

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CrA. NO. 97 of 1999

BETWEEN

RAMCHAND RAMPERSAD

APPELLANT

AND

THE STATE

RESPONDENT

CORAM

R. Hamel-Smith, J.A.,  
L. Jones, J.A.  
M. Warner, J.A.

APPEARANCES

Mr. A. Kujufi for the Appellant.

Ms. S Chote for the Respondent.

DATE: 5<sup>th</sup> March, 2002.

## JUDGMENT

### JONES, J.A.

The appellant was convicted on 24<sup>th</sup> November 1999 of rape at the Port of Spain Assizes. He was sentenced to 12 years hard labour with ten strokes of the birch. The main witness for the prosecution was the virtual complainant Geeta Rampersad. She testified that on 12<sup>th</sup> January 1995 at about 7.10 p.m. she had been at the Chase Village flyover awaiting transportation to Carlsen Field where she lived. She had gone to the cinema at Chaguanas and had been on her way home. While standing at the roadside she saw a black Suzuki jeep come out of the Carlsen Field area and head west. She saw it return over the flyover within about five minutes and stop close to where she was standing. The driver who was later identified as the appellant offered her a lift. She accepted and got into the vehicle, occupying the left front seat. The appellant went straight past the points where she could have gotten off. She attempted to open the door but was unable to do so because there was no handle. At this stage the appellant pulled out a cutlass, threatened to chop her and told her that if she did as he said she would get home alive.

The appellant drove into a track where she observed old refrigerators and bamboo grass. He opened her door and pulled her into the grass until they got to a clear spot under a tree. He told her to take off her clothes. She refused. He threatened her with the cutlass, repeated his instructions and she complied. He then kissed her, took off his pants and had sexual intercourse with her without her consent. Thereafter he picked up the cutlass and began to walk away. She told him that she did not know the way out and he pointed her in the direction to go. She dressed and walked in that direction. She said that when she got to the road she saw the appellant sitting in his vehicle and she asked him why he had left her there. He said he had gone to check to see if the coast was clear. She got into the vehicle and he asked her if she was going to tell her husband or the

police and she said no. He dropped her off and told her not to look back. She did so however and saw him driving into Pig Sty Road.

She went home to her husband and then went to the police where she made a report. She returned to the scene with Cpl. Clark who found lipstick and a cinema ticket on the ground. She was then medically examined at the Chaguanas Health Centre and vaginal swabs taken from her were analysed as containing human spermatozoa. She said it was about half an hour from the time she was picked up in the jeep to the time she was dropped off. She noted that he had an odour like that of diesel oil. She said she had looked at his face during the entire incident. She had been able to observe him, as there were lights at the flyover and lights from oncoming vehicles. There were no lights where the incident took place but she said it was not pitch black; it was "clear". She said that the appellant had been dressed in a pair of jeans and a striped jersey.

On 16<sup>th</sup> January 1995 she attended an identification parade held at the Chaguanas Police Station where she positively identified the appellant as her assailant. Under cross-examination she said that she had not spoken in the magistrate's court about lights at the flyover nor had she said anything about that in her statement to the police. She said that it took her about two to three seconds to get into the vehicle and at that point she saw the appellant's face twice. She then saw his face twice under the lights of oncoming vehicles for about five seconds each time. She said she had not been shown a black Suzuki jeep by the police.

Allan Ramsahai was another witness called by the prosecution. He was the Projects Director of the company which had employed the appellant at the time in question. He said that the appellant had been assigned a black Suzuki jeep PAO 6984. He knew the vehicle and knew that the door on the left was difficult to open from the inside because of a broken latch. He said that the appellant did mechanical work for his company.

Cpl. Clark the complainant testified that at about 8.50 on the night in question he received the report in this matter. He and other officers accompanied the virtual complainant to the scene where he found half of a cinema ticket and a tube of lipstick.

On the 15<sup>th</sup>, the day before the identification parade, he went to the home of the appellant where he saw a black Suzuki jeep PAO 6984. He identified himself to the appellant told him of the report and cautioned him. The appellant said that he knew nothing about the matter and that he had been at home on the night in question. The appellant gave him the clothes he said he had been wearing on the night in question. He searched the appellant's home for a striped jersey but found none. He said that he sat in the jeep and observed that the lock on the inside of the left front door was broken. It could not open. Under cross-examination he admitted that he had not given that evidence at anytime before the hearing. A photograph and a certified copy of the vehicle were put into evidence. He said that when he visited the scene he used a flashlight to illuminate the area and he also used the headlights of the police vehicle. The description he had been given of the assailant was of a dark complexioned person who was "douglaish". He said he also had a description of a "black" man. He considered this to be a description of the assailant's complexion and not his race.

The appellant testified in his defence. He said that he had been at home in the evening in question. He knew the virtual complainant for twenty-seven years when he lived in the same area, as she did. He said that they had even attended the same primary school. They lived five houses apart. He was employed at the time of the incident as a Plant Maintenance Supervisor. His duties included overseeing the maintenance work and repairing the heavy equipment and plant machinery for his employer. He said that he had returned home at Church Street, Chase Village after work on the day in question at about 6.30 – 7.00 p.m. and had not gone out that night. He identified the black Suzuki

in the photograph admitted into evidence as the vehicle assigned to him by his employer.

He said under cross-examination that he had never had a conversation with the virtual complainant since attaining adulthood. He was now 41. He said that she knew him because he used to visit her husband at his home. He had never visited the home when they (the virtual complainant and her husband) had been living together. He called his wife Yasmin Rampersad as a witness. She confirmed that the appellant had been at home on the evening in question. She said she recalled the day because it was a Thursday and it was a religious day of fasting for her. She said under cross-examination that the appellant got home that evening at about 6.30 – 6.45 p.m. She and her husband had a good relationship.

Mr. Kujufi who appeared for the appellant initially intimated to us that it was his intention to argue three (3) grounds of appeal and proceeded to do so. At the end of his submissions he sought leave to argue three further grounds. The first and second of those further grounds were, however, identical to the original first and second grounds. We accordingly gave leave to argue ground 3.

Ground 1:

“The learned trial judge did not put the defence adequately and did not so compartmentalise the evidence and draw to the jury’s attention the essential features of the evidence as they related to certain aspects of the defence”.

The submissions of Mr. Kujufi fell under four heads which may be classified as:

- (a) No clothes fitting the description of that which the virtual complainant said was worn by the appellant were found at his home.

- (b) There was no positive identification of lipstick and cinema tickets found at the scene of the alleged rape by the virtual complainant.
- © The time period, which would have elapsed when calculated on the evidence of the virtual complainant, if accepted, exceeded the time of his arrival home as given by the appellant and his wife.
- (d) The comment of the trial judge that the appellant's wife who testified on his behalf may not be an independent witness.

The defence of the appellant was that the virtual complainant was mistaken in her identification of him as her assailant and that he was not where the State says he was that night; an alibi. We find no fault with the judge's directions to the jury on that issue. It seems to us that the learned trial judge having reviewed the evidence, the jury could have been in no doubt as to what were the issues for their determination. The fact that clothes fitting the description of what the virtual complainant said were worn by her assailant were not found at the home of the appellant is in our view not such a circumstance as would require special mention by the trial judge nor indeed the time factor at © above. Unless the disparity is so wide that it points directly to an unacceptable situation, we see no reason for the trial judge to deal specifically with any difference in time which might very well arise because of estimates made by the witnesses. While we think the comment made by the trial judge of the appellant's wife not being an independent witness was unfortunate, we do not think in the context that it prevented the jury from giving proper consideration to her evidence. The question of non identification of the lipstick and cinema tickets does not in any way point to the appellant and as the judge quite correctly stated, that was supporting evidence for the jury to consider in deciding whether or not they were satisfied that the incident took place at Carlsen Field. We therefore find no merit in this ground.

Ground 2:

”The identification parade was fatally flawed because the victim’s statement before identification statement to the police included “she had never seen the accused before that date”.

Although this ground on its face was directed at the identification parade, Mr. Kujufi’s submission centered mainly around what he considered to be the weaknesses in the identification evidence. In our view the trial judge dealt adequately with the identification evidence cautioning the jury and directing them in terms of the guidelines set out in *Turnbull*. Mr. Kujufi’s concerns of the failure of the officer holding the identification parade to have the appellant speak so that the virtual complainant could try to identify him by voice and or by body odour are without merit, since there was no evidence that those were the methods by which the virtual complainant had identified him. The virtual complainant’s identification was solely on the basis of her recollection of the appellant’s facial features and nothing has been advanced to show that the identification parade was unfair.

Ground 3:

“The appellant did not receive a fair trial because the prosecution as it was compelled to do, did not inform the Court that the first description of the offender (appellant) given by the victim in a statement to the police on 13<sup>th</sup> January 1995 was as follows:

“I observed that the driver was very dark in complexion with very curly hair in an afro hairstyle. He was wearing a striped jersey with white stripes”.

We know of no legal principle which puts any obligation on prosecuting counsel to inform the Court about any discrepancy there might be in the first description given by the virtual complainant and the appearance of the suspect.

Should it appear that there is some material difference between the first description and the features of the suspect, it would be the duty of prosecuting counsel to bring this to the attention of counsel for the defence to make such use of it as he deems fit. It would appear that by a letter dated the 18<sup>th</sup> November 1999 addressed to attorney for the defence, State Attorney had informed him of the first description given by the virtual complainant of her assailant. Mr. Kujufi sought to convince us that this letter although he retrieved it from the brief of trial counsel, and had not questioned him about it, was not received by that counsel before the 19<sup>th</sup>. There is in fact no evidence of the date on which defence counsel received the letter. The trial commenced on the 17<sup>th</sup> of November 1999 and there is nothing to suggest that defence attorney did not receive this letter while the prosecution's case was still in progress. The disparity to which counsel referred was the description given to the police officer that the suspect was black. The officer's evidence was that he regarded this description as referring to the suspect's complexion and not his race. We have not had the full transcript but we note from the judge's summing-up that defence counsel had questioned the officer who conducted the parade about its composition, in particular, whether there were any negroes on the parade. We view this as an indication that counsel was aware of the description when he was cross-examining the police officer. We think, however, that the learned trial judge did not deal adequately with this aspect of the case. In our society the description 'black' is used primarily to refer to persons of african origin and the appellant who is indian had denied his involvement. It was incumbent on the trial judge in such circumstances to direct the jury's attention to the description given by the virtual complainant so that they can weigh this in the balance in determining whether she was mistaken in her identification.

### Ground 3 of further grounds.

“The learned trial judge ought not to have admitted into evidence the photograph of the “Black Suzuki Jeep” since that vehicle was never identified by the victim. Accordingly such evidence can have no probative value. Its only value then was prejudicial”.

During the course of the trial the prosecution tendered into evidence a photograph of a black Suzuki jeep bearing registration number PAO: 6984. It was admitted by the learned trial judge. The evidence of the complainant Cpl. Clark was that on the 15<sup>th</sup> of January 1995, he visited the home of the appellant and there found a black Suzuki jeep bearing registration number PAO: 6984. He entered that jeep and tried the left front door, which he was unable to open. Neither the jeep nor the photograph was shown to the virtual complainant. This is but one of several bits of evidence which the prosecution led and the learned trial judge placed before the jury as circumstantial evidence which he directed when taken together pointed to the guilt of the appellant. The other bits of evidence were:

- (i) the fact that the door handle on the inside of the jeep was broken and could not open;
- (ii) the smell of the perpetrator. The person who raped the virtual complainant was said by her to have smelt like diesel or grease. The appellant's job involved maintenance and repair of heavy equipment;
- (iii) the appellant lived in the direction where the jeep was first seen to be heading while the virtual complainant waited for transportation at the roadside near the Chase Village Flyover;
- (iv) the appellant had resided at Carlsen Field for some 15 years and therefore knew the area where the rape occurred very well as evidenced by his finding his way there at nighttime.

Did the trial judge fall into error when he catalogued the above-mentioned bits of evidence and directed the jury to regard them all as circumstantial? Circumstantial evidence must be evidence which standing by itself points in one direction and one direction only that is the guilt of the appellant. Circumstantial evidence must be evidence in the first place admissible and must be capable of performing a particular function. It must point unequivocally to a particular conclusion.

The evidence of the appellant's possession of a black Suzuki jeep is plainly relevant. It fits the description of the vehicle the virtual complainant claimed her assailant was driving at the time of the incident. More than that it cannot be a mere

coincidence that the jeep had a defective handle on the passenger side similar to that described by the virtual complainant. We think it mattered not that the virtual complainant was not asked to identify the jeep. She might or might not have been able to do so. This did not detract from the cogency of that evidence as a confirmatory factor in the identification of the appellant. While we feel that in the circumstances of the case where the appellant was positively identified, this evidence was really unnecessary, it was, however, admissible.

The other bits of evidence to which we have referred while each circumstance was not compelling in itself, were clearly admissible and the cumulative effect was to point in the direction of the appellant as the perpetrator of the offence. This ground accordingly fails.

We have identified one area of the summing up which we felt the trial judge did not deal with as he should have. We have drawn attention to it at ground 3 above. We must now consider whether in the light of it we can hold that the conviction was unsafe.

The prosecution's case against the appellant was strong. The virtual complainant had positively identified him at the identification parade, the conduct of which was fair. The several bits of circumstantial evidence pointed unequivocally in his direction.

While we feel that the trial judge could have given greater assistance to the jury on the question of the first description of the appellant in light of all the evidence, the appellant was not prejudiced thereby.

We therefore dismiss the appeal and affirm the conviction. However, with respect to the sentence of twelve (12) years hard labour and the imposition of ten strokes with the birch, we have taken account of the fact that the offence was committed in January 1995, seven years ago, and the appellant has been in custody since his conviction in November 1999.

In the premises we vary the sentence by quashing the order for ten strokes with the birch and imposing instead a term of ten (10) years hard labour which would commence from today.

R. Hamel-Smith,  
Justice of Appeal.

L. Jones,  
Justice of Appeal.

M. Warner,  
Justice of Appeal.