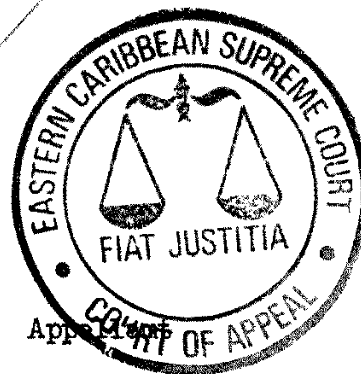

IN THE COURT OF APPEAL

SAINT LUCIA:

CRIMINAL APPEAL NO. 3 of 1976

BETWEEN: WILSON JN BAPTISTE .. Appellant

V.

THE QUEEN .. Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St.Bernard
The Honourable Mr. Justice Peterkin

Appearances: The applicant in person
P.J. Husbands for respondent

1976, October 14

J U D G M E N T

DAVIS C.J delivered the Judgment of the Court:

This is an application by Wilson Jn Baptiste for leave to appeal against two convictions; one for rape and the other for unlawful carnal knowledge of a girl of the age of 13 years.

The application was first made to a single judge and leave was refused.

In relation to conviction the summing up of the learned trial judge was thorough, careful and fair; and the jury had their minds properly directed to the issues that they had to bear in mind and the evidence which related thereto. It is impossible to say that they were not entitled to come to the conclusion that the charge of rape was made out. The application in relation to that offence is accordingly refused.

But this Court observes that the applicant was convicted not only on the full charge but also on the lesser (though just as grave) charge of unlawful charnal knowledge of a female of the age of 13 years. This offence was in relation to the same girl and in relation to the same incident, and that he was sentenced in respect thereof to a concurrent term of two years imprisonment.

It is perfectly clear on reading the record that the two charges related to one and the same incident. It does not seem to this Court right

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or desirable that one and the same incident should be made the subject matter of distinct charges, so that hereafter it may appear to those not familiar with the subject-matter that two entirely separate offences were committed. Were this permitted generally, a single offence could frequently give rise to a miltiplicity of charges; and great unfairness could ensue.

This same point was considered in the case of R. v. Lewis, which is reported in 9 W.I.R. at page 333. In that case, the appellant was charged on an indictment containing two counts, a count for rape and a count for unlawful carnal knowledge. He was convicted on both counts and sentenced to concurrent terms of imprisonment.

On appeal, the Court of Appeal of Jamaica, held that although the appellant was on the evidence, guilty technically, both of rape and carnal abuse, it was undesirable that two convictions should have been recorded against him for what was, for all practical purposes, substantially one offence only arising out of one incident. The trial judge ought not to have treated the counts as two substantive counts as if they were for entirely two differenc offences, and the correct procedure which ought to have been followed was that, on the return of the verdict of guilty on the first count, the jury should have been discharged from giving a verdict on the second and clearly alternative count.

This Court agrees with the views expressed in that decision.

We accordingly allow the application for leave to appeal against the conviction of unlawful carnal knowledge which really merges into the conviction of rape. Having granted leave the Court will treat this application for leave as a hearing of the appeal in relation to the unlawful carnal knowledge conviction and quash that conviction but refuse leave to appeal in respect of the conviction for rape.

(Maurice Davis)
CHIEF JUSTICE

/(N.A. Peterkin)..

(N.A. Peterkin)
JUSTICE OF APPEAL

(E.L. St.Bernard)
JUSTICE OF APPEAL