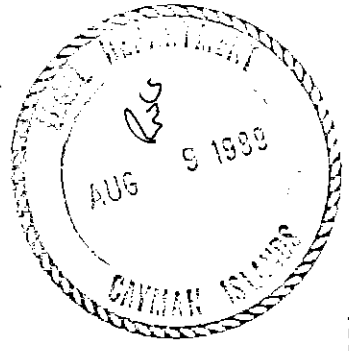


1989

D/S



IN THE CAYMAN ISLANDS COURT OF APPEAL
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN
 C.I.C.A. NO. 48/88 - *Criminal*.

BEFORE: THE HON. PRESIDENT, MR. JUSTICE ZACCA
 THE HON. MR. JUSTICE GEORGES, J.A.
 THE HON. MR. JUSTICE HENRY, J.A.

GEORGE ORILEAH SHANNON vs REGINA

The Appellant in Person
 Mr. Sheehan for the Crown

Thursday, 13th April and Monday, 7th August, 1989

J U D G M E N T

The appellant was charged with having raped Kathy Jean Christy at the Beach Club Colony on 7th August, 1988. He was convicted and sentenced to a term of 4½ years imprisonment.

Mrs. Christy was on that day a guest of the hotel. The appellant had gone to the hotel to meet a friend. While waiting for the friend he had a drink and walked around the gardens and public areas. In the course of doing this he met Mrs. Christy. She says he spoke to her first and he says she spoke first. This contact led to their going together to Periwinkle where they had dinner for which he paid.

After dinner he suggested a walk. She preferred to return to the hotel. He stated that he had held her hand at the table while having dinner and that as they walked out after dinner, he put his arm around her. She denies this. She agrees that he did ask her to

smell his shirt and that he plucked a flower and gave her as they paused near a multi-coloured fountain.

His evidence was that they walked to her room and stood there for a while talking. She unlocked the door. She stepped up to the entrance and turned to him. He placed a foot on the rising of the doorway. They were looking at each other. There was a moments silence, then he asked whether he could kiss her. She said, "Yah" and came into his arms. He kissed her on the cheek and then she kissed him on the lips. She said she had never before behaved like that but that she felt close to him. He stepped into the room. She stepped back. They were still hugging. The door was open. They sat on the bed. She said she did not want to make love to him that night because he might think she did this to every man she met. He told her that was not so and he got up and closed the door. He returned to her side on the bed. His arms were around her shoulder. He lay back and she lay back resting on his arms. They kissed each other. He rolled off and took off his trousers. She took off her dress. They continued kissing. He kissed her neck, her breasts and all over her. He took off her panties and then his shorts and they had intercourse.

After intercourse he told her that he had lied to her earlier that evening when he had said that he was not married. In fact, he had a family whom he really loved. She asked why he had lied to her and he replied it was because he had been feeling lonely.

She then grew hysterical, shouting repeatedly that he had used her and made her do something which she had never done before. She asked him to leave. He insisted that he should stay until she had calmed down. Then she began screaming and he put on his clothes and left.

Mrs. Christy's evidence was that the appellant had accompanied her to dinner. She had not been anxious that he should do so, but he had persisted. He said he came from Jamaica and she wanted to learn about Jamaica. He gave the impression that he was very lonely. He wanted her to go back to Jamaica with him. Indeed, he wanted her to marry him.

They walked back to the hotel. She realised he was trying to find an excuse to go back to her room with her. He wanted her address which she did not give him. They stood in front of her room door talking, but he would not leave, so she took out her key and unlocked the door. The area was well lit and she did not feel threatened. She told him goodnight and gave him a kiss on the cheek because she felt sorry for him.

As she did this he immediately pushed her into the room so rapidly that all she could do was scream. As she screamed, he grabbed her by the throat with one hand. That hand was over her windpipe so she could hardly breathe. She could talk for a while and tried to talk the appellant out of it. He said if she wanted to live she would not scream again. He never let go of her throat. He increased the pressure on her throat until she was just gurgling. They were then still standing about the middle of the room.

Her dress was a wrap-around dress which he undid. He pushed her on the bed. As far as she could recall, he only partially undressed and he raped her. It was all over very fast and then he sat up. He then said he had done a very wrong thing and invited her to call the police. She did not think it would have been wise to do so. The appellant took a little while to leave. He would not leave until she had stopped shaking. He advised her to have a shower. She went into the shower and turned the water on without going under it. She remained there a couple of minutes. When she came out, he had gone. She went to the desk clerk, told her that she had been attacked in her room. The desk clerk called the police who came in 10 minutes.

Mrs. Christy testified that she still had marks on her neck from the injury inflicted by the appellant when he squeezed her throat. No medical evidence was, however, called, although she was examined by a doctor very shortly after the incident. Photographs were tendered but in the final analysis, the jury were directed that they were of little evidential value as there was no attempt to relate them to Mrs. Christy.

An important witness was Carol Jean Winslow who was also a guest at the hotel that night. She is a diving instructor. She had a group staying at the hotel and was seated at a table in the courtyard of the hotel with her husband and two other persons. At approximately 10 p.m. she heard two very loud screams and the slamming of a door "very very loudly". The slamming came maybe half a minute after the screams. The scream sounded like that of a very troubled person. It appeared to come from the first building. She took notice of the scream because she had single females in her party. The screams came from the direction of "1A". The "A" building is directly beside the office. She was herself staying in "1D". She checked whether the females in her party who were staying in that area was safe. She described the scream as a panicky scream, hysterical. It was an awful scream, as if something terrible was happening. She was positive she had heard a door slam.

The next day she learned that there had been a problem. She gave a statement on 28 November, 1988 - some 3½ months after the incident. Although offered the opportunity to have an attorney briefed to present the appeal on his behalf, the appellant preferred to appear in person.

His ground of appeal was:

"that there was no evidence to convict (sic) me the judge rule that I should be acquitted in his summing to the jurors so I am appealing on the grounds of miscarriage of justice."

Before us he contended that the jury was prejudiced and that it was plain even before the case had progressed that they were bent on convicting him.

He stressed that there had been no medical evidence, though the complainant had been examined.

The record shows that this argument was put forward by attorney appearing on his behalf at the trial. The judge made specific reference

to the photographs which had been tendered and directed the jury that they should place "very little weight on those photographs". There was no medical evidence leading to the inference that the marks had been made by the appellant.

The appellant argued that the whole tenor of the complainant's evidence established that it was improbable. A rapist would not comfort his victim after the rape as she had alleged. She had admitted that she had kissed him, a clear indication of romantic intentions, having regard to the fact that it was their first meeting. Had he intended to rape her, he certainly would not have given her his name. If she had not wished him to go to her room she need not have allowed this to happen. The area was very near the receptionist's desk and was well lit. He contended that it was quite impossible for him to have held her neck with one hand and done everything else with the other.

Basically, his complaint was a prejudiced jury. He stated indeed that the judge had done his best but the jury had closed minds. The fact that he was a Jamaican being tried in the Caymans for rape militated against him.

This was essentially a case for determination by a jury. There were two conflicting stories of a relationship. The judge left it quite fairly to the jury. There is no room for saying that the complainant's story is so clearly improbable that the jury ought to have had their doubts about it so that on appeal there can be said to exist a lurking doubt.

In the record it was noted that the attorney appearing for the appellant at the trial submitted that evidence of the scream heard by Mrs. Winslow, if believed, should not have been left to the jury as corroboration of the complainant's evidence. The learned judge did leave it. We have particularly considered whether he was correct in so doing.

Before the trial judge, attorney for the applicant described the scream as being "at large". It could not be identified with the complainant. This is clearly a matter of inference. Screams of the

type described by Mrs. Winslow at night at a hotel are unlikely to be common occurrences. Mrs. Winslow states she heard it about 10 p.m. Mrs. Branwell testifies to having spoken to the complainant about 10 p.m. The complainant states that she left for dinner about 8:45 p.m. After meeting the appellant some 20 minutes elapsed before they reached the Periwinkle and dinner took some 45 minutes. They then walked to her room and stood outside talking for a while. This would make it about 10 p.m. when she screamed. It was an inference which the jury were entitled to draw that the scream was hers.

There was a further difficulty. The appellant had given a version of events in which he had stated that the complainant had screamed, but only after the act of sexual intercourse when he had disclosed that he was married and attached to his family. The question arose as to whether a piece of evidence could corroborate a complainant's story when it could also be said to be consistent with the version given by an accused person. The learned trial judge pointed out that feature of the matter in directing the jury on the issue. He also pointed out that neither the complainant nor the appellant in their evidence had mentioned the slamming of a door.

Since the identity of the accused person and the fact of sex were not in dispute, the only issue was consent. A scream by the complainant could certainly be corroborative of lack of consent. The account given by the appellant would, of course, offer an explanation of that scream which could have led the jury to conclude that the scream was not indicative of the absence of consent, but merely anger at having been deceived. This question of interpretation was one for the jury, but the judge was correct in leaving the matter to the jury as potentially corroborative.

Accordingly, we concluded that there was no error in the judge's summing up and there was sufficient evidence to support the conviction.

The appeal was, therefore, ~~be~~ dismissed and the conviction and sentence affirmed.