



CARIBBEAN COURT OF JUSTICE

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MEDIA RELEASE
(For immediate release)

**No. 02:2022
01 February 2022**

CCJ FINDS MALES CAN BE RAPED

Port of Spain, Trinidad and Tobago. In a judgment released today, the Caribbean Court of Justice (CCJ) in its Appellate Jurisdiction, allowed the appeal of the Commissioner of Police, in the matter of *Commissioner of Police v Stephen Alleyne [2022] CCJ 2 (AJ) BB*. The CCJ has found that in Barbados the law permits a man to be charged for the rape of another man. The CCJ heard the appeal on 9 November 2021.

Stephen Alleyne was charged with the offence of rape contrary to the Sexual Offences Act. Before the start of the evidence in his trial, he was released by the magistrate after hearing submissions that the charge alleged that Alleyne had sexual intercourse with another man without his consent. The magistrate decided that the crime of rape (s 3(1)) did not extend to anal intercourse between men. On appeal by the Commissioner of Police, the majority in the Court of Appeal agreed with the magistrate's decision. The Commissioner of Police appealed to the CCJ.

The CCJ, in a judgment authored by Justice Barrow, found that on a correct interpretation of s 3 (1) of the Act read with s 3 (6), a man can be charged for the rape of another man. The Act uses gender neutral language to identify both perpetrator and victim and extends the definition of rape to include anal penetration. The Court found that considering the literal meaning of the words used in the Act, their context, and comparable legislation, any person; male or female, can be the offender or victim of rape. The retention in the legislation of the offence of buggery did not prevent males from being charged with rape, as the Interpretation Act allows offenders to be charged with either offence, once they are not punished twice for the same act. The Court noted that it is aware that the issue of the constitutionality of the offence of buggery has been adjudicated in several courts, including some within the Caribbean. However, the issue did not arise for decision, and in the circumstances, it was the duty of the Court to exercise proper judicial restraint and not decide on an issue that was not argued.

In a separate judgment, Justice Jamadar, entirely supported the opinion of Justice Barrow and agreed that the Act permits a man to be charged for the rape of another man. Justice Jamadar found when judges are interpreting legislation, they must also respect the fundamental rights in the Constitution and consider a state's international treaty commitments. A gender neutral interpretation of the Act respects the right to protection of the law regardless of sex, and the prohibition against discriminatory laws under the Constitution. It also respects Barbados'

international law commitments to ensure equality before the law regardless of gender and the enjoyment of fundamental rights and freedoms without restrictions based on sex.

In a dissenting judgment, Justice Burgess found that the Act does not create an offence of rape of a male by another male and would have dismissed the appeal. He considered that under the common law, only a man could commit rape and only against a woman. He found that the Act does not purport to do anything as revolutionary as changing the common law to create an offence of rape by a male of another male. For Parliament to do so, it would have had to express that intention in clear and unambiguous language. He considered the natural and ordinary meaning and legal meaning of the words used in s 3, as well as their context in the Act as a whole and the rules of natural justice. He found that the words 'sexual intercourse' used in creating the statutory offence, means penile-vaginal penetration. He found that s 3(6) of the Act, modifies the common law by providing that, not only a man can commit the act of rape, but any of the parties to sexual intercourse, a male, or a female, can do so. That is an offender may also be female.

The appeal was therefore allowed and the case remitted to the Magistrate's Court for it to proceed with the preliminary inquiry.

The Court was presided over by the Honourable Mr Justice Saunders, President, sitting with the Honourable Justices Wit, Anderson, Rajnauth-Lee, Barrow, Burgess and Jamadar. The Appellant was represented by Ms Krystal Delaney and Mr Oliver JM Thomas and the Respondent by Mr Arthur E Holder.

The full judgment of the Court is available on the Court's website at www.ccj.org

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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