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**CASE #1848**

COURT OF GENERAL SESSIONS OF THE PEACE,

CITY AND COUNTY OF NEW YORK. PART 11.

-----x  
THE PEOPLE OF THE STATE OF NEW YORK

Before:

-against-

HON. WILLIAM H. WADHAMS, J.,

S O N G L E E.

and a jury.

-----x  
Indictment filed January 16, 1914.

2763A

Indicted for rape in the second degree, assault in the second degree and abduction.

New York, March 10, 1914.

A P P E A R A N C E S.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY ROBERT C. McCORMICK

FOR THE DEFENDANT: MR. ROBERT M. MOORE.

Peter P. McLoughlin,  
Official Stenographer.

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Mr. McCormick opened the case on behalf of the People as follows:

May it please the Court, Mr. Foreman and gentlemen of the jury: This defendant, Song Lee, has been indicted charged with the crime of rape in the second degree. There is also a count in the indictment of assault in the second degree, and one for abduction. Upon one of those counts the People will ask you to find this defendant guilty. The rape count charges that on the 27th day of December, 1913, the defendant had sexual intercourse <sup>with a female</sup> by the name of Margaret Conway, who is under eighteen years of age. At that time she was fifteen years old. The second count of assault in the second degree charges that the defendant feloniously made an assault upon Margaret Conway, with the intent to feloniously perpetrate an act of sexual intercourse with her; and the abduction count charges that the defendant did feloniously take, receive, harbor, employ or use her for the purpose of sexual intercourse.

The complaining witness was born on the 28th of August, 1898. She resided, at the time of the commission of this crime, with her father, grandfather and other members of the family at No. 403 West 44th street which is on the north side of 44th street, just a few doors west of 9th avenue. Adjoining the house in which she lived was a Chinese laundry. This laundry was in the building just west of the house where she lived, 403 West 44th street. She had been a pupil of Normal College, high school, in West 108th street. Her vacation

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began in the early part of last summer. A short time after her vacation began she was accosted by a Chinaman who was employed in the laundry of the building adjoining the house in which she lived.

MR. MOORE: That is incompetent if the Court please, what some other Chinaman might have done.

MR. McCORMICK: Not at all. It will be connected with the act of this Chinaman.

THE COURT: Make your opening as brief as you can that we may proceed.

MR. McCORMICK: (Continuing) She was accosted by a Chinaman who worked in the laundry next door to where she lived. He asked her if she had ever been fucked, using the language that he used to her. She said she had not. So he offered her seventy five cents, and told her to follow him. He walked over to Ninth avenue, and down Ninth avenue one block, and then east on 43rd street, a few doors until he came to No. 353 on the north side of 43rd street, which is a few doors east of Ninth avenue, where there was another Chinese laundry. He took her in there. In that laundry was this defendant. Now this man whose name we don't know, this Chinaman who accosted her took her into the laundry on 43rd street and had intercourse with her.

MR. MOORE: This, I submit, is incompetent. The fact that another Chinaman whom he doesn't know met this girl, and took her to a laundry and had intercourse with her in the

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laundry-- we are not responsible for that I submit. He should not say that in his opening because on the trial I shall take objection to it.

THE COURT: I think that is not relevant. Confine yourself to this issue. The jury will disregard that statement.

MR. McCORMICK: The girl met this defendant in that laundry at that time, and he had intercourse with her on that day. That is in the early part of the summer. This defendant, after he had intercourse with her, paid the girl seventy five cents to return on the following Sunday which she did, and he had intercourse with her. After he had intercourse with her another man named Song Hing had intercourse with her, and then from that time on down to the date mentioned in this indictment, upon which the crime is alleged to have been committed, this girl every few days would go around to that laundry, and have intercourse with this defendant in that place of Song Hing. Now, on the 27th of December, she was seen to go into the laundry by two men, who had observed her going in there every few days all along through the summer and fall. They never saw her carry any laundry there, and never saw her take any laundry away. Their suspicions were excited. On December 27th they saw her go into the laundry. One of these men walked across the street in front of the laundry, and saw the girl in the front room with two Chinamen, one of them being this defendant, and the other being Song Hing. They walked on a

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little further, and continued looking into the laundry and saw Song Lee, this defendant, go into a room in the rear. They had seen the girl go into the room in the rear just ahead of the Chinaman. This witness continued to watch and he saw this defendant come out from the rear room into the front room, and then he saw Song Hing pass into the back room. Then the witness returned to his shop, right across the way, and about an hour later he saw the girl leave the laundry. She took no laundry there that day, and she took no laundry away. Now, on January 3rd, this witness and another witness who will be called <sup>who</sup> had a store adjoining that of the witness that I have just spoken of, saw the girl enter the laundry about 11 o'clock in the morning. He called a police officer. The police officer entered the laundry, and found this defendant in the back room where there was a bed, with the girl. The police officer questioned her as to her name, age, and residence, and asked her what she was doing there. She simply said that she was doing nothing; she hadn't done anything. The officer took her to the place where she said she lived; told her to go home; she went upstairs. I might say that while this conversation was going on between the officer and the girl this defendant offered the officer twenty dollars to say nothing about the matter. I might say that there are other details and circumstances that still further corroborate the story told by the complaining witness. Upon that evidence the people will ask you to convict this defendant of the crime of rape in

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6  
the second degree.

MARGARET CONWAY, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states she lives at 403 West 44th street.)

DIRECT EXAMINATION BY MR. McCORMICK:

Q When were you born? A August 28th, 1898.

Q Now just speak as loud as you can, and talk to the last gentleman in the jurybox and all can hear you if you talk loud enough. Repeat that, when were you born? A August 28, 1898.

Q Keep your voice up. 1898? A Yes, sir.

Q Where did you live on the 27th of December last?

A 403 West 44th street.

Q West? A Yes, sir.

Q 403 West 44th? A Yes, sir.

Q With whom did you live there? A My father and my grandfather, my sisters and brothers.

Q Did you attend some school in the year 1913? A Yes, sir.

Q Where did you go to school? A Normal College, high school.

Q When did the vacation begin, the summer vacation?

A In July.

Q When did you first meet this defendant? A I think the summer.

Q Do you remember about what time in the summer? A About the beginning of the summer.

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Q Some time in July, about the beginning of the vacation? A Yes, sir.

Q Where was it you first met him? A I didn't meet him then.

Q Didn't you tell me you met him in the summer? A Yes, sir: I met him in the laundry, but I didn't meet him first.

Q Under what circumstances did you meet him? A Well another Chinaman had brought me around to this store.

MR. MOORE: I object to this.

MR. McCORMICK: I submit it is perfectly proper, some other Chinaman brought her. She said a Chinaman took her to the laundry.

THE COURT: She may state how she came there.

MR. MOORE: Because some other Chinaman brought her there I don't think that is competent.

THE COURT: That is a conclusion. You went there with another Chinaman?

THE WITNESS: Yes, sir.

BY MR. McCORMICK:

Q Where was it, do you remember the street? A In 43rd street.

Q Do you remember the number? A 353.

Q When you reached 353 did you meet any one else? A Yes, sir; another Chinaman.

Q Who were the men that you met at 353? A There were two Chinese there.

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Q Was this defendant there? A No, sir; the other one.

Q Another man?

MR. MOORE: I move to strike out all the evidence about this place on that occasion.

THE COURT: I will if it is not connected.

MR. McCORMICK: I will connect it.

BY MR. McCORMICK:

Q How many times did you go to that laundry before you met this defendant? A About three or four times.

Q The first time you were there did you talk to him?

A Yes, sir.

Q What conversation did you have with this defendant the first time you met him there? A He asked me to go in the room with him.

Q Now, where were you standing when he said that to you?

A In the store.

Q In the front room? A Yes, sir.

Q How many rooms were there on the ground floor of that building? A There were four.

Q What furniture was in the front room? A In the store? It was a store.

Q What was the room next to the front room? A A bedroom.

Q What did he tell you upon that occasion? A He told me to go in the back room.

Q What room did he tell you to go into? A The third room.

Q Now we call the front room the first room, and the next

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room the second room? A Yes, sir.

Q And the next is the third? A Yes, sir.

Q And still a room further back? A Yes, sir.

Q What furniture was in that third room? A There was just a bed.

Q A bed? A Yes, sir.

Q Did he say anything else to you before you went into the bedroom? A No, sir.

Q When he told you to go into the bedroom what did you do?  
A I went in.

MR. MOORE: I object to this, if the Court please, on the ground that it is incompetent and inadmissible. This seems to have been in the summer of last year. The time has not been fixed yet.

MR. McCORMICK: It was in the month of July. She doesn't remember the exact date.

MR. MOORE: The act charged is in December.

MR. McCORMICK: I have a right to show any number of occasions prior to that date upon which this defendant had intercourse with the complaining witness.

Objection overruled: exception.

MR. MOORE: I don't understand that the time has been fixed at all.

THE COURT: When was the first time you went there with this defendant when he asked you to go into the room. What time

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was it?

A In the day.

BY MR. McCORMICK:

Q The first time he asked you to go in the back room?

A In the summertime.

Q About how long after your vacation began? A About a month.

Q So it would be about the first of April? A Yes, sir.

Q When he told you to go into the bedroom what did you do? A Well, I went in.

Q When you got into the bedroom what did you do. Did he come in? A Yes, sir.

Q He followed you in? A Yes, sir.

Q Now, when you were in the bedroom was there anybody else there on that occasion? A No, sir.

Q Did he say anything to you then? A No, sir; he told me he would give me seventy five cents.

Q What is that? A He would give me seventy five cents.

Q What did you say? A All right."

Q Now, can't you go ahead and tell us all about what happened in that room at that time? A Well, he took off my hat and coat, and he told me to lie on the bed; I did; he came in too.

Q Did he take off any of his clothes? A Yes, sir; his shoes.

Q What clothes did he take off? A His shoes and pants.

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Q Then what was the next thing that happened. Did he do anything to you? A Yes, sir.

Q What did he do to you? A He got on top of me.

Q What else: did he do anything else to you: did he put his private parts into your private parts? A Yes, sir.

Q Then after that happened what was the next thing happened? A Nothing. Why then the other Chinaman came in.

Q He went in the front room? A Yes, sir.

Q This defendant left you? A Yes, sir.

Q How long after he left you was it anybody else came into the room? A About fifteen minutes.

Q Then what happened? A He did the same.

Q He did the same thing? A Yes, sir.

Q Then what was the next thing happened? A Why, I got on my hat and coat again, and they gave me my money, and I went home.

Q Who gave you the money? A Why I don't remember just at that time who gave me the money.

Q How much money did they give you? A A dollar and a half

Q How many times did you go to that laundry from the time you have just been telling us about up to the 27th of December, or Christmas.

MR. MOORE: I object to that, if the Court please. It appears she went there a number of times, and if this defendant was not present we are not responsible.

MR. McCORMICK: I withdraw the question.

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BY MR. McCORMICK:

Q How many times did you meet the defendant after that day in that laundry? A Well, about once or twice a week.

Q Once or twice a week? A Yes, sir.

Q Did the same thing happen every time? A Yes, sir.

Q Do you remember going there on the Saturday after Christmas? A Yes, sir.

Q Do you remember what happened on that day? A The same thing.

Q Did you have sexual intercourse with the defendant?

A Yes, sir.

Q In that same room? A Yes, sir.

Q And with the other man also? A Yes, sir.

Q How much money did they give you? A Dollar and a half.

Q You are not married to this defendant? A No, sir.

Q Now, do you remember going there on the 4th of January which was a few days after that? A Yes, sir.

Q What happened then?

MR. MOORE: I object to that on the ground that it is incompetent and inadmissible, subsequent to the time of the alleged commission of the crime.

MR. McCORMICK: It will show the conduct of the defendant.

THE COURT: Subsequent conduct? Objection sustained.

You may show his conduct on the 27th day of December, if there is any evidence of that.

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Q Well, on the 27th of December, do you remember how long you were in there? A I guess about an hour and a half.

Q Did you take any laundry to that laundry on any day?

A No, sir.

Q Did you ever take any laundry there? A No, sir.

Q Did you ever take any laundry away from there? A No, sir.

CROSS EXAMINATION BY MR. MOORE:

Q Where do you say you lived at this time? A 403 44th street.

Q That is one block away or is it less from this laundry?

A Yes, sir.

Q You lived there during the last year? A Yes, sir.

Q You used to play out in the street, didn't you? A Yes, sir.

Q In and about the laundry? A Yes, sir.

Q Other girls go into the laundry with you at any time?

A No, sir.

Q Sure no other girls went in there at all? A No, sir.

Q Now, when do you say it was that you first met this defendant in the laundry? A In about August.

Q Before that you say you had been in there several times?

A Yes, sir.

Q With other Chinamen? A Yes, sir.

Q As a matter of fact before that time you had intercourse with a lot of different men, didn't you? A No, sir; only the Chinamen.

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Q With a lot of those? A Three.

Q Didn't you frequent other laundries besides this one?

A No, sir.

Q Sure about that? A Positive.

Q Didn't you go to any other laundry except this one?

A No, sir.

Q Do you know Song Hing? A No, sir; I don't know them by name.

Q How old did you say you were? A Fifteen.

Q Do you remember my examining you in the police court, don't you? A Yes, sir.

Q Did you tell me you had been to any other laundry besides this one? A I never went around any other laundry to do anything.

Q Did you tell me you had been to any other laundry besides this one? A No, sir.

HUGH CONWAY, a witness called on behalf of the People being duly sworn, testified as follows:

(The witness states he lives at 909 Kent avenue, Brooklyn.)

DIRECT EXAMINATION BY MR. McCORMICK:

Q Now, Mr. Conway, you are the father of Margaret Conway, who has just left the witness stand? A Yes, sir.

Q When was she born? A August 28, 1899.

Q 1899? A 1899.

MR. MOORE: No questions.

SALVATORE CATALANO, a witness called on be-

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half of the people testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where do you live? A 362 West 43rd street, barber shop.

Q Now, Catalano, how long have you had a store at 362 W. 43rd street? A Seven years.

Q You will have to talk so that the last man can hear you?

A Seven years.

Q Have you a shop there? A Yes, sir.

Q What is it, a barber shop? A Yes, sir.

Q Do you know the man next door to you who conducts a shop at 362 West 43rd street? A Yes, sir.

Q What is his name? A Menenga.

Q Now, do you know a girl named Margaret Conway? A Yes.

Q By the way, your shop is right across the street from the laundry at 353 West 43rd street? A Yes, sir.

Q Do you know this defendant? A Yes, sir.

Q Where did you first see him? A In the laundry.

Q That laundry right across the street from your place?

A Yes, sir.

Q Now, when was the first time that you saw this girl Margaret Conway? A Last summer.

Q Do you remember the date? A I don't remember the date.

Q What is that? A I don't remember the date.

Q Along in the summer? A Yes, sir.

Q What was she doing the first time you saw her?

MR. MOORE: I object to that. There is no connection shown with the defendant.

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MR. McCORMICK: I will show the connection with the defendant.

MR. MOORE: The girl has said herself that on several occasions when she first went to this laundry she did not see the defendant.

MR. McCORMICK: Well, she testified that she did see him a great many times during the summer and fall.

MR. MOORE: You are now asking him when he first saw Margaret Conway?

Objected to; objection overruled; exception.

Q Do you remember? A No, sir; I don't remember; it was the summer, the last part of the summer.

Q What did you see her do? A I seen her went in, and didnt see her come out.

Q What is that? A I didn't see her come out.

Q That is the first time you ever saw her? A Yes, sir.

Q You saw her go in where? A The laundry.

Q Into whose laundry? A Song Lee.

Q This defendant's laundry ? A Yes, sir.

Q That was right across the street from your shop? A Yes,

Q Now, how many times on that day, on the 27th of December last, did you see her go into that laundry?

MR. MOORE: I object to that as incompetent and inadmissible as against this defendant. We are not chargeable with anything except what is brought directly home to us. It appears that she was thereupon different occasions, accord-

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inf to her testimony when the defendant was not there. Unless it is shown by this witness that the defendant was present, it is incompetent and inadmissible.

THE COURT: Do you know whether or not the defendant was present in the laundry?

THE WITNESS: Yes, sir.

BY THE COURT:

Q Did you see him there? A I seen him there, yes, sir.

BY MR. McCORMICK:

Q At any time that you say you saw him there did you see this Margaret go there? A Yes, sir; I seen him all the time there: I saw him every time there.

Q Whose laundry was that? A This was his laundry.

Q This defendant's laundry? A Yes, sir.

Q See him there that day? A Sure I seen him every day.

Q How many times did you see her go there between the first time you saw her, and the 27th of December, 1913, while the defendant was there? A Sometimes I used to see her once or twice a week; sometimes didn't see her for two weeks.

Q Did you ever see her carry a bundle into the laundry?

A No, sir: never saw her.

Q Ever see her carry a bundle out of the laundry? A No, sir: never saw her.

Q On the 27th of December, which was the Saturday after Christmas, do you remember the day? A Yes, sir.

Q Did you see her that day? A Yes, sir.

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Q About what time was it? A About around 11 o'clock.

Q In the morning? A Yes, sir.

Q Where did you see her go? A 353 West 43rd street.

Q In the laundry? A Yes, sir.

Q When she went into the laundry that day what did you do?

A I didn't do anything that day because I couldn't get any officer.

MR. MOORE: I object to that. I move to strike out the words beginning with "because".

THE COURT: Strike it out.

Q Tell us everything that you saw her do on the Saturday after Christmas? A That was the 24th I am speaking of--

Q You saw her on the Saturday after Christmas? A Yes, sir.

Q December 27th? A Yes, sir.

Q What did you see her do? A Seen her standing behind the counter.

Q First you saw her walk along 43rd street, and go into the laundry? A Yes, sir.

Q Now, I want all of it? A I went out from the shop.

Q You walked out of the door? A Yes, sir.

Q Where did you go? A I passed by, to see if she is there.

Q Dropped by the laundry? A Yes, sir.

Q The same side of the street? A Yes, sir.

Q Were you looking in the window? A Yes, sir.

Q Did you see the defendant in the front room? A Yes, sir;

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both in the front room.

Q The defendant and another man? A Yes, sir.

Q Who was he? A The other man, that is the partner.

Q Is he in the courtroom now? A No, sir.

Q You don't see him here? A No, sir.

Q What is his name? A The other Chinaman working in there.

Q Two Chinamen working in that laundry? A Yes, sir.

Q Both Chinamen talking to the girl? A No, sir: one man talking to the girl.

Q Which one? A This man here (indicating the defendant).

Q Now after this man, the defendant was talking to the girl what did you see, what was the next thing that took place?

A When I passed back again she wasn't there at all.

Q The next time you went by she wasn't in the front room?

A No, sir.

Q Who was? A The other man who was in there.

Q The other man who was in there? A The other man who was in there.

Q The other Chinaman? A Yes, sir.

Q Do you know where this defendant was? A No, sir.

Q He was not in the front room? A No, sir.

Q Did you keep on watching? A But after that I went over for the cop, to show them what he did --

Q What did you do after you say you looked and saw the other Chinaman but didn't see Margaret or this defendant?

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A I went over and called the cop.

Q I am talking about the 27th of December? A I didn't say nothing; I could not get nobody. I was watching for a cop.

THE COURT: Strike that out.

Now listen to the question.

BY THE COURT:

Q You say you saw Margaret and the defendant, and the other Chinaman all in the front store? A Yes, sir.

Q And that you saw the defendant and Margaret talking together? A Yes, sir.

Q You looked again, and you saw the other Chinaman, but you did not see Margaret and the defendant? A No, sir; I did not see them.

Q Now did you keep on looking after that? A Yes, sir.

Q What did you see? A I seen when she went out again.

Q You saw her come out? A Yes, sir.

Q Did you see the defendant? A After I did, yes, sir.

Q Where did you see him? A In the store.

BY MR. McCORMICK:

Q Did you see the defendant and her come back into the front room? A No, sir; I saw her just come out, that is all.

Q Did you see her go into the back room with the other Chinaman? A No, sir; I didn't see them going in.

Objected to; objection sustained.

BY THE COURT:

Q Tell what you saw. You must tell us what you saw? A I

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saw her come out with no bundle at all, and I seen her going in; she stayed about an hour, maybe three-quarters of an hour, when she used to go there.

BY MR. McCORMICK:

Q We are talking about the 27th of December. I am talking about the Saturday after Christmas. Do you understand? A Yes.

BY THE COURT:

Q How long did she stay there at that time, the 27th of December? A About half an hour.

BY MR. McCORMICK:

Q You didn't have a watch, you didn't have the time? A No, sir.

Q You are guessing at it? A Yes, sir; that is all.

Q After, ~~as~~ you say, the other Chinaman, not this defendant, alone in the front room? A Yes, sir.

Q After you had seen the three of them in the front room? A Yes, sir.

Q Now, after that did you see the three of them in the front room again? A No, sir; I didn't see them.

Q You just saw her come out of the door? A Yes, sir; she walked out from the store, and I seen the other one come out.

Q From where? A From the rear.

Q From the rear of the store? A Yes, sir.

Q When was the next time you saw her? A I saw her the following day.

Q Did you see her on the 4th of January?

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MR. MOORE: I object to that.

A Yes, sir.

MR. MOORE: I object to that as incompetent and inadmissible, subsequent to the commission of the crime or its alleged commission.

THE COURT: I will allow the question whether he saw her on the 4th of January.

BY THE COURT:

Q Did you see her on the 4th of January? A Yes, sir.

BY MR. McCORMICK:

Q How many times did you see her between the 27th of December and the 4th? A Every day.

MR. MOORE: I object to that on the ground that it is immaterial.

THE COURT: I do not see its materiality. Strike it out.

MR. McCORMICK: I want to show the conduct of this defendant after the commission of the crime alleged in the indictment. It corroborates the testimony as to what happened on the 27th.

THE COURT: The motion to strike out is granted.

CROSS EXAMINATION BY MR. MOORE:

Q Have you ever been in this laundry? A Yes, sir.

Q Been in there a good many times, haven't you? A Yes, sir

Q The laundry consists of three rooms, doesn't it? A Yes

Q The front room is the store is the room where the laundry is kept after it is finished? A Yes, sir.

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Q The middle room has a bed in it, has it not? A Yes, sir.

Q And the back room is where they keep their flat irons, and where they do the washing? A Yes, sir.

Q And where they do their cooking? A Yes, sir.

Q And the doors leading from the front to the rear are one behind the other, are they not? A Yes, sir.

Q And are always open, are they not? A No, sir.

Q What is that? A No, sir.

Q Well, are there any doors there at all? A Well, the front door, they generally keep it closed.

Q Is there a front door or is it just a doorway without a door on it at all? A They have portieres in the rear.

Q Now is there a door at all? A No, sir; there is no door at all.

Q There is not any door between the front and the second room is there? A No, sir.

Q There is not any door between the second room and the back room, is there? A No, sir.

Q And the Chinamen heat their flat irons in the room, dont they? A No, sir.

Q Where did they heat them? A With the gas.

Q Well also in the rear, don't they, haven't they got a stove there that the flat irons are set up against, in the rear room? A I don't know if they heat them over there; I know they have gas.

Q They heat their flat irons that they use with gas? A Yes

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Q Haven,t you seen them bring the flat irons from the rear room into the front, time and again? A They used to one time.

Q That is where they heat the flat irons, in the rear of those three rooms, isn't it? A No, sir.

Q What is that? A In the back room, in the rear one.

Q You saw the Chinaman going back and forward from the front to the rear room almost constantly, are they not, is that right? A Yes, sir.

Q They do their washing in the back room, don,t they?

A Yes, sir; they do their washing.

Q What is that? A Yes, sir.

Q They do the sprinkling of the clothes in the back room ?

A Yes, sir.

Q And they iron in the front room? A Yes, sir.

Q Any person going in there could walk from the front room to the rear without any doors obstructing them, couldn't they? A But they have a partition.

Q Never mind that, that is true? A Yes, sir.

Q Isn't it? A Yes, sir.

Q Now, they have a curtain that drops down across the doorway leading into the second room, doesn't it? A Yes, sir.

Q But that doorway during business hours, or working hours, that curtain is always thrown back isn't it? A Yes, sir.

Q So that they Chinamen can pass through without it bothering them? A Yes, sir.

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BY MR. McCORMICK:

Q But the curtain between the second and third room, to the bedroom, did you notice whether that was --

MR. MOORE: I object to that on the ground it assumes something not in evidence.

THE COURT: Objection sustained.

MIKE MARUORA, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 362 West 43rd street.

BY MR. McCORMICK:

Q Do you remember the Saturday after Christmas? A Yes, sir

Q Where is your place of business? A 362 West 43rd street.

Q Do you know this defendant? A Yes, sir.

Q What is his business? A Chinese laundry.

Q Where is his laundry? A 353 West 43rd street.

Q That is right across the street from your place? A Yes.

Q I am talking about the Saturday after Christmas. Do you remember that day? A That was on the 27th.

Q The 27th of December? A Yes, sir.

Q Do you know a girl named Margaret Conway? A Yes, sir.

Q Did you see her that day? A Yes, sir.

Q What time was it? A It was about 12 o'clock, I think.

Q What did you see her do then? A I seen her doing-- go in the store there.

Q Go in what store? A In the Chinese laundry.

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Q Did you see what direction she came from, did she come from Ninth or Eighth avenue? A She came from Ninth avenue.

Q And went into this defendant's laundry? A Yes, sir.

Q She went in the laundry? A Yes, sir; certainly.

Q When you saw her go in did she have a package of laundry in her hand? A No, sir.

Q When you saw her go in the laundry what did you do?

Objected to; objection overruled; exception.

Q What did you do? A I didn't do anything, just kept watching, that is all.

Q Now tell us what you saw?

MR. MOORE: I object to the answer, and ask to have it stricken out.

THE COURT: Motion granted.

Q Tell us what you saw in the laundry? A I saw her go to the Chinese door, 11 o'clock; she was always coming for five or six months.

MR. MOORE: I object to that.

THE COURT: Strike it out.

Q What did you see on December 27th? A So I see this girl went in the Chinese store, and after awhile they went in the back room, because I am right in front of it, across the street; and they stayed pretty near about one hour there. She came out again, and she walked away.

Q Do you remember when she was first went in the laundry, do you remember that? A That was in the summer.

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Q I am speaking of the time you saw her go in the laundry, on the 27th of December? A Both Chinamen--

Q Who else was in the front room at that time? A The Chinese was there.

Q Who were they, was this one of them (pointing to the defendant) A Well, both was in the store.

Q Was this fellow there, the defendant? A Yes, sir; he was there.

Q Was the other man there? A Certainly.

Q You saw these three people there in that room at that time? A Yes, sir.

Q Now, what was the next thing you saw any one of them do? A The next thing I seen the girl went in the back room.

Q The girl went in first? A Yes, sir.

MR. MOORE: I object to this as leading and improper.

THE COURT: He said he saw her go into the back room.

BY MR. McCORMICK:

Q Was he alone?

MR. MOORE: I wish that he would tell what they did.

Q What did you see after that? A After that she went in the back room, this fellow went in, go right after.

Q Who do you mean by this fellow? A The defendant.

Q Now, go very slowly here. Don't try to tell us all at once. How long was it before these two people, or any one of them, came back in the front room? A After about

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five minutes or so.

Q Who came in the front room then? A This fellow here.

Q This defendant? A Yes, sir.

Q Then there were two men in the front room, was there not? A Well, there was one; one was going in the back room, and one was in the store.

Q This defendant went in the back room, and then came back into the front room?

MR. MOORE: I object to this. I don't think they were his words.

THE COURT: He is merely summarizing what the witness already testified to.

MR. MOORE: Then he should not lead him in that way.

THE COURT: The witness apparently is an Italian, and does not speak fluently, and that makes it difficult to examine him. Proceed.

Q Now, after this defendant came back into the front room-- A They came out in the front of the store again.

Q This defendant did? A Yes, sir.

MR. MOORE: He says they did.

THE COURT: He said "they did".

MR. McCORMICK: But before that he said the defendant came back.

Q Can't you tell everything you saw there without all these questions? A Yes, sir; I did tell it.

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Q Tell it very slowly, exactly what you saw? A I saw this girl went in the Chinese store, the 27th of December, Saturday, she went there, 11 o'clock, I remember the time, it was pretty near 11 o'clock; they stayed an hour in the back room there, after one hour she came out again, came out and walked away. That is all I seen.

Q Now, while she was in there were you looking through the window into the front room? A Yes, sir.

Q Tell us what you saw in there? A Seen the girl went in the back room.

Q Who did she go in with? A Go with this fellow.

Q Did she go in with anybody else? A No, sir.

Q Did the other fellow go in with her? A I did not see that.

Q Have you ever seen that girl with this defendant before that? A No, sir.

Q Before that day? A Yes, sir; sure, I seen her a good many times.

Q Beginning when? A Well, that was last spring, I guess.

Q A long time before, wasn't it? A Yes, sir.

Q Did you ever see her carry a bundle to the laundry?  
A No, sir; I don't remember.

Q Did you ever see her carry a bundle away from the laundry? A No, sir.

CROSS EXAMINATION BY MR. MOORE:

Q You don't know how long she was in there, do you?

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A Well, I didn't have a watch in my hand.

Q Do you know how long she was in there, I ask you?

A Yes, sir.

Q How long? A About an hour.

Q Why do you say "one hour". A Well, about an hour, that is my mind, it might be an hour or an hour and a half, might be three-quarters.

Q Are you a barber by trade? A I am a shoemaker.

Q Do you know this last witness who was sworn here?

A What?

Q Do you know the witness that was sworn just before you were, Salvatore something? A Yes, sir.

Q Where is his place of business? A Barber shop, right next door to mine.

Q What is the number? A 362 West 43rd street.

Q You are also 362? A Yes, sir: it is one house.

Q 362 is not directly across the street from 352, is it?

A Well, it is about across the street, yes, sir, certainly.

Q Is it? A Well that doesn't go by number; that goes by number it is different. This side and the other side.

Q Isn't that farther uptown? A Yes, sir.

Q So that you are not straight across the street? A Well it is pretty near straight, anyway.

Q It is diagonally across the street? A Well, it is a little bit.

Q A little bit? A Yes, sir.

Q Quite a bit, isn't it? A Right across the street from

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my store is 357.

Q. Isn't it diagonally across to 355? A. Right next door to 355, that would be 353.

Q. Well, at least 40 feet further uptown than 353, aren't you? A. 40 feet?

Q. Yes. A. Well, I didn't have a measure with me.

Q. Now, you didn't have a watch on that day, can't you give us the distance as well as you can give us the time? A. I don't have a measure; I couldn't tell you right.

Q. You said it was directly across the street. Now, I ask you how far up the street it was from 355 to where your place was? A. I told you it was right across the street; that is all I know.

Q. Now, you also tell me it is further uptown? A. It is not so far uptown; it is pretty near across the street.

Q. About how far? (No answer.)

BY THE COURT:

Q. What do you mean by uptown? A. Further up in the city.

Q. Up the block you mean. That is not uptown, that is cross town. We are talking about a cross street? A. Yes, sir on one side.

Q. Further west, I will put it that way? A. Uptown side, to our right.

Q. You are on the uptown side? A. Chinese uptown side, I am the downtown side.

Q. You are further west? A. Yes, sir.

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Q How much further west are you than 353? A Three or four feet.

Q Is that all? A Yes, sir.

Q Do you know what three or four feet is? A About a couple of yards.

Q Could you measure it in the room here, indicate how much further you are? A I couldn't tell you the right measure, because I didn't have no measure with me.

Q Indicate in this room, if you can. Supposing that this is across the street (indicating) that wall over there you are in your shop? A Yes, sir.

Q Indicate the point where the Chinaman's store is? A The Chinese store is on this door there (indicating).

BY MR. MOORE:

Q Now this laundry that you speak of, the Chinamen are going back and forth all the time from the front to the rear room, aren't they? A Yes, sir.

Q So that you could go by there almost any time and you would find the Chinaman going in to the rear room and shortly coming out of the rear room, couldn't you? A Yes, sir.

Q This girl that you speak of, she went into the rear room after the Chinamen as she was going in, that is all you saw, wasn't it? A Yes, sir.

Q And the rear room is the room where they do their washing, isn't it? A Yes, sir.

Q The back room? A Yes, sir.

Q And the stove where they heat their irons is there,

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isn,t it? A Yes, sir.

Q That is also the room where they sprinkle their clothes, isn,t it? A Yes, sir.

Q So it id the work room of the Chinamen, is that it? A Yes, sir.

Q Don't you know that they spend a great deal of their time in that rear room, as much as they do in the front room if not more? A I guess so.

Q You know so, don't you, because you had been watching them, now, isn,t that a fact? A Yes, sir.

REDIRECT EXAMINATION BY MR. McCORMICK:

Q Is there a bed in one of those rooms? A Well, I didn't see the bed; I never went in the back room.

Q You never went in the back room? A No, sir.

Q There is a front room, and a room nextto that? A Yes.

RE-CROSS EXAMINATION BY MR. MOORE:

Q Have you gone into the back roo, through the whole place? A No, sir: never.

Q Only the front room? A Yes, sir.

V I N C E N T P I Z A R R A, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where do you reside? A scarsdale, New York.

Q Mr. Pizzarra? A I am assistant superintendent of the New York Society for the Prevention of Cruelty to Children.

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Q Did you see this defendant on the 7th day of January, 1914? A I did.

Q Where? A In the laundry on West 43rd street, between 8th and 9th avenues. I can consult the records, and I can tell you the number.

Q There isn't any dispute about that. 353? A Yes, sir; West 43rd street.

Q With whom did you go there? A I went there with Officer Maxcy of the Society and Officer Owens of the Police Department, and another officer whose name I don't remember, and Margaret Conway.

Q Did you have a conversation, or did any one of you gentlemen have a conversation with the defendant? A I did.

Q What was it? A I asked him if Margaret Conway, who was with me, had been in his store on the 27th of December, and also if she had been there on the Saturday following the 27th, and he said that she had been there; she had been there lots of times to bring in laundry. I asked him if-- I told him that the girl had informed me that he had had sexual intercourse with her, and he pretended that he could not talk English. I got no answer.

MR. MOORE: I object to that "pretended he could not talk English".

THE COURT: Strike it out.

BY MR. McCORMICK:

Q Did he say he could not talk English? A No, sir; he did

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not.

Q He did not talk? A No, sir; he did not answer me. He answered the first part of the question, but not the latter part.

Q Do you know whether the defendant can talk English?

A Well, he spoke some English to me.

Q That is all you know about it? A That is all I know.

CROSS EXAMINATION BY MR. MOORE:

Q Now, let us see. He did not talk very much English to you, did he? A Well, he said something in English; I repeated my question several times to him, before I got answers.

Q It is true his English is very broken, isn't it?

A Yes, sir.

Q You had to ask him a half dozen times before you could get an intelligent answer from him? A I wanted him to understand what I was telling him.

Q Then you got the answers from him that you have given us here? A Yes, sir.

MARTIN S. OWENS, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a police officer attached to the Detective Bureau of the 22nd Precinct.)

DIRECT EXAMINATION BY MR. McCORMICK:

Q You are a member of the Municipal Police Force? A I am

Q Were you in the laundry of the defendant on the 7th of January? A I was.

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Q Who else was there? A Detective McMahon, Mr. Pizarra, and a man named Maxcy, who accompanied Mr. Pizarra, and Margaret Conway, and two Chinamen.

Q What took place there? A Mr. Pizarra and I walked in the place, accompanied by Detective McMahon. The girl and Mr. Maxcy followed later. Mr. Piazarra told this defendant here that the girl had informed him that he had sexual intercourse with her.

MR. MOORE: I object to that. I think that this is incompetent, in view of the fact that the former witness has said that he had to speak to him a half a dozen times to make him understand.

MR. McCORMICK: No such testimony at all.

MR. MOORE: We will have it read. That is what he said to me that he had to ask him a half a dozen times to make him understand, and he got a few answers from him. If you are talking in a tongue that is foreign to a defendant, he could not be bound by what was said in that foreign tongue. I claim that the witness, Pizarra, has indicated to the Court that it was so uncertain-- his understanding -- that it ought not to be received.

THE COURT: The conversation may be given. You may show such facts as you think are proper. There was some conversation and what it was may be given. Objection overruled; exception.

BY MR. McCORMICK:

Q Now, tell us any conversation you heard this defendant

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have with an one? A I heard the defendant talking with Mr. Pizarra about knowing this girl; he said he did not know her; Mr. Pizarra asked whether she ever came there, and she said "yes"; Mr. Pizarra said, "How many times"? And he said "Quite a few". I went in the back room of this store, that is the rear, in which they wash, and while I was in there, the defendant came in, and said to me, "Charlie, can I talk to you" in as plain English as I am speaking now, and I said "no".

MR. MOORE: I move to strike that out as a conclusion of the witness.

THE COURT: You need not characterize it.

BY MR. McCORMICK:

Q He said to you, "Charlie, can I talk to you"? A Yes, sir.

THE COURT: Strike out the characterization.

THE WITNESS: (Continuing) I went then into the sleeping room, next the room in which they wash, and in which was a few boards laid on some boxes, and on which was some quilts. Under where these boards were were a couple of suitcases. I opened them. The defendant was standing near me, and I said to him, "Where do you keep your pistol." He said "I don't have no gun, Charlie, no gun." I went into the room next to his shop, a sleeping room, and there were some boards on top of some boxes that were there, and also some suitcases underneath those boards I searched those, and he said, "Charlie, no gun, me no gun!"

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I went in to the front room, which is the store proper, and I looked behind the desk, and underneath the desk, and I didn't find any gun. We then took this defendant and another man out of the store, and took them to the station house.

Q Well, did he say why the girl had been going to his laundry? A No, sir.

Q You didn't hear that? A No, sir.

CROSS EXAMINATION BY MR. MOORE:

Q What is your name? A Martin S. Owens.

Q Your name is not Charlie? A No, sir.

Q You were never called "Charlie"? A No, sir.

Q You are what is known as a plain clothes man, are you not? A I am attached to the Detective Bureau.

Q But you are a plain clothes man, aren't you? A Yes, sir.

Q You were not in uniform that day, were you? A No, sir.

Q How long have you been attached to the Detective Bureau? A Going on four years.

Q You have got a beat that is given to a lieutenant?

A At present, yes, sir.

Q That beat depends on your holding down the job, doesn't it? A No, sir.

Q What is that? A No, sir.

Q What is your rank? A First grade, detective.

Q You are a first grade detective now? A Yes, sir.

Q But if you are taken away from the detective bureau

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then what would be your rank?

MR. McCORMICK: I object to that.

Q Well, I ask you what is your official position? A Official position is first grade detective with the rank of patrolman.

Q And the detective with the rank of patrolman the salary varies from fourteen hundred to twenty two hundred and fifty a year, don't it? A First grade detective is twenty two fifty patrolman is fourteen hundred.

THE COURT: Now, Mr. Moore, what is the use of going into this. He said that the defendant told him that she had been there a few times. You do not deny that she had been there a few times?

MR. MOORE: Well, I didn't like his attitude here.

BY MR. McCORMICK:

Q Didn't this defendant say anything about the girl, whether or not she brought laundry there? A I don't remember whether he did; he said she had been in there a few times; I don't remember his saying anything about laundry.

DAVID MAXCY, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where did you reside? A 297 Fourth avenue.

Q What is your business? A Special officer Society for the Prevention of Cruelty to Children.

Q Were you present when the defendant was arrested on the 7th of January? A I was.

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Q In his laundry? A Yes, sir, at the laundry.

Q Who else was there? A Well, assistant superintendent Pizarra of the Society, Officer Owens of the 26th Precinct, the father of this girl, and the girl and myself.

Q Did you hear the defendant talk with any one? A Yes, sir, he spoke to the assistant superintendent Pizarra of the Society.

Q Do you remember what conversation there was? A Yes, sir; Mr. Pizarra asked him if he knew this girl; he said yes; he asked him if the girl was in there on January 3rd, and he said yes. He also asked if he did anything to the girl. He shook his head, "no." The girl just came in and went out. He asked him if a policeman had been there in uniform on January 3rd. He said yes. That is all the conversation.

Q When was it this conversation took place? A January 7th.

Q The 7th? A Yes, sir.

Q Was there anything said about why the girl was going there; did the defendant say why the defendant was frequenting his laundry? A No, sir; he hesitated very much, and spoke kind of broken English, and just answered yes and no, that is all.

Q Did he say anything about laundry being taken there or not? A No, sir.

Q Do you remember? A No, sir; I don't remember.

MR. McCORMICK: I will have to ask an adjournment, your Honor, I have no other witnesses to call. Dr. Brown

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ought to be here any minute. We are waiting for him.

SAMUEL A. BROWN, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he resides at 165 West 58th street.)

DIRECT EXAMINATION BY MR. McCORMICK:

Q Doctor, what is your profession? A Physician and surgeon.

Q Are you connected in any way with the New York Society for the Prevention of Cruelty to Children? A Yes, sir. I have been examiner for them since 1896.

Q On the 8th of January of this year, did you see the complaining witness in this case, Margaret Conway? A I did.

Q Where? A In the infirmary of the Children's Society, 4th avenue and 23rd street.

Q Did you make a physical examination of her? A I did.

Q Of her genital organs? A Yes, sir.

Q Will you tell us what condition you found them in? A The girl was, for her age, fairly well developed. The hymen was ruptured, and there were signs of penetration of the genitals by a blunt instrument. The vaginal orifice was dilated; the orifice of the vagina was dilated to admit of complete penetration, and she was in condition to perform sexual intercourse.

CROSS EXAMINATION BY MR. MOORE:

Q What evidence was there of penetration by a blunt instrument? A The genitals were relaxed, and increased in size,

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dilated, and the absence of the hymen.

Q Does that mean, necessarily, that there has been penetration? A Penetration produces a rupture of the hymen.

Q Don't you often have a ruptured hymen without penetration? A No, sir.

Q Haven't you seen that in girls six, seven or eight years old? A Not ruptured.

Q What have you seen? A The absence, the congenital absence of the hymen.

Q After a rupture wouldn't the hymen absorb so that it has the appearance of the absence of it? A No, sir; the hymen is always in evidence; it simply contracts.

Q You mean to say there are some women born without a hymen? A Yes, sir.

Q Doesn't nature do its work in the same general way, and its wonders perform? A Unfortunately not.

Q Sure about that, Doctor? A Absolutely.

Q That is a very ordinary thing, isn't it? A What is that?

Q The absence of the hymen? A Yes, sir; in most cases--

Q The absence of a hymen then would be an abnormal condition, wouldn't it? A A congenital deficiency, yes, sir.

Q Do you say this-- doesn't it come from rupture in early childhood, and the absorption of it so that after years it has the appearance of the absence of the hymen entirely? A Those hymens that have been ruptured in early life, the rudiments

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of that hymen are always present. It is a membrane inserted around the vaginal orifice. If you make one or more tears, from the free head to the base, the rudiments of that hymen always persists, and, of course, are present.

Q. They are not absorbed? A. No, sir; the rudiments are always there.

Q. You found the rudiments here? A. Every evidence of the rupture of the hymen.

Q. Of course, you can't tell the Court of the rupture?  
A. Only the dilatation.

Q. You weren't able to state how recently the hymen had been ruptured, were you? A. I saw no evidence of a recent tare: the tare which was present was an old one, that is, it had completely healed.

BY MR. McCORMICK:

Q. As a matter of fact, if a girl of her age had sexual intercourse once or twice a week for a period of four months before you examined her what condition would her hymen be in?

A. Well, the original tear would, under ordinary conditions of cleanliness heal in six or seven days, and subsequent intercourse, of course, would make no material difference unless the instrument introduced was unusually large, but I mean one of the same calibre would produce no symptoms at all.

Q. Will you describe the condition of the hymen in this particular case? A. It was the usual hymen, the marginal hymen, which is a membrane completely around the vagina with a

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tare at the side from the free head to the base which increased in size to the vaginal orifice.

Q Would it have admitted of complete penetration? A Yes, sir; I so testified.

Q With an adult person? A Yes, sir; with an adult person.

MR. McCORMICK: Will your Honor grant me an adjournment until two o'clock. I have one more witness to call. The witness is not here, and has not been here?

THE COURT: Gentlemen of the jury you are admonished not to converse with each other nor with any other person concerning this case, nor with anybody connected with it until it has been finally submitted to you. The Court will take a recess until five minutes to two.

R E C E S S.

AFTER RECESS.

H A R R Y D U F N E R, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a police officer attached to the 26th Precinct.)

DIRECT EXAMINATION BY MR. McCORMICK:

Q You are a member of the Municipal Police Force? A Yes.

Q Do you see that man (referring to the witness Catalano)

A Yes, sir.

Q On the 3rd of January, 1914, did you see Catalano? A Yes, sir.

Q Talk out loud? A Yes, sir.

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Q Where were you when you saw him? A On patrol, 9th avenue and 43rd street, going towards 42nd street.

Q What time in the day? A 10.30.

Q In the morning? A Yes, sir; a. m.

Q Did you talk to him? A No, sir.

Q Did he talk to you? A No, sir; he talked to me.

Q After he talked to you did you go any place? A I went with him.

Q You went some place, didn't you? A Yes, sir.

Q Where did you go? A 353 West 43rd street, up to a laundry.

Q You went to the defendant's laundry, did you? A Yes, sir.

Q Whom did you see there? A I seen the defendant there, and a little girl in front of the house; I asked her what she was doing.

Q You can't testify to any conversation you had with her. Did you talk to the defendant? A No, sir.

Q Did he say anything to you? A No, sir.

Q Did you take the girl away from there? A Yes, sir.

MR. MOORE: I object to the conversation, and I move to strike it out.

MR. McCORMICK: On this charge I would not be permitted to give evidence of a subsequent time, but I am nevertheless permitted to give evidence of familiar relations between the parties, the complainant and the defende

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ant. I call your Honor's attention to the Code.

THE COURT: Have you any case in the State of New York which has permitted evidence of any familiarity subsequent to the date charged in the indictment?

MR. McCORMICK: I have not.

THE COURT: The leading case is the case of the People against Flaherty in 162 N.Y. where, in speaking of evidence of other acts it says, "Such evidence, however, is not admitted for the purpose of proving other offenses against the law but solely upon the view that it may tend to corroborate the complainant's account of the act alleged in the indictment as constituting the crime. I shall only stop to hint at the reasons upon which this rule is founded, the underlying idea being that it is probable that parties who have prior to the offense charged indulged in sexual intercourse did commit the specific offense charged." I find nothing in reference to subsequent acts.

Objection sustained. The jury is instructed to disregard the evidence given by the officer.

MR. McCORMICK: The people rest.

MR. MOORE: Now, if your Honor please, I ask your Honor to instruct the jury to find a verdict of not guilty, for the reason that there is not sufficient corroborating evidence of the complaining witness to sustain a verdict of guilty beyond a reasonable doubt. Now, if your Honor please, I take it that it is the law that there must

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be acts testified to by persons other than the complaining witness which tend to establish the commission of the crime. Now, I say there is not a bit of evidence here, outside of the evidence of the complaining witness that, in any way tends to establish the crime. I take it that opportunity alone is not sufficient. The most the people have proven here if your Honor please, is a case of opportunity. They have not connected any one of the circumstances such as are not entirely innocent in their nature. These two Chinamen had three rooms. The front one is the one where they did the ironing, and where they delivered the parcels of laundry after they had been washed and are ready to be returned to the customer. The rear room is where they did their washing, and where they did their sprinkling, and where they heated their irons. There was an open way between the front and rear rooms, and in the middle room there was a bed, or two beds, I don't which it may be. The evidence is that the Chinamen are working both in the front and back rooms, going from and to the rooms all the time. All the washing is done in the back room. Now, the most we have here is that two men saw this girl in the front room upon a certain occasion; afterwards they walked by and she had gone in to the rear room, and this defendant was not in the front room. Now, that is all very natural and it is not corroboration in any sense of the word, because he might be back there doing his wash-

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ing or sprinkling his clothes or cooking or whatever it may have been. Your Honor will call to mind that it was about 11 o'clock when she went there. The rear room is a kitchen as well as a wash room, and the room for sprinkling clothes. That is the place where they cook their meals. And the time when she is in the rear room is the time that he was preparing his noon day meal, In addition to being there for the purpose of washing and sprinkling the laundry. Now, I submit to the Court that there is not sufficient here, outside of her testimony that would logically and legitimately tend to establish the crime. The case in the 162nd Appellate Division was a case where the People had proved that the defendant was actually on a bed with the girl, and she was undressed. They held there that the case was insufficient to establish the crime of rape. Now, here there is not anything, there is not any conduct that is unseemly, there is no exposure of the person, there is no undressing, simply she is in the front room and then at noon time she goes into the rear room. Now, I submit to the Court there is not anything there that legitimately tends to establish the crime charged against this defendant. Nor is penetration sufficient in this case if your Honor please. It might be if the girl had said that this defendant was the only person that she had intercourse with--then the penetration might be corroboration. The

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courts have held as your Honor well knows, that the simple fact that they prove that she has had intercourse does not legitimately tend to establish the crime and is not sufficient corroboration. But here even though it may be held to be sufficient corroboration still she refutes it by saying that she had intercourse with at least two other men, so that that would account for the penetration, even by her own testimony, and the penetration then would not establish the guilt of this defendant. So I submit to the Court that there is not a single thing, not a single circumstance testified to that could not happen in any laundry or house in the city of New York. She might have gone, for instance, to my own home, and been in the dining room, and then, at noon time, walked out into the kitchen. That is all they saw. They saw nothing unseemly, nothing disorderly, nothing suspicious except the fact that she went back into the kitchen. Now, I submit to the Court that under those circumstances the jury would have to guess or surmise that she is telling the truth, and the very purpose of the law is to prevent, as your Honor knows, a frame-up, if you might call it such, of a man being charged with this serious crime, because it is a very simple thing for somebody to go on the stand, and say she had intercourse with a certain person. If their word was sufficient many a man would be blackmailed out of his money. So as I

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have said there must be something said by somebody that directly tends to establish the crime, independent of anything she testifies to. Now, I submit, there is not a single thing that tends to establish that crime outside of her own testimony. Every single thing that has happened could happen in any laundry. Every single thing she said could happen, and under the authorities and particularly the late case in the Appellate Division, 152 N.Y. which seems to me to be very strong.

THE COURT: What case is that?

MR. MOORE: The People against DeNigris,

THE COURT: 152 Appellate Division?

MR. MOORE: 152 Appellate Division is the People against Klein. That was in the second department, I believe. Now, in the case of the People against DeNigris, 157 Appellate Division, page 98, they distinguish the Klein case, and say there was sufficient corroboration and undoubtedly there was. The corroboration was this--the corroborative evidence tended to prove that the defendant took a young, unmarried girl, to a furnished room, held her out as his wife, and remained there occupying a room with her for several nights. Now, of course that is sufficient corroboration, being a guest in a furnished room, and introducing her as his wife, and sleeping in the same bedroom for several nights. That is quite sufficient.

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Those acts tend legitimately and logically to the inference that he had intercourse with her. But in this case there is nothing. She comes to our place, our workshop; she is seen first in the front workshop, and then afterwards she goes into the rear room which is also our workshop.

MR. McCORMICK: Now, I say that the case that counsel relies upon is not at all in point. The Klein case, and the Seaman case are both directly in point. Your Honor knows that the Court of Appeals has repeatedly said that there must be some corroborative evidence, and it is for the jury to say whether it is sufficient.

THE COURT: The record, in my opinion, presents a question for submission to the jury. I have given counsel full opportunity to present his views, and I have examined the authorities given me. I am still of the opinion that there is a question for the jury to determine. Motion denied.

Exception.

D E F E N S E.

S O N G L E E, the defendant being duly sworn in his own behalf, testified through interpreter Ah Fung of 16 Mott street, as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q Where do you live? A All the time in 43rd street.

Q What is your business? A Laundry.

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Q How long have you been in the laundry business? A Over twenty five years.

Q How long have you been in the laundry business at 353 W 43rd street? A I have been there for ten months.

Q Do you know this girl who has been sworn here, Margaret Conway? A Yes, sir; I know the little girl.

Q Does she live near your laundry? A I don't know where she lives.

Q Had she ever been to your laundry? A Yes, sir; she came to my place, and asked for water to drink; she came to my laundry, and asked me for a drink of water.

Q How many times? A Once.

Q When was that? A I remember about the American New Year's, a Saturday.

Q That is the time she came there, and asked for a drink of water? A Yes, sir.

Q Had she been there before that, other times? A No, sir she had not been there before.

Q Who was in the laundry when she came there at that time? A My partner with me at that time, in the laundry.

Q About what time was it on this Saturday just before New Year's? A About 11 o'clock.

Q How long did she stay there? A She came in there, just asked for a cup of water to drink; she went out right away; about ten minutes.

Q What were you doing while she was in there? A I was

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ironing in the front room.

Q Now, did you ever to go into the middle room and lay on the bed with this girl, take your trousers off? A No, sir.

THE COURT: The third room?

MR. MOORE: The bedroom was the middle room.

THE COURT: You said the middle room.

MR. MOORE: If she said the third room it is a mistake I think I better make it the bedroom.

Q (Continuing) Into the bedroom into your place? A No, sir; I did not go in the bedroom; she stayed in the back there; after getting the drink of water she came out from the back room, and in the meantime the officer came in, and met her in the middle of the room, and the officer went out with her.

Q Now, did you ever have intercourse with her? A No, sir; my iron was getting cold in the back room, I went to get it hot, and when I came out again at the time with the girl.

Q That is a fact, the girl came out of the back room with him? A The girl came out first; I was behind the girl coming out.

Q With the flat iron? A Yes, sir; with the flat iron.

Q Which one of the rooms is the bedroom? A The middle room is the bedroom.

Q Are there any doors connecting the three rooms? A Yea, sir; there is the middle room, that has got a door.

Q Leading into the front or into the kitchen? A The middle room got a door, and the back room back got a door which

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connects with the hallway.

Q Is there a door in the doorway or simply a passageway?

A No, sir; a passageway; no door there.

Q Whereabouts do you do your washing? A In the back room.

Q ~~Whereabouts~~ do you do your cooking? A In the same room.

Q Whereabouts do you do your ironing? A In the front, in the store.

CROSS EXAMINATION BY MR. McCORMICK:

Q How many rooms are there? A Three rooms.

Q Are you sure there are not four rooms there? A No, sir; only three.

Q How many rooms have beds in them? A Only two rooms, the first room and in the second room, each one has got a bed.

Q The first room, by that do you mean the front room where you do the ironing? A Yes, sir.

Q Is there a bed in that room? A Yes, sir.

Q That is in the room that is closest to the sidewalk, is that right? A Yes, sir.

Q Then in the next room to that is there a bed? A Yes.

Q What else is there in that room besides the bed?

THE INTERPRETER: Which room, the second one or the first one?

MR. McCORMICK: The second room from the sidewalk, is there a bed in that room?

THE WITNESS: In all the bedrooms there is a bed in

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there and we got in there boilers, keeping them there.

Q Is there a bed in the room next to the front room?

A Yes, sir; there is a bed.

Q What is there in the third room? A The third room using as a washing room and cooking room.

Q Was this the little girl in your bedroom on the 27th of December last? A No, sir.

Q What room was she in? A She go in the back room.

Q Then she had to go through the bedroom to get into the back room, didn't she? A One passageway goes right directly to the third room, the back room.

Q Then she must have gone through the room that had a bed in it, didn't she? A Yes, sir; she goes past it, my bedroom, and this side passage is through that way.

Q You said the police officer came in there one day, what day was that? A The officer came in there Saturday.

Q Where were you when the officer came in? A I was in the back room; they called me out with the iron in my hand.

Q Where were you when the officer came in? A I was in the back room when they called me out with the iron in my hand.

Q You were between the back room and the middle room coming out? A Yes, sir.

Q I am talking about the day the officer was there. Where was the girl when you were coming from the back room to the middle room? A I stand in the washing room, the girl coming out of the washing room, the officer came in.

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Q Where was the girl when the officer came in to the middle room, wasn't she sitting on the bed? A The officer came in that day, the girl stands right on the second room, in the hall, the passageway.

Q There was a bed in that room, wasn't there? A Yes, sir;

Q How far did she stand from the bed? A Well, I guess about from the table, near this rail here (indicating)

Q Was there a curtain hanging in the doorway between the front room and the middle room? A Yes, sir; they got a curtain.

Q Was there a curtain covering the entrance from the first room to the middle room, did it cover it? A Yes, sir.

Q How long was this girl in there that day? A I guess about fifteen minutes.

Q Now, that is the day that the police officer came, isn't it? A Yes, sir.

Q Now, on the day that she was there before that, the Saturday after Christmas, December 27th, was she there that day? A No, sir; she was not there.

Q She was not there that day? A No, sir.

Q Ask him if he is sure of that? A No, sir.

Q Do you remember when Christmas was? A She didn't come into my place the 27th, the girl.

Q Ask him did she come in there the second day after Christmas? A No, sir.

Q Now that was Saturday, do you remember that Christmas

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was on Thursday? A When she came in there New Year's after New Year's.

Q I want to talk now about two days after Christmas. Did she come in there that day? A No, sir; she did not come there.

Q How many times did she go into your laundry between July and December last year, between July and the third of January?

A Only once.

Q When was that once? A All I know is that she is coming that day and asked for water to drink.

Q That is the first day you had ever seen her, wasn't it? A Yes, sir.

Q You did not see her in July or August, did you, in the middle of the summer? A No, sir.

Q Did you see her in September? A No, sir.

Q Do you know the months, of the year, do you understand them? A Yes, sir.

Q Did you see her in October? A No, sir.

Q Did you see her in November any time? A No, sir.

Q Did you see her any time in December? A No, sir.

Q The day the police officer came in was that the first day you had ever seen her? A Yes, sir; the first time I seen her.

Q When the police officer came in you offered him twenty dollars, didn't you? A No, sir; I did not.

Q Didn't you say anything about twenty dollars? A No, sir.

Q So the day that she came in there was the same day the

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police officer came in and she asked for a drink of water, did she? A Yes, sir.

Q When she asked you for that drink of water in what room were you? A I was in the front part of the store.

Q When she asked you for the drink of water, what did you say to her? A I told her "You want a drink, you go inside in the back room, and get a drink."

Q Then she went through the middle room into the back room did she? A Yes, sir; she goes through the back and get a drink

Q Did you follow her in? A Yes, sir; she goes in there first, and my iron getting cold I go in there to take a hot iron.

Q Where was your partner Song Hing at that time? A He stayed on the front of the store, sitting there smoking Chinese tobacco.

Q How long did you stay in the back of the store with this girl? A I just go in there to change my iron about five minutes, I come come out.

Q It took you five minutes to change the iron, did it? A Yes, sir.

Q What was the girl doing during that five minutes? A She stand in the back room drinking water at the time.

Q Did she talk to you? A Yes, sir; she said, "I am thirsty, I want a drink of water." That is what I was talking with her.

Q Is that all the conversation you had with her? A That

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is all the conversation I talked with her.

Q Do you know a Chinaman that runs a laundry right next to 403 West 44th street? A No, sir; I do not.

Q Have you ever been in that laundry? A No, sir: I have never been there.

Q Did the man that ran that laundry ever bring any girl to your laundry? A No, sir.

Q Do you know when Christmas comes? (No answer.)

Q Do you know what day was Christmas?

THE COURT: What day of the week?

BY MR. McCORMICK:

Q Do you know what day of the week Christmas came on?

A No, sir; I can't remember what day.

Q This girl didn't bring any laundry to your laundry, did she, any clothing? A No, sir.

Q Many other people come in and ask you for a drink of water? A No, sir.

Q Now, you only saw this girl one day in your life before you were arrested, is that right? A No, sir.

THE COURT: Ask him whether he saw her more than once.

THE WITNESS: I only saw her once.

BY MR. McCORMICK:

Q Didn't you tell the officer of the Gerry Society that this girl had brought laundry, clothes, to your laundry to be washed? A No, sir.

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MR. MOORE: I would like, if your Honor please, to recall the complaining witness for a few questions on cross examination.

MR. McCORMICK: No objection.

MARGARET CONWAY, recalled for further cross examination, testified as follows:

BY MR. MOORE:

Q Isn't there a Chinese laundry right next to where you live? A Yes, sir.

Q That is 405 West 44th street, isn't it? A Yes, sir.

Q Didn't you frequent that laundry last fall? A Only once.

Q What is that? A Only once.

Q The one right next to your house? A Yes, sir.

Q You didn't go there only once? A Yes, sir.

Q Yet, you went way around on the other street, 43rd street? A Yes, sir.

Q When was this once that you went to that other laundry? A The first say--

Q What time was that, when? A In July.

Q What is that? A In July.

Q You never went back to that one again? A No.

Q Right next door, pretty near by you? A Yes, sir.

Q Now, on this day when the officer came to 353 you were in the back room, weren't you? A Yes, sir.

Q In the kitchen? A Yes, sir.

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Q Fully dressed weren't you? A Yes, sir.

Q You were not in the bedroom at all? A No, sir.

Q You had been there about five minutes, hadn't you?

A Yes, sir.

Q And the Chinaman was working in and about the kitchen, wasn't he, this one? A He was talking to me.

Q What is that? A He was talking to me.

Q In the kitchen? A Yes, sir.

BY MR. McCORMICK:

Q What did he say to you on that occasion? A He had just come in to talk to me when the policeman came so I don't remember.

Q Do you remember what he was talking about when the policeman came in? A No, sir; I don't remember what he was talking about.

Q Did you ever have intercourse, sexual intercourse with any one except those three Chinamen? A No, sir.

MR. MOORE: She has already testified to that.

MR. MOORE: The defense rests.

MR. McCORMICK: The People rest.

(Both counsel sum up.)

(During the summing up of defendant's counsel the Assistant District Attorney objected to counsel alluding to a frame-up.)

THE COURT: There is no evidence here as to any instigation by any rival laundry man on the one hand nor of

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any improper act by anybody connected with the Gerry Society on the other at all. Counsel in summing up are merely presenting such a picture as they think is proper for the jury to look upon and drawing such conclusions from the evidence as they believe it warrants.

MR. MOORE: But, if the Court please, I make no pretense, and have not, and don't want to be understood as making the pretense that the Gerry Society instilled anything into this girl's mind. I say that they took her up after this situation developed.

(During the summing up of the Assistant District Attorney he stated: "To let this man walk out of this court room would be a disgrace to civilization in New York, and I demand on behalf of the People of the State of New York a conviction of rape in the second degree.")

THE COURT: What was it you wished to except to, Mr. Moore?

MR. MOORE: The remark of counsel that "to let this defendant escape would be a disgrace and a blot on civilization."

THE COURT: Well, the jury are to determine whether or not he is guilty or innocent on the evidence presented

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## THE COURT'S CHARGE.

WADHAMS, J.-- Gentlemen of the jury:

This is a very simple case for you to determine, for the reason that it has been tried within one day, and the evidence is fresh in your minds. Now, it remains for you to determine what the truth is.

There is a twofold function to be performed in the trial of every case, one by the Court, and the other by the jury. The Court rules, from time to time, upon the admissibility of evidence. The Court hears the arguments presented by counsel for the defendant and the District Attorney, and the Court determines after hearing their arguments, all questions of law that are presented. Those questions do not concern you; that is not your function.

A motion was made to direct the jury to acquit and it was argued, at some length, by counsel. The Court denied that motion but that is not to be taken, by you, as indicating that the Court has reached a conclusion upon the facts which should sway you in reaching your conclusion upon the facts. All that the Court determined, in denying that motion, was that there is a question of fact which must be determined by the jury and that the case must be submitted to you.

The defendant has been indicted by the Grand Jury, charged with rape in the second degree, in that, on the

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27th day of December, 1913, he had an act of sexual intercourse with a female, who was not his wife, namely Margaret Conway; that she was at the time under the age of eighteen years. The finding of an indictment is no evidence against any one. It is the machinery by which the trial is brought on and the issue raised for your determination. Just as the Court rules upon the questions of law that are presented, and decides them, so you must determine the questions of fact. You are the exclusive judges of the facts. You are called from your business lives to sit as jurors in this trial, and you are expected to use your experience and knowledge as business men. You may take into consideration the manner and appearance of the witnesses upon the stand in reaching your conclusion as to whether or not the truth is being told and the credibility that you are going to give to any witness. I charge you that should you find that any witness has willfully sworn falsely, to a material fact, you are at liberty to disregard all the evidence of that witness, although you are not bound to do so, because it is for you to say what weight you will give to any testimony that is presented.

The legislature has provided, in the Penal Law, section 2010, a definition of the crime of rape in the second degree which is as follows:

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"A person who perpetrates an act of sexual intercourse with a female, not his wife, under the age of eighteen years, under circumstances not amounting to rape in the first degree, is guilty of rape in the second degree, and punishable therefor."

There is no charge here and there is no evidence of any guilt of rape in the first degree on the part of the defendant and, therefore, you are to determine whether or not this defendant perpetrated an act of sexual intercourse with the complaining witness, Margaret Conway, whether or not she was his wife at the time, and whether or not she was under the age of eighteen years at the time. That is the question submitted for your determination.

I charge you, further, that, "No conviction can be had for rape upon the testimony of the female defiled, unsupported by other evidence."

The defendant is presumed to be innocent until he is proved to be guilty by your verdict. That presumption rests upon him throughout the case until you are convinced, from the proofs submitted to you, that the defendant is guilty of the crime charged, and then the presumption of innocence is destroyed.

The defendant is entitled to the benefit of every reasonable doubt arising from the evidence in the case.

A reasonable doubt is not a mere whim, a guess, a surmise,

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nor should it be regarded as a subterfuge to which resort may be had in order to avoid the performance of a disagreeable duty. A reasonable doubt is not a mere speculative doubt because everything relative to human affairs, that is based upon evidence, may be open to some possible or imaginary doubt. If a reasonable doubt, then, is not a whim, a guess, a surmise, an excuse or a mere speculative doubt, what is it? A reasonable doubt is a doubt arising from such fact or facts in the case as leads you, as intelligent men, acting impartially upon the evidence, to the conclusion that you are not wholly satisfied, in your minds, that the defendant is guilty of the crime charged against him. It is a doubt based upon the evidence, that is the testimony of those called to the stand; a doubt arising from some facts in the evidence which leaves your mind in doubt, which leaves you in a position where you are not able to say, to a moral certainty that the defendant is guilty. If you have a reasonable doubt as to the guilt of this defendant, it is your duty to give him the benefit of that doubt, and to acquit him. If you have no such reasonable doubt it is your duty, under your oaths of office as jurors, as judges, to find him guilty. Therefore, you will not determine this case by reason of any prejudice, nor, on the contrary, by reason of any sympathy. This defendant is a Chinaman. It is the boast of our institutions that the

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defendant is entitled at the hands of a jury, and I charge you it is your duty to give him the same consideration as any one who might come into a court of justice. You are not to be prejudiced against him by reason of his being an alien; neither are you to show him sympathy on that account. You are judges. You are simply to determine, on the evidence, is he guilty or not guilty, without any question of his race or nationality. It is not a question of what you might like the law to be or might wish it to be. You are instructed by the Court that this is the law and you are bound, as jurors, to reach a verdict upon the law and under the evidence as it has been given here.

Are there any requests to charge?

MR. McCORMICK: No requests from the people.

MR. MOORE: Just one, and that is this: I ask your Honor to charge the jury that in determining the weight that shall be given to the two Italian witnesses as to the frequency of the girl's visits to this laundry, they have a right to take into consideration the fact that that is a built-up district and that other people should see her if she was going there as frequently as they say.

THE COURT: Well, gentlemen of the jury, you may take into consideration, as citizens of New York, your knowledge of conditions here. There has been no evidence of any special condition in that district, that I

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have heard. You may now retire.

MR. MOORE: I say they have a right to take their own knowledge of the situation in a built-up district.

THE COURT: Yes, of course.

(The jury retire at 4 o'clock.)

(The jury return to court at 4.40.)

THE COURT: Mr. District Attorney and counsel for the defendant, I am in receipt of the following communication from the jury: Are we to consider the testimony of the two Italians as corroborative evidence,

THE COURT: As the Appellate Division in this department said in the case of the People *against Adams* 72 New York, passing upon the charge of the Court below in that case:

"The question of corroboration," that is to say, whether there is any corroboration is one of law for the Court, but the sufficiency of the evidence in warranting a conviction is for the jury." In other words upon the motion to direct an acquittal there was a question of law presented to the Court. That question was based upon the proposition as presented by the defendant that there was no corroboration. If, as matter of law I had held that there was no corroboration I would not have submitted the case to you for your consideration; but, as matter of law, which does not concern you, I held that there was evidence corroborating the testimony of

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the complaining witness. The sufficiency of that evidence, that is to say, whether you think it is sufficient to warrant a conviction is for you. I charge you that you may consider the testimony of the two Italians as corroborative evidence.

MR. MOORE: As one of the corroborative circumstances?

THE COURT: Certainly.

AJUROR: I would ask that your Honor would kindly direct the stenographer to read the testimony of the complainant, and the two Italians in that particular, I could not hear it, I am a little hard of hearing. I didn't hear exactly when she had intercourse with the Chinaman, how often she had intercourse, how often she went there.

THE COURT: Perhaps we would save time if I state that the evidence of the complaining witness was that from the summer months up to January she had intercourse, from time to time, sometimes, once or twice, not with the defendant, and she testified that she did have intercourse with the defendant on the 27th day of December. The two Italians testified that they had seen her during those months going back and forth many times. Does that answer the question?

THE JUROR: Yes, sir.

The jury again retire and at 4.55 p.m. return a verdict of guilty, as indicted, of rape in the second de-

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gree.

MR. MOORE: I move to set aside the verdict on the ground that it is contrary to law and contrary to the evidence, and upon the exceptions taken to your Honor's ruling. I wish to say frankly to the Court that I had not had an opportunity to prepare the law in this case as I would like to, and I would like to be heard on the law, if I might be, at a later date. I suppose the defendant will be remanded for sentence. On the day of sentence might I be heard at that time?

THE COURT: You may. Your motions are denied, but I will give you an opportunity to argue the matter if you so desire on the day of sentence. I will consider any cases you wish to present.

(Defendant remanded to March 17th.)

April 13, 1914.

Counsel for the defendant renews motion for new trial.

Motion denied.

Defendant is thereupon sentenced to State Prison for not less than five years nor more than ten years.

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