

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 15/89

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

REGINA v. ALBERT LUGG

Applicant unrepresented

Miss Y. Sibble for the Crown

June 12, 1989

WRIGHT, J.A.

On the 7th August, 1987 about 3 o'clock in the afternoon there was an encounter between the applicant and the complainant, 'KG', both of whom were known to each other for some twelve years. 'KG' at the time was at the home of a friend one Ishie, and when she looked outside she saw the applicant whom she knew as 'Monkey' along with one Donald. They were talking with Ishie. Next the applicant came inside the house and told 'KG' that it was a long time that he was looking for her in connection with some forty dollars which he alleged she had stolen from a girl's bag. She denied the charge but as he kept on arguing she decided she would go to the applicant's mother-in-law in an apparent endeavour to sort out the matter. She went there and in the presence of the mother-in-law and the applicant's baby

mother, one Shirley Major, the matter was discussed and she obtained from one Tena a denial that ~~KG~~ had taken the money. The applicant then boxed and kicked her and grabbed her in her blouse saying he was taking her across the road. At that time Donald had a buck knife. The applicant pushed her into the house and from the language that he used she understood that he wanted to have sexual intercourse with her. He threatened to cut her in her face with the knife which had previously been held by Donald. She said no. He proceeded to box, kick and thump her and when she fell to the ground he stood over her and with the knife which he used to cut off her panty and thereafter he had intercourse with her during which she made so much noise that she said one big fat girl came to the window and looked. Her legs and her skirt were messed up and she went straight back to the baby-mother and told her what had happened. In tears she left for the police station but the applicant tried to prevent her. She had to run into the court yard and then after to the police station where she made a report to Corporal Barbara Simpson who took her to the doctor and thereafter went to the applicant's workplace and took him into custody. She arrested and charged him for rape, and when he was cautioned he said "A never rape her officer, is mi woman". At the trial his defence was consent. He gave sworn testimony in which he was supported by his baby-mother. He asserted that the complainant was his girl-friend on the side and that he had intercourse with her on several occasions. In fact on this day in question he admitted having intercourse with her at the request of the complainant and this was after all the beating which he admitted he had administered to her but for which he had expressed his sorrow.

The baby-mother Shirley Major testified that subsequent to this incident on an occasion when the complainant

slept at their home she caught them both in the act of intercourse.

The learned trial judge gave proper directions on the question of consent and on corroboration and also gave the appropriate warning. The directions, we think, were impeccable. There is nothing to fault his treatment of the law and the evidence. In the circumstances, the application for leave to appeal is refused. The sentence will run from the 17th April, 1989.