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IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 21/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA

VS.

ROLAND LAWRENCE

Mr. L. L. Cousins for applicant

Mr. Lloyd Hibbert for the Crown

July 4, 1989

ROWE, P.:

The applicant, Roland Lawrence, was convicted on the 24th of January, 1989 for rape in the St. Catherine Circuit Court along with another man, Barnes, who was having a first conviction and the trial Judge properly put him on probation, he then being of the age of twenty years and from whom there has been no application for leave to appeal.

Lawrence was sentenced to ten years imprisonment at hard labour and he has applied for leave to appeal. That application was refused by a single judge of the Court of Appeal. It has been renewed before us and Mr. Cousins, in his usually spirited way, has argued certain grounds of appeal on his behalf. We have not troubled to call upon the Crown for a response, as we think that there is no merit in the grounds argued and that the application ought to be dismissed.

The Crown's case was that at 9:30 p.m. on the 15th of August, 1986, in St. Catherine at a place called Birkshire, three women were at their home, one of them a fifteen year old girl. Two men rushed out of

the bushes at them. One of the men, who had a knife, held on to this fifteen year old girl and the two men then dragged her into nearby bushes. She did not return until the early morning of the following day. The other women, after this one had been abducted, ran and locked themselves inside the house and could not and did not make any effort during the night to rescue her as they had not the physical facilities and they were some five miles away from the local police station. The defence was an alibi in respect of Lawrence.

The prosecution's case turned upon the evidence of the fifteen yeard old girl who said that having been abducted she was taken into the bushes, ordered to remove her clothing and while she was naked the applicant had sexual intercourse with her for some ten minutes, all the time having with him an open knife. When he had completed his exercise he invited the other man to participate and that man also ravished her. They kept her with them until the early morning when she was able to escape and return home. She said that she knew both men before the 15th of August. She did not have any special relationship with either of them but she had seen them repeatedly as she passed by a particular public place where these men gathered to gamble.

Her sister, who was of more mature age, gave evidence that she knew the applicant and the other man previously and she identified the applicant as one of the men who abducted the complainant on that night of the 15th of August.

In his summing-up to the jury, the learned trial judge reminded them that the defence of the applicant was an alibi which he was not required to prove but simply to raise and it was the duty of the prosecution to negative that alibi.

The central issue was, we think, identification and the learned trial judge directed the jury that the witnesses, the complainant and her sister Charmaine, "told you that they knew the accused before", and, indeed, in the case of Barnes, who is not an appellant in this case Charmaine, the older woman, was the mother of children fathered by Barnes' uncle, and

it appears from what the learned trial judge said that the question that Charmaine knew the two accused well was not in question during the trial.

The learned trial judge went on to say:

> "Considering that it was night it is my duty to instruct you that you must consider carefully the evidence as to identification, that is, are they making a mistake when they say that they saw Lawrence that night. Are they making mistake when they say they saw Barnes that night? Because where identification is concerned mistake is a real possibility and a person may make an honest mistake and although the person may be making an honest mistake the person may nevertheless be very convincing as a witness, and more than one witness may make the same mistake and they may be convincing and honest maybe in their error. So you have to examine closely the circumstances in which the identification is alleged to have been made.
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> You consider that it was night. You consider that they were out in the yard. You consider that it was moonlight according to the female witnesses. You consider that both witnesses are saying that they knew the accused men before. You consider the length of time particularly that Christine is supposed to have been with them. In other words, on what Christine is saying, if you believe her evidence, she would have been with them for a long period of time. So you consider that, because you may say to yourselves that naturally if she had been with them almost all night or a good portion of the night then she would have had the opportunity to observe who the men were. You consider that, and if you have any doubts in relation to identification, any doubts whatsoever you resolve the doubt in favour of the accused men."

We think that this direction on identification was accurate, fair and one which a jury could understand and apply with ease.

Mr. Cousins submitted that the witness Christine gave evidence of knowing Barnes, but little, when Barnes had given evidence suggesting that he knew Christine very well. Barnes said that he had caught Christine in a compromising position with another man on one occasion; that he had humiliated her for wearing his shirt without permission; that she had on

occasions run away from her home and had come to his home and that she had reasons of her own to tell an untruth upon him. Mr. Cousins submitted that if Christene was found to be prevaricating as to her knowledge of Barnes then her evidence ought not to be believed at all. In our view it was a question for the jury, having regard to all the circumstances of the particular case, to determine if Christene had underplayed her knowledge of Barnes but had spoken truthfully in respect of the other incidents that had occurred.

The learned trial judge directed the jury that there was no evidence which was capable of amounting to corroboration in this particular case. We think that he was being extraordinarily fair to the applicant. There was evidence before the Court, which we think, could quite properly have put to the jury as amounting to corroboration. We have in mind especially the fact that the elder sister of the complainant said that she was a witness to the abduction; that she knew the applicant to be one of the persons who abducted her; that she was away for all the night and when she came back in the morning she made this report of having been sexually assaulted. We think that that would have been evidence from which the inference of rape could very readily have been drawn. Nevertheless, the learned trial judge quite fairly did not use these circumstances as corroborative evidence.

We think therefore that there was no error in the summing-up of the learned trial judge and all the issues that arose were correctly and fairly put before the jury and that their verdict of guilty in relation to the applicant cannot be successfully challenged.

We have looked at the question of sentence and we are of the view that the ten years imprisonment at hard labour was appropriate. Here is a case in which the applicant had eight previous convictions, some of them for violence and certainly one of them for rape. He had been given quite extended prison terms in the past and they did not seem to have been of any effect upon him in so far as his further criminal activities were concerned. Therefore we think that the sentence of ten years imprisonment at hard labour in respect of Lawrence ought to be upheld and should be made to run from today.