

CA Criminal Law - R.M. Court - Indecent Assault & Assault Occasioning  
actual bodily harm - conviction for indecent assault - Evidence  
Verdict whether verdict unreasonable - Appeal dismissed  
No case referred to

JAMAICA

Comp

IN THE COURT OF APPEAL

Evidence

R.M. CRIMINAL APPEAL NO: 6/89

BEFORE: The Hon. Mr. Justice Campbell, J.A.  
The Hon. Mr. Justice Wright, J.A.  
The Hon. Mr. Justice Downer, J.A.

R. v. CLIFFORD SWABY

N. Manley for Appellant

Miss Y. Sibbles for Crown

February 28, 1989

CAMPBELL, J.A.

The appellant Clifford Swaby was charged in the Resident Magistrate's Court for the parish of Saint Andrew on April 28, 1988. The offences in respect of which he was charged were two, namely indecent assault and assault occasioning actual bodily harm. He was acquitted of the count for indecent assault and convicted on the other count and was sentenced to pay a fine of \$400.00 or two months imprisonment at hard labour in default.

The gist of the evidence given by the complainant was that on April 26, 1987 about 9.30 in the morning she was at home. The appellant came and demanded money for repairs to a television set which he had reputedly effected. The complainant said that the television set was not working and that she had already paid him the sum of \$45.00. She said the appellant grabbed her around her neck, she gave evidence of certain acts which is contended would amount to indecent assault and in addition she said that the appellant punched her twice on the left side of her face, boxed her on her right ear, kicked her in her left

side; he thereafter left with the television set. She immediately made a report to the Patrick City Police Station and on that very day she had medical treatment for her face, which she said was swollen and painful. The medical evidence adduced was that the complainant was found to have tenderness and slight swelling to both cheeks and it was consistent with injury inflicted with a blunt instrument. The injury was of recent origin, that is, in the past twenty-four hours.

On this evidence the learned Resident Magistrate made findings in support of the assault occasioning actual bodily harm. This was after learned attorney Mr. Ballentyne had addressed the court, inviting the court to reject the evidence of the complainant. The learned Resident Magistrate made a specific finding that there was no medical evidence supporting the complainant with reference to assault to her left side, but she nevertheless stated that she accepted the area of her testimony relating to the assault to her left side. This implies that even without the medical evidence the learned Resident Magistrate would have been prepared and was prepared to find that the complainant had been assaulted and had suffered actual bodily harm. An aspect of the appellant's case which the learned Resident Magistrate found strange was that on other occasions when he had cause to visit the complainant he went alone, but on this occasion, he went with persons whom he called as supporting witnesses, no doubt to buttress his evidence that there was no assault whatsoever on the complainant.

Before us, Mr. Manley submitted that the verdict was unreasonable because the indecent assault was so inextricably linked with and was so much integrated as a part of the overall assault, that any finding that the appellant was not guilty of indecent assault should necessarily have resulted in a finding that he was not guilty of any assault whatsoever. He thus criticized the learned Resident Magistrate in effect for not having considered, as it was put in the ground of appeal, the indivisible nature of the complainant's credit having regard to the peculiar circumstances of the case. We regret that we found the submission not persuasive because there are many

reasons why the learned Resident Magistrate could have found the appellant not guilty of indecent assault. The verdict of not guilty could have been based on a doubt in the learned Resident Magistrate's mind. It could be that the learned Resident Magistrate felt that the acts constituting the indecent assault were done involuntarily without animus in the course of the overall assault. We cannot say in the absence of specific findings of the learned Magistrate relative to this count that the verdict of not guilty was based on a finding that the complainant was telling deliberate lies and that such lies were of such a serious nature as to render her testimony in respect of the other assault totally uncreditworthy.

With regard to the offence of assault occasioning actual bodily harm, the complainant gave evidence of being hit to her cheek and to her side. Medical evidence, as already stated, was adduced which confirmed that she had suffered injury to her cheek, however slight. We cannot say that on the basis of this evidence the learned Resident Magistrate ought not to have come to the decision to which she came. She was entitled to find the accused guilty as she did. In the circumstance the appeal is dismissed. The conviction and sentence are affirmed.