

C.A. - CRIMINAL LAW - Wounding - Plea of guilty - [Crown case that complainant used
insultive words to appellant who then wounded him with knife on
finger, right leg and right lower foot - Appellant's explanation
that complainant touched her "private parts" with his foot used
"dirty words" to her and kicked her in region of "private
parts" and she lost control and inflicted injuries.]
Sentence - Twelve months imprisonment at hard labour,
(JAN 27/88)

J A M A I C A

Whether excessive
Appeal allowed or
(Held allowing the appeal) Rule of law is that where plea of guilty
Judge, (as trier of fact) should sentence
IN THE COURT OF APPEAL on the set of facts which are more
favourable to the accused - Appellant grossly provoked -
RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 17/88
impetuous assault by complainant - Sentence manifestly
excessive. Sentence varied to expire on 14/6/88 (12 day
after hearing of appeal)

BEFORE: (One previous conviction for assault occasioning
actual bodily harm)
THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.

No case referred to

REGINA

VS.

PEARLINA WRIGHT

Leonard Green for the Appellant

Miss V. Grant for the Crown

June 13, 1988

ROWE P.:

The appellant Pearlina Wright was convicted on her plea
of guilty of unlawful wounding in the Resident Magistrate's Court for
the parish of Westmoreland on the 2nd of February 1988 and she was
sentenced to twelve months imprisonment at hard labour.

The complaint by the prosecution was that this appellant
was travelling in a pick-up on the 5th of January 1988 and the
complainant was also travelling in that pick-up. The prosecution said
that there was a dispute between the parties and the complainant is
alleged to have used insulting words to the appellant referring to her
body odour, whereupon she took a knife and inflicted an injury to his
finger and an injury to his right leg and his right lower foot. When
she was spoken to by somebody, said the prosecution, her remark was: "A
should a kill you," referring to the complainant.

Sentence excessive
CRIMINAL LAW

The appellant gave an explanation and her explanation was that she had a knife on her on that day because in her occupation she has to carry large sums of money. As she was riding in this pick-up she felt a foot touching her private parts and she asked the person to move the foot. The person rather than removing the foot put it back and then she noticed that it was the foot of the complainant. She said she spoke to him a second time and he used dirty words referring to her private parts. She said he kicked her in the region of her private parts and then she lost control and the injuries were inflicted.

The rule of law is that when a person pleads guilty, the learned trial judge, as the tribunal of fact, should sentence on the set of facts which are most favourable to the accused. If that rule had been applied in this particular case it would show that this appellant had been grossly provoked by the complainant. It was an impertinent sort of assault to which she reacted.

The sentence of twelve months imprisonment at hard labour is wholly out of place for this sort of offence, notwithstanding the fact that she had a previous conviction for assault occasioning bodily harm. We think that the sentence was manifestly excessive and it can only be corrected in this case by imposing such a sentence as would expire on the 14th of June, 1988. Sentence varied accordingly.