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MOHAMMED SAFARAZ KHAN

v.

REGINAM

[COURT OF APPEAL, 1965 (Mills-Owens P., Marsack J.A., Gould
B J.A.), 26th May, 9th June]

Criminal Jurisdiction

Criminal law—sexual offence—complaint—delay in making—first opportunity of complaining to proper recipients.

Criminal law—corroboration—sworn evidence of boy of eleven years—circum-
C *stantial evidence as corroboration.*

The appellant was charged with buggery of a boy of eleven years who was employed by the appellant. The offence was alleged to have taken place at 3 a.m. in a house of which the only occupants were the appellant and the complainant. The following morning the com-
D plainant did some cooking for the appellant and then went to three older men of his own race and told them what had happened. The trial judge correctly directed himself on the question of the necessity for corroboration but said he was fully prepared to act upon the boy's evidence without corroboration as to the identity of his assailant.

E *Held :* 1. The fact that the boy did not complain until the following day was not out of keeping with what might be expected in the circumstances and was his first opportunity of complaining to persons who would be the proper recipients of such a complaint.

2. The circumstantial evidence did provide some corroboration on the identity question and the trial judge had ample grounds for
F accepting the story of the complainant as substantially accurate.

Case referred to: *R. v. Campbell* [1956] 2 Q.B. 432; 40 Cr. App. R. 95.

Appeal against conviction and sentence.

D. Whippy for the appellant.

G *B. A. Palmer* for the Crown.

The facts are set out in the judgment of the court.

Judgment of the Court : [9th June, 1965]—

This is an appeal against conviction of the appellant on the 23rd
H April, 1965, by the High Court of the Western Pacific, of the offence of Buggery, and also against sentence of three years' imprisonment passed upon conviction.

The grounds of appeal were drawn without legal assistance; but we accept the submission of counsel for the appellant that the appeal may be considered upon the basis that the grounds were really intended to mean that the verdict was unreasonable and could not be supported having regard to the evidence. This ground would also involve examination of the question of corroboration. No appeal was lodged against sentence, but counsel for the appellant sought and obtained leave to appeal as to this also at the hearing. Counsel for the Crown raised no objection to either of these applications made on behalf of the appellant.

The case against the appellant is that a young boy named Jack Fou, aged 11 years, (who will be referred to in this judgment as the complainant) had been working for the appellant at Auki, Malaita, for a short time. He occupied a room in the appellant's house. The only two occupants of the house were the appellant and the complainant. On the night of the 13th/14th March, 1965, the complainant went out to visit friends, returning to the house of the appellant at about 10 p.m. He found that the house was locked. The house was built of European materials. The complainant effected an entry into the house by climbing through the window and opening the main door. He switched on the light, went into his room and went to sleep. Before going to bed he ascertained that there was no one else in the house. Some time later he woke up to find the appellant trying to take off the trousers in which the complainant was sleeping. When complainant spoke to the appellant the appellant left and complainant went off to sleep again. Later that night he woke to find the appellant in the act of committing the offence with which he was charged. Complainant started to shout and the appellant put a pillow over his mouth. When the appellant had gone the complainant went to the lavatory and saw that there was blood on him. The time was then about 3 a.m. The complainant then remained in his room until morning when he found marks, which he described as "something like water", and also blood on the mattress. He wiped off these marks and bloodstains with a cloth. The following morning, Sunday, he left the house after doing some cooking for the appellant and spoke to three older men who were known to him and who were of his own race. He told them what had happened. He then went to the Police Station. From the station he was taken to a hospital where he was examined by an Assistant Medical Officer. The complainant was found to have sustained linear lacerated wounds on the sides of the anus which had apparently been caused by the forcing of a smooth blunt object through the anal orifice. There was also bruising around the anus, together with serum and what the Medical Officer referred to as "altered blood". There were also bloodstains on the inside of the short trousers which the complainant was wearing.

Some five days later an examination was carried out, by a medical practitioner, of the bedding and clothing of the complainant. Two of the stains on the mattress were suspected by the doctor to be seminal stains, but gave negative results to the tests applied. What appeared to be blood stains on the bedding and clothing were also tested, but only in the case of the spots on the boy's shorts was a positive reaction shown.

The argument of counsel for the appellant was directed to two main points :—

(a) the insufficiency of the evidence generally,

A and (b) the lack of corroboration of the complainant's story.

On the general issue counsel emphasised that the appellant had not been legally represented at the trial and accordingly should have been assisted in every possible way by the learned trial Judge. He criticised the comment made by the learned Judge that no questions had been directed to the principal issues in the course of cross-
B examination of the complainant by the accused. Weaknesses in the complainant's story should, in counsel's submission, have been probed by the learned Judge in default of cross-examination by the accused personally. We agree that where the accused is an islander appearing in person without the aid of counsel the Judge should personally question witnesses whose evidence shows signs of obvious inconsist-
C encies or requires further clarification. There is, however, no obligation on the learned Judge to submit witnesses for the prosecution to the extensive cross-examination which they might expect at the hands of counsel appearing for an accused person. All that the Judge must do is, as far as lies within his power, to ascertain the truth. In the present case there is nothing in the learned Judge's conduct of the trial to support any submission that the accused did
D not receive a fair hearing.

There is no doubt that there is ample evidence if accepted — as it was accepted by the learned trial Judge — to support a conviction in the present case. The accused elected to give evidence, in the course of which he deposed that on the night in question he was present at a party elsewhere until 2.30 a.m. during which time he had
E been drinking a great deal. At 2.30 a.m. he found the house locked and had to unlock the door in order to enter. He passed the complainant's room and through the screen saw the complainant lying there asleep. The medical evidence fully supports the complainant's evidence that the offence charged had actually been committed on him, and the only question for determination was as to who had committed it. Counsel for the appellant submits that there were two
F other possibilities: First that the boy may have received the injuries elsewhere and had then gone home deciding to blame the appellant; second that some other person had come to the house after 2.30 a.m. and had committed the offence on the boy when the boy and the appellant were both in the house. We do not think that on the evidence either of these surmises can be accepted as a reasonable possibility.

G Counsel further contends that doubt should be cast upon the evidence of the complainant on the ground that although, according to his story, the offence was committed on him at about 3 o'clock in the morning he remained in the house thereafter and did not make a formal complaint to anyone until midday the following day. As to this we agree with the expressed opinion of the learned trial Judge
H that the complainant's conduct was not out of keeping with what might be expected of such a boy in the circumstances disclosed. We do not think that any inference unfavourable to the credibility of the

boy's evidence can be drawn from the fact of his remaining there and carrying out the orders of his employer until his employer left the house. We think also that he took the first opportunity of making a complaint to the persons who would be the proper recipients of such a complaint, that is elderly persons of his own race and speaking his own language. In any event no submission was made by counsel that the evidence should not have been admitted.

There remains for consideration the argument of counsel for the appellant based upon the necessity for corroboration. In the present case corroboration should be looked for on two grounds: the fact that a sexual offence is involved, and the fact that the complainant, though he gave evidence on oath, is a young boy of eleven. There is thus a particular duty on the Court to scrutinise that evidence with great care and to look for what corroboration may be found in independent evidence. The law on the subject is stated by Goddard L.C.J. in *R. v. Campbell* (1956) 40 Cr. App. R. 95 which was a case of indecent assault on a boy aged about 10. At p. 102 the Lord Chief Justice says :—

> "The sworn evidence of a child need not, as a matter of law, be corroborated, but a jury should be warned, not that they must find corroboration, but that there is a risk in acting on the uncorroborated evidence of young boys or girls, though they may do so if convinced the witness is telling the truth . . ."

As to the type of corroboration which should be looked for, counsel referred us to the following passage from 10 *Hals.* (3rd Ed.) p. 460, para. 846 :—

> "The corroboration need not be direct evidence that the accused committed the crime, nor need it amount to confirmation of the whole of the story of the witness to be corroborated, so long as it corroborates the evidence in some respects material to the charge under consideration. It is sufficient if it is merely circumstantial evidence of the accused's connexion with the crime; but it must be independent evidence and it must not be vague."

In giving his judgment the learned trial Judge directs himself correctly and adequately as to the risk of acting on the uncorroborated evidence of children and no exception can be taken to his judgment on this ground. He also indicates correctly the type of corroborated evidence which is needed.

With regard to the commission of the offence of buggery on the complainant, there is ample corroboration in the medical evidence and it is not necessary to examine that aspect of the argument any further. With regard to the evidence that it was the accused who committed the offence, the learned trial Judge says :—

> "I am fully prepared to act on the boy's evidence in this regard without any corroborative evidence bearing directly on the question of it being the accused who was upon him."

We think in fact that there is some circumstantial evidence implicating the accused. That he had the opportunity there can be no question. The accused was in the house at the time when the complainant deposes that the offence was committed. From the accused's own evidence it appears that until 2.30 a.m. the house was locked, and any entry otherwise than by the means adopted by the boy was at least unlikely. Even if the appellant had left the door unlocked after he entered — and this point is not covered by evidence — any other person entering and committing the crime would have had to escape observation by the appellant. It is true that in the absence of medical evidence indicating at approximately what time the injuries were received by the complainant there is no direct corroboration of the complainant's evidence that the assault on him took place at approximately 3 a.m. His evidence on this point is, however, consistent with the rest of the evidence, and is also consistent with the complaints which he made to the elders the following day. Though in the absence of compelling evidence as to the precise time of the assault the undisputed evidence concerning the locking of the house and the return of the appellant is not conclusive against him, it does none the less, in our view, afford some corroboration implicating the appellant.

In the result we are of opinion that the learned trial Judge directed himself correctly on the subject of corroboration of the evidence of the complainant; that although corroboration is not necessary in law there was in fact substantial corroboration as to the commission of the offence and some corroboration of the evidence that it was the accused who committed it. The learned Judge had, in our opinion, ample grounds for accepting the story of the complainant as substantially accurate. That being so we can find no substance in the appeal against conviction which accordingly fails.

We now turn to the appeal against sentence. Good reasons would have to be shown to justify our interfering with the sentence passed by a Judge who knows the conditions of life in the country much better than we, and who in fixing the sentence of three years' imprisonment has taken into account all that could be said in favour of the appellant. We are unable to say either that the learned trial Judge applied a wrong principle or that the sentence is manifestly excessive. The appeal against sentence is accordingly dismissed.

Appeals dismissed.