JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 25/89

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA

VS.

ASQUITH WILLIAMSON

Miss Helen Birch instructed by
Delroy Chuck for Appellant

Miss Sheryl Richards for Crown

February 19, 1990

Rowe P.:

The single ground argued in this appeal is that the trial judge failed to direct the jury properly on the law of identification, in particular that he omitted to warn the jury that an honest witness can be a mistaken one. It has merit and the appeal will be allowed, the conviction set aside and the sentence quashed. We proposed to order a new trial to commence in the next ensuing Circuit Court.

This case required care and patience on the part of the trial judge. Complaining of rape, was a sixteen year old girl to whom on the prosecution's case her ravisher was well-known. He was her uncle and they lived on the same premises.

The incident is alleged to have occurred at night. On the case for the Crown the complainant was ambushed at night as she walked along a track. She was held in the front of her dress and, to subdue her screams, she was punched in the nose and dragged into a hut where she was placed on a bed and raped throughout the night. Evidence was led that she recognized the attacker by his voice to be the appellant.

At no point in his summing-up did the trial judge even make a passing reference to the issue of visual identification. Certainly he gave no warning as to the dangers of visual identification, he referred to no weakness in the identification evidence, he gave no reasons for caution in acting upon visual identification evidence. He ignored the entire issue altogether.

Identification was an issue that had to be faced. The appellant raised the defence of alibi and thereby put the prosecution to proof of every ingredient in the case. This was not a case where the accused was relying on consent or one in which the attack on the girl occurred at high noon by a well-known member of her family. In keeping with recent decisions of this Court, this conviction cannot stand. It must be set aside with the result stated earlier.