboration, but, as he was also entitled to do, he directed them that notwithstanding the absence of corroboration, if they were satisfied and felt sure that the complainant was a credible witness and that her evidence could be accepted, they were entitled to bring in a verdict against the appellant notwithstanding the absence of corroboration. The jury by their verdict accepted the complainant as a credible witness, they found the applicant guilty as charged. We can find no fault with the summation to the jury nor in the verdict returned. The only question for which leave to appeal was granted was whether the sentence of twelve years imprisonment ought to be reduced having regard to the fact that the antecedent character evidence adduced did mention that the applicant was unstable and simpleminded. This antecedent evidence which was a matter of opinion was stated by a non-expert as likely influencing the appellant's involvement in the crime. What was significant however, was that the appellant who had been convicted in the Gun Court on the 3rd of October, 1978 and had then been given a life imprisonment had only recently been released on parole, in August, 1986, and within the space of a month, he was committing this very serious offence. We do not consider that the issue of being unstable and simpleminded which in any case is not established on any credible evidence, should in any way have influenced the trial judge in relation to the determination of the quantum of imprisonment which the circumstances of the offence warranted. We consider that the sentence of

12 years imprisonment was within the range of sentences for this very serious offence. The offence of rape seems to be too rampant and we consider that severe sentences are merited and in this case 12 years was one which suited the circumstances in which the offence was committed. For the above reasons we do not consider that there is any merit either in the application for leave to appeal against conviction nor in the appeal against sentence. The appeal is accordingly dismissed, the sentence of imprisonment confirmed, we order that the sentence commence to run from the 6th day of September, 1988.