

IN THE SEYCHELLES COURT OF APPEAL

DONA BONIFACE

APPELLANT

Versus

THE REPUBLIC

RESPONDENT



Criminal Appeal No: 5 of 1997

[Before: Goburdhun, P., Silungwe & Venchard, JJ.A]

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Mr. A. Juliette for the Appellant
Mr. R. Kanakaradne for the Respondent

REASONS OF THE COURT

(Delivered by Silungwe, J.A)

For reasons to be furnished later, the appeal against conviction on a charge of sexual assault contrary to section 130(1) of the Penal Code as amended by Act No. 15 of 1996, was disallowed on August 14, 1997 but the appeal against the sentence of 12 years succeeded to the extent that this was reduced to 8 years imprisonment. We now give our reasons.

The particulars of offence were that, on September 25, 1996, at Port Glaud, the appelland committed sexual assault on Janice Jennifer Bonne.

At the material time, Janice Jennifer Bonne (hereafter referred to as the complainant), was a school girl aged 16 years. She was living with her parents - Philip and Yvette Bonne - at Port Glaud. The appelland too was a resident of Port Glaud and his house (where he lived with his wife, family and mother-in-law) was some 50 meters away from that of the complainant's parents. It was common knowledge that before this case arose, the complainant had known the appelland for about 10 years and he was on good terms with her family.

At about 6.30 pm on September 25, 1996, the complainant and her young sister, Marie Lise Bonne, left home to meet their mother, Yvette, by

the main road. As the two sisters walked along a foot path at the back of Port Glaud church, the complainant saw the appellant and one Richard Serret sitting on church steps. Subsequently, the complainant met her father who was returning home. Marie Lise returned home with her father but the complainant stayed behind to await her mother.

As it was getting dark, the complainant decided to return home. On her way home, the appellant, who was still at the church steps, told her to wait for him so that they could walk to their respective homes together. Subsequently, the appellant grabbed the complainant by the shoulders, pulled her away from the foot path and allegedly threatened her with harm if she shouted. The complainant testified that as a result of the said threats, she was too frightened to scream or shout. Twice the appellant asked the complainant to kiss him but she refused to do so. The appellant then tried to kiss her but she avoided the kiss by turning her mouth away. When the complainant declined to bend over at the appellant's request, he pulled her shorts and panty down to her ankles and inserted his penis into her anal canal so forcefully that she nearly fell forward. In the process, the appellant lost balance and the firm grip that he had on her, thereby giving the complainant an opportunity to flee home where a complaint was made to her mother and, subsequently, to the appellant's wife, mother-in-law and to him as well.

When the complainant was medically examined later that evening, she was found with a blood-clotted tear – about 3cm long – on the left side of her anus. In the doctor's opinion, any smooth round object forced into the unlubricated anal canal could have caused the said injury.

The appellant was, at the time, a casual worker aged 31 years. In his unsworn statement, he told the court that on the evening in question, he had gone out to fetch a certificate apparently from a Mr. Max Maurel but, as the latter was not at home, he sat down near a church to await his arrival. He was joined by Richard Serret. He then saw the complainant in the company of her youngest sister. Subsequently, he saw the complainant talking to her father. The complainant walked towards Sun Down Restaurant but her sister went away with the father.

At about 8.00, after he had returned home, the appellant heard the complainant's mother asking his own mother-in-law whether his wife was present at home. His wife went outside and, on her return, asked him what he had done. When he asked her what was happening, she told him that the complainant had alleged that he had raped her. He was shocked.

When the complainant's father later came along with the complainant herself (on their way to a police station) and found the appellant outside with his mother-in-law, the appellant called out to the complainant's father and asked about the allegations levelled against him. The complainant's father responded: "you have no problem, I have the problem." The complainant called his father and said "let's go".

The appellant was arrested about 25 hours later and, on being medically examined, no abrasions were found on his penis. The doctor testified that even if there had been any injury on the appellant's penis, it could have healed and become invisible at the time of the examination.

Mr. Juliette submitted that the appellant had been convicted exclusively on the uncorroborated evidence of the complainant and that the said conviction was, therefore, bad in law. He argued that the English Law of Evidence was applicable and that, under that law, corroboration was required. The learned Chief Justice's finding that there was corroboration in the complainant's distressful condition then came under attack.

In sexual offences, such as the present one, the approach to corroboration is the same. Thus, the Privy Council said in James v R (1970) Cr. App. R. 299 at 302:

"Where the charge is of rape, the corroborative evidence must confirm in some material particular that intercourse has taken place without the woman's consent, and also that the accused was the man who committed the crime. In sexual cases, in view of the possibility of error in identification by the complainant, corroborative evidence confirming in a material particular her evidence that the accused was the guilty man is as important as such evidence confirming that intercourse took place without her consent."