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8th. May, 1963.

J A M A I C A

IN THE COURT OF APPEAL:

CRIMINAL APPEAL NO: 189 of 1962.

BEFORE: The Hon. Mr. Justice Cundall - President.
The Hon. Mr. Justice Lewis
The Hon. Mr. Justice Henriques.

REGINA vs: RANSFORD FORREST:

Mr. Carl Rattray for the Appellant

Mr. L. G. Barnett for the Crown.

JUDGMENT OF THE COURT DELIVERED BY MR. JUSTICE HENRIQUES:

The Appellant was indicted on an indictment containing two counts, one for Assault with intent to ravish and the other for Larceny in relation to the same set of circumstances in the Westmoreland Circuit Court held at Savanna-la-mar on the 1st. of November 1962. The jury convicted him of the first count for Assault with intent to ravish and acquitted him on the second count for Larceny.

The allegation of the Crown was that the Appellant having assaulted one Ruby Atkinson went on to steal from her handbag a purse containing £1.15.10. According to the evidence which was led at the trial Ruby Atkinson was riding her bicycle very early on the morning of the 3rd. of August to work when she was accosted by the appellant whom she did not know before, he came out in front of her, presented a gun to her and halted her. She stopped, he then pulled her off the cycle, threw her cycle to the ground and then taking hold of her demanded sexual relations of her. He was pulling her and she resisted, and she then suggested, realising the peril in which she stood, and as a result of his threatening attitude, suggested that they should go to the other side of the road. Before they had reached

the other side of the road the appellant had pushed his hand under her dress and held on to her slip which had become torn. While they were crossing the road she asked the appellant to let her go, he believing that she was then consenting to the intention which he had in his mind, did so and she ran away. While she was running down the road, according to her testimony at the trial, she looked behind and saw the appellant go to the bicycle, open a travelling bag and remove her purse containing her money. After running a short distance she encountered one Oswald Delvaille, who was a witness at the trial, and she made a report to him, and he supported her story. The Police were informed and later that morning Detective Corporal Williamson went to a certain spot called Hornwall Farm where he saw the appellant. He searched him and found upon him the sum of £1.13.8. Now, the appellant was then taken to a yard where his room was identified, the room that he occupied was identified to the Police. Corporal Williamson went inside the room and came out with a toy pistol in his hand saying that he had found that pistol underneath a mattress in the room. The appellant was then arrested and on the 4th. of August, I think, an identification parade was held at the Station at which Ruby Atkinson attended and she there picked out the appellant as the man who had assaulted her and robbed her. On the identification by the woman the appellant is alleged to have said, "He make up me mind already to hang".

The appellant testified on his own behalf that he had left for work about half past six in the morning, and from his evidence it is not quite clear what his movements were, say, between seven o'clock and eleven o'clock, which was when Detective Corporal Williamson came to him and approached him and searched him, had a conversation with him and took him to his yard.

Mr. Rattray on the appellant's behalf has argued two grounds of appeal: one, that the learned trial Judge gave to the jury inadequate direction on the question of corroboration; two, that having acquitted the appellant on the charge of Larceny and there being no evidence of corroboratio it was clear that the jury had not accepted the evidence of the Complainant in toto, and therefore the appellant should be acquitted on count one as well as on count two; and the third, a subsidiary ground was not in relation

to conviction but in relation to the sentence which was imposed. It is alleged that that sentence is in the circumstances excessive.

On the issue of corroboration the learned trial Judge's directions are to be found on page seven of the summing-up, and it says, "Now, as regards to count one, that count relates to a sex offence, and where sex offences are concerned it is my duty to warn you that it is dangerous and unsafe to convict on the uncorroborated evidence of the complaining woman. Now, corroboration or corroborative evidence is evidence which supports the complaining woman's story in some material particular implicating the accused. It is not for me to indicate to you where corroborative evidence is, if there is any, but Members of the jury, it is a matter for you to look at the evidence and see if there is corroboration". The learned trial Judge went on quite properly to point out that in a case of this nature even though the jury were unable to find corroborative factors, they could, if they felt that they could entirely rely on the testimony of the prosecutrix, convict, but that it was dangerous and unsafe to do so in relation to a charge of this particular nature.

Now, the directions in so far as they went would appear to be adequ but in our view there was a fatal defect in the particular passage which has been complained of. That defect lies in the fact that the learned trial Judge failed to point out that the evidence which must be considered, which can be considered as corroborative evidence, must flow from an independent source, a source other than the main witness, the prosecutrix in the case. The correct directions in a matter of this kind which ought to be given have been considered by and laid down in the Court of Criminal Appeal in England in the case of Regina v. Sanders ~~in 46 Criminal Appeal Reports at page 60~~ (1961) 45 Cr. App. R. 60 at p. 66. I quote from the judgment, "The sworn evidence of one witness is in law sufficient to sustain a conviction. However, experience in the courts has shown that it is extremely dangerous to convict solely on the uncorroborated evidence of the victim of any sexual assault. People have been known to make charges of this sort for improper or obscure reasons, for example, for revenge, or because of the witness's own queer thoughts. You should therefore consider the evidence and see if there is corroboration

Corroboration is independent testimony that the offence charged was committed and was committed by the accused. What is required is not independent evidence of everything that the victim relates but some additional evidence confirming some of the victim's story rendering it probable that the story is true and that it is reasonably safe to act upon it. It is important to remember that the evidence must implicate the accused. When I mentioned that the passage in the summing-up was defective, fatally defective, what I meant was that according to the directions in Sanders' case, the Judge failed to give what was a proper direction in relation to the issue of corroboration.

It has been submitted further by Mr. Rattray on behalfof the appellant that the directions were not in accordance with the decision of the Court of Criminal Appeal in the Queen and Anslow, 1960, Criminal Law Review, that it was the duty of the learned trial Judge to point out, as he submitted in this case that there was in fact no corroboration - it was the duty of the learned trial Judge to point out that fact to the jury. In the particular circumstances of this case we are unable to accede to that view of the evidence. We feel that in this case there were corroborative factors. There were matters which were capable of being regarded as corroboration. That being so, the question arises for consideration as to what position the Court should take with regard to what I have described as a defect in the summing-up. In view of the whole of the circumstances of the case, though we think that the submission is well founded in relation to there being no reference to independent testimony, we feel that no substantial miscarriage of justice has resulted, and in those circumstances we apply the proviso to section 13 of the Judicature Appellate Jurisdiction Law, 1962.

With regard to the second submission which was made to us, namely, that having acquitted on one count the verdict on the other count is unreasonable and therefore ought to be set aside. Though it might appear that there is some inconsistency between the two verdicts in the case, we feel that there were circumstances present in the one and absent in the other which may have differentiated the two cases in the minds of the jury. The Court

The Court therefore is not disposed to disturb the verdict of the jury on count one of the indictment. The Appeal therefore, so far as conviction is concerned, is dismissed.

With regard to the sentence however, we feel that the circumstances of the case did not warrant the imposition of corporal punishment and that part of the sentence which relates to the imposition of twelve lashes of the cat-o-nine tails will be quashed. The sentence will, in the circumstances, run from the date of conviction.