JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 66/89

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

R. v. DELROY LYNCH

Application for leave to appeal

Miss Marcia Hughes for Crown

29th October, 1990

CAREY, J.A.:

On April 7, 1989 in the Clarendon Circuit Court before Harrison J, sitting with a jury, the applicant was convicted on a count which charged him with the offence of rape. He was sentenced to 8 years imprisonment at hard labour. He now applies for leave to appeal against conviction and that sentence which was imposed upon him.

The underlying facts in the case which may be very shortly stated are that on the 4th of March, 1988, as the victim of the charge testified the applicant came to her kitchen asked her for her husband who apparently was away; lay hold of her suddenly and took her by a rock and sexually assaulted her. There was absolutely no corroboration in the case. The applicant, in his defence admitted coming to the premises but denied wholly assaulting his elderly victim. She says she was sixty years of age; her husband says she was fifty-five.

This was a very straightforward simple case and the learned trial judge in our opinion, dealt very clearly, fairly and lucidly with the issues which arose for the jury's consideration. He pointed out the absence of corroboration and indicated, in language which they could not fail to understand that this was a situation where the credit of the victim was at issue. They therefore had to consider with particular care, the evidence given by this lady.

But having given the matter our very careful consideration, we do not think we can interfere because as we said, the issues were put quite clearly to the jury and the jury were faced with two distinct stories, one must have been true and one not true. The jury observed the demeanour of the witnesses and are in a better position than we are to judge the credit-worthiness of the witnesses and the evidence which each gave.

In the circumstances, the application for leave to appeal is refused and the court directs sentence to commence on the 7th of July, 1989.