

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL No. 41/66

BEFORE: The Hon. Mr. Justice Henriques, Presiding
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Eccleston, Acting

R. v. G E O R G E C R I P P S

Mr. F. Phipps for the Crown
Mr. N. Hill for the appellant

23rd, 24th June, 1966

HENRIQUES, J. A.,

This appeal is in relation to a conviction for rape against the appellant at the Home Circuit Court on the 15th of March, this year. The appellant was then sentenced to seven years hard labour and to receive seven lashes., He has appealed against his conviction.

At the outset of the case, learned Counsel for the Crown with the permission of Counsel for the appellant brought to the attention of the Court, certain matters which appeared upon the record, and he submitted that inconsidering those matters, the Court might very well come to the view that this trial was a nullity and there ought to be a venire de novo. His submission was based upon some alleged ambiguity in the taking of the verdict.

When the matter came on for hearing yesterday, learned Counsel for the Crown however, stated that he had had an opportunity to examine further the record critically, and he had come to the conclusion that the ambiguity had been resolved and therefore he sought permission to withdraw his previous submissions.

Learned.....

Learned Counsel for the appellant then opened the appeal and took as his sole ground of appeal, the fact that the learned trial judge did not properly direct the jury on the important and vital issue of corroboration. He adverted to this passage in the summing-up of the learned trial judge to be found at page 11 thereof:-

"The real issue between the crown and this accused man is the question of identity. When you are looking for corroboration in the evidence I particularly direct you to corroboration on that part of her story which relates to the identity of this man. I cannot really give you any assistance on the question of what is, or what rather is capable of amounting to corroboration in this case. There is certainly corroboration of the fact of the sexual intercourse. You will find that in the doctor's evidence. As to whether this was done with consent or not, and whether it was by force, you may consider the question of the bruises on her throat; and as to identify of the accused man as the man who committed this offence against her, as she says, I am unable to direct you to any part of this evidence that may amount to corroboration. If, however, you see it, bearing in mind what I have told you as to the meaning of corroboration, and what you must look for, then if you find it, members of the jury, you are quite entitled to act on it."

Those directions were not in accordance with the directions which were approved by this Court in the case of the Queen v Johnson to be found in 5 W.I.R., at page 396, and also the case of the Queen v Anderson decided in this Court on the 7th of February, 1966. There was in fact, no corroboration of the identity of the appellant. The jury should have been told,

↳ in our view.....

in our view, in clear and precise terms that that was the situation, and the failure on the part of the learned judge so to do, amounted, in our opinion to a grave misdirection.

We have been asked to apply the proviso in this case. We appreciate the very cogent argument which has been advanced by learned Counsel for the Crown on this particular aspect, but, we feel, in the circumstances, that we are unable to say, that we are satisfied that on the whole of the facts and with the correct direction the only proper verdict would have been one of guilty. Therefore, this appeal must be allowed, the conviction and sentence set aside, and in the interests of justice, we order a new trial to take place at the current session of the Home Circuit Court.