

## [COURT OF CRIMINAL APPEAL.]

1944 Present: Howard C.J., Moseley and Wijeyewardene JJ.

THE KING *v.* THEMIS SINGHO.

51—M. C. Gampaha, 18,870.

*Rape—Uncorroborated evidence of prosecutrix—Evidence unsatisfactory—  
Conviction should not be allowed to stand.*

In a charge of rape it is proper for a Jury to convict on the uncorroborated evidence of the complainant only when such evidence is of such a character as to convince the Jury that she is speaking the truth.

The Court of Criminal Appeal will set aside a conviction when it thinks it safer on the whole that the conviction should not be allowed to stand.

**A** PPEAL against a conviction by a Judge and Jury before the 1st Western Circuit.

J. E. M. Obeyesekere (with him M. M. Kumarakulasingham), for appellant.

E. H. T. Gunasekera, C.C., for the Crown.

*Cur. adv. vult.*

May 29, 1944. HOWARD C.J.—

In this case the Court granted leave to the accused to appeal from his conviction on a charge of rape. No objection has been taken to the charge of the learned Judge, but it has been argued by Mr. Obeyesekere, on behalf of the appellant, that the verdict is unreasonable. There is no corroboration of the story of the complainant Mary Nona. But the Jury, in spite of being warned of the danger of convicting without such corroboration, have found the accused guilty. In previous cases we have pointed out that this Court cannot re-try cases upon issues which have been properly left to the Jury. The Jury in this case were warned that the burden was on the prosecution not only to prove that the appellant had had sexual connection with Mary Nona, but also that such connection was against the latter's will. The medical evidence was almost

negligible so far as it afforded any evidence of a struggle. Although there was a small contusion inside the vagina, the hymen was intact. Mary Nona stated that after the alleged assault on her by the accused, the first persons she met were Amerasinghe and Carolis. She made no complaint to these men. She explains this omission by the excuse that they were friends of the accused. She then says she met Sethan Perera. No complaint was made to Sethan although he was a person of substance in the village. Sethan in giving evidence states that, when he met Mary Nona, she was in the company of her aunt, Podi Nona. Podi Nona was not called to give evidence and Mary Nona states that she has no recollection of seeing her soon after the alleged rape had taken place. Mary Nona is contradicted by every witness who gave evidence. Moreover in the Magistrate's Court she stated that the accused had had intercourse with her thrice. Mr. Gunasekera, on behalf of the Crown, has pointed out that this is not a case of oath against oath. Hence as the appellant did not go into the witness-box the verdict should be allowed to stand.

No doubt in certain circumstances it is right and proper for the Jury in a rape case to convict on the uncorroborated evidence of the complainant. But it is only when the evidence of the complainant is of such a character as to convince the Jury that she is speaking the truth. It is difficult to understand how Mary Nona's evidence could have made such an impression on the Jury.

We adopt the words of Alverstone L.C.J., in setting aside the verdict in *Rex v. Bradley*<sup>1</sup> when he said "On the whole we think it safer that the conviction should not be allowed to stand." The appeal is allowed.

*Appeal allowed.*

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