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IN THE SEYCHELLES COURT OF APPEAL

ROBERT MARENGO

APPELLANT

V.

THE REPUBLIC

RESPONDENT

Criminal Appeal No. 10 of 1995

Mr. A. Derjacques for appellant

Mr. A. Fernando for respondent

JUDGMENT OF THE COURT

Appellant was prosecuted before the Supreme Court for the offence of rape in breach of section 130 and punishable under section 31 of the Penal Code. It was alleged that on or about the 15th day of December 1992 at Ma Pavillon, appellant had carnal knowledge of one Stella Priscilla Port-Louis without her consent. In a considered judgment the learned Chief Justice who heard the case judgment found appellant guilty of the offence and sentenced him to undergo 10 years imprisonment.

The judgment of the learned Chief Justice is being challenged on the grounds that (1) the conviction is against the weight of the evidence; (2) although the Judge warned himself about the requirement for corroboration he should only have convicted in the circumstances of the case, if such evidence was found. It was insufficient on these facts to place reliance on the complainant's evidence; and (3) the sentence of 10 years imprisonment was manifestly excessive.

The prosecution relied entirely on the evidence of the complainant to prove its case. In her evidence complainant said that Robert Marengo, appellant in this case, called at her place, on 15th December 1992, posing as a

soldier who was looking for two army officers who had escaped in the vicinity of her house. He enquired whether she had seen them. Complainant said she had not seen them. He left and complainant went to her school where she was a physical Education Instructor. When she reached her school she was informed that there was a telephone call for her from her home. She suspected that the call was connected with the visit of appellant to her place in the morning. She enquired from her home and was told that the 'soldier' (i.e. appellant) was saying that they were harbouring the army officers who had escaped. Complainant sought the advice of the principal and the police at the Beau Vallon Police Station and they advised her to go home and find out what was the matter. When she returned home she saw appellant who was with her cousin Jimmy. Appellant told her that he had found out the army officers who had escaped and that they had been arrested. Appellant further said that the army officers had spent the night at her place and they left in the morning. Complainant got very scared on hearing all this. Appellant asked her to accompany her to a place where she would have to give a statement to two high army officers in connection with the army officers who had escaped. She reluctantly accompanied appellant. Her two sisters and her cousin Jimmy also accompanied them. On their way, appellant asked her sisters and cousin to wait at a certain spot. Appellant took complainant to the house where allegedly the two high military officers were. After walking for some distance appellant asked her to wait for some time on the ground that the high military officers had been out to see the two army officers who had escaped., After waiting for some 30 minutes she told appellant that she was going back to her sisters and cousin. Appellant then asked complainant to make a deal with him. She declined and started going back towards the spot where she had parted with her sisters and cousin Jimmy. Appellant followed her. At a certain distance appellant caught hold of her hands and pulled her towards him. Complainant asked him to leave her hands.

She struggled and freed herself and started running. Appellant ran after her caught her, placed his hand round her neck as, if to strangle her. She put up a strong struggle but appellant swore at her and threatened to kill her. She could not struggle for long as appellant was much stronger than her. The ground was slippery, she was overpowered and was pushed on the ground. Appellant took out her clothes and raped her. After ravishing her appellant warned complainant that if she would report the case he would kill her. Appellant told complainant to tell her sisters and cousin that everything was O.K. Complainant under the grip of fear did what appellant told her. She did not tell her sisters and Jimmy about what had happened. When she reached home after she had a bath she related to her cousin Jimmy what had happened. She also told Jimmy about the threats of death uttered to her by appellant if she would report the matter to the police. Her cousin Jimmy told her not to go to the police in the circumstances. She admitted that when a police officer from Beau Vallon Police Station called to find out what had happened she said everything was O.K. The next day on the advice of her cousin Sinon she reported the matter to the police and she was taken to the hospital. The doctor who examined complainant found a "suck mark" which is commonly called a "love bite" on the front of the throat. He also found 5 tears in her hymen which were bleeding.

Expatriating on the grounds of appeal counsel for appellant contended that the circumstances of the case are such that there should not have been a conviction without corroboration. He referred to the "love bite" on the person of the complainant which in his view would support the appellant's version, that there was consent. He also referred to the failure on the part of complainant to report the incident to her sisters and cousin immediately after the occurrence, her failure to go to the police the same day. In his view the lack of evidence to support or indicate struggle or violence

is suggestive of the version that there was consent. He also mentioned there was no evidence of stress. We do not find any merit in the submission of Counsel. The learned Chief Justice after analysing the evidence believed every word that complainant said in Court. He gave himself the warning of convicting on the uncorroborated testimony of the complainant. Corroboration of the evidence of a complainant is not essential before convicting. From the evidence accepted by him the learned Chief Justice rejected the defence of consent and found appellant guilty of rape. He cannot be faulted for reaching this conclusion.

As regards sentence we would point out that appellant was 31 years of age at the time of the commission of the offence. Complainant was a virgin of 19 years. The victim was "tricked and lured to a secluded place" when she was savagely raped. In March 1989 complainant was sentenced to 5 years imprisonment for rape. No sooner he was released i.e. 3 months after his release from prison he committed the present offence. Counsel has cited a number of cases of rape where the length of sentences varies, the longest sentence being of six years. Passing sentence is not an exact science. Previous cases as to sentencing can be relevant and of some help but each case must be judged on its own facts. We do not find the sentence passed in this case manifestly excessive. In our view appellant richly deserved the punishment passed on him. We dismiss the appeal against both conviction and sentence.

G. GOBURDHUN (PRESIDENT)

(JUSTICE OF APPEAL)

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Delivered on the 19<sup>th</sup> day of October, 1995.