

YANKAIYA

v.

REGINAM

[SUPREME COURT, 1963 (Knox-Mawer Ag. P.J.),

8th November, 6th December]

Appellate Jurisdiction

Criminal law—evidence—sexual offence—corroboration—distressed condition of complainant—Penal Code (Cap. 8) ss. 145, 273 (a).

The distressed condition of a complainant in a sexual case is capable of amounting to corroboration of the complainant's evidence.

*R. v. Redpath* (1962) 46 Cr. App. R. 319; [1962] S.J. 412, applied.

*Appeal against conviction.*

*Ramrakha* for the appellant.

*Palmer* for the Crown.

KNOX-MAWER Ag. P.J. [6th December, 1963]—

The appellant was charged before the Magistrate's Court of First Class, Tavua, with the following offence:—

*Statement of Offence*

Assault with intent to commit a felony: Contrary to section 273 (a) of the Penal Code, Cap. 8.

*Particulars of Offence*

Yankaiya, s/o Kesho Pillay on the 11th day of September, 1963, at Nadarivatu, Tavua in the Western Division assaulted Betty Patricia Derbyshire with intent to commit a felony namely indecent assault contrary to section 145 of the Penal Code.

He was convicted and sentenced to 18 months imprisonment.

The appellant has relied upon two main grounds in his appeal against conviction. Firstly, that there was no corroboration, and secondly, that the charge as laid is a "contradiction in terms".

I am satisfied that there was corroboration in this case. It has been recently held in the case of *Redpath* 46 Cr. App. R. 319, that in a sexual offence the distressed condition of the complainant is capable of amounting to corroboration of the complainant's evidence. In the case before me, two prosecution witnesses gave corroborative evidence as to the distressed condition of the complainant. There was also corroborative evidence of the identification of the appellant as the assailant in so far as the prosecution witness Semesa Vudreu said he saw the appellant running and hiding himself in the bush. The complainant's evidence in this case is therefore corroborated both as to the sexual assault and as to the identity of the person who made that assault.

In springing upon and seizing hold of the complainant, the appellant was clearly guilty of an "assault" upon her. That his intent in so "assaulting" her was to commit an indecent assault upon her is the only reasonable inference that can be drawn from the circumstances in as much as he was endeavouring by force to lay her on the ground in a spot of relative seclusion. It follows that this particular charge was properly brought and the appellant was correctly convicted of such charge.

As regards sentence, it cannot be said that having regard to the gravity of the offence and the fact that the appellant has a criminal record, that eighteen months imprisonment is either manifestly excessive or wrong in principle.

This appeal is accordingly dismissed.

*Appeal dismissed.*

Solicitor for the appellant: *K. C. Ramrakha.*

*Solicitor-General* for the Crown.