

Nov 17 1965

J A M A I C A

IN THE COURT OF APPEAL

R.M.C.A. No. 204/65

BEFORE: The Hon. Mr. Justice Henriques (P)
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Moody (Ag.)

R. v. S Y B I L S M A L L

Mr. C. B. F. Orr appeared for the Crown.
Mr. Ian Ramsay, Q.C., appeared for the appellant.

22nd November, 1965.

HENRIQUES, J.A.:

The appellant was convicted before the learned Resident Magistrate for the parish of Kingston on the 9th of September, this year, of assaulting one Monica Anderson and thereby occasioning actual bodily harm, and sentenced to a term of imprisonment of 6 months hard labour.

It appears that on the 7th of June, the appellant went to a premises on Bread Lane and Charles Street in Kingston where, subsequently, the complainant claimed angry words passed between them, and the appellant threw something from a bottle into the face of the complainant. According to the complainant's evidence, 'my face burnt me and my two eyes also burnt me, I couldn't see. I went to the Kingston Public Hospital, I spent nine days there. I can see alright now out of my left eye, but the right one is foggy.'

The appellant's account was that she had an encounter with the complainant in the course of which the complainant took out a bottle of liquid, that she grabbed the bottle and she saw something flash out of the bottle and the contents from the bottle entered the eye of the complainant.

There were two versions before the learned Resident Magistrate and he accepted that of the complainant and convicted the appellant. Learned counsel, Mr. Ramsay, has made two short submissions to the Court. The first deals with the question of conviction and he submits

/that.....

that in the absence of the tendering of a medical certificate from the doctor who examined the complainant at the hospital, that the charge of assault occasioning actual bodily harm, cannot be sustained. He also submitted that in any case, the sentence in view of the previous good character of the appellant and in the absence of the medical certificate, is manifestly excessive in the circumstances.

We have listened carefully to the eloquent plea which Mr. Ramsay has made on behalf of the appellant. It is true that it might have been advisable for the learned Resident Magistrate to have obtained a medical certificate or for the medical certificate to have been tendered in evidence. Nevertheless, there was evidence before the learned Resident Magistrate for him to consider whether this offence had been made out or not; and that evidence clearly pointed to an assault and if the evidence of the complainant was accepted, that as a result of that assault her vision in both eyes were affected and consequently that she had to attend at the hospital for a period of nine days, it is the view of the Court, that that is evidence of a very serious assault indeed. It appears that it was not contested that the substance which was thrown from this bottle was not caustic soda. It appears as an inference from the evidence that it was caustic soda.

So far as counsel's first submission is concerned, we are unable to agree with him. We think that there was evidence before the learned Resident Magistrate which justified him in coming to the conclusion to which he did. On that charge, the appellant could have been sentenced to 12 months hard labour. The learned Resident Magistrate must be assumed to have taken into consideration the fact that this was appellant's first conviction when he imposed a penalty of 6 months hard labour.

We have viewed carefully the circumstances and we are unable to agree with the submissions of learned counsel that this sentence is in any way manifestly excessive for what was an extremely serious assault. The appeal is therefore dismissed.

..

..