

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 7/90

COR: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A (AG.)

R. v. DENZIL RICHARDS

Canute Brown for the Applicant

Miss Karen Reid for the Crown

18th March, 1991

GORDON, J.A. (AG.)

This is an appeal from a conviction on an indictment in the Home Circuit Court on charges of incest. The applicant was sentenced to three years imprisonment which was suspended for 2 years.

The prosecution's case was contained almost entirely in the evidence of the complainant, Hilda Richards, the child of the applicant and Evelyn Barrett. This child was born in Trelawny and spent most of her infant life with relatives in Trelawny, then as an adolescent she went to Kingston and on the night of the 18th of July, 1988 she turned up at her father's home seeking accommodation. With some reluctance she was accommodated and she remained in the home until the 17th January, 1989 when she left. Her evidence is that on five occasions commencing on the 9th of August, 1988 and ending on the 15th of December, 1988 she was sexually assaulted in the home by her father. The five occasions are the subject of five counts on the indictment. At the time when she went to reside at this home the applicant was living with his commonlaw wife one Lelieth Martin. Miss Martin was a student at University of the West Indies but because of the intervention of hurricane

"Gilbert" in September 1988 she did not return to the U.W.I for studies until late October. She contended that she remained away from home from Sunday to Thursday and spent from Thursday to midday or there about on Sunday at her home in Anchovy.

The complainant said that despite the fact that she was disturbed and upset by her father's unwanted attention she did not make a report to anyone. On three occasions she said she packed up to leave the home, she had no where to go but she was persuaded by her step-mother to remain. She never did tell her step-mother why she wanted to leave and in this respect her step-mother agreed that on two or three occasions Hilda did pack up to leave and she the step-mother persuaded her to remain in the home. She said as a result of her father's attention, she was upset, she cried and she had a nervous breakdown, she was very unhappy about the whole affair and sometime after the last incident in December she told her mother and her mother took her to the Police Area I Headquarters in Montego Bay where a formal report was made.

When the accusation was brought home to the father he intimated that the child was malicious, she was put up by the mother as a spy in his home and that she was not speaking the truth. He denied the allegations. In his defence, the applicant said that when the complainant came to live at the house, he was very reluctant to have her there but he allowed her to remain because his fiancée Lelieth Martin persuaded him. He said the complainant had some very unbecoming habits, that she was lazy and he wanted her to leave but she remained. He felt that the charges were made because he had been sending his paramour to the University and he had not supported Hilda nor did he sent her to school, and Hilda and her mother were trying to get back at him by making this complaint. Miss Martin in her evidence said that she persuaded the applicant to allow Hilda to remain at the home and that she and Hilda related very

well with each other; they spoke frequently and they were reasonably chummy. They discussed many matters together, but Hilda never complained about the attention of her father, although she regarded him as being miserable and they had an occasional fuss, and she complained that the father/daughter relationship that she expected did not exist.

Before us Mr. Brown complained that the verdict was unreasonable and cannot be supported having regard to the evidence. He pointed out what were features of the case which should have persuaded the jury to entertain doubts as to the truthfulness of the complainant's evidence. In the first instance, the fact that she failed to complain to anyone; secondly, the absence of medical evidence; thirdly, the fact that Miss Martin said that she returned from the University on the 15th December and was at home when the last offence was alleged to have been committed. Apart from these complaints Mr. Brown conceded that the picture of the prosecution's case was fairly and accurately dealt with by the learned trial judge, and that the defence was fairly put to the jury. Nevertheless, he contended that the verdict was unreasonable and could not be supported having regard to the evidence.

The learned trial judge in a very detailed and very well structured summing-up dealt with all the factors in the case, the absence of corroboration, which he stressed, the question of accomplice, the failure of the complainant to make any report to anyone of her father's attention, the absence of medical evidence. Indeed, as Mr. Brown has conceded the summing-up was very, very fair and cannot be challenged on any ground. Having given consideration to the submissions of counsel, and having carefully perused the transcript we find that there is no merit in this application. It is accordingly dismissed.

It should be observed that Mr. Brown had indicated that he did not wish to pursue an appeal against sentence. That

is astute on his part in that the sentence that the Court imposed could be regarded in the light of prevailing circumstances as very favourable to the applicant indeed.