

[COURT OF CRIMINAL APPEAL.]

1946 *Present* : Cannon J. (President), Jayetileke and Rose JJ.

THE KING *v.* ARIYARATNA.

21—*M. C. Negombo, 44,343.*

*Rape—Consent—Misdirection—Penal Code, s. 364.*

In a prosecution for rape it does not follow necessarily that because the accused's defence was that he had no connection with the woman the question of absence of consent was therefore irrelevant.

**A** PPEAL against a conviction by a Judge and Jury.

<sup>1</sup> (1944) *K. B. 442.*

<sup>2</sup> (1944) *A. C. 315.*

*M. M. Kumarakulasingham* (with him *T. A. de Wijesundera*), for the accused, appellant.

*T. S. Fernando, C.C.*, for the Crown.

March 27, 1946. CANNON J.—

The appellant was convicted of rape of a girl aged 17. He is said to be aged about 30. The Crown case was that she was employed at the same camp as the accused on labour work and on the day in question when work was finished and the workpeople were leaving, the accused went to the girl and threatening her with a knife which he showed to her made her accompany him into some scrub jungle where a few hours later he raped her. He then left her saying he was going for some money and clothes, and after about quarter of an hour one Kamal Baas, another employee at the camp, came along and took the girl to a neighbouring house of a woman where she spent the night. It is said that the scene of the crime was near a footpath which was used by labourers going to and from the camp and that was how Kamal happened to be at the scene. The next day she went home but did not tell her sisters all that had happened, merely stating that she had been threatened with assault by the accused. Her mother was not at home and did not return home until the next day when the girl in reply to a question by the mother said that she had been raped but did not mention the accused's name although she said that she knew it and could identify him.

The defence was that the accused had had nothing to do with the girl, that there was no corroboration of her story in the legal sense, that is, implicating the accused, although her evidence that someone had connection with her and that she was before the incident a virgin was corroborated, because the doctor verified her evidence on that point. The witness Kamal was said to have absconded.

There are two main grounds of appeal, namely, (1) regarding the summing-up on the question of consent, and (2) the judge's directions on corroboration. On page 5 of the summing-up the judge is recorded as saying :

“The burden of proof is on the Crown. The Crown must prove that this accused committed this offence and that it was done against the will of the woman, or if it was with her consent, that her consent was obtained by fear of death or of hurt. In this case, fortunately, you are not concerned with the second point. Here you are concerned with the identity of the person who committed the act. If it was the accused, then you are on safe ground in holding that it was done against her will, or at least that her consent was obtained when she was in fear of death or of hurt. It is not the case of the accused that the girl went with him with her consent on this day to have sexual intercourse with him. His case is that he had nothing to do with her. So you are really concerned with the first point—was it this accused who had sexual intercourse with the girl ”

Now, it is correct that in other parts of the summing-up the learned judge directs the jury upon the necessity of proving absence of consent, but emphasis was made by Mr. Kumarakulasingham in his able presentation of the case to us that the passage which I have read is of a categorical nature. It may be that the judge meant the jury to understand that if they did not accept that view of the defence, it being that the accused had had no connection with the girl, then if they believed the girl's story that he had, they would have no reasonable anxiety as to the truth of her statement that it was against her will; but the passage seems to direct the jury that the question of consent is not a matter for their consideration. It does not follow necessarily that because the accused's defence was that he had had no connection with the girl that therefore the question of consent was irrelevant.

Crown Counsel, Mr. Fernando, concedes that the jury may have thought that the question of consent was a matter of minor importance and for that reason feels unable to support the conviction. We are of the same opinion and it is therefore unnecessary to go into the question of corroboration.

The appeal is allowed and the conviction quashed.

*Appeal allowed.*

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