JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 30/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.

REGINA vs. DONALD REID

Appellant unrepresented

Miss Carol Malcolm for the Crown

January 22, 1990

ROWE, P.:

The applicant, Donald Reid, was convicted before Harrison, J. and a jury in the Home Circuit Court on the 15th February, 1989 for rape and he was sentenced to serve a term of eight years imprisonment at hard labour. He applied for leave to appeal on the ground that there was insufficient evidence to support his conviction and that the jurors were misguided. This application for leave to appeal first came before Downer, J.A., as a Single Judge, who thought that the summing-up was over-generous and that there was evidence amounting to corroboration which, if the judge was so minded, he could have used, and so he refused leave to appeal. The applicant has renewed this application before the Full Court and we now consider it.

The Crown's case, which came through the mouths of a number of witnesses, was to the effect that on the 24th May, 1988, two young women went along Marcus Garvey Drive and were in the vicinity of Hand Arnold, which appears to be a commercial enterprise. Their purpose was to find two men, who appear to be friends of theirs of one sort or

another. While they made enquiries they came upon the applicant who, in the guise of a good samaritan, offered to show them where one of the men called "Okra" could be found. The applicant walked them some distance, into unoccupied territory, and when they heard sounds, which were distinctly unfriendly, the applicant told them that they were in the territory of gunmen. The women became frightened and began to run, whereupon, on the Crown's case, the applicant held on to one of the women by the back of her blouse, using words, "Hey gal weh yuh a run go", and he thus restrained her. The other woman ran back to the Hand Arnold factory in search of a man called "Sam". The woman, who was thus restrained, said the applicant drew an icepick from his pocket and threatened to kill her if she did not obey his instructions. Those instructions included keeping quiet while he drew her into bushes nearby and he raped her on two separate occasions. He thereafter returned to the vicinity of Hand Arnold and there was a conversation in which she told him that she was a cousin of "Sam". The applicant expressed no real remorse but he said, "Sam Jegger is mi breathren", indicating that had he known of the relationship he might have spared her. This woman also said that when she made a report to Sam, Sam called to the applicant and the applicant was asked what it is that he had done to the complainant and the applicant's reply to Sam was that he did not know that this woman was his cousin.

The defence was consent. The applicant gave a very long statement from the dock in which he said that the complainant had agreed to have sexual intercourse with him for the sum of $20; that he had actually gone to his house to get this money; he had left her outside, she made no effort or attempt to escape, he came back and the inter-

intercourse which they had with each other was amorous and consensual.

The learned trial judge, in giving very elaborate directions to the jury on the question of what amounted to rape and the necessity for corroboration, correctly warned the jury that it was dangerous for them to convict on the uncorroborated evidence of a woman in the case of rape and then he did say that, in this particular case, there was no evidence capable of amounting to corroboration. Where the only issue in a case of rape is consent, then what the prosecution has to show, in the nature of corroboration, is whether there was any evidence which could support the prosecution that the woman had not consented or put the other way that on the woman's story there could be no honest belief in the applicant that the woman had consented.

In this particular case, the evidence from an independent witness at trial was that the two women had gone, not to see the applicant, but that they were in search of a man called "Okra". One woman said that it was an expression from the applicant which caused them to think that they were in danger of an attack by gunmen and both women attempted to run from the scene and there was evidence from the companion of the complainant that at that point the applicant restrained the complainant in circumstances where she was not a willing party. That certainly gave the lie to any honest belief which the applicant might claim that he formed, based upon the woman's behaviour by word or deed, that she was consenting to have sexual intercourse with him. In our view, the evidence of the other woman was capable of being very strong support of the complainant's evidence and capable of amounting to corroboration. Downer, J.A. had said, in refusing leave to appeal, that the summing-up was over-generous

to the applicant and with this we agree. We find no reason for disturbing the conviction. The application for leave to appeal is refused, sentence, in this case, will run from the 15th May, 1989.