



After the accused was finished he left and went away and Venita Agard came outside. At that time she was looking for her common law husband. she did not find him immediately but when she eventually did she told him what had happened and they both went to the Police Station where Venita Agard made a report.

The nightgown in which she was sleeping that night was handed to the police and it was found on examination by a laboratory technician on the 30th of April, that is, a little less than two months after the alleged incident to be heavily stained with spermatozoa and blood.

In his evidence at the trial the appellant said he was met next morning by two policemen when he went to the river to fish. They were sergeant Bacchus and Corporal Delves. They told him they wanted him and he went with them. They took his pants, shirt, hat and shoes and carried him to the police station, where they charged him with the offence. He said he knew nothing about Venita Agard and denied going to her house on the night in question.

Two important issues arose at the trial. These concerned the corroboration of Venita Agard's story and the identification of the accused. It was submitted that on both of these issues the trial judge misdirected the jury.

In directing the jury on the question of corroboration the trial judge said:

"..... and the prosecution is not only asking you to accept and believe the evidence of the girl, Venita Agard, but they are asking you to find corroboration in the fact that there was blood on this nightie as deposed to by the sergeant of police and the lab technician and there was spermatozoa on the nightie as deposed to by the lab technician as well."

The law relating to the function of a judge in dealing with the question of corroboration in a case of this sort is well /settled .....

settled. His duty is to point out to the jury the evidence capable in law of being regarded as corroboration and it is for the jury to decide whether or not the evidence does amount to corroboration. He must also explain to the jury what is meant by corroboration. The trial judge told the jury what is meant by corroboration and there is no complaint against the summing up in this respect. The gravamen of the criticism of that portion of the judge's summing up quoted above is (to use the words of counsel for the appellant) that "he misdirected the jury by indicating to them evidence which he stated was corroborative evidence which could not amount to corroborative evidence of Venita Agard's story". In other words what is being said is that the judge told the jury that the spermatozoa and blood found on the night dress were capable of supporting Venita Agard's story that the appellant had raped her. This was of course incorrect for the evidence was entirely neutral in its effect. It did not affect the appellant by tending to connect him with the alleged offence or to implicate him there-with in any way. The Attorney General conceded that this was a misdirection on the part of the trial judge.

As to the second issue of identification the trial judge told the jury:

"and if you find that he (i.e. the appellant) did ask Toney where was Linton Fraser, you will go on further and ask yourselves why he was asking him that, and is it just coincidence that he should have found himself in Fraser's house that night having earlier asked Winston Toney where Fraser was".

It was contended that the use of the words "is it just coincidence that he should have found himself in Fraser's house that night", suggested to the jury that the appellant was in Venita Agard's house on the night in question and, as was rightly contended by counsel for the appellant, this was one of the vital issues in the case to be determined by the jury.

/In .....

In view of the fact that the appellant's defence was an alibi the judge was in effect destroying the whole of this defence by making that statement to the jury. He was telling them that the man who was in Venita Agard's house was the appellant whereas the appellant was saying he was not. On this issue as on the first there was a serious misdirection by the trial judge and as a result the Court is of the opinion that the conviction cannot stand.

The appeal is accordingly allowed, the conviction quashed and the sentence set aside.

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P. Cecil Lewis  
JUSTICE OF APPEAL