

IN THE REPUBLIC OF TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Criminal Appeal No. 30 of 2005

BETWEEN

GODFREY GABRIEL

APPELLANT

AND

THE STATE

RESPONDENT

**PANEL: JOHN J. A.
 MENDONCA J.A.
 WEEKES J.A.**

**APPEARANCES: Mr. Rajkumar for the Appellant.
 Ms. Seetahal S.C. for the Respondent**

DATE DELIVERED: September 27, 2006

JUDGMENT

DELIVERED BY MENDONCA J.A.

1. The Appellant was convicted of the crime of sexual intercourse with a minor contrary to section 6 of the Sexual Offences Act, 1986 (the 1986 Act). He was sentenced to twenty (20) years imprisonment with hard labour. The Appellant appealed his conviction. On the hearing of the appeal on July 13 2006 Counsel for the Appellant advanced two grounds of appeal. The grounds were argued in the alternative. Counsel first submitted that the Judge erred in law when he permitted evidence to be led before the jury of a complaint made by the victim to her aunt the day after the offence was committed. Such evidence Counsel argued was inadmissible in law. In the alternative Counsel submitted that if such evidence was admissible the Judge failed to direct the jury adequately or at all with regard to the dangers of such evidence and how this type of evidence should be approached.

2. Counsel for the State submitted that evidence of recent complaint was admissible but in this case no such evidence was led by the State.

3. After considering the arguments we agreed with Counsel for the State that there was no evidence of recent complaint led at the trial. We therefore dismissed the appeal, affirmed the conviction and ordered that the sentence begin from the date of conviction. There was therefore no need to consider whether evidence of recent complaint was admissible under the law. However, given the importance of the issue, we indicated to

Counsel that we would nevertheless consider the arguments advanced on the admissibility of such evidence and give our decision in writing at a later date. This we now do.

4. Under the common law upon the trial of an indictment for rape and other kindred offences the fact that a complaint was made by the alleged victim shortly after the alleged occurrence of the offence and the particulars of such complaint may so far as they relate to the charge against the accused could be given in evidence by the prosecution, not as evidence of the facts complained of, but as evidence of the consistency of the conduct of the alleged victim with the story told by her in the witness box, and, where consent is in issue, to show that the victim's conduct was inconsistent with consent (see **R. v. Lillyman** [1896] 2 QB 167). However, the common law rules relating to recent complaint were abolished by section 31 of the 1986 Act. This section provides as follows:

31. The Common Law rules relating to evidence of recent complaint in sexual offence cases are abolished.

5. This section, it was held in **Diaz v The State** (1989) WIR 425, rendered inadmissible evidence of recent complaint in all criminal trials involving sexual and other kindred offences. Section 31 of the 1986 Act was however repealed by section 18 of the Sexual Offences (Amendment) Act, 2000 (the 2000 Act). Under the common law, on the repeal of an Act that itself had altered the common law, the common law revived.

Counsel for the Appellant however submitted that this common law principle has been altered by section 27(1)(a) of the Interpretation Act which is as follows:

27(1) Where a written law repeals or revokes a written law, the repeal or revocation does not, except as in this section otherwise provided, and unless the contrary intention appears –

(a) revive any written law or thing not in force or existing at the time at which the repeal or revocation takes effect;

6. Counsel submitted that in view of that section the repeal of an Act that abolished any common law rule did not revive that rule. Therefore on the repeal of section 31 of the 1986 Act by the 2000 Act the common law rules of recent complaint were not revived.

7. Counsel for the Appellant referred the court to **Boddington v. Wilson** [1951] 1 All ER 166 at p. 169 where Sir Raymond Evershed M.R. stated:

If regulation 62 (4A) had retained its original form so that the notice in question would have been wholly inoperative, or “null and void” from the moment of its service because of the non-fulfillment of the condition precedent, then I think that the effect of section 38 (2)(a) of the [Interpretation] Act of 1889 would have been that the common law would not have applied so as to give life to this notice to quit

8. Section 38(2)(a) of the English Interpretation Act 1889 to which reference was made in Boddington provides as follows:

Where this Act or any Act passed after the commencement of this Act repeals any other enactment then, unless the contrary intention appears, the repeal shall not –

(a) revive anything not in force or existing at the time at which the repeal takes effect

9. Reference may also be made to **D v D** [1979] Fam. 70. In that case the Court had to construe a similar provision that the repeal of an act does not revive “anything” not in force or existing at the time the repeal takes effect. It was held that the common law was not revived.

10. In Australia the Courts have arrived at a similar conclusion as to the meaning of a similarly worded section of the relevant Interpretation Act. In **Majeau Carrying Co v Rutile** [1973] 1 ALR 1 the relevant provision of the Interpretation Act there provided that the repeal of a former Act shall not, unless the contrary intention appears, inter alia, “Revive anything not in force or existing at the time at which such repeal ... took or takes effect”. The Court stated:

“This provision raises the presumption that the intention of Parliament, in repealing the Act of 1938, was not to revive the common law rules (if any) that were displaced by the repealed enactment ...

11. Similarly in Canada the Courts have also held that a provision similarly worded to section 38(2)(a) of 1889 English Act has the effect of not reviving the common law. In **R. v. Camp**, 79 DLR 462, 469 it was stated in the judgment of the Court:

Even if the former s.142 could be viewed as a mere codification of the former law, the common law presumption that, absent the expression of a contrary intention, *prima facie* Parliament is presumed to have intended to revive the former law when it repeals laws which supplanted that former law has been reversed by s.35(a) of the *Interpretation Act*, R.S.C. 1970, c. 1-23, which provides:

35. Where an enactment is repealed in whole or in part, the repeal does not

(a) revive any enactment or *anything* not in force or existing at the time when the repeal takes effect;

12. In these cases the Courts in essence held that “anything” in the Acts to be wide enough to refer to the common law so that the repeal of an Act which itself abolished the common law did not serve to revive the common law.

13. In reply to Counsel for the Appellant, Counsel for the State submitted that section 27(1)(a) does not refer to the common law. The consequence therefore was that on the repeal of section 31 of the 1986 Act the common law relating to recent complaint revived. Counsel referred to the case of **ex parte Council of Civil Service Unions** [1984] 1RLR317.

14. In that case it was argued that section 38(2)(a) of the English Interpretation Act operated so as not to revive the prerogative power to lay down or vary terms or conditions of service of civil servants in relation to trade union membership when a 1927 Act restricting that power was repealed. The Court, however, did not accept that argument. It did so on the basis that the 1927 Act did not supercede the prerogative power but only required the power to make regulations in relation to the rights of civil servants to membership of trade unions to be exercised in a particular way. The prerogative power therefore was not repealed by the 1927 Act and so was not caught by section 38 (2)(a) of the English Interpretation Act and in any event there was a contrary intention in the Act that repealed the 1927 Act. This case is not in conflict with the cases referred to previously on the construction of the Interpretation Act and in our view does not provide support for the construction of section 27(1)(a) of the Interpretation Act as submitted by Counsel.

15. Counsel for the State, however, also drew the Court's attention to the difference in the wording in the English Act which provides that the repeal of an Act does not revive

“anything” not in force at the time of the repeal when compared to section 27(1)(a) of the Interpretation Act in this jurisdiction which refers to the repeal not reviving “any written law or thing”. This submitted Counsel did not refer to the common law. Counsel further submitted that any doubt created by the difference in the wording of the statutory provisions should go in favour of not applying the section to the common law. In this regard Counsel referred to **Benion on Statutory Interpretation** (4th ed.) (at p.258) where the author states that the application of section 38(2)(a) to prevent the revival of the common law is contrary to principle.

16. For our part we see nothing wrong in principle if Parliament legislated that a rule of the common law which was abolished by an Act is not to be revived on the repeal of that Act. But this is the crux of the argument surrounding section 27(1)(a) of the Interpretation Act. Does the word “thing” in “any written law or thing” refer to the common law? We accept that the section does give rise to difficulties in interpretation since the word “written” may also be construed as describing “thing” as well as law. As Counsel for State submitted this may refer to other written things such as a notice to quit or a contract in writing. But this is an argument that need not be resolved in this case. We say this because in our judgment section 31(1) of the Interpretation Act is decisive of the issue. This provides as follows:

31(1) The repeal or the amendment of a written law shall not be construed as a declaration as to the previous state of the law.

17. This section, which was introduced by an amendment to the Interpretation Act in 1979, is clear in its meaning and intent. Quite simply the repeal or amendment of a written law is not to be construed as declaratory of the previous state of the law. “Law” in “state of the law” certainly includes the common law. In each case the repealing Act will have to be construed to determine whether it was Parliament’s intention to revive the previous law. In this case it is common ground that the 2000 Act does not contain such an intention. The consequence therefore is that the repeal of the 1986 Act did not reinstate the common law rules as to recent complaint.

John J.A.
Justice of Appeal

Mendonca J.A.
Justice of Appeal

Weekes J.A.
Justice of Appeal