

Wednesday, 13th Jan. 1965

IN THE COURT OF APPEAL

B. I. COURT CRIMINAL APPEAL NO. 220/64

B E F O R E

The President  
The Hon. Mr. Justice Henriques  
The Hon. Mr. Justice Waddington

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Mr. W. Hill for the Appellant

Mr. E. G. Smith for the Crown

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R E G I N A vs HELEN YOUNG TENN

JUDGMENT DELIVERED BY THE PRESIDENT

THE PRESIDENT: The appellant, Helen Young Tenn, was convicted by the learned Resident Magistrate for the parish of Portland on the 1st October last year, for the offence of assaulting one Lloyd Jacks, a member of the Constabulary Force, in the lawful execution of his duty.

The actual facts are not relevant to the purpose of deciding this case, and have not been entered into by learned counsel for the appellant, or learned counsel for the crown. The complaint is with regard to the procedure which took place before the learned Resident Magistrate.

It appears that the appellant came before the learned Resident Magistrate's court on an information, sworn to by the complainant, Jacks, that the appellant did unlawfully assault him, he being a constable in the Jamaica Constabulary Force, in the lawful execution of his duty, contrary to section 31, cap. 268.

The transcript starts with this statement: "Plea - not guilty", and then immediately beneath that it is noted, "Clerk of Courts applies for indictment for assault. Granted.", and learned counsel for the appellant, who also appeared in the court below, then pointed out that the appellant had been served with summons under section 31; and the note goes on "Court points out defendant being tried on indictment as ordered, not on the information."

Complainant Jacks was then sworn, gave evidence-in-chief and was being cross-examined. The record then shows the following note:

"Although order for trial on indictment already granted by court, just signed by Resident Magistrate and indictment just signed. Mr. Hill submits at this stage the trial was a nullity. The court directs the constable to be sworn again".

The complainant was again sworn, and he again went over his evidence-in-chief. Apparently in the course of giving his evidence-in-chief the Clerk of the Courts, according to a note which appears, then applied for "an order for assaulting the constable in execution of duty", and the order was granted. Learned counsel for the appellant objected to this course, stating that on the order for the trial being a nullity the Clerk of the Courts cannot now apply for an order for assaulting a constable in the execution of his duty; that there could not be two orders on the same information. The court ruled "since the previous trial is a nullity, such an order could be made", and the transcript shows the complainant was again sworn, this being the third time, and he started giving his evidence again, in chief, and he was cross-examined and the trial was concluded after the appellant and witnesses had given evidence. A conviction was recorded by the learned Resident Magistrate, and a fine imposed.

It has been submitted to this court by learned counsel for the appellant that the entire proceedings in the lower court were wrong - the procedure was irregular and illegal, and that the appeal should be allowed and the conviction quashed. Learned counsel for the crown has agreed with the submission of counsel for the appellant, that the procedure which took place in the court below was clearly irregular and wrong. The court agrees. In the first place it appears that the appellant was pleaded before any indictment had come into existence at all. After having been pleaded the learned Resident Magistrate then made an order for trial on indictment for assault at common law.

The second irregularity that took place, which appears quite clear from the transcript, is that even assuming the learned Resident Magistrate had now corrected the first irregularity by signing the

order for indictment on the information, and that the Clerk of Courts had then correctly preferred an indictment, is that no plea was taken on this indictment at this stage which should certainly have been done.

The third irregularity which appears to have taken place is that the Clerk of the Courts having already got an order for the trial, and the trial having been started, apparently then applied for another order. What he should have done is to have applied for another count to be added in the indictment, assuming that the indictment was in existence at that stage. But that was not done. It appears that yet another order was made by the learned Resident Magistrate for a different offence, this time for assaulting a constable in the execution of his duty.

Another irregularity then occurs in that, again no plea was taken of the appellant for this fresh offence which was being preferred against her.

It is quite clear to this court that the entire proceedings were wrong, and that the appeal will have to be allowed.

The court has considered carefully the question as to whether there should be a new trial or not. It being clear from what had occurred before the learned Resident Magistrate that the whole trial amounts to a nullity, we have decided that in the interests of justice the right thing is that there should be a new trial. Accordingly, the court allows the appeal and orders a new trial.

Sgd., Sir H. Duffus.  
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