JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 169/87

COR: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.
The Hon. Mr. Justice Wright, J.A.

THE QUEEN v. CHRISTOPHER MILLER

Miss Janet Nosworthy for applicant

Mr. Canute Brown for the Crown

March 21, 1988

CAREY, J.A.:

In the High Court Division of the Gun Court, on the 29th of September, 1987 the applicant, Christopher Miller was convicted for the offences of Illegal Possession of a firearm and Buggery. In respect of these charges, he was sentenced to 5 years imprisonment at hard labour and 6 years imprisonment at hard labour respectively. He now applies for leave to appeal against the conviction and sentence.

The facts are short: It is enough to say that on the Crown's case there was evidence that the victim, in respect of the second Count, was a young lad of 17 or thereabouts who was buggered by the applicant and as a coersive measure, he used a firearm to do so. During the course of police investigations, at all events, when the police interviewed the applicant, he told them that it was not true that he had buggered the youth. What he had done was to engage in oral sex. Of course, that was denied by the applicant who gave evidence, denying the charge.

Several grounds of appeal were put before us, but with all respect to learned counsel, we propose to mention just a few of them. The first point which was put before us was that the victim's description of the gun was altogether imprecise and fell well below the test that was required in the circumstances. We should point out that this was a case where the allegation was that a firearm was used in the commission of a felony and by virtue of section 25(1) of the Firearms Act, even if the object was an imitation firearm, that would be enough to fix the applicant with guilt.

The learned trial judge did find it was a firearm and it was described in these terms: "The mouth was brown coloured resembling small arms that policemen carry." The point maintained is that that is not enough. In our view, that is ample evidence. It is not necessary to give detailed descriptions of the firearms, because it must depend on the intelligence and the power of observation of the witness; it must be extremely difficult now-a-days to find a person who doesn't know a gun when he sees a gun. Insofar as we are concerned, the evidence that was put forward by this applicant was more than ample.

In fact what was being suggested by the applicant's counsel in the Court below, not counsel who appeared before us, was that there was no firearm whatsoever, and the victim was maintaining, all along, that a firearm was used in the commission of the offence. As we have said, the description that he gave was more than ample.

There was an argument in respect to corroboration, and the ground was framed in this form:

> "The learned trial judge erred in law in that in respect of the offence of Buggery he failed to direct himself adequately or at all on the vital issue of corroboration, in that -

"(i) Corroboration of the evidence of the Complainant was necessary and desirable in all the circumstances of the case;

(ii) there was no evidence before the Court capable of corroborating the evidence of the Complainant and the Learned Trial Judge ought therefore to have warned himself of the danger of convicting the Applicant on the uncorroborated evidence of the Complainant;

(iii) Had the Learned Trial Judge warned himself or adequately warned himself of the danger of conviction he would having regard to the evidence before the Court been compelled to reach a finding that such evidence was unsafe and unsatisfactory and that accordingly the Applicant was entitled to be found NOT GUILTY of the offence of Buggery;"

We have gone very carefully through the summation of the learned trial judge who gave a very lengthy and careful judgment in the matter, and at page 156 he is recorded as saying:

"Well, the evidence of certainly Miller was also brought by the prosecution."

We think that "brought" is a mishearing of what was actually said, namely, "corroborated" by the prosecution, and this is brought home very forcibly when one reads what follows thereafter. In the course of recounting what was the result of the interview between the applicant and a police officer, the learned trial judge note the officer as saying this -

"The Sergeant said that he took the accused in the police car to Bridgeport Police Station into his office, cautioned him, rather told he was still on caution having cautioned him previously, the accused said, 'Officer, mi never have nuh gun, mi never rape him, all I did was play with his penis, I gave him a blow job'."

In fact, the victim had given evidence that the applicant had indulged in oral sex. Further on, at page 160, the learned trial judge said this:

> "That was the case for the prosecution. I accepted the evidence of Karl Beepath; I accepted the evidence of Mrs. Beepath; I find that she was speaking the truth; there is no corroboration in this case as far as the sexual act is concerned but I believe the evidence of the complainant and his mother and also the remark made by the accused to the police officer, Detective Sergeant Barns."

That remark is that which we just extracted from the evidence in this case.

When one looks at these passages, it is clear that the learned trial judge had in his mind, the necessity for corroboration, and although he said that there was no corroboration in the case, we feel that the evidence to which we have already adverted was evidence in a material particular and therefore capable of corroborating the evidence of the victim. Thus the learned trial judge was aware of the need for corroboration, and it is plain that he warned himself of the dangers of acting on the uncorroborated evidence of a person who is subject to some sexual assault. There is, therefore, no merit in that ground which was so strongly argued by counsel.

We do not think it necessary to advert to the other grounds which, counsel conceded, would not take the matter further.

The question of sentence was also argued; it being suggested that the sentence was manifestly excessive. We cannot agree with that, in view of the circumstnaces of this case. The sentence imposed for possession of a firearm simpliciter was 5 years. Insofar as the buggery count is concerned, that was a most serious charge indeed. This victim was a youngster, and the crime is one of great trauma - we have no doubt. In our view, the sentence was eminently warranted on the facts, and we are not persuaded, therefore, that the sentence was manifestly excessive.

For these reasons, the application for leave to appeal will be refused and the Court directs that the sentence will commence at the date of conviction.