JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 134/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (AG.)

REGINA

VS.

LOWELL MORRISON

Leslie Cousins for Applicant

Miss P. Williams for Crown

September 24, 1990

ROWE P.:

This is a case in which the applicant Lowell Morrison was convicted in the St. Catherine Circuit Court for rape, the particulars being that he on a date in April of 1988 had sexual intercourse with a girl then about the age of ten years of age without her consent. He was sentenced to serve a term of ten years imprisonment at hard labour.

Mr. Cousins filed and has referred to some five grounds of appeal. He has said that:

(1) The Verdict of the Jury is against the weight of the evidence and contrary to Law;

(2) That the Indictment preferred against the accused was wrong in Law as at the time of the offence the Amending Law raising the age of consent to 16 years had not been passed;

(3) That because of the considerable time which elapsed between the purported commission of the offence and the mother's discovery of the complainant's condition, evidence of the complainant elicited by questions put by the girl's mother was inadmissible and ought not to have been presented to Jury;

(4) That the sentence imposed was harsh and excessive;

(5) That evidence prejudicial to the accused was wrongly admitted.

For the Crown the case is a very very simple one. On a day in April, said the complainant, she lived in the same compound as did the applicant and while her parents were away from home and her blind grand-parent was the only adult around, the applicant asked her to go to the shop to purchase cigarettes for him. Upon her return he held her, drew her into his room and had sexual intercourse with her. Thereafter she said she felt her underclothes wet and there was blood coming from her vagina. However, she did not make any report to her mother or to anyone about the incident. In September of 1988 on an occasion while she was having a bath her mother observed that her stomach was protruding and concluded that the child was pregnant. She taxed her with what had happened to her.

According to the Crown's case the girl then told her mother what the applicant had done and the mother sent for

the applicant. When he came and the accusation was made to him he said:

> "What does a man do to get a girl pregnant?"

And as if he were speaking to the girl he said:

> "Did I discharge?"

When he was about to leave he is alleged to have said:

> "Fatty if is me, put the prison on top of me."

During the course of his summing-up the learned trial judge correctly directed the jury as to the burden and standard of proof and he dealt with the issue of corroboration. When he came to deal with the possible effect of the conversation between the applicant and the girl's mother the learned trial jude said that it could not in law amount to corroboration and he directed the jury to treat the case as if it was one dealing with the uncorroborated evidence of the child.

In our view what the applicant said to the girl's mother was a direct and clear admission that he had had sexual intercourse with her. What he was probably challenging was that he could be the probable father of the child as he had not 'discharged'. In those circumstances this was evidence which was capable of amounting to powerful corroboration of the girl's testimony.

We think therefore that the summing-up was unduly favourable to the applicant and that his conviction is unassailable.

He was about 54 years of age at the time of the commission of the offence and his only previous conviction had been from 1953, some twenty odd years ago. We have

considered that a sentence of ten years at hard labour is somewhat out of line with the sentences which are being imposed for this very very serious offence in these Courts and we are prepared to reduce the sentence to one of seven years imprisonment at hard labour to commence three months from the date of his conviction, that is on the 4th of January 1990.

The application for leave to appeal against conviction is refused. The application for leave to appeal against sentence is granted and the sentence is reduced as we have indicated.