JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 116/05

BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR.JUSTICE HARRISON, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A. (Ag.)

FITZROY TAYLOR
v
REGINA

Applicant is unrepresented.

Mesdames Meridian Kohler, Crown Counsel and Dahlia Findlay, Crown Counsel (Ag.) for the Crown.

April 10, 2008

ORAL JUDGMENT

HARRISON, J.A.

1. The applicant Fitzroy Taylor was convicted on an indictment containing two counts for offences committed by him on the 24th February, 2005. He was tried in the High Court Division of the Gun Court holden in May Pen before Sykes, J. Count 1 charged him with illegal possession of firearm and count 2 with the offence of rape. He was sentenced on the 28th July, 2005 to 2 years and 5 years hard labour respectively.

2. The evidence presented by the prosecution through Woman Constable Davis, is that the accused man admitted to her that he had sexual intercourse with the complainant, that they had something going on and that she was his girlfriend. What was in issue was whether she had consented to this act of sexual intercourse. She contended that there was no consent on her part.

3. Learned Counsel for the Crown, whom we requested to give assistance to the Court, has intimated that she can find nothing which could be put forward on behalf of this applicant. We ourselves have read the papers and the evidence is indeed overwhelming.

The Findings by the Trial Judge

4. The learned judge had reminded himself that the real issue in the case was whether there was consent on the part of the complainant. He warned himself about convicting on the uncorroborated evidence of the complainant. He reminded himself that there was no burden on the accused to prove anything, that the burden was on the prosecution and that it never shifted. He was satisfied he said, that the complainant was a witness of truth and could be believed despite a previous inconsistent statement on her part. He accepted her as an honest person and said that the question which he had to resolve was whether she was reliable when she said that what she saw was a firearm. He accepted that she did see the applicant with the gun and that from her description, he was satisfied that it was a firearm within the meaning of the law.

5. The learned judge was satisfied to the extent that he felt sure that although the light which was in the room was not turned on for a long time, she still had sufficient time to see the firearm. He was also satisfied to the extent where he felt sure, that the complainant had not consented to sexual intercourse with the accused. He came to this conclusion based on the complainant's conduct at the material time. She had said to the accused: "How would you like someone to do this to your mother or baby mother."

6. He also found that the applicant had known that she was not consenting. He accepted that she had folded her arms across her chest when she was lying on the bed, and had turned her face away from the applicant and did not remove her underwear when ordered to do so. He also found that it was the applicant who had pushed her panty to one side and then inserted his penis into her vagina. The learned judge also reminded himself that it was the applicant who had pushed and prodded her to the house. He was therefore satisfied to the extent where he felt sure that the complainant had not consented to sexual intercourse.

The judge completely rejected the unsworn statement of the accused man and found him guilty on both counts in the indictment. We agree with the learned judge's findings. His handling of the case cannot be faulted. The application for leave to appeal is therefore refused. The conviction is affirmed and we direct that sentence is to commence as of the 28th day of October 2005.