IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 201902422/B5

NCN: [2021] EWCA Crim 318

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 25 February 2021

LORD JUSTICE DAVIS

MR JUSTICE SPENCER

MR JUSTICE BOURNE

REGINA

V

"T"

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MS S SHOTTON appeared on behalf of the Appellant.

MS R KARMY-JONES QC & MS B CRIPPS appeared on behalf of the Crown.

J U D G M E N T

NOTE: the original version of this judgment has been revised to ensure anonymity of the complainant, and in compliance with the provisions of the Sexual Offences (Amendment) Act 1992.

Introduction

1. LORD JUSTICE DAVIS: After a trial at the Lewes Crown Court (sitting at the Hove trial centre) the appellant was convicted on 31 May 2019 of two counts of rape. The complainant was a woman to whom at the time he had been married. The issue on this appeal, for which leave was granted by the Full Court, is whether he, by his counsel, was wrongly precluded from putting certain questions to the complainant in cross-examination. That issue in turn involves, amongst other things, consideration of whether sexual orientation or sexual identification could, in the circumstances of this case, constitute "sexual behaviour" for the purposes of section 41 of the Youth Justice and Criminal Evidence Act 1999 (to which we will refer as "the 1999 Act").

Background facts

2. The background facts, in summary, are these.
3. The complainant had been the appellant's second wife. They had met in 1999 when they were members of the same church in the North of England. He was a significant number of years older than her. They subsequently moved to live in Sussex. They married in July 2002 but were divorced in November 2010 after separating in 2009.
4. Following the divorce the appellant had continued to contact the complainant by text message. During the course of 2016 and 2017 he sent her a large number of text messages, many of which were explicitly of a sexual nature and many being sent late at night or in the early hours of the morning. She asked him to stop but he continued to contact her. At all events, on 6 June 2017 the complainant made a formal complaint to the police about the abuse which she alleged she had suffered during the course of the marriage. The appellant was interviewed on 22 September 2017. He denied all the allegations of abuse which had been made although he admitted having sent the text messages.
5. The prosecution was to say at the trial that the appellant had had sexual intercourse with the complainant during their marriage on three occasions when he was drunk and when she had not consented. This was said to have occurred in the context of a marriage alleged to have been one in which the appellant had been controlling and in many ways otherwise abusive towards the complainant.
6. The defence, on the other hand, in a nutshell, was that all sexual activity in the marriage had been consensual and was part of a loving relationship. Furthermore, it was said that in so far as alcohol had played its part, if he did drink too much on occasion then that would simply make him sleepy. As to the text messages, he said that they were in the context of seeking to maintain a friendship with the complainant after the marriage ended. In short, the allegations of rape were said to be simply false.
7. So far as the first alleged rape was concerned (count 2 on the indictment) the complainant was to say in evidence at trial that the appellant had been drinking and had become aggressive and verbally insulting. At one stage he fell onto a printer, after which he agreed to go to bed. She waited a bit before going to bed herself. According to her, the appellant then tried to kiss her and climb on top of her and carried on and ignored her when she said that she did not want to do it. She tried to keep her legs close together but he forced them apart, pulled off her underwear and then penetrated her whilst holding her arms back. She was unable to stop him. After he ejaculated he then rolled off and went to sleep. According to her, when she raised it with him the next morning he told her that nobody would believe her and she was to be careful about what she was implying.

8. So far as the second alleged incident of rape was concerned, on the complainant's evidence the background was broadly similar. Again the appellant had been drinking heavily during the course of the evening, became aggressive, domineering and insulting and then tried to kiss her when they were in bed. When she said "no" he continued, he forced her legs apart and penetrated her and then after ejaculating fell asleep. The third alleged incident of rape, which seems to have been altogether more briefly covered in evidence, took a broadly similar course according to the complainant.
9. She was also to say in her evidence that there had been other occasions when she had said "no" but she had not resisted as she became resigned to what was going to happen. She further accepted in the course of her evidence that she frequently had consensual sex with the appellant during this period, both before and after the alleged rapes, and indeed, she had wanted to have a baby with him.
10. The prosecution also adduced evidence of complaints, some relatively recent, others not. For example, one witness had been a chaplain at Liverpool Airport who said that she had met the complainant in 2007. According to that chaplain the complainant disclosed to her that she was being sexually assaulted. The chaplain was sure that this was before the end of the marriage and before the complainant had left the appellant. Further, in a letter of 22 July 2009 from the complainant to her doctor, details were given of the incident which were said to form the subject matter of the first count of rape. Further, a Mr X, a Church Minister and in effect the complainant's mentor, who had married the appellant and the complainant, said that the complainant had contacted him in 2010, in a state of distress and had subsequently disclosed to him in 2011 that she had been raped by the appellant.
11. Another witness said that she had known the complainant for many years through the church in the North of England. Her evidence was that she noticed a total change in the complainant's character when she returned there in May 2007 and appeared withdrawn and cowed. Later, in around 2014 or 2015, according to this witness, the complainant began to disclose that her marriage had not been good and she later told her that she had been raped. There was also evidence from a domestic violence adviser who met the complainant in January 2017. She was to say that the complainant disclosed to her that the abuse started gradually after the marriage in 2002.
12. The appellant gave evidence himself. He was a man of ostensibly impressive good character, leaving aside the text messages. He had been, amongst other things, a magistrate and a head teacher as well as being closely involved in church matters. He was to say that he had supported the complainant during the marriage and he denied being controlling or abusive. He said that he had never had sexual intercourse with her without her consent; he had never pinned her arms down during sex; she had never said "no"; and he had never forced her legs apart. He said that he was ashamed by his sexually explicit text messages sent in 2016 and 2017, which he said were completely unlike him. He said that he did not have a problem with alcohol but, on those occasions where he did drink too much, it would simply make him sleepy. In short, the allegations of the rape made by the complainant simply did not happen.
13. The appellant's current wife also gave evidence for the defence. She described the appellant as being "kind and generous", they had a normal and loving sex life and he had never been physically or verbally aggressive towards her. She further said that on those occasions when he drank alcohol he would simply become lethargic and fall asleep.

Application and Ruling at trial

14. During the course of the trial before HHJ Henson QC and a jury the defence made a written application seeking leave to put certain questions to the complainant in the course of cross-examination. The application was made specifically under section 41(3)(a) of the 1999 Act. Reliance to some extent was also placed on section 41(5), although that in due course rather fell away.
15. Section 41 of the 1999 Act provides as follows:
    i. " Restriction on evidence or questions about complainant's sexual history.

    ii. 41. (1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

(b) no evidence may be adduced, and

(c) no question may be asked in cross-examination

    i. by or on behalf of any accused at the trial, about any sexual behaviour of the complainant.

    ii. (2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied—

(a) that subsection (3) or (5) applies, and

(b) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

    iii. (3) This subsection applies if the evidence or question relates to a relevant issue in the case and either—

(a) that issue is not an issue of consent; or

(b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge

against the accused; or

(c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar—

(i) to any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused, or

iv. (ii) to any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event

v. that the similarity cannot reasonably be explained as a coincidence.

vi. (4) For the purposes of subsection (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

vii. (5) This subsection applies if the evidence or question—

(a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and

(b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.

viii. (6) For the purposes of subsections (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).

ix. (7) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence—

(a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but

(b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

x. (8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section."

16. Also highly relevant to this appeal are the interpretation provisions contained in section 42(1) of the 1999 Act. That provides as follows:

i. "Interpretation and application of section 41.

ii. 42. (1) In section 41—

(a) 'relevant issue in the case' means any issue falling to be proved by the prosecution or defence in the trial of the accused;

(b) 'issue of consent' means any issue whether the complainant in fact consented to the conduct constituting the offence with which the accused is charged (and accordingly does not include any issue as to the belief of the accused that the complainant so consented);

(c) 'sexual behaviour' means any sexual behaviour or other sexual experience, whether or not involving any accused or other person, but excluding (except in section 41(3)(c)(i) and (5)(a)) anything alleged to have taken place as part of the event which is the subject matter of the charge against the accused; and

(d) subject to any order made under subsection (2), 'sexual offence' shall be

construed in accordance with section 62."

17. The questions which counsel, Ms Shotton, appearing for the appellant at trial as before us on this appeal today, wished to put to the complainant were set out in the course of her written application submitted to the judge. In the relevant respects for the purposes of this appeal, the questions were these:
18. whether she identifies as a lesbian/bisexual woman now?
19. (ii) whether she was conflicted about her sexuality during her marriage to the defendant?
20. (iii) whether she has deep-seated anxiety about her sexual identity?
21. (iv) whether she has been rejected by her religious parents as a result of telling them about her sexual interest in women?
22. (v) whether she also fears rejection from others including work colleagues in reaction to her sexual interest in women?
23. (vi) whether she has made false allegations against the appellant as a means to justify any change in her sexual identity?
24. For the purposes of this appeal Ms Shotton has also added a further question which she says she would have wished to ask, although it was not raised before the judge, which was this:
25. (vii) whether her conflict about her sexual identity has caused her to reassess consensual acts of intercourse as non-consensual?
26. It is said of this last question, although not referred to in the original section 41 application, that it “logically followed from the thrust” of that application. We have great difficulty in seeing how it "logically follows" from the thrust of the application.
27. What, then, was the basis relied upon as justifying these questions being put to the complainant? As set out in the application the basis was this. First, the witness statement of Mr X in one passage had said:

    i. "With the benefit of hindsight I do wonder whether I should have challenged underlying issues before the wedding. I suspected that [the complainant] might be conflicted regarding her sexuality and therefore marrying for the wrong reason, but we never discussed this in any of our conversations."

28. (As we have said Mr X had been mentor to the complainant prior to the marriage in 2002.) Further, what was sought to be relied upon was certain material disclosed as unused material by the prosecution well in advance of trial, taken from the complainant's psychiatric records. In one of the particular letters from a community mental health practitioner based in the North of England, dated 30 December 2014, this was said:

    i. "It appears that [the complainant] has deep seated anxiety about her sexual identity, in particular she is fearful of the responses and possible rejection of others including work colleagues. Owing to her anxiety she has a tendency to ruminate about this and this leads to a spiral of anxiety and worrying thoughts about others perceiving her possible sexual preference."

29. Reliance also was sought to be placed on a note dated 10 August 2015 which stated:

    i. "...critical incidents described including bullying from children at her school in relation to her sexuality. Rejection from strictly religious parents was also described in relation to her sexuality (after writing to her parents a letter to outline her difficulties and confusion)."

30. What such letter to the parents said or what date it had is not known. It was stated to us that "bullying from children at school" related to the times when the complainant was teaching at a school, she being by profession a qualified teacher.
31. As part of the defence case, it had been proposed that a motivation for the complainant making what the defence were to say were entirely false allegations was prompted by her bitterness and jealousy at the appellant subsequently remarrying another woman and indeed having a baby with that other woman. It was suggested that that was a reason for the complainant to make what was said to be false allegations of rape. But further to that, and after this disclosure had been given by the prosecution, there was also advanced in the defence case statement of 19 March 2019, to the effect that, "I can only speculate" that the making of the allegations "may be a way of seeking validation for any change in sexual orientation".
32. This then was followed up in the written application made to the judge by Ms Shotton. It was said that a "possible reason" why the complainant would make false rape allegations was in order to help "justify any change in her sexuality". Accordingly it was said these questions were "relevant to a possible motive" that she might have in making false allegations of rape. It was further suggested that any conflict in the complainant's sexuality may have caused her not to enjoy consensual relations with the appellant, or to have caused her to have misinterpreted the consensual nature of such activities with the passage of time. It was further suggested that such matters may also explain her seemingly altered conduct during the marriage and her apparently distracted behaviour. The application was made, and in these respects opposed by the Crown, although certain other questions were not objected to.
33. So far as these particular proposed questions were concerned, the judge would have none of it. It was ruled that section 41(5) of the 1999 Act had no relevance in circumstances where that the prosecution had made clear that they would not be putting forward that particular part of Mr X's statement in any event. In any event, in these respects the judge was to find it was entirely speculative.
34. The judge also went on to observe that the notes disclosed by the prosecution postdated the marriage by several years. The judge further noted that there was no direct evidence at all of any change in sexuality on the part of the complainant.
35. The judge then went on to say this:

    i. "It is also relevant to note that she says that throughout the relationship... there was as well, consensual sex. She has highlighted three occasions when the defendant, intoxicated, raped her. And in terms of then suggesting that you can apply a backwards process in terms of a thought process is not based, in

> my judgment, on any evidential basis. It is purely speculative. And it ignores the fact that this complainant says that there was consensual sex and in fact, she wanted there to be such because she wished to have a child. It seems to me that this is very much one of the areas that section 41 and the shield has been engaged for. In my judgment, its purpose or main purpose is to pursue a line of questioning which would impugn the credibility or potentially impugn the credibility of the witness and that is why it is being sought."

36. Thus it was that she refused leave to put those questions in cross-examination.

Discussion and disposal

37. It is the position of Ms Shotton that the judge was wrong in her ruling. It was the position of Ms Karmy-Jones, who had not herself appear below but appears for the prosecution today along with Ms Cripps, that the judge had been entirely right in her ruling.
38. We have to say that we are rather uneasy at the way in which this appeal comes before this Court. As we have said, the application below was based entirely on section 41 of the 1999 Act. But the principal argument Ms Shotton now seeks to deploy is that section 41 of the 1999 Act actually has no application at all in this context. So the appeal is pursuing a point which was not raised below and, indeed, is contrary to the way in which the matter was advanced before the trial judge below. But the fact remains that leave has been granted on a previous occasion by a constitution of this Court to pursue this point. That being so, we think that we are bound to deal with it.
39. The context of and purpose behind the 1999 Act are well known. They are fully discussed by the House of Lords in the case of R v A (No 2) [2001] UKHL 25; [2001] 2 Cr App R 21. One purpose unquestionably was with a view to debunking the “twin myths” as they are known; that is to say, that people who have been prepared to sleep with others in the past maybe the more ready to sleep with someone else on the particular occasion in question and, in addition, may be the less capable of belief. But there clearly was another and wider purpose behind the legislation: and that was to prevent unfair harassment, humiliation and demeaning of witnesses (usually women) giving evidence in trials involving sexual offences. The point is very clearly put by Lord Hutton in the case of A (No 2) at paragraph 142. At the same time, and as the decision in A (No 2) emphasises, fairness is the underlying key; and it is important that a defendant should not be deprived of the opportunity to put relevant questions if exclusion of such questions could endanger the fairness of the trial (see paragraph 46 of the speech of Lord Steyn, for example).
40. What has to be considered in this particular case is what actually constitutes "sexual behaviour" as defined by section 42(1) of the 1999 Act. This has arisen for discussion in a number of cases. Most obviously, of course, it will refer to matters of conduct or activity, to acts or events of a sexual character (see paragraph 126 of the speech of Lord Clyde in A (No 2) and on which Ms Shotton sought to place reliance). Further, the word "experience" is apt at least to extend, among other things, to activities in which the complainant may not necessarily have voluntarily participated.
41. Various decisions of constitutions of this Court have, for example, decided that sexually provocative postings on Facebook or in the sending or viewing of pornographic images

could amount to "sexual behaviour". Furthermore, as it has been said, behaviour may be "sexual" even if, for example, the complainant is incapacitated or is so young as not to realise that. We observe that in the case of R v Beedall [2007] EWCA Crim 23, the complainant was saying that he had been the victim of a homosexual rape. The Crown had not sought to present the complainant as exclusively heterosexual. Nevertheless, the defence, and basing themselves on certain physical anal characteristics of the complainant, wished to cross-examine the complainant as to his sexual orientation, in particular as to whether he was a practising homosexual. We note that the court in that case upheld a decision of the trial judge to exclude such evidence applying section 41 of the 1999 Act.

42. Ms Shotton submitted that "sexual behaviour" as used in section 41 was confined to actions and conduct and at all events did not extend to what she called "internal conflicts about sexuality". Ms Karmy-Jones, on the other hand, submitted that sexual identity and sexual orientation may indeed constitute an "experience" and so indeed may be within the ambit of section 41: just as, so she said, virginity or celibacy may be. She submitted (adopting the comments of Rook & Ward on the Law on Practice of Sexual Offences 5th ed. at paragraph 26-146) that sexual orientation can be suggestive of sexual activity and, if so, is capable of being "sexual behaviour". Indeed, she submitted that if it were not so, then potentially lines of cross-examination might be opened up in such cases which would, almost inevitably, potentially be humiliating and distressing to a complainant and when it was the purpose of the 1999 Act to avoid such a situation arising. She submitted in fact that the present case was a paradigm example of that. The proposed questioning would, she said, be a humiliating intrusion into the complainant's privacy and would be an unwarranted invitation to the jury in effect to engage in what she described as prejudicial "lesbophobic" inferences without any relevant basis for that occurring.
43. It may be observed that, in contrast with the predecessor statute of the Sexual Offences (Amendment) Act 1976, section 41 does not confine sexual experience to being with a person other than the defendant. The definition is altogether more open-ended than that. Furthermore, it may also be noted that section 41(6) confines questioning (where questioning is to be permitted) to specific instances of alleged sexual behaviour on the part of the complainant. That restriction therefore connotes that non-specific instances would also be capable of falling within the ambit of "sexual behaviour". That wide approach therefore is consistent with the broad purposive approach suggested by Ms Karmy-Jones.
44. In this particular case, the very first proposed question, which really laid the foundation for the subsequent questions, related directly to the complainant's sexual identity. It specifically in terms asked whether she was lesbian or bisexual now. As we see it, such a question is indeed suggestive of sexual activity; and the following questions, which to a greater or lesser extent followed on from or were based on that first question, likewise can have a like connotation.
45. In such circumstances, we agree with the submissions of Ms Karmy-Jones in this particular case. We do not wish to generalise about the matter; indeed we think it would be unwise to do so. We should in fact record that Ms Shotton did not seek to argue that sexual orientation can never fall within section 41 and Ms Karmy-Jones did not seek to argue that sexual orientation always will fall within section 41: it depends, they both agreed, upon the particular circumstances of the case. What we would say is that in the

circumstances of this particular case, leave under section 41 was indeed required. We think that the approach indicated in Rook and Ward (as set out above) is very helpful. Here, viewed overall, the proposed questioning as to the complainant's sexual orientation, in our opinion, was indeed suggestive of sexual activity. It follows that Ms Shotton had been correct in the court below to base her application on the provisions of that section.

46. That being so, we are in no doubt at all that the judge was correct to refuse this application. That in fact is for quite a number of reasons.
47. First, although the judge did not specifically refer to it, section 41(6) would require the questioning to be limited to specific instances of conduct. But here the proposed questioning was wholly generalised. So it would have fallen to be excluded by reference to section 41(6) on that basis alone.
48. But second, however, section 41(4) precludes questioning where it appears reasonable to assume that the purpose, or main purpose, of asking those questions is to impugn the credibility of the complainant. Ms Shotton argued, as she had below, that that was not the purpose in this case. Rather, the defence was seeking to explore the motivation of the complainant in making, on the defence case, false complaints. It is true that in A (No 2) Lord Hope (at paragraph 79 of his speech) had said that for the purposes of section 41(3)(a) one example of where evidence may be admissible would be where the case was that the complainant had a motive to fabricate the evidence. But, as we see it, one needs to be careful here. There may indeed be situations, when such a motive is advanced, when the evidence about previous sexual behaviour can properly be admitted. That can be so even in circumstances where that may also bring into play questions of credibility: see the comments of the court at paragraph 27 of the judgment in the case of R v F [2005] EWCA Crim 493; [2005] 2 Cr App R 13. On the other hand, the courts also have to be wary about the potential for assertions to the effect that the challenge is as to malicious motivation to fabricate being, in truth, an obfuscation of the real or main purpose: that is to say, to undermine a complainant's credibility. Were it otherwise, then the provisions of section 41(3)(a) could be used to "ride a coach and horses through the desirable policy reflected in section 41(4) of the 1999 Act", as stated by Lord Woolf LCJ at paragraph 20 of his judgment in the case of R v Mokrecovas [2001] EWCA Crim 1644; [2002] 1 Cr App R 20.
49. The point remains that it all depends on the circumstances of the particular case. In our view, in the circumstances of this case the judge was entirely justified in seeing this line of questioning as having the main purpose of undermining the complainant's credibility. Indeed that reflects the way in which Ms Shotton has addressed this Court in seeking to argue that the matter should be dealt with other than by section 41, she submitting that it was crucial as to the complainant's credibility.
50. The third point is linked to that. As we see it, and as the judge saw it, the whole basis for this questioning was entirely speculative. Indeed, that had in effect been virtually admitted in the defence case statement itself. It is at all events wholly unexplained how challenging the complainant's sexual identity and her anxieties about her sexual identity could logically have any bearing on her asserted motivation for making false allegations of three incidents of rape. Moreover, as the judge had pointed out, the complainant's own evidence at trial had been throughout the marriage she had engaged in consensual sex with the appellant; and indeed had wanted a baby. Furthermore, as the judge also had

pointed out, the chronology relating to the complaints indicated that she had been complaining of sexual abuse before any references about her being conflicted about her sexual identity had arisen.

51. It seems to us, overall, that even if section 41 could be brought into play here, the application simply could not have met the further requirement of section 41(2)(b) of the 1999 Act. It could not be said that refusal to permit such questioning might have had the result of rendering a conclusion of the jury unsafe.
52. For all these reasons, we are in no doubt that the judge's actual decision to exclude this questioning by reference to section 41 of the 1999 Act was correct. In particular, as we see it, and perhaps more importantly as the trial judge saw it, this line of questioning was indeed irrelevant. It should have had no part to play in the trial. As the trial judge said, the relevant part of Mr X's statement involved inadmissible speculation. As for the two notes in 2014 and 2015, they came at a much later date and indeed are very tenuous as to what, in truth, they indicate. But more specifically, and as we have said, they provide no logical connection to the motive sought to be attributed to the complainant.
53. Overall, this is, as we see it, a paradigm case of questions being sought to be asked which would have needlessly humiliated and invaded the privacy of a complainant. Giving evidence at a rape trial is stressful enough. To have had to answer questions in public about her sexuality and her alleged internal conflicts about her sexuality would only have added to the mortification and distress of the complainant (as the appellant must have appreciated). Accordingly, even if, contrary to our own view, section 41 had no application here then, in any event, this line of questioning was properly to be excluded: in effect for the reasons given by the judge herself. It was speculative and irrelevant and of no probative value. Consequently, on ordinary evidential principles it was rightly not put before the jury.
54. Ultimately, the question we have to ask is whether this trial was fair. More specifically, was material unfairness caused to the defence by these proposed questions being excluded? We are of the very clear view that no unfairness at all was caused to the defence by excluding this questioning. We thus consider that this was indeed a fair trial. The complainant gave her evidence; the appellant gave his evidence. On these two counts the jury, on the evidence, had been made sure that the rapes had occurred. There is no proper basis for this Court interfering. In the result we dismiss this appeal.