150* **R. v Neville Benson Henry

R. v Jeffrey Patrick Manning
Court of Appeal (Criminal Division)

9 December 1968

(1969) 53 Cr. App. R. 150

Lord Justice Salmon, Lord Justice Fenton Atkinson and Mr. Justice Milmo

1968 Dec. 9

Evidence—Corroboration—Sexual Offence—Direction to Jury.

On a charge of a sexual offence against a woman or girt, the judge should direct the jury in dear and simple language that it is dangerous to convict on the uncorroborated evidence of the complainant, because human experience in the courts has shown that women and girls, for all sorts of reasons and sometimes for no reason at all, tell a false story which is very easy to fabricate, but extremely difficult to refute. He should go on to tell them that, bearing that warning in mind, they have to look at the particular facts of the particular case and if, having given full weight to the warning, they come to the conclusion that the woman or girl without any real doubt is speaking the truth, the fact that there is no corroboration does not matter and they are entitled to convict.

Appeals against conviction.

The appellants were convicted at Warwickshire Assizes on April 5, 1968, of rape and were each sentenced by Stable J. to seven years imprisonment.

The following statement of facts is taken, in subtance, from the judgment. The girl in question, who was 161/2 on January 8, 1968, had come from Ireland to Birmingham with another girl and hoped to stay with an aunt who lived at 64 St. Saviours Road. When the girls arrived at the aunts flat, they found that the aunt was out and would not be back until about 5 p.m. It was then about 1 p.m. They went to a fish and chip shop and then to a cafâ and there met a number of Jamaicans including the two appellants. According to the girl's evidence, the appellant Henry suggested that she should go back to his house, 138 St. Saviours Road, where, according to her, he said that he **151* was living with his mother and father. There is no doubt that the girt went back with Henry and they walked along the road with the girl holding Henry's arm; Manning followed. According to the girl's evidence, when she got to the house she discovered that in addition to Manning, who had then arrived, and Henry, there were a number of other West Indian men in the house, but that Henry's mother and father were not there; so there she was, alone with about six young men in all. The girl was a virgin. According to her, she was very anxious to get away and frightened, but she did not say anything about it at first. A gramophone was put on and she danced with one of the men, who was trying to show her a somewhat complicated step. She says that she then went downstairs when one of the men, Henry, went down for a drink. She tried to get out of the house, but was stopped and brought back upstairs again. According to her, Henry took her into another room and then into his room and made it quite dear to her that he intended to have intercourse with her. She protested and said she would not have intercourse with him. He said that, if she did not submit, he would get ten men to hold her down whilst he had intercourse with her by force. According to her case, she was terrified and submitted and he had intercourse with her and ruptured her hymen. According to her case, Manning subsequently had intercourse with her against her will. She was kept in the house against her will and Henry had intercourse with her again against her will and she was then kept a prisoner in the house on Henrys instructions by one of the men living there called Bevis, who eventually let her go.

The case for Henry was quite different from the case for Manning. Henry said that certainly he had intercourse with this girl, but that she was fully consenting and that there was not a word of truth in her story that he threatened her in any way. He said that she was not in the slightest degree unhappy about it and indeed initiated the proceedings. Mannings case was quite different. He said that he went into Henry's room and found the girl there after Henry had had intercourse with her and saw that **152* she was bleeding between her legs and that, although he had been inclined to ask her to have intercourse with him, this made

him change his mind; he said that he never penetrated her, but that he had lain on top of her and there was some sexual intimacy with her consent.

Brian Bush , for the appellant Henry. The judge's direction on corroboration was unsatisfactory.

3. Lee , for the appellant Manning. The argument put forward on behalf of the co-appellant is adopted. In Manning's case a clear direction was essential, because In fact there was no corroboration so far as he was concerned.

3. W. Wilson , for the Crown. Some of the phrases used by the judge with regard to corroboration may not have been entirely accurate, but looked at as a whole, his direction was sufficient. If the Court should be of contrary view, It is submitted that this is a case where the proviso to section 2 (1) of the Criminal Appeal Act 1968should be applied in view of the strength of the case for the prosecution.

Salmon Li.:

On April 5, 1968, at Warwickshire Assizes both these appellants were convicted on separate counts of rape and each was sentenced by the learned judge to seven years imprisonment. They now apply by leave of the single judge against their convictions on the ground of misdirection by the trial judge. [After stating the facts the learned Lord justice continued.]

The case against Henry was very strongly corroborated. First, Bevis Herman, one of the men in the house, gave evidence to the effect that on Henry's instructions he kept the girl in the house against her will. He suggested to Henry that he should let her go and Henry said, "All in due course." Henry was saying, on the other hand, that the girl was in the house entirely voluntarily, consented to all that had been done and never tried to get away. Then again Henry said that after he had had sexual intercourse a man called George came into the room and said to the girl in effect, "Now it's my turn." The girl said she *[153] would not have intercourse with him and shrieked and slapped his face; and Henry just walked out of the room and left them together. Thirdly, there was independent evidence that immediately after the girl had had intercourse with Henry she was in an extremely distressed state and crying, and Henry denied it. There were those three separate pieces of corroboration as far as Henry is concerned, which this Court considers to be of very great weight.

As far as Manning was concerned, there was not a spark of corroboration. It is suggested that when he was first questioned by the police he admitted that he had had intercourse with the girl, that there had been penetration and that afterwards he changed the story and said he had merely had sexual intimacy with her. It is suggested that this was a lie and that this lie would corroborate the case that she had not consented to what had occurred, but, in the view of this Court, when one looks at the whole picture of what Manning told the police and appreciates that he may well not be very coherent, his story looked at as a whole seems to *be* quite consistent, because it is certainly not shown that his intention was other than to say exactly what he said when he was in the witness-box.

What is complained about by both these appellants is the learned judges summing-up on corroboration. This Court has said again and again, and I hope, quite recently made it clear, In *O'Reilly (1967) 51 Cr.App.R. 345; [1967] 2 Q.B. 722; (1967] 3 W.L.R. 191; [1967] 2 All E.R.* 766, that there is no magic formula or mumbo jumbo required in a direction relating to corroboration. What the judge has to do is to use clear and simple language that will without any doubt convey to the jury that in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that In these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all. The judge should **j54* then go on to tell the jury that, bearing that warning well in mind, they have to look at the particular facts of the particular case and if, having given full weight to the warning, they come to the conclusion that in the particular case the woman or girl without any real doubt is speaking the truth, then the fact that there is no corroboration matters not at all; they are entitled to convict. Most unfortunately, this is not what was done in the present case. It seems to be almost the reverse of what was done. The learned judge said: "Now, members of the jury, you have heard a good deal about what is called corroboration. Members of the jury, I think, unfortunately, that where the issue is consent or no consent the judge who sums the case up is almost compelled to use a certain formula." Pausing there, the Court has already indicated that there is no formula. It does not matter whether the issue is consent or no consent or whether the issue is identification or

anything else. There is still a duty to use language which will in plain terms convey a warning of the kind I have described. The learned judge then went on to say: "I personally don't like fixed formulas because what may be wholly appropriate to one case does not lit the facts of another. Members *of* the jury, the direction that judges must give is that where the issue is consent or no consent, if the man says the girl consented and the girl says no, she did not, and there is no evidence beyond the two, no evidence from some independent source, that, although the jury is entitled to convict on the uncorroborated evidence of the girl, in some cases It is highly dangerous to do so. Members of the jury, you can picture the sort of case to which that formula Is most fitted, where it is common ground that there has been lovemaking between the two parties concerned, and the girl says, 'Well, I allowed a good deal of physical familiarity but the matter went too far and about the act of intercourse I did not consent,' a jury is told, I have told them many a time, where that is all you have got it is highly dangerous to convict. Of course, there are other cases in which the warning perhaps is not so stringent and the direction that you give to the jury is that they must before they convict scrutinise the evidence of the **155* woman concerned, scrutinise it with double care, and only if in the absence of any corroborative evidence, having given the girls evidence the most careful scrutiny, they are fully satisfied of the truth of her story, then they are entitled to convict." It is to be observed, pausing there, that the learned judge does not say why they are to scrutinise her evidence, does not say that in that second category it is dangerous to convict without corroboration, still less why it is dangerous to do so. He then went on: "Members of the jury, I venture to think that this is one of those cases In which that formula is not very helpful. This Is not a case in which there has been Jove-making between the two parties and it is common ground that up to a point the girl was a consenting party. In this case, members of the jury, you want to took at the whole picture." This Court feels forced to the conclusion that that direction cannot possibly be supported on any view of the law.

Then the question is, ought the proviso to be applied? The case of Henry differs very much from the case of Manning. There were the three pieces *of* formidable corroboration of the girl's evidence against Henry, but not a spark of corroboration against Manning. Supposing a jury had been correctly directed, could they on this evidence have come to any conclusion other than the one at which they arrived against Henry? This Court, looking at the case realistically, as it is bound to do, finds that there is no real possibility that, however impeccably the jury had been directed on the issue of corroboration, the jury could in the very special circumstances here have come to any conclusion except that at which they arrived. Here was Henry, who says that he had had intercourse with the girl, she consenting, and Immediately afterwards another man called George comes into the room and says, "I am going to have intercourse with you," in effect, and the girl shrieks and makes it quite clear that she does not want to have intercourse with the man and slaps his face, and Henry walks straight out of the room, leaving the two together. If he had not had intercourse with her against her will, it is incredible that he would have walked out and left her **156* in that room alone with George. Then again he says that after he had intercourse with her she was quite happy, whereas the independent evidence shows that she was highly distressed and crying. What reason could there be for him lying other than his guilt? Thirdly, and perhaps most importantly, is the other piece of corroboration: here was a girl who, according to Henry, was happy to be in the house and happy to have intercourse with him twice; there was never any question of keeping her against her will. There is, however, the strong independent evidence of Bevis that Henry was keeping her there against her will and had instructed Bevis to keep her there whilst he, Henry, was away.

For those reasons, this Court has come to the conclusion that, as far as Henry is concerned, there has been no miscarriage of justice of any kind and the Court has no hesitation, on the special facts of this case, in applying the proviso.

As far as Manning is concerned, the case is different. It may be (It is not for this Court to speculate) that Manning is fortunate, but the fact remains that, as far as he is concerned, there was not, for the reasons already indicated, a shred of corroboration of the charge against him. That being so, it was highly important for the judge to tell the jury that there was no corroboration against Manning. It was particularly important for him to do so in this case because there was corroboration against Mannings co-defendant, the three pieces of evidence to which reference has already been made, and the learned judge ought to have told the jury that none of these should be taken into account against Manning, because the evidence against him rested solely on the evidence of the girl herself. What conclusion would the Jury have come to if they had been properly directed as far as Manning is concerned? One suspects that they might well have come to the same conclusion as that at which they did arrive, but, having regard to the fact that there was no corroboration against him of any kind, it is impossible for this Court to say that a jury could have come to no other conclusion and therefore in Manning's case it would be wrong to apply the proviso. *157