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IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL No. 33/66

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

R. vs ANTHONY O'SULLIVAN

Mr. C. Orr for the Crown

Appellant appeared in person.

11th February, 1966.

DUFFUS, P.,

The appellant, Anthony O'Sullivan, was found guilty of wounding a man named Garfield Chung and sentenced to 12 months imprisonment at hard labour, on the 16th of December, last year.

The record showed that the appellant first pleaded guilty to the offence, and then he gave an explanation, which amounted to a plea of not guilty. ~~as~~ in his explanation he stated that he had wounded the complainant while acting in self-defence. The Resident Magistrate caused a plea of not guilty to be entered and he heard the evidence, at the conclusion of which, he found the appellant guilty and sentenced him to 12 months.

The facts very briefly were, that there was a dispute between the complainant and the appellant about the cost of certain repairs to a motor car, and according, to the complainant, the appellant used a lot of foul language to him, and while he was approaching him to argue with him about the claim for the cost of repairs, the appellant hit him in his forehead with a stone held in his hand, causing a cut which bled. The appellant, on the other hand, stated

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that the reason why he hit the complainant in the head with stone was that the complainant was attacking him with an ice pick, and he was in the circumstances, forced to use the stone to hit the complainant, endeavouring to stop the attack.

The appellant has made submissions to us on the matter, and the Court is satisfied that it was entirely a question of fact for the learned Resident Magistrate to decide which version of the incident he accepted. He accepted the version given for the prosecution and we see no good reason why we should interfere with the conviction of the appellant. The appellant also complains, that he has been in custody for sixty-four days since this incident, as he was not allowed bail prior to his trial, nor was he able to obtain bail after his conviction, and he complains also, that his sentence was manifestly excessive, in spite of the fact, that he admitted seven previous convictions, most of which are for offences such as larceny and vagrancy. He does admit that he has one for robbery with violence.

The matter of sentence has given us some amount of concern because it does appear that the entire incident took place quite suddenly, and it does appear that the appellant did not use any cutting implement or similar weapon when inflicting the wound on the complainant. He seems to have acted suddenly and hit the complainant with a stone held in his hand when they were close to each other. As the appellant has pointed out, no medical evidence was called to indicate the seriousness of the wound, presumably, therefore the wound was not of a serious nature.

The papers reached the Court of Appeal on the 21st of January, and this is the earliest opportunity the Court has had to deal with the matter. There was some delay occasioned in the papers reaching the Court of Appeal, because it appears that the appellant's grounds of appeal were not

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signed by him until the 13th of January this year, and they were received in the Resident Magistrate's Court, Morant Bay on the 17th of January. The filing of the grounds of appeal was certainly something that was within the control of the appellant, not within the control of the Court.

The Court, however, considers that 12 months imprisonment in the circumstances of this particular case was excessive. It has decided, therefore, to dismiss the appeal, in so far as the conviction is concerned, and confirm the conviction, but to allow the appeal, in so far as the matter of sentence is concerned. The Court sets aside the sentence of 12 months imprisonment at hard labour imposed by the learned Resident Magistrate and substitutes a sentence of 6 months imprisonment at hard labour and directs, that the sentence commence on the 21st of January, 1966, the date on which the papers were received by the Court of Appeal.