

C.A. CRIMINAL LAW ^{Evidence, identification} Illegal possession of firearm (2 counts) robbery with aggravation (2 counts) Rape (1 count) assault with intent to rob (1 count) — applicant identified at identification parade — ring subject of robbery found in applicant's room — clothes allegedly worn by applicant at time of offence found in his room — ^{JAMAICA} No reason to interfere with convictions or sentence — applications for leave to appeal refused.

(*) Evidence (identification)

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL. NO. 202/87

No case referred to.

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

EVIDENCE

REGINA

VS.

JUNIOR GIBSON

No appearance for the applicant

Miss Antionette McKain for Crown

July 14, 1988

ROWE, P.:

This is an application by Junior Gibson for leave to appeal against his convictions and sentences in the High Court Division of the Westmoreland Circuit Court on the 3rd of November, 1987. He was on that occasion convicted of all six counts of the indictment. There were two counts of illegal possession of firearm; two counts of robbery with aggravation; a count for rape and a count for assault with intent to rob. He was given a total sentence of twenty years imprisonment at hard labour.

The presentation by the prosecution showed that there were two separate incidents, one on the 18th of July, 1986 and the other one a week later on the 25th of July, 1986.

As to the first incident the prosecution alleged that a mini-bus operator of Amity in Westmoreland, his wife and step-daughter, retired to bed in their home at Amity on the night of the 18th of July. At about 3 - 4 o'clock in the early morning they heard noises and discovered later on that the padlocks on the grill outside the kitchen were broken off.

The wooden door to the kitchen was kicked open, just at the point in time when the householder had gone into the kitchen to investigate. In came a man armed with a short black gun and behind him came a second man armed with a long knife. The man who was armed with the gun has been identified as the applicant Junior Gibson.

The householder said that he had been seeing the applicant for a number of months in the district of Jane Marks, not far from where he lived. He had never actually spoken to him but the applicant is somebody he had seen on several occasions.

The two witnesses who gave evidence for the Crown said that there was electric light in the house. The householder said that he was able to identify the applicant from the light in the kitchen and from the light in the bedroom.

The men having entered the house demanded money and the householder gave up \$5,000 which was in the bedroom. The men searched the bedroom and in the process the applicant stole from the householder's wife her wedding ring and a chain. The householder decoyed the man outside by telling him that he had money in his van. The applicant followed him, but rather than giving money to the applicant, the householder raised a hue and cry. Surprisingly, the applicant ran back into and through the house and when he got to the rear of the house he laid hold of the householder's step-daughter, who was then in the custody of the other robber, placed the gun at her neck and drew her across the road into a cane field where he proceeded to rape her. She was able to see him by electric light which was to the back of the house.

On the 7th of August the householder went to an identification parade and there pointed out the applicant as the person who robbed him and his wife of the \$5,000 and the ring and chain. But there was an even more immediate method of identification. The police having received the report from the householder on the early morning of the 19th of July went to the applicant's home. They knew that he lived in a one-room house to the back of his parents' house and the police officer said that as he approached the house he saw the applicant, who looked in his direction and then ran and escaped.

The police officer went into the room which he knew the applicant occupied and in this room he found a ring on the floor, which ring was identified by the householder and his wife by means of the initials which were on the ring. The police also found clothing and water boots. They found a grey pants, a floral merino and a short rubber water boots which were wet, as also, a red and white handkerchief. These pieces of clothing were identified by the householder and his step-daughter as the articles which were being worn by the applicant on the occasion when he came into their home, a few hours earlier on.

The second incident on which evidence was given at trial occurred on the night of the 25th of July at Georges Plain. A housewife and her two young daughters had retired to bed and about 3 o'clock in the early morning two men, one armed with a gun, and the other with a knife burst into their room. The women heard the place being attacked and the housewife began to scream, whereupon the man who had the gun, upon entry, ordered her to keep quiet and threatened that if she made any further noise, if she screamed anymore, she would be shot. He demanded money from her and she assured him that there was absolutely no money in that room. The men began searching. The woman placed her two daughters behind her and the sixteen year old, with a great presence of mind, escaped through an open door. The mother and the younger child, they too made their escape through that door and screaming ran away into the night leaving the men in the room. When the housewife returned she did not observe any particular loss.

The housewife went to an identification parade on the 7th of August and identified the applicant as the man who came into her house on July 25 and as the one who was armed with the gun. She said that there was a bright electric light in the bedroom when the men entered because she had, prior to their entry, turned on the electric light in that room.

The applicant's defence in relation to the first incident of the 18th of July was that he had known the bus operator prior to the 18th of July and had actually done repair work on his bus. He denied knowing anything about the charges brought against him. He admitted that he occupied

the room which the police said they searched but he said that his brother also occupied that room. He denied that he had taken and left in that room the ring which the householder's wife identified. He admitted that he had worn the clothes which were seen by the police but on an entirely separate and different mission, and he denied having or knowing anything about the second incident which was related herein.

The learned trial judge was very impressed with the witnesses for the prosecution and he rejected the defence and found the applicant guilty as charged.

We see no reason to interfere with the convictions or with the sentences imposed. The applications for leave to appeal are refused.

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