

The Queen

Appellant

v.

Rennie Gilbert

Respondent

FROM

**THE EASTERN CARIBBEAN COURT OF
APPEAL (GRENADA)**

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 21st March 2002

Present at the hearing:-

Lord Steyn
Lord Hobhouse of Woodborough
Lord Millett
Lord Scott of Foscote
Sir Philip Otton

[Delivered by Lord Hobhouse of Woodborough]

1. On 26th October 1999, after a trial in the High Court of Grenada before St Paul J and a jury which lasted less than two days in all, the defendant Rennie Gilbert was convicted on a single count of attempted rape and sentenced to seven years hard labour. The offence was alleged to have been committed on 25th November 1998 in the middle of the day on Bacolet beach St David's. The alleged victim was Nadisha Mapson, a 21 year old woman who worked as a shelf clerk in St George's. She had gone to the beach with two friends, Mearlyn Mahon and Kean Simeon. At one stage Miss Mahon and Mr Simeon went off together along the beach leaving Miss Mapson alone. Miss Mapson's evidence was that during this time she was approached by a young man whom she recognised as the defendant who had been at the same primary school as her and who she knew to live at Laura Land, St David's. He was only wearing underwear and had what looked like a jersey partly covering his face. He said: "I am going to rape you". He

threw her to the ground and indecently assaulted her. In the course of the ensuing struggle, he cuffed her in the face and threatened her with an iron bar. She scratched him on his back with her fingernails. She saw her friends walking back along the beach and managed to escape and run towards them. She had only her bikini top on; formerly she had had on a bikini suit and tights. As she ran she turned and saw the defendant picking up some items from the ground where they had been. Later she found that a bag, sunglasses and shoes were missing. She said that the incident had lasted for about 15 minutes.

2. The only other prosecution witnesses were Miss Mahon and Detective Sergeant Frame. Mr Simeon was not called. Miss Mahon gave evidence in general support of Miss Mapson but did not see the incident or her assailant. She could only speak to the fact that they met Miss Mapson running towards the sea water with no underwear on. The detective sergeant gave evidence that the two women came to the police station at about 2.30 pm on the 25th and made a complaint. He went to the beach and found trampled sand and a pair of green/black tights at the place pointed out by Miss Mapson. The next morning he detained the defendant for questioning. He observed scratch marks on his back which appeared to be fingernail marks. The defendant said that he had got them in the bush that morning. The officer kept a record of his interview of the defendant but neither side adduced evidence of what the defendant had said.

3. The defendant represented himself at the trial. Their Lordships have been informed that he was not entitled to legal aid. The defendant's cross-examination of Miss Mapson was confined to challenging her knowledge of him and her ability to recognise him. He did not otherwise challenge her account of the incident. The defendant did not give evidence. He made an unsworn statement from the dock:

“My name is Rennie Gilbert. I live at Laura Land, St David's. I am a handyman. During the time the virtual complainant [*sic*] say the incident took place I was at my aunt's residence at Westerhall St David's. I was home the day. I did not go anywhere. I was looking after my grandmother. She is more in bed but move about a little bit. I was unable to move about as I should as I was suffering a gunshot wound in my right leg. On 26th November 1998 the police came to me and said he want me at the station for questioning. He locked me in a cell. He never asked me any question. That was Thursday. The Friday he asked me if I

know Nadisha Mapson. I told him no. I have no witness. My grandmother died.”

The defendant then made a closing address to the jury lasting 7 minutes. The judge summed-up and the jury retired.

4. The only record of the evidence given at the trial (and the statement from the dock) is the trial judge’s note. The depositions taken at the Magistrate’s Court are also available but it appears that no use was made of them at the trial and they were not in evidence. There is a transcript of the judge’s summing-up. He directed the jury upon the constituents of the offence, the burden and standard of proof. He stressed that the prosecution case depended upon the evidence of Miss Mapson and asked the jury: “Can you consider her a witness of truth?” At various points in the summing-up he specifically drew the jury’s attention to differences between the evidence of Miss Mapson and Miss Mahon. He gave the jury a *Turnbull* direction on the reliability of identification evidence. He referred to the fact that Miss Mapson said that she had scratched the back of her assailant and that D.S. Frame said that he had seen marks resembling fingernail scratches on the defendant’s back the next day. He directed them upon the proper way to take into account the claim of alibi raised by the defendant’s statement from the dock. He did not give the jury any corroboration direction in relation to the commission of the offence of attempted rape or warn them of any danger of convicting on uncorroborated evidence.

5. The defendant appealed to the Eastern Caribbean Court of Appeal (Grenada) against his conviction. Legal aid was available but the defendant chose to represent himself. The Court of Appeal (Byron CJ, Satrohan Singh and Redhead JJA) allowed the appeal, quashed the conviction and ordered the release of the defendant. They did so on the single ground of the absence of a corroboration direction and warning. They considered that the summing-up was otherwise satisfactory but held that the judge should have followed and applied the decision of the Eastern Caribbean Court of Appeal in *Pivotte v The Queen* (1995) 50 WIR 114. This was a decision which rejected the approach adopted by the English Court of Appeal in *R v Chance* [1988] QB 932 and held that the direction must always be given. Satrohan Singh JA giving the leading judgment in *Pivotte* said at p.119:

“My considered opinion therefore is that in a sexual offence case, where identification is the main issue, the *Turnbull* guidelines and the corroboration rule should be used as a complement to each other and that the guidelines in *Turnbull*

alone would not suffice. The corroboration warning must be given.

In the instant matter, the appellant having pleaded 'Not Guilty', and having introduced an alibi as his defence, thereby making identification the main issue, the burden remained on the prosecution to prove every element of the charges, including all the elements of the attempted rape. The appellant did not challenge the fact of the commission of these offences, but the issues constituting the offences were not formally admitted. Given these circumstances, and applying the law as I understand it, it is my judgment that the corroboration warning was necessary with respect to the offence of attempted rape, not only on the issue that the offence was committed but also on the issue that the appellant committed it. This warning was not given by the judge. I consider this non-direction to be a grave misdirection."

In the present case, the Court of Appeal recognised that the corroboration requirement had been decided to be outdated in England and had been abolished there by statute and referred to the fact that a draft Evidence Bill for Saint Lucia would follow the same course. But Byron CJ giving the judgment of the Court continued:

"What is the position now? Although this impending development in jurisprudence is a trend that is likely to affect all our jurisdictions, the requirement to give the corroboration warning is still part of our law, and cannot be ignored. In this case the nature of the evidence left a lurking doubt as to the safety of the conviction. We did not think it an appropriate case to consider the application of the proviso."

Byron CJ had earlier said that there was no corroboration of Miss Mapson's evidence that she had been indecently assaulted.

6. The Director of Public Prosecutions was given special leave to appeal to the Privy Council in order to contest the conclusion that the rule that a corroboration direction and warning must be given should still be regarded as part of the law of Grenada. Mr Dingemans for the Director submitted that the judgment in *Pivotte* was wrong and should be over-ruled and, alternatively, that section 167 of the Evidence Act of Grenada had the effect of requiring the English law to be followed. Section 167 reads:

“Unless this Act otherwise provides, any question which shall arise in any action, suit, information, or other proceeding whatsoever in or before any Court of Justice, or before any person having by law authority to hear, receive and examine evidence touching the admissibility or sufficiency of any evidence, or the swearing of a witness or the form of oath or of affirmation to be used by any witness or the admissibility of any question put to any witness, or the admissibility or sufficiency of any document, writing, matter, or thing tendered in evidence, shall be decided according to the law of England for the time being in force.”

This had the result, it was submitted, that both the decision in *Chance* and section 32(1) of the English Criminal Justice and Public Order Act 1994 abrogating the requirement, *inter alia*, in respect of trials where the offence charged is a sexual offence were also part of the law of Grenada and applicable to the present case.

7. The defendant has not sought to be represented on this appeal and has not instructed counsel. Their Lordships accordingly requested the assistance of an *amicus curiae* and are grateful to Mr Evans for the assistance he has given them. Mr Evans has submitted that the Court of Appeal was right to conclude that in the present case a corroboration direction and warning should have been given. *Pivotte* should continue to be followed until abrogated by statute. Section 167 did not cover the present question since it was not a question of “the admissibility or sufficiency” of any evidence. Mr Evans also argued that, even on the basis of the judgment in *Chance*, a direction and warning should have been given and that, in any event, contrary to the view of the Court of Appeal in the present case, the *Turnbull* and alibi directions were inadequate.

Sexual Offences: Corroboration.

8. The rule in question is a special rule requiring the judge to give the jury a specific direction and warning in respect of the evidence of the complainant in a sexual offence case, that is to say, the evidence of the person who says that he or she has been the victim of a sexual offence. It does not apply to the evidence of any other person, only to the evidence of the victim. It potentially applies to male as well as female victims. Its effect is that in any sexual case the jury must be directed that it is dangerous to convict the defendant upon the uncorroborated evidence of the complainant alone; the judge must tell the jury which evidence would, if they

accept it, be capable of amounting to corroborating evidence; but he can go on to tell them that they can convict on uncorroborated evidence if, having paid due heed to the warning, they are nevertheless convinced of the defendant's guilt. The trial judge is also required to explain to the jury why the warning is necessary. Thus the classic version of the explanation was given by Salmon LJ in *Reg v Henry* (1968) 53 Cr App Rep 150 at 153, in these terms:

“... 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.”

It will be noticed that this explanation is expressly based upon a suggested special propensity of girls and women to lie. In *Pivotte* at p.118, Satrohan Singh JA referred (as had others before him) to examples of such reasons as being sexual neurosis, fantasy, spite and refusal to admit consent because of shame.

9. In *James v The Queen* (1970) 55 Cr App Rep 299, a rape case, the Privy Council held that the complainant's evidence of sexual intercourse, her lack of consent and the identity of the man concerned all needed to be corroborated and the jury should be warned that in all these respects it was dangerous to convict upon uncorroborated evidence. The breadth of that requirement gave rise to practical difficulties. The defendant may admit that he had had intercourse with the complainant; he may not dispute anything except lack of consent. He may, as the defendant did in the present case, simply say that it was not him and rely upon the assertion of an alibi without challenging her evidence in any other respect. Is the judge to tell the jury that the defendant's acceptance or admission of those parts of the complainant's evidence corroborates her evidence? Or should the judge adapt his summing-up to the actual issues raised by the evidence given at the trial? The English Court of Appeal in *Chance* adopted the latter approach which avoids the artificialities of the former. But either approach leaves an area of middle ground where the judge has to make an assessment (unless he is in all such cases to adopt the unqualified *James* approach). The defendant will have pleaded not guilty thereby putting the whole of the prosecution case formally in issue. He is unlikely, particularly when representing himself, to have made any formal admissions. Similarly, his cross-examination may not have taken advantage of opportunities to probe other aspects of the complainant's evidence.

10. *Chance* was a case decided at a time before the English law had been altered by statute and before the whole question of corroboration in criminal cases had been considered by the Law Commission. The facts of that case were such that it would have been extremely foolish of the defendant to have challenged the complainant's evidence that she had been forcibly raped. Swabs showed that sexual intercourse had occurred. She had suffered, among other injuries, two black eyes, chipped teeth and bruises on her right upper arm. No formal admissions had been made by the defence but the defendant's case was conducted solely on the basis that her assailant was not the defendant. He relied upon an alibi and called supporting witnesses. In his summing-up the judge had given a full *Turnbull* direction. The defendant appealed on the ground that he should also have warned the jury of the dangers of convicting on the uncorroborated evidence of a complainant. His appeal was dismissed. The court reviewed the authorities. In the earlier authorities, it had been said that the full warning must be given even though no issue other than identification was relied upon by the defence. In the later cases, with one exception, the court had held or proceeded on the basis that in an identification only case the full warning need not be given.

11. The Court of Appeal therefore considered what must be the justification for a rule which requires the judge to warn the jury in sexual cases. They said, at pp.941-2:

“The aim of any direction to a jury must be to provide realistic, comprehensible and common sense guidance to enable them to avoid pitfalls and to come to a fair and just conclusion as to the guilt or innocence of the defendant. This involves the necessity of the judge tailoring his direction to the facts of the particular case. If he is required to apply rigid rules, there will inevitably be occasions when the direction will be inappropriate to the facts. Juries are quick to spot such anomalies, and will understandably view the anomaly, and often, as a result, the rest of the directions, with suspicion, thus undermining the judge's purpose. Directions on corroboration are particularly subject to this danger: see *Reg v O'Reilly* [1967] 2 QB 722, 727, *per Salmon L.J.*”

They adopted what had been said by Barwick CJ in the High Court of Australia in *Kelleher v The Queen* (1974) 131 CLR 534, at 543:

“The rule of practice as to the warning to be given to the jury is related to the reasons which have prompted it. In my

opinion, it does not require a warning where those reasons have no play ... The issue whether or not she was honestly mistaken in her identification of the applicant did not involve any of those elements upon which the need for caution arises.”

The Court of Appeal concluded that what if any warning the judge should give depended upon what were the live factual issues on the evidence given at the trial. They considered that what had been said in *James* must be read subject to this implicit qualification. Thus they said at pages 942-943:

“What is the judge to do in the much more usual case where there has been no formal admission but equally there has been no suggestion by the defence that there is any doubt as to the commission of the offence and no cross-examination of the complainant to that effect? If, as in the instant case for example, it could not sensibly be suggested that no rape had occurred, it is absurd and gratuitously offensive to the complainant to insist that the usual warning should nevertheless be given.”

They pointed out two important advantages of their approach. First, where the defendant is charged with both a non-sexual and a sexual offence committed in relation to the same woman, say a burglary and a rape, it is not necessary for the judge to make the suggestion, not advanced by the defence and (in the absence of evidence to support it) patently absurd, that the woman householder may have been giving her evidence out of fantasy spite or neurosis. Secondly, it will not be necessary for the judge to give directions to the jury which will be seen by them to be totally inappropriate and therefore detract from the important and relevant directions which he has to give them, similarly saving a court of appeal from saying that such a direction ought formally to have been given but it would not have affected the decision of the jury and that the proviso should be applied.

12. In 1991, the view of the Court of Appeal in *Chance* (at pp.941-2) was expressly endorsed by the Law Commission in its Report Law Com. No. 202 (section 2.7). The working paper which had preceded this Report had criticised the existing rules as being inflexible, complex, productive of anomalies and inappropriate for the purpose they were intended to serve; it also expressed the view that the automatic application of the rule to (*inter alia*) complainants in sexual cases could not be justified. The Report pointed out (paragraph 2.9):

“The danger of injustice is increased by the irrational terms of the required direction itself. The judge is obliged to start by saying that it is dangerous to convict on the basis of certain evidence, but then to go on and tell the jury that it is possible for them to do exactly that. Those formulae can lead, according to the circumstances of the case, either to the placing of an unfair handicap on the prosecution or to confusion that may be positively detrimental to the accused. Far from protecting the accused, the rules, by requiring the jury to be given a complicated and technical discourse about the evidence to be corroborated, may ‘have the contrary effect [on the jury] to a sensible warning ... directed to the facts of the particular case’.”

The responses which the Commission had received to their working paper had confirmed these criticisms. The direction was “nonsensical at worst and contradictory at best to most juries”; in relation to sexual cases, it was “patronising” (see paragraphs 2.16 and 2.19): the Commission recommended that the requirement for a corroboration warning in sexual and certain other cases should be abrogated and proposed a draft bill in the form that was enacted in 1994. However they also recommended judges “should not be prohibited from giving the jury a warning, or a warning in any particular terms, about the evidence of any particular type or category of witness”. (paragraph 5.4)

13. This discretion left open to the trial judge was considered by the Court of Appeal in *R v Makanjuola* [1995] 1 WLR 1348. The court provided guidance on the application of the 1994 Act and how the judge should make use of this discretion in his summing-up. The judgment of the Court was given by Lord Taylor of Gosforth LCJ. At pp. 1351-1352, he said:

“The circumstances and evidence in criminal cases are infinitely variable and it is impossible to categorise how a judge should deal with them. But it is clear that to carry on giving ‘discretionary’ warnings generally and in the same terms as were previously obligatory would be contrary to the policy and purpose of the Act. Whether, as a matter of discretion, a judge should give any warning and if so its strength and terms must depend upon the content and manner of the witness's evidence, the circumstances of the case and the issues raised. The judge will often consider that no special warning is required at all. Where, however the witness has been shown to be unreliable, he or she may consider it necessary to urge caution. In a more extreme

case, if the witness is shown to have lied, to have made previous false complaints, or to bear the defendant some grudge, a stronger warning may be thought appropriate and the judge may suggest it would be wise to look for some supporting material before acting on the impugned witness's evidence. We stress that these observations are merely illustrative of some, not all, of the factors which judges may take into account in measuring where a witness stands in the scale of reliability and what response they should make at that level in their directions to the jury. We also stress that judges are not required to conform to any formula and this court would be slow to interfere with the exercise of discretion by a trial judge who has the advantage of assessing the manner of a witness's evidence as well as its content.

To summarise.

...

(2) It is a matter for the judge's discretion what, if any warning, he considers appropriate in respect of such a witness as indeed in respect of any other witness in whatever type of case. Whether he chooses to give a warning and in what terms will depend on the circumstances of the case, the issues raised and the content and quality of the witness's evidence.

(3) In some cases, it may be appropriate for the judge to warn the jury to exercise caution before acting upon the unsupported evidence of a witness. This will not be so simply because the witness is a complainant of a sexual offence nor will it necessarily be so because a witness is alleged to be an accomplice. There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. An evidential basis does not include mere suggestion by cross-examining counsel.

(4) If any question arises as to whether the judge should give a special warning in respect of a witness, it is desirable that the question be resolved by discussion with counsel in the absence of the jury before final speeches.

(5) Where the judge does decide to give some warning in respect of a witness, it will be appropriate to do so as part of the judge's review of the evidence and his comments as to how the jury should evaluate it rather than as a set-piece legal direction.

(6) Where some warning is required, it will be for the judge to decide the strength and terms of the warning. It does not have to be invested with the whole florid regime of the old corroboration rules.
...”

14. Their Lordships consider that this quotation from the judgment of Lord Taylor appropriately gives effect to the purpose for which the rule regarding the corroboration warning in sexual cases existed. The purpose was and still is to give juries the appropriate directions to assist them to arrive at a safe verdict as part of a fair trial. The former rule of practice had not been conducive to achieving that result. It had led to inappropriate and indiscriminate directions being given which confused juries and created unfairness as between the prosecution and the defence and undermined rather than supported the safety of the juries’ verdicts.

15. More recently the question of the need for corroboration in sexual cases has been reviewed in a judgment of the Supreme Court of Namibia in *State v K* [2000] 4 LRC 129 in the context of a constitutional requirement of a fair trial in conjunction with the victim’s right to be protected. The judgment quoted fully from contrasting judgments of South African judges, Kriegler J and Oliver JA, and preferred the latter. The view favouring the giving of the warning, although biblically derived from the experiences of Joseph in Egypt, was not supported by the absence of any modern empirical data that in sexual cases more false charges are laid than in any other category of crime (p.139). The judgment agreed with Oliver JA in expressly endorsing and adopting what had been said by Lord Taylor in *Makanjuola* (*sup*): see pp.143-4 and 146. The conclusion of the court was that the rule had outlived its usefulness and there were no convincing reasons for its continued application (p.145). The court was also of the view that it had been duty bound to consider the issue since it was a reasonable possibility that the application of the existing rule of procedure or evidence might adversely affect the fairness of the trial (p.135).

16. In the present case the Court of Appeal was bound by the previous decision of the court in *Pivotte*. In that case the court had pointed out correctly that the *Turnbull* direction is concerned with the reliability of the identifying witness’s evidence and the possibility of mistake rather than the question of fabrication and lies which is the subject matter of the corroboration warning in sexual cases: see particularly Floissac CJ at pp.119-120. But in rejecting *Chance* the court failed to take account of the essential

purpose of the rule of practice and its role in relation to the actual issues raised by the evidence given at the trial. It treats the plea of the defendant as conclusive giving rise to the absurdity and confusion of requiring a corroboration warning in relation to evidence of the complainant which is not challenged. Further, at p.118, Satrohan Singh JA says:

“... *Chance* seems to be removing from the jury, and giving to the judge in certain cases, the task of deciding whether or not a complainant’s evidence in a sexual offence can be accepted without corroboration, a matter of credibility that is eminently for the jury.”

This is not correct. Credibility is always a question for the jury whether or not a corroboration warning is given. In an identification case the jury will still have to be directed that they must be satisfied so that they are sure that the prosecution has proved all the ingredients of the offence and that they can only convict if they are so satisfied. In a sexual case the position is no different. But what is under consideration in *Chance* is whether it is necessary to warn the jury that it is dangerous to convict when no question has been raised as to the honesty, as opposed to reliability, of the complainant’s evidence. The decision in *Pivotte* is, as the leading judgment shows, based upon the discredited belief that regardless of the circumstances the evidence of female complainants must be regarded as particularly suspect and particularly likely to be fabricated. This belief is not conducive to the fairness of the trial nor to the safety of the verdict.

17. This can be illustrated from the present case. The account given by Miss Mapson of the incident was not challenged. It was not suggested to her that she had not been assaulted as she described. If it had been, there was available evidence from Miss Mahon that when she met up with Miss Mapson again after the incident Miss Mapson’s mouth was bleeding: see Miss Mahon’s deposition. At the trial, Miss Mahon was not asked to give this evidence. If she had been asked to do so, there would have been potentially corroborative evidence that Miss Mapson had been physically attacked. What issues are raised in the cross-examination of the complainant inevitably affects the conduct of the trial. To treat issues as having been raised when they have not and then ask why they have not been covered by additional evidence is not a satisfactory way to conduct a trial nor is it fair.

18. A suggestion made in the *Pivotte* case was that the corroboration warning was particularly required where the

defendant was unrepresented (p.118). Where a defendant is facing a serious charge, as is the case where the defendant is liable to be sentenced to 7 years imprisonment with hard labour if found guilty, and is unrepresented, it is incumbent upon the prosecuting counsel to take special care to present the prosecution evidence fairly including any weaknesses in that evidence. It is also the duty of the judge to see that any points in the prosecution evidence which might favour the defendant are brought out. In the present case there is no suggestion that either the prosecuting counsel or the judge failed in this regard. But it in no way follows that the judge should give an inappropriate warning about the complainant's evidence merely because the defendant is unrepresented.

The Arguments:

19. Mr. Evans' primary argument was that the Court of Appeal were right to hold that in all sexual cases the full corroboration warning should be given; *Pivotte* was rightly decided and should be preferred to the English authorities. For the reasons given in the preceding paragraphs, their Lordships do not accept this submission; the mandatory corroboration warning does not add to the fairness of the trial nor aid the achievement of safe verdicts.

20. His secondary argument was that in any event the rule requiring the corroboration warning in all sexual cases could only be abrogated by statute, as had occurred in England with the passing of the 1994 Act and in the meanwhile, in the absence of such a statute, *Pivotte* should continue to be followed in Grenada and the Eastern Caribbean. There would be force in this submission if the rule in question was properly described as a rule of law or had itself been enacted by a statute. But the rule was in truth a rule of practice said to be based upon "long practical experience" (per Salmon LJ in *Reg v O'Reilly* [1967] 2 QB 722 at 726). It tells a judge how he should sum-up in a sexual case. Its justification has to be that described in the passage quoted from the judgment in *Chance*. The rule is always liable to be reassessed in the light of further experience or research and reformulated in order better to perform that function. If, as their Lordships consider in agreement with the Law Commission and the Court of Appeal in England, the rule has become counter-productive and confusing it is the duty of their Lordships so to hold. In their Lordships' opinion the rule of practice which now will best fulfil the needs of fairness and safety is that set out in the passage they have quoted from the judgment of Lord Taylor in *Makanjuola*. The guidance given by Lord Taylor of Gosforth LCJ should now be followed.

21. This renders academic the counter-argument of the Crown that section 167 of the Evidence Act makes applicable in Grenada the English 1994 Act and the decisions of the English Court of Appeal in *Chance* and *Makanjuola*. Their Lordships do not accept the Crown's argument. If the rule had been a rule of law which excluded evidence or required convictions to be supported by corroborated evidence, the answer would have been different. Here the relevant rule is a rule of practice. It relates to the manner in which a judge should sum up. It does not and did not withdraw any issue from the jury or require the direction of an acquittal. It did not preclude a properly directed jury from convicting on uncorroborated evidence. Still less did it render any evidence inadmissible. The case of *Thompson v The Queen* [1998] AC 811 upon which the Crown relied in this connection was a case relating to the admissibility of confessions and the applicability of the provisions governing admissibility in the English Police and Criminal Evidence Act 1984. It therefore came within the terms of section 3 of the Saint Vincent Evidence Act 1988, the equivalent of section 167 of the Grenadian Act.

The Outcome of the Appeal:

22. The only ground upon which the Court of Appeal allowed the defendant's appeal and quashed his conviction was that they held that the law required a corroboration warning to be given. This ground was mistaken and accordingly did not provide a basis for the Court of Appeal's orders.

23. The *amicus* argued that there were other grounds upon which the Court of Appeal should have quashed the conviction. He submitted that the *Turnbull* direction was inadequate; it was not specific enough; the identification evidence of Miss Mapson was unfit to be left to the jury. Their Lordships agree with the Court of Appeal that the summing-up was appropriate for the case. The incident took place over the course of some 15 minutes in the middle of the day. The assailant's face was only partially obscured. She said that she was able to recognise the defendant with whom she had been at school. The jury were warned about the risk of mistake. His second point was that the alibi direction was inadequate. This was a case where there had been no sworn evidence of alibi and no separate question of its credibility arose. The judge warned the jury that someone may put forward a false alibi for many reasons and no conclusions should be drawn: the relevant question was had the prosecution proved that he was Miss Mapson's assailant. The direction was appropriate. Neither of the

additional grounds put forward by Mr Evans would have justified the Court of Appeal's orders.

24. However, this still leaves open what order should be made upon this appeal to their Lordships' Board. Their Lordships have concluded that, having allowed the Crown's appeal, the case should be referred back to the Court of Appeal for such further consideration as they may think fit in the light of the judgment of the Board. The reasons for taking this course are twofold. First, as stated by Lord Taylor, the question whether to give a corroboration warning in sexual cases is a matter for the discretion of the trial judge *R v Makanjuola* [1995] 1 WLR 1348, at p.1351. It will only be in clear and exceptional cases that an appellate court will feel justified in interfering with the trial judge's exercise of his discretion. Their Lordships do not believe that this case comes into that category: see Lord Taylor's third paragraph at p.1352. But, since the Court of Appeal did not have to consider this point (on account of the view they took of the law), the defendant should have the opportunity, if he chooses to avail himself of it, of submitting that this was such a case. Secondly, the Court of Appeal in the penultimate paragraph of their judgment included the sentences: "In this case the nature of the evidence left a lurking doubt as to the safety of the conviction. We did not think it an appropriate case to consider the application of the proviso". It is not clear whether the reference to "lurking doubt" was simply directed to the question of the exercise of the proviso or that the Court of Appeal were referring to some aspect of the case which was capable in their view of showing that the verdict was unsafe and therefore capable of providing a free-standing ground of appeal. Their Lordships express no view upon this nor whether the record discloses any such ground of appeal. However, here again, the defendant should have the opportunity, if he wishes, to submit that he has such a ground of appeal.

25. Their Lordships accordingly will humbly advise Her Majesty that the appeal should be allowed and the case remitted to the Eastern Caribbean Court of Appeal for further consideration in accordance with this judgment.