

GRENADA:

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 12 of 1977

BETWEEN: JOHN MITCHELL - Appellant

Vs.

THE QUEEN - Respondent

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice Peterkin
The Honourable Mr. Justice Berridge (Acting)

Appearances: Mr. K. Radix for Appellant
Attorney-General for Respondent

1978, January 24 and 25

J U D G M E N T

PETERKIN, J.A. delivered the Judgment of the Court:

The Appellant was convicted on 7th November, 1977, of the offence of rape and was sentenced to seven years imprisonment. He now appeals against conviction and sentence.

The facts are briefly as follows. The complainant Lucy Warren set out to go to Palmiste from Grand Roy sometime after 6.00 p.m. to meet her boyfriend. She set out walking but later entered a bus, and while she was on that bus she saw her boyfriend walking back to Grand Roy from his work and so when the bus further negotiated the corner and stopped she got off and walked back in the direction of the boyfriend. By that time he had disappeared and walked ahead, and while she was walking down she heard someone calling, she looked around and saw the accused, and she said that he told her to wait

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for him, that she slowed down and allowed him to come up and that he continued to walk with her. But she went on to say that he held her hand and told her that he wanted to have sex with her. She said that she replied saying that she only had sex with her boyfriend, and at that stage she said that he pulled a knife from his pocket, pressed the blade against her belly, and she became frightened. Then she said he pulled her into the bush and threw her on the ground under a coconut tree and held the knife at her throat. She said that she held the blade of the knife and broke it and threw it away and that he threw away the handle at that stage, but that he then put his hands around her neck and started searching. She said that the next thing that happened was that he pulled down her dress took down her pantie and had sexual intercourse with her against her will.

There was evidence from the doctor which was to the effect that when he saw her that night about 8.00 p.m. her clothes were muddy and she had a bruise at the top of the right elbow. And there was evidence from Corporal Roberts that when he visited the spot where the incident is alleged to have taken place that he found on the scene of the incident the handle of the knife alleged to have been broken. Now that in essence was the case for the Crown.

The defense to this was an allegation by the appellant that the whole thing was a made up story. He said, that he refused to give her money to buy curtains and this was her way of paying him back. He made an unsworn statement from the dock and in the statement he said that Lucy Warren and himself were friends at one stage

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when she was living at Gouyave, that she told him she was coming to live at Grand Roy and he objected to this and that she came there in spite of his objection and he then decided that he would no longer be friends with her. And he went on to say in his statement that she said if she could not get him in good that she would get him in bad, to use his own words. Then he said that on the 28th January, 1977, that she actually was coming to meet him and she said to him that she wanted some money to buy window curtains for the house. He said he refused and told her that if she wanted to live in a house with a man that he, that man, should buy the curtains. Then he said that they had an argument as they were walking down and that when they got to a bridge on the road to use his own words, he took his departure. He said that was all that happened. There was no question of taking her into the bush, there was no question of having sexual intercourse with her. That in short was the defense.

This of course put all the issues at large as it were, that is to say, identity, consent, etc.

Now the grounds of appeal as amended are as follows:

- (1) The learned trial judge was wrong in law when he directed the jury as to what evidence could have amounted to corroboration and
- (2) The learned trial judge was wrong in law in failing to tell the jury that there was no evidence capable of amounting to corroboration.

Now in arguing these grounds Counsel for the appellant referred the Court to two passages in the judge's summing up and submitted that they both amounted to misdirections. The first passage

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concerns the doctor's evidence. This appears at page 13 of the record. The learned judge said this to/jury in dealing with the doctor's evidence and I quote:

"I would ask you to bear that evidence in mind when you are considering the question whether or not Lucy Warren's evidence in that respect has been corroborated because I may tell you now, as is my function in connection with corroboration, that this can constitute corroboration, It is your duty when you come to deliberate to decide whether it does. I can only tell you that it can. It will be for you to decide whether you are satisfied that it does, but I give it to you as a piece of evidence which can constitute corroboration of Lucy Warren's evidence that she was thrown on the ground by the accused on a coconut branch."

He was here of course referring to the evidence that she had mud on her clothes and that she had a bruise at the top of the right elbow.

The second passage complained of concerns Corporal Robertson's evidence, and this is at page 17 of the record. The learned judge directed the jury in these terms. He told them that he found on the scene of the incident the handle of the knife which was alleged to have been broken by Lucy and he went on to say as follows:-

"I would mention that that also is evidence capable of amounting to corroboration of Lucy Warren's evidence."

At a later stage he said this, "but in the case of Corporal Robertson, the knife is capable of amounting to corroboration. It is for you to say whether you regard it as amounting to corroboration."

Now, the learned trial judge in his summing up directed the jury on the need for corroboration and told them that it would be

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dangerous to convict unless there was corroboration of Lucy Warren's evidence, and he also went on at page 11 of the record to direct them as to the meaning of corroboration. He told them that it meant independent testimony which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it. There has been no fault found with this, and this, in our view, was correct.

Unfortunately, however, in our view the learned judge erred in directing the jury in terms of the passages complained of because in neither case did the evidence tend to implicate the appellant. He ought, in the opinion of the Court, when telling the jury of the need for corroboration, to have directed them that there was no evidence capable of amounting to corroboration but that it was still open to them if satisfied that the complainant was speaking the truth, and after paying regard to the warning, to convict the appellant.

I should like at this stage to refer to the case cited to the Court by Counsel for the appellant, that is the case of Eric James against the Queen. This case went to the Privy Council, and they decided in part in that case that, in cases where there was none, it was a serious misdirection not to tell the jury that there was no evidence capable of amounting to corroboration that the complainant was raped and raped by the appellant.

In the instant case the learned judge went one stage further and directed the jury that there was such evidence when, indeed, there was none. The jury, therefore, in this case might have felt

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that it was safe to convict in spite of the warning because they were directed that there was evidence capable of amounting to corroboration of the complainant's testimony.

We are not able to say that a reasonable jury properly directed would have come to the same verdict. Accordingly, the appeal will be allowed, the conviction quashed, and sentence set aside.

(N.A. Peterkin)
JUSTICE OF APPEAL

(N.A. Berridge) (Acting)
JUSTICE OF APPEAL

DAVIS, C.J.:

The appeal is allowed. The Court will order an entry of acquittal.

(Sir Maurice Davis)
CHIEF JUSTICE