

# Judge directs rape trial acquittal

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A judge of the Supreme Court has taken a trial of rape out of the hands of a jury and directed that four men be acquitted because the girl's evidence was unsatisfactory.

Such directions to acquit are not unprecedented, but at the Parramatta Supreme Court on Tuesday Mr Justice Cross declared his responsibility for taking the case from the jury with unusual boldness and gave detailed reasons.

The men had been charged



Mr Justice Cross

quila-and-coke from the accused at the hotel and made no complaint to any of the

"In those circumstances and because it is highly unlikely that a responsible jury would do something which they have been told is dangerous and unsafe to do, the jury, if the matter were left to them, would probably acquit.

"But the court has a further duty where the complainant's own evidence strains credulity or is otherwise unsatisfactory," Mr Justice Cross said.

That duty was to prevent any injustice. He quoted the rule, as expressed by a South Australian Supreme Court judge in 1978: "Where the evidence adduced by the Crown has been shown to be unsatisfactory and manifestly unreliable, that no reasonable jury could safely act on it, it is the responsibility of the trial judge to direct the jury

juries to stop a case if they feel that the prosecution case has not been proved should be only rarely if ever used and that judges should more often take the responsibility themselves of saying to the jury that it is not satisfactory evidence on which they should convict and accordingly direct an acquittal."

Mr Justice Cross said he would take such responsibility.

"The primary question is not whether or not the accused or any of them had intercourse with this girl without her consent but whether there is evidence — and I stress that word — which is satisfactory and on which a finding beyond reasonable doubt that any of the accused had intercourse with this girl without her consent could be safely based.

with raping the girl, then aged 17, at a house in Newtown late last year.

Mr B. R. Miles appeared for the accused, Mr J. H. Laurence for the prosecution.

Mr Justice Cross said the girl's evidence was that one of the accused, who was known to her, abducted her by force, by some implied threat arising from a statement that he had a .38 pistol.

The girl's statement as to some pistol was not only uncorroborated but there was no subsequent suggestion of the possession of any pistol, let alone the production of one.

The girl made no complaint to the taxi-driver who carried her and one of the accused to the hotel. She accepted a te-

no complaint to any of the customers or staff there that she was being held against her will, even though she was left alone when the accused went to the toilet, the judge said.

The girl's evidence also was that the second accused had intercourse without any word passing between her and him.

"The girl does not claim that she sought physically to resist that accused having intercourse with her or that she even sought verbally to dissuade him," Mr Justice Cross said.

He said that it was clear in law — law arising out of past experience — that in all cases of alleged sexual assaults, including rape, a jury must be told that it is dangerous and unsafe to convict on the evidence of the girl alone.

at the close of the Crown case to return a verdict of acquittal in the sense that he advises them to do so while telling them that they have the power to reject his advice."

Mr Justice Cross said: "With every respect to that experienced and respected judge, this does not appear to me to go quite far enough.

"For if a jury, in disregard of such a strong suggestion by a trial judge, decided to continue hearing the case and eventually convicted the accused, an appeal would be inevitable."

He said he preferred the views of Lord Parker in Young's case in the English Court of Criminal Appeal in 1964.

Lord Parker said: "It may be that the time has come when the practice of judges' inviting

"Suspicion, however warranted, and conjecture, however accurate, may not be substituted for the fundamental requirement of Australian criminal justice, namely proof beyond reasonable doubt.

"Off course, there is room for legitimate suspicion that this girl felt subject to pressure at the time of these acts of intercourse.

"Granted, one could speculate — perhaps correctly — that that was so. But in the framework of a criminal trial in our system of jurisprudence, suspicion and conjecture have no place.

"The law demands proof — and proof beyond reasonable doubt. I take the responsibility for holding in this case that there is no such proof, and I intend to direct an acquittal."