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INSTITUTE OF ADVANCED  
LEGAL STUDIES  
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25 RUSSELL SQUARE  
LONDON W.C.1

No. 37 of 1969.

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN

ERIC JAMES Appellant  
AND  
THE QUEEN Respondent

CASE FOR THE RESPONDENT

- 10 1. This is an appeal from a judgment of the Court of Appeal of Jamaica (Henriques P., Shelley and Fox JJ.A.) dated the 27th February, 1969 which dismissed the Appellants application for leave to appeal from his conviction for rape by the Home Circuit Court, Kingston, (Robinson J. and a jury) on the 4th March, 1968, when he had been sentenced to ten years imprisonment with hard labour and twelve strokes with an approved instrument.
- 20 2. The Appellant was charged with the offence of rape, the particulars being that on the 18th April, 1967, he had had sexual intercourse with Eلسada Hall without her consent, and that at the time of the offence he had been armed with a gun and a knife.
- 3. The evidence called by the prosecution included :-
- (a) 30 Eلسada Hall, the complainant, said that she was 18 years old and lived and worked as a domestic servant at 10 Coolshade Drive; on the 18th April, 1967 she had returned home at about 10.30 p.m. As she

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had approached a separate entrance which she used, a man approached her with a revolver in his right hand and a knife in his left hand. The man had threatened her and made her go into her room; inside she told him that she only had threepence, which he had taken and then returned, and had then told her to remove her clothes; he had put down the revolver but kept the knife in his hand pointing at her; he then insisted against her wishes on having sexual intercourse with her, which lasted for about half an hour. After she had dressed, the man remained standing over her until 5.10 a.m. when it was partly daylight. At that time she was able to see the man clearly for the first time, and was then able to identify the man as the Appellant; as he left, he threatened to kill her if she told anyone; she waited some minutes and then went to her employers, Mr. and Mrs. Lue, and made a complaint, as a result of which the police were called. On the same day at 4.45 p.m. the complainant was standing on the verandah at her house when she saw the man who had attacked her walking along a road 40 yards away; she went after him in a car driven by Mr. Lyn, a lodger in her house, and the two of them spoke to the Appellant; he denied having seen her before, and on request gave his correct address; she then went to the police and made a full complaint to Detective Hohn; the detective took her to the address which the Appellant had given where they found him working in the garden, he again denied seeing her before.

- 94-113            (b) Mrs. Lue, the complainant's employer had found her crying at her door at 6.30 a.m. on the 19th April; the girl had complained of being raped the night before, and given some description of the man involved.
- 114-134           (c) Detective Hohn said that 8.45 a.m. on the 19th April, 1967, the complainant had made a complaint to him; he had seen her again at 5 p.m. when they went to 181 Border Avenue and there saw the Appellant; the complainant had then accused the Appellant

10 of being the man involved, but he had denied knowing her; the witness had taken some of the Appellant's clothes for examination: in cross-examination he said that there had been another case of rape at the same time in the same area, for which another man had been arrested, but that he had escaped from police custody; that man had fitted the general description first given to him by the complainant.

(d) Dr. March, a Government pathologist said that Elzada Hall had had intercourse recently, from tests he had made, and that there was semen on her clothing and bedding; there had been no semen on the clothing of the Appellant which he had examined.

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20 4. The Appellant gave evidence on oath; he said that he was a general labourer, living at 181, Border Avenue, Kingston 8; on the 18th April he had been working at a building site at 8, Highland Drive, finishing just before 6 p.m. when he went straight home; he had stayed at home until 5.30 a.m. the following morning; he had been living alone, but he visited his wife and four children every fortnight in the country; before he was arrested he did not know where Coolshade Drive was; he had never seen the complainant before she and a man had spoken to him on the afternoon of 19th April; on that occasion she had not accused him and had not seemed certain that she had seen him before; shortly afterwards the police arrived and the complainant had accused him of the rape; he had denied it and said he was at home all night; he had never owned a revolver or a knife, and the police had taken the clothes he had worn on the 18th April. In cross-examination he denied that he had ever been to the complainant's house or had attacked or raped her.

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40 5. Robinson J. began his summing-up to the jury by telling them that they were the judges of fact in the case; they might think that on the night in question Elzada Hall had had intercourse; Counsel for the defence had accepted that she had been raped, if the jury

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was satisfied that she had been raped, then the next question was whether the Appellant was the man concerned; finally they would have to consider whether he had been armed with a gun and a knife as the complainant had said. In this case the identification of the Appellant was of the utmost importance, since the first question for the jury was whether he was the man who had forced his way into the complainant's room; the learned judge then directed the jury upon the onus of proof, and upon the facts necessary to establish rape; he then directed them upon the manner in which to consider the complaint made to Mrs. Lue, and went on:-

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p.181 l.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 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 that 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 prisoner committed it. I  
"shall deal further, members of the jury, on  
"the issue of corroboration when I come to deal  
"with the facts. You may think, and I shall

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"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.

10 "On the 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. So as I saw, members of the jury, the doctor seems to me to corroborate the 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  
20 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?"

30 6. The learned judge then directed the jury at length upon the evidence given in the case; after detailing the evidence given by Dr. Marsh, he said :-

"In dealing with corroboration this morning, members of the jury, I pointed out to you, and this is a matter for you, but I pointed out to you that it seemed to me that the Doctor corroborates the complainant that intercourse had taken place. As I say, it is a matter for you; but I went on to say and I repeat if intercourse had taken place you will have to decide on what facts you accept, was it  
40 without consent. If intercourse had taken place without consent of the complainant, then who was the man that had intercourse with this complainant? In other words, was it the prisoner that had intercourse with her as she alleges?"

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7. The jury found the Appellant guilty of rape, and he was sentenced to the statutory penalty of ten years hard labour and twelve strokes.

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8. The Appellant applied for leave to appeal to the Court of Appeal (Henriques P. Shelley and Fox JJ.), but on 27th February, 1969, his application was refused.

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Henriques P., giving the judgment of the Court of Appeal, said that the main ground argued had been that the trial judge had not fully or adequately dealt with the issue of corroboration; the learned President referred to the passages in the summing up which dealt with corroboration; and said that the trial judge had clearly mentioned the three essential elements necessary to constitute guilt, which were the fact of intercourse, that it was without consent, and that the man concerned was identified; in more than one passage, the trial judge had stressed that it was in relation to the issue of intercourse that there existed corroboration in the Crown's case; the court had carefully considered the directions upon the issue of corroboration, and in the particular circumstances of the case, those directions had been adequate; the present case was distinguishable from The Queen v. Trigg (1963) 1 W.L.R. 305, where no direction at all about corroboration had been given. Two further minor grounds of appeal arising from the evidence had also been argued, but there was no merit in either of them, and the application would accordingly be dismissed.

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9. The Respondent respectfully submits that the reasons given by the Court of Appeal for dismissing the application were correct. The only criticism made of the summing up to the jury was that the directions upon the issue of corroboration were inadequate. It is submitted that the directions upon the law of corroboration were full and correct, and that in relating the law to the facts, the learned judge correctly related the evidence of Dr. Marsh only to the issue of whether intercourse had taken place. The learned judge made it clear to the jury that the real issue in the case was that of

identification of the Appellant, and it was not suggested to the jury that the evidence of Dr. Marsh was of any assistance to them on that issue. If the trial judge was wrong in using the word corroboration in relation to the evidence of Dr. Marsh, albeit in the limited context he described, it is submitted that such use had no effect upon the conviction of the Appellant.

- 10 10. The Respondent therefore respectfully submits that this appeal should be dismissed, and the judgment of the Court of Appeal Jamaica should be confirmed, for the following, among other

R E A S O N S

1. BECAUSE there was a sufficient direction upon the issue of corroboration
2. BECAUSE there was no misdirection upon the issue of corroboration
- 20 3. BECAUSE the Appellant has suffered no miscarriage of justice.
4. BECAUSE of the other reasons in the judgment of the Court of Appeal.

MERVYN HEALD

No. 37 of 1969.

IN THE PRIVY COUNCIL

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O N    A P P E A L  
FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N

ERIC JAMES

Appellant

AND

THE QUEEN

Respondent

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CASE FOR THE RESPONDENT

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