Privy Council Appeal Nos. 2 and 3 of 1990

(1) Pierre Nelson Manon
(2) Luc Herve Manon
(3) Desire Clency Georgini and
(4) Marie Desire Bernard Nicolas Pierrus *Appellants*

v.

The Queen *Respondent*

FROM

THE SUPREME COURT OF MAURITIUS

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, OF THE 8TH OCTOBER 1991, DELIVERED THE 11TH NOVEMBER 1991

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD TEMPLEMAN
LORD GOFF OF CHIEVELEY
LORD BROWNE-WILKINSON
SIR MAURICE CASEY

*[Delivered by **Lord Bridge of Harwich**]*

The appellants, Pierre and Luc Manon, were charged with rape. The appellants, Georgini and Pierrus, were charged with the offence of attempt upon chastity. Together with a fifth man, Sooriah, who was also charged with rape, they were tried in the Intermediate Court by two professional magistrates and convicted as charged. Their appeal to the Supreme Court was heard before Sir V.J.P. Glover C.J., Proag and Ahnee JJ. and dismissed by a majority (Ahnee J. dissenting). They now appeal to Her Majesty in Council. At the conclusion of the hearing their Lordships announced that they would humbly advise Her Majesty that the appeal ought to be dismissed for reasons to be given later. They now give their reasons.

The evidence of the complainant, Doris Joseph, was, in summary, to the following effect. She had known the appellant, Pierrus, since she was 19 years old. She had had an intimate relationship with him involving a large degree of sexual familiarity, but stopping short of actual sexual intercourse. At the end of 1984 she sought to break off the relationship, but he continued to press her with his attentions. On 24th March 1985

A submission had been made on behalf of the accused that a fatal flaw in the prosecution case arose from their failure to call the maid at the Pierrus house, since the complainant, in cross-examination, had claimed that the maid could support her account in some respects. The defence relied in support of this submission on a decision of the Supreme Court of Mauritius in *Budlawan v. R.* [1987] MR 50. The point was quite misconceived. *Budlawan* was a case of murder by shooting where identity was in issue. The prosecution put in evidence the statements to the police which had been made by a number of eye witnesses of the shooting, but did not call them to give evidence. Delivering the judgment of the court, Lallah J. said:-

> "... the appeal must be allowed because of a gross irregularity consisting in the admission of clearly irreceivable evidence most prejudicial to the particular defence put forward by the appellant."

Later in the judgment he added:-

> "... the prosecution having decided to adduce evidence of what three alleged witnesses had seen and said on an issue which struck at the very root of the defence, the prosecution was in duty bound to call those witnesses in order to ensure that the appellant could cross-examine them and benefit from a fair trial."

This decision gave no support whatever to the submission for the defence in the instant case. Here the police had taken a statement from the maid which was not put in evidence but had been furnished to the defence. They could have called her as a witness or required that she be tendered for cross-examination. They took neither course.

However, referring to counsel's submission, the magistrates said in their judgment:-

> "We have considered their submission on the point and we find that *Budlawan* is plainly distinguishable from the facts of this case: the more so when we find sufficient corroboration in the testimony of Witness Nombro when he described the state in which he saw the girl that evening: she 'devidait ... pleurait, causait en meme temps ... she looked tres boulversee'."

One ground of appeal before the Supreme Court and the only ground which requires consideration by the Board is founded on this passage. The submission which found favour with the dissenting judge, Ahnee J., was that Nombro's evidence of the distressed condition of the complainant when recounting to him what had happened to her was incapable of amounting to corroboration. The majority of the Supreme Court rejected this submission on two grounds. Their first ground appears from the following passage from their judgment:-

> "The judgment of the trial Court, looked at as a whole, clearly indicates that the magistrates were, notwithstanding that these are sexual offences, fully alive to the rules regarding corroboration and perfectly satisfied that they could rely on the evidence of the complainant coupled with the proof of consistency indicated by the substance and details of her complaint to Nombro. As opposed to that they were faced with the mere statements of the appellants according to whom the girl had graciously submitted to their lust. And we are left in no doubt as to the choice the trial Court made. They were not, in our view, even looking for corroboration before deciding whether to rely on that evidence."

They went on to conclude that the magistrates had assumed that a complainant's distressed condition could always amount to corroboration and rightly held this to be erroneous. But they further held that on a proper self-direction the magistrates must have concluded that Nombro's evidence of a complainant's distress did amount to corroboration.

Their Lordships feel considerable doubt whether the evidence given by Nombro of the complainant's distress was capable of amounting to corroboration in the technical sense of affording confirmation of the complainant's evidence from an independent source. But it is unnecessary to examine this issue further since their Lordships fully agree with the majority of the Supreme Court that the magistrates' judgment, read as a whole, makes it clear that their acceptance of the complainant's evidence was not dependent on any element of corroboration. The stark issue at the trial was quite unlike that at most trials for rape arising from a one to one encounter between a man and a woman. There was certainly no room for mistake or misunderstanding or for self-deception on the complainant's part. If the complainant had, as the unsworn and untested statements of the appellants alleged, cheerfully prostituted herself in a sexual orgy with four strange men, her evidence was grossly perjured. If her evidence was accepted as honest, she had been the victim of a peculiarly nasty gang rape. The glowing terms in which the magistrates commended her as a witness make it abundantly clear that they fully accepted her honesty.

Their Lordships are accordingly satisfied that, if there was a technical misdirection in the reference to corroboration, it occasioned no miscarriage of justice.