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11th October, 1965.

JAMAICA

IN THE COURT OF APPEAL

CIRCUIT COURT APPEAL NO. 90/65

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Moody (Acting)

R. v. RONALD MORRISON

Mr. F. Phipps for the Crown
Messrs. L. Robinson, Q.C. and D. Muirhead for the appellant.

MOODY, J.A. (Ag.)

In this case the appellant was convicted on an indictment on a charge of wounding with intent - conviction is recorded on the 5th of May, 1965, and sentence was passed on the 7th of May.

As far as the Crown's case is concerned it was a case that was presented out of circumstances arising in connection with the complainant, Wilson Chung, receiving a depressed fracture of the skull on the occasion when he and others on the 18th of July, 1964, were having birthday anniversary celebrations.

Now three grounds have been argued before us, and we deem it necessary to deal only with one, and that is the third ground of appeal. In brief, that the learned trial Judge refused to allow the appellant's Counsel to cross-examine Walker as to the question of bias, and in consequence thereof, he was prevented from being able fully to address the jury and to pursue this question of bias or partiality. In support of that ground, we were referred to the case of Subramanian where it was reported in the (1956) 1. W.L.R. 965.

Now the principle that is involved is succinctly stated in Harris' Criminal Law where it says that if a witness says that 'A' told him something, this may or may not be hearsay,

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if it is hearsay, it is in general inadmissible; whether it is hearsay or not, depends as a rule upon whether the making of the statement or its truth is in issue. That principle is well established, and we feel in the circumstances of this case as revealed in the notes of evidence, that the appellant's Counsel was in fact denied the opportunity of pursuing his cross-examination on the question of bias and partiality of the witness, Walker; and this is a frustration which is much more grievious when it is realised that Walker was the principal and the only eye witness to the event. His evidence was that he saw the appellant pick up a stone and strike the blow. It was vital that every opportunity should have been given to the appellant, if he intended to impugn the credibility of that witness.

In the circumstances, this Court allows the appeal; quashes the conviction and in the interest of justice orders a new trial at the current session of the Home Circuit.

In respect of grounds one and two, in view of the conclusion that we have reached that there should be a new trial, we consider it advisable not to deal with the arguments that were raised before us, as it would tend to incline us to express an opinion on the facts of the case.