

ACKSON ZIMBA v THE PEOPLE (1980) Z.R. 259 (S.C.)

SUPREME COURT

GARDNER, AG. D.C.J., BRUCE-LYLE, J.S. AND CULLINAN, AG. J.S.

19TH AUGUST, 1980

S.C.Z. JUDGMENT NO. 20 OF 1980

Flynote

Evidence - Corroboration - Evidence of distress - Whether could amount to corroboration.

Criminal law and procedure - Rape - Evidence of distress - Necessity for court to warn itself that it may be simulated.

Headnote

The appellant was convicted of rape. On appeal the court considered whether the fact that the complainant was crying when she was seen by the independent witness, could amount to corroboration.

**Held:**

It is necessary for the trial court to warn itself that evidence of distress at the time of the making of the complaint may not be enough to amount to corroboration as it may well be simulated.

**Case referred to:**

(1) Knight v R.50 Cr. App. Rep. 122.

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GARDNER Ag DCJ

For the appellant: Patel, Senior Legal Aid Counsel.

For the respondent: N. Sivakumaran, State Advocate.

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Judgment

**GARDNER, AG. D.C.J.:** delivered the judgment of the court.

The appellant was convicted of rape, the particulars of the charge being that on the 14th June, 1979, he did unlawfully have carnal knowledge of Monica Ndhlovu without her consent. The learned State Advocate does not support this conviction.

The evidence against the appellant was that he was alleged to have seized a woman in the bush and to have raped her, and the woman was thereafter seen to be crying by an independent witness.

The complainant stated that during the course of her alleged rape she sustained scratches on her legs, and she said that the third party whom she met had asked her how she had obtained those scratches. That witness did not corroborate the evidence as to the scratches, nor did the medical report refer to any external injuries to the complainant at all. In the circumstances there was a complete lack of corroboration in this case.

We have considered whether the fact that the complainant was crying, when she was seen by the independent witness, could amount to corroboration. Although the distress of the complainant could have been regarded as corroboration, on the authority of *Knight v R* (1) it is necessary for the trial court to warn itself that evidence of distress at the time of the making of the complaint may not be enough to amount to corroboration as it may well be simulated. No such warning was given to himself by the magistrate in this case, and we agree with the learned State Advocate that this conviction cannot be supported. The appeal is allowed, the conviction is quashed, and the sentence is set aside.

Appeal allowed

**1979**

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