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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

BEFORE THE HON THE CHIEF JUSTICE

ON THE 18TH MARCH 1993

IND 23 OF 1992

REGINA V MICHAEL BEECHER

Mr. Clarke for the Crown
Mr. H Hamilton Q.C. and Mr. S. McField for the defence

RULING ON NO CASE SUBMISSION

On a submission of no case I have to consider whether there is evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict. That is the well known principle enunciated in R v Galbraith.

An essential element of the crime of rape is carnal knowledge of the complainant by the person accused - that is to say - some penetration of her vagina by his penis.

I have considered a number of directions which, on my view of the case, I would have to give to a jury in summing up - the definition of the offence itself as set out in S 115 of the Penal Code, the burden and standard of proof, how to approach evidence of recent complaint, corroboration and in particular what are and are not proper inferences to be drawn from the evidence. In relation to the last of the foregoing, that direction would be, of course, that the jury may draw inferences from the facts they find proved - logical inferences which the facts point to. But they can only draw an inference adverse to the accused if that inference is the only reasonable

inference to draw from the facts. In other words, the facts must point irresistibly to the conclusion that they draw before they can rely on such a conclusion, if it is adverse to the accused.

Now, the Judgment of the Lord Chief Justice in the case of Galbraith, as well as laying down the principle to which I have already referred, contained two passages which I would like to highlight. The first was this -

> "It cannot be too clearly stated that the judge's obligation to stop the case is an obligation which is concerned primarily with those cases where the minimum evidence to establish the facts of the crime has not been called. It is not the judge's job to weigh the evidence, decide who is telling the truth and stop the case merely because he thinks the witness is lying. To do that is to usurp the functions of the jury.".

That passage was in fact itself taken from part of the judgment of the previous Lord Chief Justice, Lord Widgery, in the case of **R. v Barker** in 1977.

Earlier in the judgment in **Galbraith** the Lord Chief Justice had said this -

> "There are two schools of thought -
>
> (1) that the judge should stop the case if in his view it would be unsafe (alternatively unsafe or unsatisfactory) for the jury to convict;
> (2) that he should do so only if there is no evidence upon which a jury, properly directed, could properly convict.
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> Although in many cases the question is one of semantics, and although in many cases each test would produce the same result, this is not necessarily so. A balance has to be struck between, on the one hand, the usurpation by the judge of the jury's functions and on the other, the danger of an unjust conviction.".

Now in her evidence in chief the complainant said she felt Dr. Beecher's penis came out of her vagina and touch her leg. Obviously if she really felt all that it must have gone in whether the complainant felt that event or not. However, in cross-examination she acknowledged that she could not be absolutely sure what touched her leg. She also said that she did not see Dr. Beecher's penis at all; did not see his fly open; she did not see him close his fly; did not feel his penis enter her that day; and saw rather than felt the thrusting motion.

When pressed, she said, she never felt the thrusting motion. She also acknowledged that if she did not see what brushed her leg she could not be absolutely sure what it was. She also agreed that she had previously said on oath that she did not know whether it was Dr. Beecher's hand or his penis which entered her, which led to the submission that if she did not know that she could not know whether it was a hand or a penis which emerged. It was common ground that manual examination of this nature was common medical practice.

I do not find the various cases cited by Mr. Clarke, where various subterfuges were used to induce a woman to allow herself to be penetrated by the male organ of the accused to be helpful. The issue here is not whether Dr. Beecher introduced his penis by pretending it was his hand or a speculum used in treatment, but whether anything of that nature happened at all.

Of course no general proposition can be advanced that because a woman did not see or feel penetration that a prima facie case of rape cannot be made out. However, in the particular circumstances of this case there is really no answer to Mr. Hamilton's submission that the first person who must be sure she has been raped is the complainant herself.

I do not think that I have to go into greater detail about the evidence. In view of the tenuous nature of that given by the complainant, taking that evidence together with that of the other witnesses who were directly involved in the immediate aftermath of the incident the prosecution is, in my view, thrown back to inviting the jury to come to the view that the only reasonable inference to be drawn from the expert evidence (taking that evidence at its highest) was that the stains containing Vadlee Levy's DNA could only have been found where they were found on Dr. Beecher's clothing as a result of sexual intercourse between him and Vadlee Levy. No reasonable jury, properly directed, could, in the light of the prosecution evidence

as a whole and in particular the evidence of Dr. Lookloy and Mrs. Neil, come to that conclusion or, on the prosecution evidence taken as a whole find that Dr. Beecher raped Vadlee Levy on 4th September 1991.

Accordingly this Court will instruct the jury to return a verdict of not guilty of the offence of rape with which Dr. Michael Beecher is charged, enter that verdict and discharge him.

G. E. Harre

18-3-93.