

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO: 04/96

BETWEEN:

ALFORD HOYTE

APPELLANT

AND

THE QUEEN

RESPONDENT

Before:

The Rt. Hon. Sir Vincent Floissac	-	Chief Justice
The Honourable Mr C.M. Dennis Byron	-	Justice of Appeal
The Honourable Mr Satrohan Singh	-	Justice of Appeal

Appearances:

Mr A. F. Williams for the Appellant  
Mr Brian Cottle for the Respondent

-----  
March: 28, 1996  
-----

### JUDGMENT

The fundamental issue in this appeal is whether the quality of the virtual complainant's identification of the appellant was so poor as to render the appellant's conviction of rape unsafe and unsatisfactory.

There can be no doubt that the quality of the identification was seriously impaired by an irregularity in the identification parade where the appellant was the only person who wore a headgear. However, the irregularity was neutralised by the following circumstances:-

- (1) The learned judge adequately warned the jury of the danger of conviction on uncorroborated visual identification and the reason for that danger.

- (2) The virtual complainant did not rely solely on visual identification at the identification parade. She testified that she had known the appellant since 1980 or thereabouts and recognised him by the side of his face, his height and his voice. She unhesitatingly and confidently selected him after he had uttered the words which he allegedly uttered at the time of the alleged rape.
- (3) The appellant admitted that he was at or near the scene of the rape at the time it was committed. There was therefore opportunity for him to commit the offence. This opportunity is supporting evidence that he had committed the offence.

In those circumstances, we do not entertain a lurking doubt that justice may not have been done by the verdict. Without that lurking doubt, we cannot declare the verdict to be unsafe and unsatisfactory. Accordingly, we must dismiss the appeal against conviction.

This is a case where the appellant nocturnally broke and entered the virtual complainant's bedroom while she was asleep, woke her up and raped her having regard to the circumstances of the offence, the appellant's previous conviction and sentence for entering a dwelling house and the prevalence of the offence, there can be no justification for reducing the sentence the appeal against which must also be dismissed.

.....  
Vincent F. Floissac  
Chief Justice

.....  
C.M. Dennis Byron  
Justice of Appeal

.....  
Satrohan Singh  
Justice of Appeal