C.A. Criminal Law — ① Inflicting grievous bodily harm ② causing grievous bodily harm ③ Inflicting grievous bodily harm — Sentenced to 3, 15 and 3 years imprisonment at hard labour — Use of acid to effect injuries — Sentence — whether sentence of 15 years imprisonment manifestly excessive — Applicant 27 years old mother of two children, no previous conviction, — whether sentence more retributive than rehabilitative — Vast number of "acid throwing" cases — Leave to appeal against sentence refused. Case referred to R v Ivorn Jumpp SCCA 70/93 unreported

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 24/94

COR: **THE HON MR JUSTICE WRIGHT J A**
THE HON MR JUSTICE GORDON J A
THE HON MR JUSTICE PATTERSON J A (AG.)

R v MARCIA SHARPE

Earle Witter and Barrington Frankson for the Applicant

Paula Llewellyn, Deputy Director of Public Prosecutions for the Crown

October 18 and November 21, 1994

PATTERSON J A (AG.)

The appellant was charged in the Home Circuit Court on the 15th March, 1994 before Courtenay Orr, J and a jury on an indictment containing five counts. She was convicted of three counts; inflicting grievous bodily harm to Unetha Albertha Creary (count 2), causing grievous bodily harm to Ann-Marie Creary with intent to do grievous bodily harm (count 3), and inflicting grievous bodily harm to Nesta Scarlett (count 5). She was sentenced to three (3) years imprisonment at hard labour on count 2, fifteen (15) years imprisonment at hard labour on count 3, and three (3) years imprisonment at hard labour on count 5. Her application for leave to appeal against the sentences was refused, and we now give the reasons for our decision.

The charges arose from an incident which occurred near to midnight on the 14th June, 1991 when the applicant threw a corrosive liquid, said to be acid, on the three complainants causing them severe injury. Earlier that day, at about 4:30 p.m., two brothers of the applicant were engaged in a fight, and one flung a stone which wounded Unetha Albertha Creary who is, the mother of Ann-Marie Creary and the sister of Nesta Scarlett. The applicant accompanied the wounded Mrs. Creary to seek Medical attention. On their way back home, while walking along the road

near to the applicant's house, they were approached by Ann-Marie who rebuked the applicant for not having taken her injured mother home in a taxi. An argument ensued between them as to how the money that had been provided to cover the medical and travelling expenses had been spent. Ann-marie and the applicant eventually "grabbed up" each other. Ann-Marie had a knife in her hand then, but it was taken away by her younger sister who parted them also. Heated words continued to pass between Ann-Marie and the applicant, despite the efforts of Nesta and Mrs. Creary to quell the dispute. Mrs. Creary held on to Ann-Marie's blouse and so too did Nesta and it was then that the applicant was heard to say that she did not know how Ann-Marie "go on like she bad so" and that she is "going to cool her." Having said that, the applicant bent down as if to tie her shoe lace, then stepped to the left of the three women, and began splashing them with liquid from a bottle. No doubt the intention of the applicant was to pour the contents of the bottle, which she admitted she knew contained acid, on Ann-Marie, but she acted with a reckless disregard for the safety of the other two women. In the event, all three women suffered serious burns as a result of being splashed with the acid. Mrs. Creary described her injuries thus:

> "Me face peel off, left eyes closed, between my eye-brow and my eye-lash burn off."

She was hospitalized for twelve days. Ann-Marie said that she received burns to her face and chest, her "skin started melting" from the left side of her face right down to her breast. She too was hospitalized. Nesta Scarlett received burns to her right elbow and left forearm and was treated at hospital.

The applicant contended that Ann-Marie attacked and wounded her with a knife. She said she acted in lawful self-defence by throwing the contents of the bottle at Ann-Marie while she was under attack. She said she had taken the bottle from her brother

at about dusk that day and placed it in the pocket of her shorts. She knew what was in the bottle, because she had seen her brother pour "Drano" in it, but she did not put it in her pocket with the intention of pouring the contents on Ann-Marie or any other person.

The jury, by their verdict, rejected the defence of self-defence. It is clear that the applicant armed herself with the corrosive substance after her brother had hit Mrs. Creary with the stone. She knew what was in the bottle, and the permanent injury it would cause when it is poured unto the skin of a person. Nevertheless, she deliberately splashed it at Ann-Marie with reckless disregard for the safety of the other two women. Her desire was satisfied, and her victims must now live with contracted and keloid scars.

Counsel for the applicant mentioned that the learned trial judge had imposed the maximum sentence for the convictions on counts 2 and 5, but he said he would not complain about those sentences. His contention was focused on the sentence of fifteen (15) years imposed on count 3, which he argued was manifestly excessive. He based his argument on the fact that the applicant was a young woman, 27 years old, the mother of two children, with no previous conviction. He said that the facts leading up to the incident clearly show that Ann-Marie was the aggressor. He urged that the object of punishment was rehabilitation, and argued that the sentence of fifteen (15) years leaned heavily on the retributive side rather than on the rehabilitative side. He referred to the case of R. v. Yvonne Jumpp SCCA 70/93, (unreported) where he said the facts were similar to the instant case. In that case Jumpp was convicted of the offence of causing grievous bodily harm with intent to do grievous bodily harm, and was sentenced to imprisonment at hard labour for seven years. The court allowed her appeal against sentence and varied the term of imprisonment to one of three years, suspended for three years. The facts in that case disclosed that she had thrown hot water on her victim. Wright, J A

in delivering the judgment of the court, said that "the injuries were sufficiently severe, having regard to the syndrome of violence which pervades the society, to warrant severe punishment." However, there were substantially mitigatory factors which the court took into account before varying the sentence, and that case was decided on its own facts, and must not be considered as laying down any general principle.

In the instant case, the learned trial judge correctly took into account the vast number of acid throwing cases arising from minor incidents, and the serious injuries that result. He had in mind the rehabilitation of the applicant. This is what he said:

> "I am sorry, your lawyer has begged for you and said that I must look about your rehabilitation. The best rehabilitation is when somebody reaches the stage where she says I will never do it again and one of the ways to make a person reach that stage is to show that person that it does not pay to throw acid."

The maximum sentence provided by law for the offence under consideration is imprisonment for life with or without hard labour However, the court would only impose the maximum sentence for the most serious type of cases falling within the section which creates this offence - namely section 20 of the Offences against the Person Act. Certainly, causing grievous bodily harm to a person with intent to do grievous bodily harm, by employing the use of a highly corrosive substance, is a most serious offence, having regard to the known permanent effect that such substance causes. The deterrent effect of the sentence cannot be overlooked. It is clear that the learned trial judge had all the relevant principles in mind, and in sentencing the applicant, he balanced the scales of justice by weighing the interest of society at large against the fallibility of the applicant.

Accordingly, we were quite unable to say that in the circumstances of this case, the sentence of fifteen (15) years imprisonment at hard labour was manifestly excessive. We, therefore, refused leave to appeal against the sentences, and ordered that they run from the 15th June, 1994.