JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 121/96

BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE WALKER, J.A. (AG.)

REGINA

VS.

DEON NOBLE

Leslie L. Cousins for Appellant

Miss Kathy Pyke and Mrs. Donna Marie Parkinson for Crown

June 30 and July 31, 1997

WALKER J.A. (AG.)

At a trial in the St. Catherine Circuit Court before Harris, J. and a jury the appellant was convicted of Rape and sentenced to serve a term of imprisonment of seven years at hard labour. This appeal which was prosecuted by leave of a single judge was heard by us on June 30, 1997 at which time the appeal was allowed and a verdict of acquittal entered in favour of the appellant. As promised we now put in writing the reasons for our decision.

The facts are short. For the prosecution the complainant testified that on a night in October, 1995, by arrangement between themselves, she and the appellant met at White Church Street in Spanish Town. The time was between 9:30 o' clock

and 10:00 o'clock. From this meeting point the appellant drove her in his trailer to a restaurant in Portmore where they dined together. After dinner, and despite her protests, the appellant drove her to an area known as Rodney's Arms. Having arrived at Rodney's Arms the appellant parked his trailer and proceeded to make sexual advances towards her. She resisted him and he slapped her across her face. Eventually, under threat of further violence she went and lay on a bed in the trailer where the appellant had sexual intercourse with her against her will. Afterwards the complainant reported her ordeal to the police.

The defence was one of alibi. The appellant gave sworn evidence in which he admitted knowing the complainant whom he said he first met two weeks before the date of the alleged incident. He said that on October 19, 1995, he had a telephone conversation with her in the course of which she expressed a desire to see him and requested of him a sum of money which she said she intended to use to help her family in St. Ann. The appellant denied meeting the complainant and having sexual intercourse with her on the night in question. On that night he testified that he was in Kingston in the company of his girl-friend, Nola McCalla. Miss McCalla, herself, gave evidence which supported the appellant's story.

On appeal we took the unusual step at the outset to enquire of Miss Pyke for the prosecution whether she was, in fact, intending to support this conviction. With commendable forthrightness, she said she was not. There is very good reason for her concession.

The short point is that having given to the jury the general warning with regard to corroboration, the learned trial judge omitted to direct the jury that there was no evidence in the case which was capable of amounting to corroboration. This non-

direction amounted to a serious mis-direction. The absolute necessity for such a direction is, of course, obvious. Without it there arose a real risk that the jury might have regarded as corroboration evidence that was not capable of amounting to corroboration. In every case in which corroboration is required, whether as a matter of law or practice, it is the duty of a trial judge to give to the jury the requisite warning in that regard. That warning must always include a direction as to whether or not there is in the case being tried evidence that is capable of amounting to corroboration. If there is, the trial judge should point out that evidence to the jury, leaving it to them to say whether in the final analysis they find that such evidence does, in fact, amount to corroboration. On the other hand, if there is no such evidence the trial judge must tell the jury so. A failure on the part of the trial judge to do so, as happened in this case, will inevitably prove fatal to a conviction (See **James v R** (1970) 55 Cr App R 299). In the present case it was the word of the complainant alone against the word of the appellant and his witness since the evidence of the complainant was not corroborated. The jury should have been made aware of that and not left, as they were, to their own devices.

Another aspect of this matter which caused us concern was the fact that the learned trial judge omitted to tell the jury the reason for the warning with regard to corroboration, that reason being the relative ease with which a woman may allege that she has been raped as opposed to the difficulty faced by a man in refuting such an allegation. We do not say that this omission was, of itself, necessarily fatal to this conviction, but we do think that such an explanation ought to have been given. Indeed, in every case involving the offence of Rape, or a kindred offence, it is desirable that a trial judge should, in directing a jury, explain to them the reason for giving a warning as

to the need for corroboration. In this way the legal concept of corroboration becomes more intelligible to jurors who are laymen and, in the final analysis, the sole judges of fact.

It was in these circumstances that we allowed this appeal and, in the interest of justice, entered a verdict of acquittal in favour of the appellant.