

22-07-05

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS**

**CICA NO:16/2004**

**Ind No: 6/04**

**BETWEEN**

**TREVOR JERRY CHOUDHURY**

**APPELLANT**

**AND**

**REGINA**

**RESPONDENT**

**Before:**

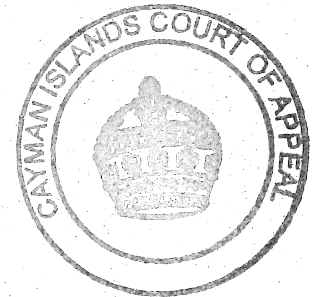
**THE Rt. HON. MR. JUSTICE ZACCA, P  
THE HON. MR. JUSTICE TAYLOR, J.A.  
THE HON. MR. JUSTICE FORTE, J.A.**

Appearances: Mr. Furniss for the Appellant  
Mr. Roberts for the Crown

Heard: 8<sup>th</sup> & 14<sup>th</sup> April, 2005

Delivered: 22<sup>nd</sup> July, 2005

**FORTE, J.A.**



**Reasons for Judgment**

On the 15<sup>th</sup> October 2004, the appellant was convicted in the Grand Court, by Levers, J., sitting without a jury, on three counts of an indictment charging him with Indecent Assault, committed on three girls of tender years. He was sentenced to 2 ½ years imprisonment, on each count. The learned trial judge ordered that the sentences run concurrently. The appellant appealed these convictions. Arguments having been heard in this Court on the 8<sup>th</sup> April 2005, we allowed his appeals, quashed the convictions, set aside the sentences and

entered verdicts of acquittal. We now fulfill our promise, we made on that occasion, to put our reasons in writing.

Before setting out the facts relied on by the Crown at trial, it is appropriate here, to record that the appellant had also been charged with three offences of defilement of the same young girls, but those charges were withdrawn by the Crown. Other charges relating to the threatening of violence were dismissed, when the learned trial judge ruled that there was no case to answer.

This appeal was therefore concerned solely with the three convictions for indecent assault.

The Crown sought to prove its case mainly on the evidence of the three young girls, all of whom gave unsworn testimony.

All three girls lived in the same community. On the day of the incident they were playing in the street in near proximity to their homes and the home of the appellant. The Crown alleged that the girls were called to his house, by the appellant, who invited them into his home. Thereafter, there were varying stories from the girls as to what transpired in the house. All three girls testified that they were ordered by the appellant to take off their clothes and to lay on the bed. That the appellant also took off his clothes, except for his underpants. The first two girls (hereafter called A & B) to testify alleged that he came on top of all three girls in turn, and "boned" them. The meaning given by the girls to the word "boned" varied between rubbing his penis against their vagina, to that of inserting his penis into the vagina. By her verdict, however, the learned judge obviously accepted the former definition. When the third young girl (C) testified, she

agreed that they were told to take off their clothes and to lay on the bed. However, her testimony as to the circumstances of the act of indecent assault differed materially from the evidence of the other two girls. Her account, described circumstances, where the appellant sat on the bed, with each girl in turn sitting on him, facilitating his act of indecency. There was no attempt by the Crown, to reconcile this discrepancy between the evidence, of A & B and that of C, nor did the learned judge indicate in her reasons, that she had accepted one version as opposed to the other. In fact, the learned judge by her reasons, indicated that these different accounts were not material discrepancies. This is what she said:

“The evidence of the girls is contradictory on a few matters, but on the material particulars they are consistent. The three young girls were in the accused’s room and all three are consistent in the manner in which the accused undertook the assault.”

The evidence demonstrated that the learned judge fell into error when she stated that, “all three are consistent in the manner in which the accused undertook the assault.” This error has to be considered against the accepted legal principle that the evidence of young girls, particularly when unsworn, must be approached with caution, given that children of tender years are subject to over imaginativeness, are susceptible to influence by third parties and are generally prone to unreliability. There is no indication in the learned judge’s reasoning that she was mindful of this principle when determining the credibility of the three young girls. The real issue in the case was one of credibility, which placed a

responsibility on the learned judge to examine carefully the evidence of the girls, given their tender years.

We came to the conclusion that, the inconsistencies which existed in the evidence were in fact material inconsistencies, which in the absence of some explanation, would result in an unreasonable verdict.

Before leaving this appeal, we wish to make one other comment. During the course of the arguments presented to the learned judge, after completion of the evidence, the learned judge expressed the view that each girl's testimony could be corroborated by the unsworn testimony of the others. The unsworn testimony of one witness cannot corroborate the unsworn testimony of another. At a later stage however, the learned judge indicated that "in the circumstances ... there was no corroboration ...". We therefore concluded that in her final deliberations she approached the evidence, on the basis that there was in fact no corroboration.

For the above reasons, we made the orders, referred to earlier.

Zacca, P.

Taylor, J.A.

Forte, J.A.

