

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 148/89

COR: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

R. v. COURTNEY DIXON

Application for leave to appeal

Mrs. L. Errar-Gayle for Crown

5th November, 1990

FORTE, J.A.

The applicant was convicted in the Home Circuit Court on the 20th October, 1989, for the offences of Rape and sentenced to imprisonment of 5 years at hard labour.

The facts upon which the conviction arose are as follows:

On 29th March, 1987 at 5.00 a.m. the complainant on her way home was walking alone on the Hope Town Road in Papine St. Andrew.

She saw what she presumed to be a mad-man and as a result ran up the hill. Being tired she stopped to rest on a boulder. Looking back she saw some-one running up the hill coming towards her. This was a man who came up behind her and held her by her ankle. She did not know the man before, but subsequently identified the applicant as this man. He grabbed her hand, pulled a knife from his pocket, opened it and held it at her throat - touching her throat. He tried to pull down her pants. When she resisted, he threatened to cut it off. She released her hold on her pants and he pulled it down. He spun

her around and she felt the knife on her back. In obedience to his orders, she "bent down" and in those circumstances he had sexual intercourse with her. After he was finished, she drew up her pants and the applicant then engaged her in conversation enquiring of her name and address. She gave him false answers. As she walked towards her home, he walked with her, and then giving her a wrong name, he told her "Dont bother to report it" and he went back in the direction from which he had come.

On two occasions subsequently, the first, two months after and the second in the following year, she saw the applicant but reports to the police on those occasions did not result in his apprehension.

However, on the 20th March, 1989 she attended an Identification Parade where she identified the applicant. Identification as it turned out was not an issue, as the applicant in his defence admitted having sex with her on that occasion but maintained that she had consented. That the complaint was made because of a dispute between them concerning money i.e. that he had promised to give her \$35.00 for the sexual act, but had only given her \$15.00.

We have reviewed the summing-up of the learned trial judge and can find no fault with his directions either on the Law or in relation to the facts. This was a case which rested solely on the testimony of the complainant, and the learned trial judge having adequately directed their minds to all the issues and in particular, the danger of acting upon the uncorroborated evidence of the complainant, the jury nevertheless convicted the applicant. In those circumstances, we see no reason for disturbing the conviction or the sentence. The application for leave to appeal is therefore refused. We, however order that the sentence be commenced from the 20th January, 1990.