[2010] JMCA Crim.12

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 135 OF 2008

BEFORE: THE HON. MR JUSTICE COOKE, J.A.
THE HON. MR JUSTICE MORRISON, J.A.
THE HON. MISS JUSTICE PHILLIPS, J.A.

KENRICK THOMPSON v REGINA

Dwight Reece, instructed by Reece & Reece for the Applicant

Ms. Meridian Kohler for the Crown.

8 February, 2010

ORAL JUDGMENT

MORRISON, J.A.

[1] On 6 November 2008 the applicant was convicted of the offence of rape in the Circuit Court in the parish of Clarendon after a trial before Jones J and a jury. Mr Dwight Reece, who appeared for the applicant in this court, indicated to the court that, after a careful perusal of the trial judge's summing up, he could find no ground that he could properly urge on the applicant's behalf.

[2] With that assessment, we entirely agree. The evidence was that the applicant and the complainant were known to each other. The

applicant accepted that, so no issue of identification arose. But the complainant said that on the day in question, 16 October 2007, she was taking a short cut through a dirt road on her way to the supermarket in the vicinity of the district of Kellits in Clarendon. While walking through the shortcut, at 8:30 in the morning, she said that she saw the applicant, who greeted her, held on to her, pinned her to a tree, pulled down her clothes and finally, after a struggle, forced her to the ground, and there had sexual intercourse with her without her consent.

[3] The account she gave therefore spoke to the force used and suggested that the offence had taken place actually in the track, on the ground.

[4] A doctor was called to give evidence on behalf of the Crown, and she stated that, having examined the complainant, she found that the hymen was not intact and that there was an abrasion interior to the vaginal opening. She said that the abrasions were bruises, and that in her opinion this was caused by forceful sexual activity, and the tenderness that she saw in the area was consistent with a recent injury. She also gave evidence that she had found traces of dirt in the complainant's vagina.

[5] The applicant in his defence did not deny having sexual intercourse with the complainant, but said that he had done so with her consent. On his account, they had a relationship for some six to seven months. He

therefore directly challenged the complainant's credibility in saying that he had had sexual intercourse with her against her consent.

[6] The complainant stated that when she got home on the morning in question, she made a report to her mother of what had taken place and that her mother subsequently took her to the police station.

[7] On this state of the evidence, the learned trial judge, correctly in our view, identified the credibility of the witness as the single issue in the case. He gave full and adequate directions on every matter that could possibly arise. He told the jury about the effect of the recent complaint, and that they should be cautious to treat it only as evidence of her consistency and not as evidence of the facts stated. He also gave a full corroboration warning, telling the jury that it was dangerous to convict on the uncorroborated evidence of a complainant in this kind of case.

[8] The question whether such a warning was necessary on the facts of this case, was obviously a matter for the judge's discretion and he decided that it was and this is not a matter about which the applicant could possibly complain. As I have indicated, the trial judge was full and careful in his directions and, on the basis of what appears on the record to be irresistible evidence, the jury did not have much difficulty in convicting the applicant of the offence charged.

[9] With regard to the sentence, the learned trial judge took into account the circumstances of the case, the fact that the applicant did not have any previous convictions and decided to impose a sentence of 7 years imprisonment.

[10] In agreement with the single judge of appeal who had refused leave to appeal in this matter, we consider that a sentence of 7 years imprisonment in these circumstances was certainly lenient, and cannot be said to be in any way excessive. So, in the circumstances, this application for leave to appeal must be refused. The applicant's sentence is to run from 6 February 2009.