

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 48/89

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE CAMPBELL, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

REGINA v. BASIL SIMMS

Application for leave to Appeal

Mr. Brian Sykes for Crown

15th January and 7th February, 1990

CAREY, J.A.:

In the Home Circuit Court on 4th April, 1989 before Ellis, J. and a jury, this applicant was convicted of the offence of rape and sentenced to seven (7) years hard labour. On 15th January, 1990 we refused his application for leave to appeal both conviction and sentence, directed his sentence to commence 4th July, 1989 and promised to put our reasons in writing. We would normally have given an oral judgment but the recording machine was not available.

The facts need only be outlined. On 27th February 1989 a young lady from the country whom we will call Miss S. was standing at a bus stop on Camp Road intending to go to Cross Roads. A car came up and the driver offered her a lift which she gratefully accepted. The driver was a stranger to her. In the course of the journey, he gave his name as Dr. Simms, then enquired what work she did. On learning that she was unemployed, he offered her a job promising to take her to his office. He drove to Abbey Court

Apartment and took her to a room which he informed her, was his office. At this point he demanded sexual intercourse but over her protests, he succeeded in being intimate with her. He then returned her to Cross Roads. Before this, he wrote his name on a piece of paper and suggested that she contact him. The young woman spoke with a friend but did not make a report to the police until some two (2) days later, after she had spoken to an aunt. She went with the police to Abbey Court Apartment where she identified this applicant as her ravisher. He denied that she had ever been there. Subsequently when he was arrested he remarked to the police officer "you have smashed my corner."

The applicant made an unsworn statement in the course of which, as the learned trial judge observed, he recited a liturgy of conspiracy on the part of everybody including public officials. He did admit taking Miss S. to Abbey Court Apartment. He called as a witness a security guard who was on duty at the material time. This witness confirmed that Miss S. had arrived with the applicant and both went to the applicant's apartment. His house-hold help also gave evidence on his behalf. She said she was at the apartment all day between 8.30 a.m. to 5.30 p.m. and no one came there. The appellant, she testified, did come to the apartment but was there for a short time only.

The facts were quite straightforward and could provide no problems for a jury of seven (7) reasonable persons. It did not. The jury arrived at their verdict in about half an hour. We examined the directions of the learned trial judge. He gave clear, correct and adequate directions on corroboration. He advised that there was none. He highlighted the other issues which arose for consideration.

We can find no reason whatever to fault those directions.

As to the sentence imposed it is well within the range for such brazen and deplorable conduct. We cannot leave this case however without commenting on the intemperate language of the trial judge in imposing sentence.

The following dialogue appears at pages 49 - 51.

"HIS LORDSHIP: You have been found guilty by seven persons here, a verdict with which I am in entire agreement. You are the most despicable man that I have ever come across. You are wicked, you are malignant, you are a cancer in this society. You talk about innocence and truth, and you come in this court, and you malign from Director of Public Prosecutions down to the woman who you ravished. You are the person who would malign and blackmail your mother.

ACCUSED: My Lord ...

HIS LORDSHIP: Keep quiet!

ACCUSED: I gave the witness

HIS LORDSHIP: Keep quiet - tell him to keep quiet.

ACCUSED: I gave it to the Director of Public Prosecutions.

HIS LORDSHIP: You would malign your own mother and perhaps this is why you could not put your mother's name on this, you would malign your own mother to get out. You are a wicked man. You are completely amoral not immoral "amoral". You are void to any moral.

ACCUSED: Worse was said to Jesus Christ

HIS LORDSHIP: You are a worthless fellow; and you come and call the name of Jesus in your mouth. Be careful

The jury have convicted you of rape which is a serious offence and the only thing that one considers in rape is how much time you are to get. You are fortunate on the record there that you have something about it is suspended and the two years have passed, otherwise I would have dealt with you on that.

Talk about you wish to appeal and you giving verbal notice of appeal, you worthless man. And you malign people, you call everybody's name you call who conspire against you. Look at you! You are the conspirator here. You have conspired to drag justice and fair play into the mud.

You talk about you are a doctor, you are a fraud. Come to talk about truth, you call the word "truth" in your mouth; and you call about Jesus in your mouth, you are a worthless fellow.

You go to prison for seven years hard labour.

ACCUSED: Could My Lord advise me on appeal?"

In a paper entitled "Conduct of Trials" delivered at a Judicial Seminar at Mallards Beach Hotel 6th November, 1988, the author made this observation at page 15:-

"Some sentencing exercises call for fatherly advice: others do not. For my part, sentencing should be as dispassionate as any other part of the trial process. It must be left to the judge's sensitivity and innate courtesy, not to abuse his powers of punishment. Sentence should not amount to a prolix sermon nor an abusive tirade."....

We do not think that it can be doubted that trials ought to proceed with decorum, dignity and despatch. That ideal however is ill-served by remarks such as we have quoted.

We do not propose to interfere with the sentence for the reason already stated. The application for leave to appeal is refused and we order the sentence to run from 4th July, 1989.