

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 220/87

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

REGINA

VS

JOSEPH JOLLY

Applicant not represented  
Miss Y. Sibble for the Crown

April 18, 1988

ROWE P.:

The applicant Joseph Jolly was convicted in the St. Catherine Circuit Court on the 1st of December last year for attempt at carnal abuse and was sentenced to imprisonment for four years at hard labour. His application is for leave to appeal from that conviction.

The evidence upon which the Crown relied was that on the 5th of September of 1986 this applicant attempted to sexually assault a young girl under the age of twelve years. At the time of the incident, the young girl was of the age of ten years and a few months. Her mental health was not very good, in so much so, that she could not give any evidence at the trial.

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The Crown relied upon two adult witnesses who said that they peeped into the applicant's kitchen and saw him lying on top of the young girl, who was partially unclothed and was making motions, as if he was having sexual intercourse with her.

In the absence of medical evidence however, and the girl being unable to give any account of what in fact happened to her, the Crown had to settle for the offence of attempted rape.

The applicant's defence was that the girl had come into his kitchen and had literally stuck herself unto him. He had chased her out. Nothing in fact had happened between them. The jury rejected the defence and quite rightly so, we think, as the evidence was overwhelming, that he had acted disgracefully towards this semi-imbecile young girl.

We can find no reason to upset the conviction or the sentence of four years at hard labour which sentence should run from the date of conviction. The application for leave to appeal is refused.