JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 161 & 162/88

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Downer, J.A.

R. v. COPELAND JOHNSON
ROLAND LAWRENCE

L.L. Cousins for Applicants

P. Dennis for Crown

February 6 & 27, 1989

CAMPBELL, J.A.

Johnson and Lawrence were each convicted before Gordon J., and a jury on July 13, 1988 in the Saint Catherine Circuit Court of the offence of rape and sentenced to four years and six years imprisonment at hard labour respectively.

The application of Johnson for leave to appeal was refused by the single judge while that of Lawrence was granted on the ground of a misdirection in law.

The facts are simple and straightforward. On 25th July, 1986 Johnson was in the company of the complainant and her female companion on property of Johnson's father picking mangoes for sale by the complainant. While they were so engaged, Lawrence appeared on the scene. He was apparently known to the complainant, because, on his being sighted by her she referred to him as "Beeman" in drawing the attention of Johnson to his presence. Johnson himself was not surprised at the presence of Lawrence because his response to the complainant was in substance that she should take it easy as everything was

alright. The female companion was immediately grabbed by Lawrence who dragged her into the bushes. Before she was dragged away she overheard Lawrence directing Johnson to hold on to the complainant which Johnson did. The complainant's evidence is that she wrestled unsuccessfully with Johnson, who overpowered and sexually assaulted her. She said Johnson overpowered her by threatening her with a knife. The female companion's evidence is that after she was grabbed and after hearing Lawrence direct Johnson to hold on to the complainant which was done, she was taken into the bushes by a hillside and Lawrence menaced her with a knife while endeavouring to have sexual intercourse with her. She fought him off and effected her release. She said Lawrence then called to Johnson to bring the complainant to him. This was done, and she saw when Lawrence grabbed the complainant and took her to the place where she, the female companion, had earlier fought him off. The police officer who investigated the case and arrested Johnson, said that when he arrested and charged Johnson, he said he never wanted to do what he did but that he was forced by "Beeman" to do it.

On this evidence, the jury was entitled to bring in a verdict of guilty of the offence of rape against both Johnson and Lawrence if they the jury accepted as credible the evidence of the complainant supported in this regard by the evidence of the female companion namely that she saw Johnson and Lawrence each on a different occasion grabbing the complainant and pulling her into different parts of the bushes. There is also the admission of Johnson to the police officer on his arrest.

Before us Mr. Cousins on behalf of both men submitted that the learned trial judge had erred in admitting evidence prejudicial to Lawrence namely the evidence of the female companion of the attempted rape on her. Further, the learned trial judge erred in failing to direct the jury with clarity on the defences raised and that he had glossed over crucial issues vital to the defence. We found absolutely no merit in these submissions in consequence of which the application of Johnson was refused.

Regarding the appeal of Lawrence, though we, as earlier stated, found no merit in the above submissions of Mr. Cousins, nonetheless we anxiously considered the ground upon which the single judge had granted leave to appeal. The learned trial judge having earlier in his summation correctly and properly directed the jury to consider separately the evidence implicating each accused, at the end of his summation said this:

> "Now, Mr. Foreman and members of the jury, two persons are charged on the indictment. I told you each man's case is separate. The accused, Johnson is alleged by the officer to have said 'Is beeman force me to do it.' I told you that the evidence of ... (complainant) as to what transpired indicated that Johnson said that 'a long time I want to try but because I was alone I would not try' so, on the issue of duress, which I have not left with you at all, I say in law the defence of duress does not apply so far as he is concerned. How does it affect the other aspect of Beeman's involvement? This is evidence given on oath in the witness box by one accused which tends to involve the other. Question of facts for you to determine how you view the evidence. It is all a question of fact."

The learned trial judge having at the beginning of the above passage correctly stated that it was the police officer who in his evidence attributed to Johnson the statement "Is Beeman force me to do it," lapsed into error nearing the end of the passage by saying that the statement "is evidence given on oath in the witness box by one accused which tends to involve the other." However the jury could not be unaware that the learned trial judge had erred when he said that such statement was part of the evidence of any of the accused. It follows therefore that they would be unlikely to treat that statement, not being evidence of Johnson, as having any value in determining the guilt or innocence of Lawrence. We do not consider this misdirection on the evidence as other than minor and even if it could be considered otherwise, we are of the view that no substantial miscarriage of justice was occasioned thereby, because the evidence of the complainant and her female companion was clear as to the identity of Lawrence whom they each knew before the date of the incident.

It was for the above reasons that we on February 6, 1989 refused the application for leave to appeal of Johnson, dismissed the appeal of Lawrence and confirmed the sentences which we directed should commence to run from October 13, 1988.