JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS: 203 & 204/88

BEFORE: THE HON. MR. JUSTICE ROWE - PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

R. v. MELVIN DIAS
JEREMIAH MURDOCK

Lynden Wellesley for Appellants

Miss C. Malcolm for Crown

May 29, 1990

Rowe P.:

Jeremiah Murdock and Melvin Dias were both convicted in the St. Catherine Circuit Court on the 13th of October, 1988 for robbery with aggravation and rape and were sentenced to prison. Both have appealed and the single judge gave leave to appeal and granted legal aid.

Mr. Wellesley appearing for both appellants has argued before us today that on the issue of identification the learned trial judge failed to address the jury properly on the quality of the evidence of identification in that he failed to alert the jury to vital aspects of the evidence in relation to identification and he also failed to explain to the jury the significance of the weaknesses and strengths of the identification evidence. In addition, it was submitted, the trial judge gave no general warning as to the necessity for caution when one is dealing with a case which rests wholly upon identification evidence.

We will speak very briefly of the facts in this case, The allegation for the Crown was that on the 30th of December, 1988, a young woman was walking along Port Henderson Road at around 8 o'clock in the night and when she was in the vicinity of the Forum Hotel, where there are some vandalised houses, she was pounced upon and abducted by two men who drew her across a wall and into one of these abandoned houses. It was part of the Crown's case that the Forum Hotel has flood lights which illuminate these abandoned buildings and the one into which the woman was taken was such a building. The main prosecution witnesses said that she was kept in this building for about three hours during which the two men had sexual intercourse with her without her consent. She said that during the incident the men referred to each other; one by the name of 'Ninja', the other by the name of 'Stitchie'. She said too, that she was able to identify these men because they were with her for this very very long time and that the lighting was good.

At one time the men left the house and she followed behind them. They captured her for a second time, took her back to the house with intent to further sexual assault but release her without further injury. This was additional opportunity, she said, for being able to see and to recognize the men. She said that she had seen both of them on previous occasions, although not for any protracted period.

We find that from the summing-up the learned trial judge mentioned the issue of identification, no less than six times, nevertheless, at no point in time did he ever get around to dealing with giving the jury that caution which has become a hallmark of the several decisions both of this Court and of the Privy Council when one is dealing with visual identification.

We entirely agree with Mr. Wellesley that the convictions in this case cannot be allowed to stand. We have considered whether or not there should be a new trial. We think that the evidence was of such a nature that it would be in the interest of justice that a woman who was so badly treated, (if her evidence is to be believed), should have her case fairly put to a jury for a proper determination and in those circumstances we will allow the appeal, we will set aside the convictions and the sentences and we will order in the interest of justice, that there should be a new trial in the next session of the St. Catherine Circuit Court.