No. 10/1981

CRIMINAL LAW (RAPE) ACT, 1981

AN ACT TO AMEND THE LAW RELATING TO RAPE AND INDECENT ASSAULT ON FEMALES.

[6*th May*, 1981]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1. —(1) In this Act—

"a rape offence" means any of the following, namely, rape, attempted rape, aiding, abetting, counselling and procuring rape or attempted rape, and incitement to rape;

"complainant" means a woman in relation to whom a rape offence is alleged to have been committed.

(2) In this Act references to sexual intercourse shall be construed as references to carnal knowledge as defined in section 63 of the Offences against the Person Act, 1861, so far as it relates to natural intercourse (under which such intercourse is deemed complete on proof of penetration only).

(3) In this Act "man" and "woman" include respectively a male and a female person of any age; but this does not affect any rule of law by virtue of which a male person is treated by reason of his age as being incapable of committing an offence of any particular kind.

Meaning of "rape".

2. —(1) A man commits rape if—

(*a*) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and

(*b*) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it,

and references to rape in this Act and any other enactment shall be construed accordingly.

(2) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.

Restrictions on evidence at trials for rape offences.

3. —(1) If at a trial any person is for the time being charged with a rape offence to which he pleads not guilty, then, except with the leave of the judge, no evidence shall be adduced and no question shall be asked in cross-examination at the trial, by or on behalf of any accused person at the trial, about any sexual experience of a complainant with a person other than that accused.

(2) (*a*) The judge shall not give leave in pursuance of subsection (1) for any evidence or question except on an application made to him, in the absence of the jury, by or on behalf of an accused person.

(*b*) The judge shall give leave if, and only if, he is satisfied that it would be unfair to the accused person to refuse to allow the evidence to be adduced or the question to be asked, that is to say, if he is satisfied that, on the assumption that if the evidence or question was not allowed the jury might reasonably be satisfied beyond reasonable doubt that the accused person is guilty, the effect of allowing the evidence or question might reasonably be that they would not be so satisfied.

(3) If, notwithstanding that the judge has given leave in accordance with this section for any evidence to be adduced or question to be asked in cross-examination, it appears to the judge that any question asked or proposed to be asked (whether in the course of so adducing evidence or of cross-examination) in reliance on the leave which he has given is not or may not be such as may properly be asked in accordance with that leave, he may direct that the question shall not be asked or, if asked, that it shall not be answered except in accordance with his leave given on a fresh application under this section.

(4) Nothing in this section authorises evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.

Preliminary

4. —(1) Where a justice of the District Court conducts a

examination.

preliminary examination of a charge of a rape offence, then, except with the leave of the justice, evidence shall not be adduced and a question shall not be asked at the examination which, if the examination were a trial such as is mentioned in section 3 (1), could not be adduced or asked without leave in pursuance of that section.

(2) On an application for leave the justice shall—

(*a*) refuse leave unless he is satisfied that leave in respect of the evidence or question would be likely to be given at such a trial, or

(*b*) give leave if he is so satisfied.

(3) Section 3 (3) shall apply to an application under subsection (2) of this section with the substitution, for references to the judge, of references to the justice.

Trials of juveniles.

5. —Where a person charged with a rape offence is tried for that offence summarily in pursuance of the Summary Jurisdiction over Children (Ireland) Act, 1884, as amended by section 133 (6) of the Children Act, 1908, and section 28 of the Children Act, 1941 (which provides for the summary trial in certain cases of persons under the age of 17 years who are charged with indictable offences)—

(*a*) sections 2 (2) and 3 (2) (*b*) shall have effect as if for the references to the jury there were substituted references to the court,

(*b*) section 3 (2) (*a*) shall have effect as if the words "in the absence of the jury" were omitted, and

(*c*) section 3, subsections (3) and (4) of section 7 and subsections (2), (4) and (5) of section 8 shall have effect as if for the references to the judge there were substituted references to the court.

Exclusion of the public.

6. —(1) Subject to subsection (2), notwithstanding section 111 (4) of the Children Act, 1908, section 20 of the Criminal Justice Act, 1951 , and section 16 of the Criminal Procedure Act, 1967 , during the hearing of an application under section 3 (including that section as applied by section 5) or under section 4 (2), the judge, the justice or the court, as the case may be, shall exclude from the court all persons except officers of the court and persons directly concerned in the proceedings.

(2) Subsection (1) is without prejudice to the right of a parent, relative or friend of the complainant or, where the accused is a person under the age of 21 years, the accused to remain in court.

Anonymity of complaints.

7. —(1) Subject to subsection (8) (*a*), after a person is charged with a rape offence no matter likely to lead members of the public to identify a woman as the complainant in relation to that charge shall be published in a written publication available to the public or be broadcast except as authorised by a direction given in pursuance of this section.

(2) If, at any stage before the commencement of a trial of a person for a rape offence, he or another person against whom the complainant may be expected to give evidence at the trial applies to a judge of the High Court or Circuit Court for a direction in pursuance of this subsection and satisfies the judge—

(*a*) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and

(*b*) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given,

the judge shall direct that subsection (1) shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the complainant as is specified in the direction.

(3) If at a trial of a person for a rape offence he or another person who is also charged at the trial applies to the judge for a direction in pursuance of this subsection and satisfies the judge—

(*a*) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial,

(*b*) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given, and

(*c*) that there was good reason for his not having made an application under subsection (2) before the commencement of the trial,

the judge shall direct that subsection (1) shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the complainant as is specified in the direction.

(4) If at a trial for a rape offence the judge is satisfied that the effect of subsection (1) is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the

restriction, he shall direct that that subsection shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given in pursuance of this subsection by reason only of an acquittal of an accused person at the trial.

(5) If a person who has been convicted of an offence and given notice of appeal against the conviction, or, on conviction on indictment, notice of an application for leave so to appeal, applies to the appellate court for a direction in pursuance of this subsection and satisfies the court—

(*a*) that the direction is required for the purpose of obtaining evidence in support of the appeal, and

(*b*) that the applicant is likely to suffer injustice if the direction is not given,

the court shall direct that subsection (1) shall not apply to such matter relating to a specified complainant and rape offence as is specified in the direction.

(6) If any matter is published or broadcast in contravention of subsection (1), the following persons, namely—

(*a*) in the case of a publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical,

(*b*) in the case of any other publication, the person who publishes it, and

(*c*) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence.

(7) In this section—

"a broadcast" means a broadcast by wireless telegraphy of sound or visual images intended for general reception, and cognate expressions shall be construed accordingly;

"written publication" includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(8) Nothing in this section—

(*a*) prohibits the publication or broadcasting of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with a rape offence, or

(*b*) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast.

(9) A direction in pursuance of this section does not affect the operation of subsection (1) at any time before the direction is given.

(10) If, after the commencement of a trial of a person for a rape offence, a new trial of the person for that offence is ordered, the commencement of any previous trial of that person for that offence shall be disregarded for the purposes of subsections (2) and (3).

Anonymity of accused.

8. —(1) After a person is charged with a rape offence no matter likely to lead members of the public to identify him as the person against whom the charge is made shall be published in a written publication available to the public or be broadcast except—

(*a*) as authorised by a direction given in pursuance of this section or by virtue of section 7 (8) (*a*) as applied by subsection (6) of this section, or

(*b*) after he has been convicted of the offence.

(2) If a person charged with a rape offence applies to a justice of the District Court before the commencement of his trial for that offence for a direction in pursuance of this subsection, the justice shall direct that subsection (1) shall not apply to him in relation to the charge; and if at a trial at which that person is charged with a rape offence in respect of which he has not obtained such a direction that person applies to the judge for a direction in pursuance of this subsection, the judge shall direct that subsection (1) shall not apply to that person in relation to the charge.

(3) If, at any stage before the commencement of a trial of a person for a rape offence, another person who is to be charged with a rape offence at the trial applies to a judge of the High Court or Circuit Court for a direction in pursuance of this subsection and satisfies the judge—

(*a*) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial, and

(*b*) that the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given,

the judge shall direct that subsection (1) shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the first-mentioned person as is specified in the direction.

(4) If at a trial of a person for a rape offence another person who is also charged at the trial applies to the judge for a direction in pursuance of this subsection and satisfies the judge—

(*a*) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial,

(*b*) that the conduct of the applicant's defence is likely to be adversely affected if the direction is not given, and

(*c*) that there was good reason for his not having made an application under subsection (3) before the commencement of the trial,

the judge shall direct that subsection (1) shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to the first-mentioned person as is specified in the direction.

(5) If at a trial at which a person is charged with a rape offence the judge is satisfied that the effect of subsection (1) is to impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction in respect of that person, the judge shall direct that subsection (1) shall not, by virtue of the charge alleging the offence aforesaid, apply to such matter relating to that person as is specified in the direction.

(6) Subsections (6) to (9) of section 7 shall have effect for the purposes of this section as if for references to that section there were substituted references to this section.

(7) If, after the commencement of a trial of a person for a rape offence, a new trial of the person for that offence is ordered, the commencement of any previous trial of that person for that offence shall be disregarded for the purposes of subsections (2),

(3) and (4).

Trials by court-martial.

9. —(1) This Act applies to the trial of a rape offence by court-martial with the necessary modifications.

(2) In particular—

(*a*) for the references to a judge in section 7 (2) or section 8 (3) and for the references to a justice of the District Court in section 8 (2) there shall be substituted references to the convening authority, and

(*b*) for references in section 3 and for other references in section 7 or 8 to a judge there shall be substituted references to the court-martial.

Punishment of indecent assault on female.

10. —(1) If a person is convicted on indictment of any indecent assault upon a female he shall be liable to imprisonment for a term not exceeding 10 years.

(2) Section 6 of the Criminal Law Amendment Act, 1935 , is hereby repealed.

Penalty for publication of unauthorised matter.

11. —(1) A person guilty of an offence under section 7 (6) (including an offence under that section as applied by section 8 (6)) shall be liable on conviction on indictment to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding 3 years or to both such fine and such imprisonment.

(2) (*a*) Where an offence to which subsection (1) relates and which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(*b*) Where the affairs of a body corporate are managed by its members, paragraph (*a*) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where a person is charged with an offence to which subsection (1) relates it shall be a defence to prove that at the

time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in section 7 (1) or section 8 (1), as the case may be.

Summary jurisdiction.

12. —(1) A justice of the District Court shall have jurisdiction to try summarily an offence to which section 10 or 11 relates if—

(i) the justice is of opinion that the facts proved or alleged against a defendant charged with such an offence constitute a minor offence fit to be tried summarily,

(ii) the Director of Public Prosecutions consents, and

(iii) the defendant (on being informed by the justice of his right to be tried by a jury) does not object to being tried summarily,

and, upon conviction under this subsection, the said defendant shall be liable to a fine not exceeding £500 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both such fine and such imprisonment.

(2) Section 13 of the Criminal Procedure Act, 1967 (which provides for the procedure where a person pleads guilty in the District Court to an indictable offence) shall apply in relation to an offence mentioned in subsection (1) as if, in lieu of the penalties specified in subsection (3) of the said section 13, there were specified therein the penalties provided for by subsection (1) of this section and the reference in subsection (2) (*a*) of the said section 13 to the penalties provided for in subsection (3) of that section shall be construed accordingly.

(3) Section 2 of the Criminal Justice Act, 1951 (which provides for the indictable offences which may be tried summarily with the consent of the accused) shall not apply to an offence to which section 10 relates.

Short title and commencement.

13. —(1) This Act may be cited as the Criminal Law (Rape) Act, 1981 .

(2) This Act shall come into operation one month after the date of its passing.

(3) Section 3 (including that section as applied by sections 5 and 9) and section 4 shall not have effect in relation to a trial or preliminary examination which begins before the commencement of this Act and sections 7 and 8 shall not have effect in relation to a charge alleging a rape offence which is

made before such commencement.

(4) Section 10 and, in so far as it relates to an offence under section 10, section 12 shall not have effect in relation to an offence committed before the commencement of this Act.

ACTS REFERRED TO

Children Act, 1908	1908, c. 67
Children Act, 1941	1941, No. 12
Criminal Justice Act, 1951	1951, No. 2
Criminal Law Amendment Act, 1935	1935, No. 6
Criminal Procedure Act, 1967	1967, No. 12
Offences against the Person Act, 1861	1861, c. 100
Summary Jurisdiction over Children (Ireland) Act, 1884	1884,c. 19