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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 60/87

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT  
THE HON. MR. JUSTICE CARBERRY, J.A.  
THE HON. MR. JUSTICE WHITE, J.A.

REGINA

VS.

DONALD BROWN

No Appearance for the Applicant

Miss M. Hughes for the Crown

July 16, 1987

ROWE P.:

This is an application by Donald Brown for leave to appeal against his conviction in the St. James Circuit Court on the 2nd of April, 1987, for Rape. He was given a sentence of six years at hard labour.

The prosecution's case rested almost entirely upon the evidence of a 20 year old young woman. She had by that time been the mother of a child and her evidence was that on the 31st of December, 1984 she went to a dance in the area in which she lived and there were a great many people at the dance, some of them inside the dance hall, others on the road. It appeared that she was in great demand to be danced with by the men in the area and at one time while somebody was attempting to dance with her, she fell over almost into the arms of the applicant Brown. At trial the applicant said, there was a "ruption", on account of this young lady falling upon him, whereas she said the applicant partially rescued her from the men who wished to dance with her. Her skirt got torn in the melee and thereafter she moved away from the scene of the dance.

The complainant further said that she was trying to get to her home, accompanied by a man called Wayne Fearon, who was incidentally also convicted of this offence of Rape committed against her, but who has abandoned his appeal. She said that as they walked along, Wayne Fearon dragged her into some bushes and compelled her at knife point to have sexual intercourse with him and that while Wayne was having sexual intercourse with her, up came the applicant Brown and he too joined in the act by getting on top of her and having sexual intercourse with her. Several other men took part in this terrible encounter.

There was no question as to the complainant's pre-knowledge of the applicant Brown. The only point in issue was whether the lighting was good enough for her to be able to identify her attackers. The learned trial judge directed the jury adequately on this aspect of the matter and the jury were in no doubt that she had a sufficient opportunity to observe and to identify the applicant.

The applicant's defence was that he did not take part in this act of Rape. His account was that he was dancing with the complainant when somebody came and dragged her away from him and a fight started. Because of this he left the dance and went home.

The very simple issue before the jury was therefore: Was this applicant, one of the persons who had sexual intercourse with the complainant? There could in the circumstances have been no question as to consent and the applicant did not rely upon consent as a defence. The jury returned a verdict of guilty and in our view there is no arguable ground on this application for leave to appeal.

The application is therefore refused and we will direct that the sentence should begin to run on the 25th of June, 1987.