J A M A I C A

IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL NO. 99/65

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

R. v. K A R L A N D E R S O N

Mr. F. Phipps appeared for the Crown

Mr. L.R. Cowan appeared for the appellant.

9th May, 1966.

HENRIQUES, J.A.,

In this case the appellant was convicted on the 19th of May, of the rape in rather disgusting circumstances of one Lurline Henry, and sentenced by the learned trial judge to 7 years with hard labour, and in addition 3 strokes with an approved instrument. It is unnecessary for the purposes of this appeal to go fully into the circumstances of this case, which, as I have said before, are of a disgusting nature.

On behalf of the appellant one point has been taken, namely, that the learned trial judge failed to direct the jury, that in the instant case there was no evidence in law capable of amounting to corroboration of the girl's story, and the passage in the summing up which is complained of is to be found at page 6 of the transcript, which is to the following effect:-

" In these cases it is a rule of practice, not a rule of law - in other words, none of the laws say that in a case of rape the Crown must prove what is called corroboration, but it is a rule of practice long established in the Courts which now has the effect of a rule of law that in a case of this nature the Crown should supply evidence of what is called corroboration. You should always look for that. It is your duty to look for this corroboration and in the absence of corroboration it is

/my duty...

" my duty to warn you that it is dangerous to convict upon the evidence of a complainant who is uncorroborated, but if you are so convinced of the truth of the evidence of the complainant, if you are so satisfied that she is a witness of truth and you are prepared to accept her evidence despite the fact that there is no corroboration and in spite of my warning, you are entitled to do so."

The learned trial judge then goes on to define what is corroboration in law. It is submitted that this is a case in which there was, in fact, no corroboration, it was the duty of the learned trial judge so to have told the jury.

Learned Counsel on behalf of the Crown has submitted that there was no duty in the instant case on the learned trial judge to state that there was no corroboration in the case, in view of the other clear and precise directions given by the learned trial judge.

We have considered the submissions made by learned Counsel, and we think that this matter is concluded by the decision of this Court in 1963, 5 W.I.R. - R. vs. Johnson, which is reported at page 369. In that case reading from the headnote -

" The only evidence of the commission of the act by the appellant came from the girl and her evidence was entirely uncorroborated. The defence was a denial. The trial judge when summing up to the jury gave what has always been accepted as the usual direction as to corroboration, that is he warned the jury that they should look for corroboration and he told them what corroboration was but he failed to point out that there was no evidence whatever which could be regarded as corroboration.

Held: that in those cases where there is no corroboration at all it is the duty of the judge so to point out to the jury, otherwise he may well be inviting them to regard as corroboration something which is not corroboration."

/That decision...

That decision is in consonance with the decision of R. v.Anslow, decided in 1961, in the Court of Criminal Appeal in England, which is reported in 1962 Criminal Law Review at page 101. There in the course of the judgment which dealt with the case of an accomplice, the principles of which would be equally applicable to a case of this nature, the Court in giving its judgment, said:

> " In the judgment of this Court in a case where corroboration was called for, a judge who directed the jury properly by warning them of the need for corroboration should go further and tell them in terms, if that be the case, that there was no corroboration in the facts of the case before them. Failure to do that would lead the jury to suppose that in giving heed to the warning there was material upon which they could rely. It was held in the circumstances that that conviction could not be sustained."

In accordance with these decisions, we are of the view that in the instant case the judge should have specifically stated that there was, in fact, no corroboration to be found anywhere in the evidence. This he has failed to do, and his omission in our view has resulted in a miscarriage of justice.

In the circumstances, the appeal will be allowed, the conviction and sentence set aside, and in the interests of justice a new trial is ordered. The appellant will remain in custody pending his retrial.