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25 RUSSELL SQUARE
LONDON W.C.1

1.

IN THE PRIVY COUNCIL

No. 37 of 1969

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :-

ERIC JAMES

Appellant

- and -

THE QUEEN

Respondent

C A S E FOR THE APPELLANT

Record

- 10 1. This is an appeal in forma pauperis from a Judgment of the Court of Appeal of Jamaica (Henriques, P., Shelley, J.A. and Fox, J.A.), dated the 27th day of February 1969, dismissing the Appellant's application for leave to appeal against his conviction for rape by the Home Circuit Court, Kingston, on the 4th day of March 1968, when he was sentenced to ten years' imprisonment with hard labour and twelve strokes with an approved instrument. pp.216-220
- 20 2. The Appellant was charged with the offence of rape, in that he p. 209
 - "On the 18th day of April, 1967, in the parish of St. Andrew, had sexual intercourse with Elsada Hall without her consent. At the time of the commission of the said offence the said Eric James was armed with a gun and knife." p. 1
- 3. The principal ground of this Appeal is that the learned trial Judge wrongly directed the Jury

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on the question of corroboration.

pp. 2-61
and
pp.79-94

4. The principal witness for the Prosecution was the Complainant, Elsada Hall, who was 18 years old. At the time of the incident, in April 1967, she was a domestic servant working at 10 Coolshade Drive and lived in a room at the same premises. She testified that she was returning home from a meeting at about 10.30 p.m., and as she approached the building she saw a dark man with no shirt and one trousers foot rolled up and one down. He had a revolver in his right hand and a ratchet knife in his left hand. He said, if you scream out I kill you. He held the knife in his right hand, pointing at her right breast, and held her around the waist. When asked what he wanted he replied "Shut up". He led her up the steps to her room and then she opened the door, turned on the light, and had a slight glance of his face, but he quickly turned off the light and said, "What you noticing me for?" He first asked for her money and she gave him the threepence left from her bus fare. He gave back the threepence and said, "Take off your clothes now." She hesitated for a moment, and he pointed the revolver and the knife at her and said, "Well, it is either one thing or the other." She took off most of her clothes, and he said "Lie down now." He sat on the edge of the bed and took off his water boots. He came over to her with the knife still in his right hand, and held the knife beside her neck. The intercourse lasted for about half an hour. He then said to her, "Get up and put on your clothes." He stood over her with a revolver in his right hand and knife in his left hand until about 5.10 a.m., when he left the room. It was partly daylight and she could see him properly. Before he left, he said, "If you scream out or tell anyone I will come back and kill you." When he left, she told her employers, Mr. and Mrs. Lue who were occupants of the main building. The police were called and she made a report to Detective Hohn. She was examined later by Dr. Sanguinetti. On the 19th of April (the day following the incident), Elsada Hall was standing on the back of the verandah of 10 Coolshade Drive and saw three men walking along Fairfax Drive two chains away from her. She recognized one as the

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person who attacked and raped her the prior night. She spoke to Mr. Lyn (a boarder of 10 Coolshade Drive) then ran down the street to Fairfax Drive. Mr. Lyn followed in his car, picked up the Complainant, and stopped in front of the accused. When asked if he knew the Complainant, the accused said, "No, no, sir this is the first time I see her." He gave his address as 181 Border Avenue and his name as Eric James.

10 The accused and Mr. Lyn drove to the
Constant Spring police station and made a report
to Detective Hohn. Accompanied by Detective
Hohn, the Complainant and Mr. Lyn drove to 181
Border Avenue, where the accused was standing
with a water hose in his hand. The Complainant
pointed out the accused and told the detective
what had happened the previous night. The
accused said, "No, no, you must be a mad woman,
20 for this is the first time I see you." He told
the officer that the girl had taken him for the
wrong person and that he had slept in his own bed
the whole night. He was taken into custody.

In cross-examination, the Complainant said
that she had described to the police the man who
attacked her as "a very black man, round face,
hair needed a cut at the time." He had no shirt,
was wearing dark trousers, and short water boots.
She guessed his height as 5 feet and 9½ inches.

30 5. Mrs. Linda Lue gave evidence that in the
early morning hours of the morning of the 19th
April she heard a knocking on her door. Opening
the door she saw Elsada Hall, who was crying.
Elsada Hall told her that when she came home the
prior evening, someone came from the side of the
building with a knife and gun and asked her to
open the door, and that when she did so, the man
raped her. Mrs. Lue telephoned the Constant
Spring Police Station and made a report, and the
police came to the house later that day.

pp.94-113

40 6. Detective Stanley Hohn testified that he
received a report about 8.45 on the morning of
19th April, and went to 10 Coolshade Drive where
he saw Elsada Hall. Certain articles (a spread,
a sheet, a panty and a slip) were handed to him

pp.114-134

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which were taken to the Forensic Laboratory, and he took Elzada to Dr. Sanguinetti, where she was examined.

He again saw Elzada Hall about 5 p.m., when she made a report, and he went with her to 181 Border Avenue where they saw the accused. Elzada identified the accused as the man who had attacked her the previous evening. The accused said, "No, no, you must be a mad woman. It is the first time I ever see you. Listen officer, this girl is taking me for the wrong person."

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Hohn took certain articles of clothing (pair of trousers and underpants) from the accused, which were taken to the Forensic Laboratory. Hohn arrested the accused, after cautioning him, and the accused said, "It is not me, sir. I sleep in my bed all night last night." From the time he entered 181 Border Avenue until his arrest the accused did not attempt to run away. On the afternoon of the 19th, the accused was not wearing water boots. Detective Hohn made a search for water boots and weapons at the accused's home and place of work but found none.

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Detective Hohn was asked about another incident in the area where a rape of a similar pattern had occurred, except that no gun was involved, only a knife. Some days after the accused was arrested, a man was brought into the station for investigation in connection with the other rape. The man escaped and was still at large. He was of dark complexion, medium built, with black croppy hair, and about 5 feet 7 inches to 5 feet 9 inches in height.

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pp.62-75

7. Dr. Noel March testified that on the 20th April he received eight sealed envelopes and parcels from Constable Hohn. Sealed envelopes marked 'A' contained a vaginal swab taken from Elzada Hall and vaginal smears. The swab had traces of human blood and semen and spermatozoa.

"The smears were examined and I found a few red blood cells and pus cells and spermatozoa. The sealed envelope marked 'B' contained one floral sheet, multi-coloured."

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Exhibit 2 he identified as the sheet he received and examined.

10 "I found human blood present in pale brown stains near the middle, semen was also present near the middle and to one end and spermatozoa was found. I made holes to get samples for examination. Most males over 30 will produce spermatozoa. Spermatozoa lives in semen. There must have been semen to produce spermatozoa. Semen was Group 'O'."

20 The sealed envelope, marked 'C', he identified as the spread, Exhibit 1. He said diluted blood was present in areas marked in blue pencil which he pointed out and he also pointed out an area to the corner of the spread to the court. The semen was present near the middle. Spermatozoa was found in the semen which was Group 'O'. The sealed envelope, marked 'D', contained the pair of white panties, Exhibit 3. Semen was present on the crutch and spermatozoa was found in the semen. No blood was detected. The sealed envelope, marked 'E', contained a pink half-slip which he identified as Exhibit 4. He said human blood was found on the lower back and front, in an area marked in blue pencil. Semen was present in the lower back and front marked in red pencil. Semen was Group 'O'. Spermatozoa was found in the semen.

30 "I also received a parcel marked 'F' containing a pair of dirty old trousers." Exhibit 5 in court.

He said neither blood nor semen was found on the trousers. These were the trousers which Detective Hohn said the accused had handed him.

40 In cross examination, the witness said he also received a sealed envelope marked 'G' which contained a pair of underpants. Neither blood nor semen was found on the underpants. He also received an envelope marked 'H' which contained a pair of dirty grey underpants torn in the middle. Neither blood nor semen was found on either of these underpants, the accused's underpants.

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pp.135-174

8. The defence was an alibi. The Appellant gave evidence that he was married with four children who live at Mandeville. He lives at 181 Border Avenue, Kingston and slept alone there on the night of 18th April 1967. The first time he ever saw Elsada Hall was on the 19th April when he was stopped by her and Mr. Lyn. He described in some detail his encounter with them and his later arrest by Detective Hohn. He said he was 5ft 2½ inches tall.

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9. On the question of corroboration, the learned trial Judge directed the Jury as follows:-

p.179 1.33 -
p.181 1.9

"I must also tell you, members of the jury, that what Mrs. Lue says this girl told her - the complainant - is not corroboration of the complainant herself, for the simple reason that Mrs. Lue is saying something that the witness told her, Mrs. Lue. The complainant, the prosecutrix, Elsada Hall, cannot corroborate herself. On the question of corroboration, members of the jury, I must tell you that though corroboration of the evidence of the prosecutrix, Elsada Hall, is not essential in law, it is in practice always looked for, and it is the practice to warn the jury against the danger of acting upon her uncorroborated testimony, particularly where the issue is consent or no consent. In other words, members of the jury, if you believe, the law permits it, that if you believe what Elsada Hall has told you, and if you feel sure on the material facts as to what she has told you, you can act on it; but my duty is to warn you of the danger of acting upon her uncorroborated testimony.

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What is corroboration? Corroboration is independent evidence which affects the accused by connecting him with the crime. It must be evidence which implicates him, that is which confirms in some material particular not only the evidence that the crime has been committed, but also that the

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prisoner committed it. I shall deal further, members of the jury, on the issue of corroboration when I come to deal with the facts.

10 You may think, and I shall remind you of that presently, that what Dr. Marsh says corroborates the complainant, Elsada Hall, on the issue of intercourse. That is to say, and I shall remind you in detail as to the doctor's evidence and he said semen and spermatozoa was found on certain garments that were on that bed allegedly that night.

On that question of intercourse the doctor corroborates the woman. He also gives evidence about the spread. Semen was present near the middle of the spread. Spermatozoa was also found.

20 So as I say, members of the jury, the doctor seems to me to corroborate the complainant that intercourse had taken place. It is a matter for you, whether you regard the doctor's evidence, in relation to the finding of semen on these various garments and on these various objects, whether it amounts to corroboration, is a matter for you. So that, as I said before, if intercourse had taken place, the question is, was it without consent of the complainant, Elsada Hall? The next question would be, was the prisoner the man? Was he the man that had intercourse with her without her consent?"

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10. The Appellant respectfully submits that the above directions on corroboration were wrong for although the learned trial Judge duly warned the Jury on the danger of convicting without corroboration, he proceeded to invite them to regard as corroboration something which is no corroboration at all. It is submitted that the learned trial Judge was right in telling the Jury that corroboration is "independent evidence which implicates him (the accused), that is which confirms in some material particular not only the evidence, that the crime has been committed, but

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also that the prisoner committed it." However, the learned Judge fell into error in telling the Jury that on the question of intercourse the doctor corroborates" the woman. It is submitted that what requires corroboration is not the fact of intercourse, but independent evidence implicating the accused. It is respectfully submitted that there was no such independent evidence in this case and that it was the duty of the learned trial Judge to direct the jury accordingly.

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11. It is submitted further that the learned trial judge erred in not telling the jury that the identification of the accused by Elzada Hall was highly unsatisfactory.

p. 209

12. The jury returned a unanimous verdict of guilty and the Appellant was sentenced to ten years' imprisonment with hard labour and twelve strokes with an approved instrument.

p. 212

13. The Appellant applied for leave to appeal to the Court of Appeal of Jamaica on several grounds including those urged in this appeal, but in a Judgment, dated the 27th day of February, 1969, the said Court refused the application

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pp.216-202

14. It is respectfully submitted that the Court of Appeal were wrong in holding that the learned trial judge's directions to the jury on the issue of corroboration were adequate.

15. On the 6th day of November 1969, the Judicial Committee of the Privy Council granted the Appellant special leave to appeal in forma pauperis against the Judgment of the Court of Appeal of Jamaica and on the 28th day of November 1969 an Order granting such Special Leave was made by Her Majesty in Council.

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pp.221-222

16. The Appellant respectfully submits that this appeal should be allowed and his conviction and sentence quashed for the following among other

R E A S O N S

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1. BECAUSE the learned trial judge failed to

direct the jury properly on the question of corroboration.

2. BECAUSE there was in fact no corroboration of the evidence of the complainant, Elsada Hall.
3. BECAUSE the learned trial judge failed to tell the jury that there was no corroboration in this case.
- 10 4. BECAUSE the learned judge invited the jury to treat as corroboration something which was no corroboration at all.
5. BECAUSE the Court of Appeal erred in saying that the directions of the trial judge on the question of corroboration were adequate.
6. BECAUSE the identification of the Appellant by Elsada Hall was highly unsatisfactory and the trial judge erred in not so telling the jury.
- 20 7. BECAUSE the judgment of the Court of Appeal is wrong.

EUGENE COTRAN.

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