J A M A I C A

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 9 of 1973

BEFORE: The Hon. Mr. Justice Luckhoo, J.A. (Presiding)
The Hon. Mr. Justice Robinson, J.A. (Ag.)
The Hon. Mr. Justice Grannum, J.A. (Ag.)

R. v. PAUL WILLIAMS

Enoch Blake for the appellant.

L. Tomlinson for the Crown.

July 5 & 25, 1973

LUCKHOO, J.A.:

On July 5, we dismissed this appeal affirming the appellant's conviction and varying the sentence imposed by the learned trial judge. We now give our reasons for so doing.

The appellant was tried in the Home Circuit Court on an indictment charging him with rape on July 27, 1972. He was convicted of the offence charged and was sentenced to imprisonment for life.

The evidence for the prosecution was to the following effect. The complainant Elsie Bryce resided with her husband and their three young children at Outlook Avenue, Kingston. At about 10 p.m. on July 27, 1972, Mrs. Bryce and the children were in bed. Mr. Bryce had not yet returned home. Mrs. Bryce said that she heard sounds as if someone was moving about outside the house.

/She caused .....

She caused her daughter to turn off the lights in the bedroom. She then heard the sound of someone running outside towards another room and also the sound of someone trying to push up the window in that room. She went to that room and turned off the lamp which was burning in the room. She then extinguished the remaining lights in the house. The lights were on in the yard. She caused her children to get under a bed at the same time completing the closing of windows in the house. On looking through the glass section of the door she observed the appellant edging his way towards the wall outside. He had two bricks or building blocks in his hands. As he approached the door she screamed. He told her to stop screaming and to open the door or else he would "shoot it up" and come inside. She and the children began crying and she asked him to go away and leave them alone. She offered him money if he would do so. He appeared as if to throw bricks through the glass door and she begged him to desist as otherwise the glass would be broken and might fall on the baby who was in the bed. Considering the doorlocks not to be sufficiently sound she decided that the best course of action would be to get the appellant away from the children. As a result she put on a pair of trousers in addition to her long jacket, panty and brassiere, told the children to get back into bed and then went into another room from which she pleaded with the appellant to go away. She armed herself with a toy gun which she soon after discarded as being useless when he shouted to her to open the door. He was tearing and pulling his hair and picked up the bricks again. On seeing this she told him to go to the back of the house. It was then about 1.40 a.m. She was trying to stall for time to allow her husband to get home. She went to the back window and saw the appellant outside. The children ran behind her. The appellant tried to pull out some bolts from the windows. She asked him to desist and he told her that he only wanted to talk with her. She told him that she would do so and he replied that she was too

/far away .....

far away and again pulled at the windows shouting that he would come in. She asked him to walk to the end of the house and said she would come outside. She opened the door and came outside. She then locked the door dropping the key inside the house under a window. She said she went outside because she did not want her children to be hurt or to see anything dreadful that might damage their minds. She was scared and went to one end of the wall. She sat about 6 feet away from the appellant. She put her head into her lap and began to sob begging the appellant to leave them alone. He told her that he had been watching her for a long time and that on that night he had seen the light. He came close to her and attempted to put his hand inside her jacket but she pulled it away. Again she begged him to leave them alone. She thought she heard someone at the gate and told the appellant that it might be her husband. She retrieved her door key, opened the door and ran into the house. She looked outside but saw no one. Her two year old child awoke and began to cry. The appellant then shouted that if she did not want anything to happen to the children she should come outside again. She decided that was the best thing to do and went outside again. The appellant told her that any woman he made up his mind to get he always gets. He pulled down the zip of his pants and said that he hated women and hated his father. He began fondling her and when she resisted he became rough with her. She tried to take his mind off sexual activity by attempting to get him to speak about his father. She succeeded for a while. It was then about 5 - 5.30 a.m. He appeared to see through her ruse and said that he was fed up with talking. She got up and ran but he held her by the wrist. He undid the pin on her trousers and she began to scream. He told her that if she did not stop screaming he would burst her head and hurt her before anyone could come. She knelt down and begged him to leave her alone. He tried to drag her into the house. They went towards the back of the house. He demanded the door key and having got hold of the bunch of keys which she had earlier thrown into the house he tried to open the door. When he could not discover the key which fitted the lock he gave

/the keys.....

the keys to her and she threw them into the house. He collared her and she punched him and pulled his hair. He then pushed her towards a wash basin near the back door, threw her down over it and had sexual intercourse with her without her consent after ripping off her trousers and pulling down her panty which was torn in the process. During the act of sexual intercourse she felt sick and vomited whereupon the appellant said "a form yoh a form" indicating thereby that he did not believe that she had vomited from disgust but that she was pretending. It was then about 6.30 a.m. He told her that she should not let what happened worry her if she tried to like him a little bit. He eventually left. By then she was in hysterics. Her husband came home some time later that morning and she made a complaint to him. The husband made a report to the police and Mrs. Bryce was later taken to Dr. March a pathologist who examined her and found spermatozoa in her vagina as well as on the trousers which Mrs. Bryce claimed she was wearing that night.

It was suggested to Mrs. Bryce in the course of cross-examination by counsel for the appellant that sexual intercourse between her and the appellant took place that night with Mrs.Bryce's consent and that before sexual intercourse had taken place she enquired of him whether he had venereal disease; that when he answered her in the negative she examined his penis herself to verify that his answer was true. These suggestions were all rejected by Mrs. Bryce. Detective Corporal of Police Donald Brown testified that after interviewing Mrs. Bryce he went with Detective Harvey at about 7 p.m. that day to the Rialto Theatre where he saw the appellant. He cautioned the appellant and told him that he had received a report that he had raped Mrs. Bryce. The appellant then said "I was drunk". In his defence the appellant made an unsworn statement as follows:

> "I am not guilty of rape. I saved the life of the lady's second child and I did not threaten the child's life. That is all I have to say."

/The first .....

The first ground of appeal argued on behalf of the appellant was that the complainant's story was uncorroborated and that the learned trial judge was in error when he directed the jury that depending upon what view they took of the meaning of the words "I was drunk", if they believed the appellant did use those words to Det. Cpl. Brown after being cautioned and told of the complainant's accusation against him of rape, those words could amount to corroboration of the complainant's testimony that the appellant had sexual intercourse with her without her consent.

Mr. Enoch Blake contended that the words "I was drunk" could in no circumstances be held to be corroborative of the complainant's story; that in his directions to the jury the learned trial judge indicated that from those words two inferences might be drawn one adverse to the appellant and another in the appellant's favour in which case the trial judge ought to have directed the jury to draw that inference which was in the appellant's favour whereas he erroneously left it to the jury to draw such inference as they thought fit.

The learned trial judge who had given a very careful and correct direction on the need for and the nature of corroboration in a case of this kind dealt with this matter in the following way. He told the jury -

> "The words, 'I was drunk' can carry more than one connotation because it does not go into any detail. It could mean, 'I was drunk, I do not know what had happened, if anything happened, I was drunk, non compos mentis - I don't know what happened, I cannot tell you anything about it'. It could also mean, 'I was drunk, that is I did it; I did in fact, as you tell me, rape or have sexual intercourse with Mrs. Bryce, but when I did it I was drunk. Don't be too hard on me because I was drunk; I am asking you to excuse me for it.' So this is a question for you Mr. Foreman and

> members of the jury, to decide what view you take of those words, because if you take the view that the words meant 'I did it but I was drunk, will you excuse me', then those words can amount to a corroboration of the evidence by Mrs. Bryce. If, however, you take the view that the words did not mean that, there was no suggestion in those words that the accused was admitting that he had raped Mrs. Bryce, he is only saying he was drunk and cannot remember what happened or some such thing, then it is necessary for you to approach the case on the footing that there is no corroboration of her story."

This aspect of the summing-up must be considered in the light of the defence raised at the trial which was that the appellant did have sexual intercourse with the respondent but with her consent. The only issue in the case was consent or no consent. The learned trial judge did not in his directions set out above tell the jury that the words attributed to the appellant "I was drunk" seemed to him to be equally consistent with the two views he put forward for their consideration in which event they could not be said to be corroborative of either. It was for the jury in the light of the circumstances of the case including the defence raised to say which of the two views put forward for their consideration they accepted and the learned trial judge so directed the jury.

The other grounds argued by Mr. Blake in relation to the appeal against conviction were without merit. It was submitted that the learned trial judge ought to have directed the jury on the law relating to the effect of drunkenness on a charge of rape. This submission we rejected as there was not a tittle of evidence in relation to which such a direction could be given.

In respect of sentence the sentence of life imprisonment was imposed because the learned trial judge took the view that the appellant was in need of psychiatric treatment. We were unable to see that anything said in relation to the appellant's antecedents could fairly support such a view. In the circumstances we considered that the sentence of life imprisonment was not appropriate and in substitution therefor imposed a sentence of fifteen years at hard labour.