CA - CRIMINAL LAW - Gun Court - Illegal possession of firearm - Rape - Whether there was corroboration — whether judge failed to analyse evidence properly in coming to a verdict — whether "verdict unsafe and unsupportable by the weight of the evidence" — Counsel does not pursue ground as to sentence (Concurrent terms of 7 years hard labour) Application for leave to appeal refused — Sentence "somewhat Excessive" Per curiam — No ground of appeal known to law as "The verdict is unsafe and is unsupported by the weight of the evidence" — Grand complicity stated as "that the verdict is unreasonable and cannot be supported having regard to the evidence."

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 81/87

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Downer, J.A.

No Cases referred to

Sentence
Ground of appeal
"unreasonable verdict"

R. vs. NEVILLE WILSON

B.E. Frankson for applicant

Miss V. Bennett & Miss. A. McKain for the Crown

May 30, 1988

CAREY, J.A.:

This applicant Neville Wilson was convicted in the High Court Division of the Gun Court on the 12th of May, 1987 for the offences of illegal possession of firearm and Rape and in respect of this conviction, he was sentenced to concurrent terms of 7 years imprisonment at hard labour.

The short facts are: On the 27th of December, 1986 at about 8 o'clock in the evening, a school girl aged 16 years, while engaged in conversation with a male friend in a lane in Linstead, was suddenly confronted by this applicant and three other men, one of whom was previously arrested, tried, but acquitted. The applicant, whom she knew, was armed with a gun: he goes by the pseudonym "Pie Head". He hit her in her head with the gun and one of his companions told her in effect, that she had no business talking to an "outer",

apparently the person with whom she was in conversation does not live in that neighbourhood. They took her, she said, into some bushes and there three men raped her in turn. The appellant, as we observed, is well known to her; he lives 3 chains away from her on the same road. When he was apprehended by the police, he is reported as saying - "Officer a salt mi salt, me never want to do it." In his defence he denied raping the young lady whom he admitted knowing. He attributes some animus towards him because her sister bore a child for his brother who does not support it. This was a case of mistaken identity.

Before us this morning, Mr. Frankson sought leave to argue a number of grounds regarding conviction. He endeavoured to say, first of all, that there was no corroboration. As to that, the Court pointed out the statement which the applicant allegedly made to the police officer after he was cautioned at the time of his arrest. And learned counsel was constrained to concede that that response could amount in law to corroboration and if the learned trial judge accepted it, as indeed he did. There was also some attempt to argue that the learned judge had failed to properly analyse the evidence in coming to a verdict adverse to the applicant. As we pointed to learned counsel, this issue was a plain question of fact for the learned judge who did review the evidence and consider the issues which fairly arose for his decision. It is difficult in those circumstances then to say the learned judge had failed in that respect.

There was a ground which is worded in this form - " The verdict is unsafe and is unsupported by the weight of the evidence." Indeed, there is no such ground known to our law. The ground correctly stated is that the verdict is unreasonable and cannot be supported having regard to the evidence. Howsoever that may be, in endeavouring to argue that, he was quite unable to condescend to particulars. We did not discover what was the basis on which the argument on that ground was founded.

There was also a ground as to sentence, but learned counsel, hearkening to some words of caution, prudently desisted from that endeavour. In so far as the sentence was concerned, far from being excessive, we think the learned trial judge was somewhat lenient, for the circumstances were atrocious. The act of rape was accompanied by aggravating factors, the number of participants and the manner of the act. But these did not seem of much significance themselves to the learned judge. At all events, we do not propose to interfere with the sentence.

Accordingly, this application for leave to appeal will be refused and in compliance with the request of learned counsel, we will direct sentence to commence from the date of conviction.