

IN THE COURT OF APPEAL

ROBERT HONORE

APPELLANT

V/S

THE REPUBLIC

RESPONDENT

Criminal Appeal No. 3/92

Mr. F. Bonte for the appellant

Mr. A. Fernando for the respondent

JUDGMENT OF THE COURT

The appellant was prosecuted before the Supreme Court for the offences of rape and murder (contrary to section 131 and section 193 of the Penal Code). He pleaded guilty to the charges and was sentenced to 6 years imprisonment on the charge of rape and life imprisonment on the charge of murder in accordance with section 194 of the Penal Code. He is appealing against his conviction and sentence on the grounds that (1) the indictment "was defective in that the charge of rape should not have been joined with that of murder" or "tried at the same time" (2) the learned trial judge erred in not fully investigating the circumstances as per sec. 230 of Cap.45".

Expatriating on the first ground Mr. Bonte for the appellant stated that the joining of the charge of rape to that of murder offends the rule that different offences ought not to be joined with a Count of murder as this may cause prejudice to an accused party. Joinder is permissible when the charges are based on the same facts. In the instant case we find that the facts of both charges are the same. They arise out of the same transaction. This being so the joinder is permissible and this could have caused no prejudice to the appellant. Counsel did not address us on the sentence passed on the charge of rape. From what is on record we do not find the sentence passed on the appellant in respect of the charge of rape wrong in principle or manifestly excessive.

The first ground of appeal fails.

We will now turn to examine the second ground of appeal.

The procedure for trial of a murder case is laid down in section 230 (1) of Cap. 45 as amended. It reads as follows: "The charge shall then be read and if necessary explained or interpreted to the accused and the Registrar shall call upon him to plead thereto. If he pleads guilty the Court shall hear his Counsel and if the Court is satisfied that an accused understands the matter and intends to admit without qualification, that, he committed the offence charged and

that the case does not involve any issue which ought to be tried, the Court may convict him on his plea". Mr. Bonte argued that the learned judge did not comply with the procedure laid down by section 230 (1) of Cap 45 inasmuch as he did not hear Counsel and did not satisfy himself that there was any triable issue.


The record shows that after the plea of guilty was recorded the learned judge asked Mr. Fernando Counsel for the Republic to address the Court as to the facts of the case. Counsel for the Republic then recited the facts. The defence did not dispute the facts as recited by counsel for the Republic. In the recital of facts the appellant said that "he waited for the girl to pass by with the intention of having sexual intercourse with her. He asked the girl to have sex with him. She refused and she hit him with her umbrella. He got hold of the girl and dragged her into to the bushes. The girl fell and struggled to get away and at that stage he tied her neck with a cloth strap". He said he had carried the cloth strap with him with the intention of using it to tie her neck if she were to resist his advances.

On the recital of facts as recorded we are unable to gauge the degree of violence used on the girl by the appellant. In a case of murder the degree of violence used is important to find the intent of an accused. Murder is a complex and most serious charge. In fact in murder cases in some Commonwealth jurisdictions though there is a plea of

guilty there is a full hearing as if the accused has pleaded not guilty. In our view the procedure laid down in section 230 (1) of Cap. 45 should be strictly followed and Counsel should be heard as required by the section. The Court should also find out whether there is any triable issue. This has not been done in the present appeal. In the circumstances we would allow the appeal in respect of the charge of murder set aside the conviction and sentence and order a new trial before another judge. The conviction and sentence of 6 years for rape is maintained.

Dated 28th October 1983


..... President


..... Justice of Appeal


..... Justice of Appeal