

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 100/86

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Bingham, J.A. (Ag.)

R. v. ARTHUR LIVERMORE

Hugh Thompson for Applicant

J. Moodie for Crown

13th May, 1987

CAMPBELL J.A.

Arthur Livermore was convicted in the St. Mary Circuit Court held at Port Maria on 3rd December, 1986 of the offence of Buggery, he was sentenced to 10 years imprisonment at hard labour. The facts on which he was found guilty are very brief.

Raymond Dixon a boy aged 10 years who was living at Fellowship Hall was sent out on the 12th of March, 1986 to tie out some goats and to fetch water which was normal for young boys in the country. In the course of doing so, he was pounced upon by the applicant, put to lie on his belly, his shorts was taken off and the applicant put his penis in the boy's anus. So sudden was the attack on him that the boy did not know whom his assailant was until the applicant got up. The boy said at first that he did not feel anything but afterwards using his words, his bottom was burning. He said he knew the applicant for the past ten years. He went home and he reported the incident to his aunt the following day when he felt his bottom was burning more than the day before. He explained that the reason why he did not report to his aunt immediately after the attack, was because the applicant had told him that if he did talk about it, he was going to kill him.

The applicant at trial denied having anything to do with the boy. The jury was not impressed by his evidence and infact unanimously found him guilty of the offence. The learned trial judge having considered the antecedent of the applicant and appreciating fully that he had no previous conviction, sentenced him as I have indicated before to 10 years imprisonment. He did, in doing so, take into consideration the age of the applicant. He indicated that the sort of offence which he was considering demanded serious sentence because it was a grave offence.

Before us Mr. Thompson has properly indicated that having regard to the summing-up with which he could find no fault either as to the facts or as to the direction in law, he could not maintain any argument that the conviction was wrong. He however submits that the sentence of ten years imprisonment is manifestly excessive. He adverted to conditions in the prison and adopted what was said by Mr. Miller who preceded him in a case in which the sentence was similarly sought to be reduced. What Mr. Thompson is saying is that the conditions in the prison are dehumanizing. Secondly, having regard to the age and the physical condition of the applicant whom he intimated was not only apparently feeble in intellect but also very frail and looked like a man of sixty even though he was a man age 45 years, he doubted very much if the applicant could survive the sentence of ten years in the penitentiary. We have considered Mr. Thompson's submission. We are not unmindful of the conditions in our prisons, we certainly feel sympathetic to persons who have to pay the penalty for the offence committed, in those institutions. Nevertheless we cannot harken too much to pleas based on the condition in our prisons for if we were to do so, it would mean that no one could properly be sent to prison. What we have to consider here is the seriousness of the offence committed. Not only is it offensive but it is one in which a young boy of ten could be psychologically disturbed for the rest of his life. It is one for which we feel that a person who has been properly convicted ought to be sent to prison for a long term if for no other reason then to protect the public at large and young boys in particular

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from being harrassed by such persons were they to be let loose in society. We do not see that the sentence of ten years is manifestly excessive and for that reason we feel that it ought not to be disturbed. The application for leave to appeal against conviction and sentence is refused, the conviction and sentence affirmed, the sentence will run from the date of conviction.