

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CRIMINAL APPEAL NO. 49/89

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA v. ULAMA FINN

Delroy Chuck for appellant

Brian Sykes for the Crown

October 23 & December 11, 1989

GORDON, J.A. (Ag.):

At the conclusion of the hearing of this appeal, we dismissed the appeal against conviction, allowed the appeal against sentence and substituted a fine for the sentence of imprisonment. As promised, we now give our reasons.

This appellant was convicted of assault occasioning actual bodily harm at the Sutton Street Court on August 2, 1989 and sentenced to a term of two months imprisonment at hard labour. Mr. Chuck obtained leave to argue additional grounds, viz:

- "1. That the learned Resident Magistrate failed to recognise, to deal with and to indicate clearly that he was aware of the dangers of mistaken identification which was a live issue at trial.

"2. That the verdict of the learned Resident Magistrate is unreasonable and cannot be supported by the evidence."

The complainant is a business woman and the appellant is the woman who has displaced this complainant in her husband's affection. At about 9:00 p.m. on May 24, 1989, the complainant was at her husband's business place in downtown Kingston when the appellant came there. After a heated argument between the two women, the appellant left the premises. The complainant subsequently left the business place and was suddenly set upon by the appellant who addressed the complainant by name then threw some liquid in her face. The complainant said her eyes became swollen and smarted, and her face was partially discoloured. She sought medical attention. The defence was a denial of the charge. The appellant contended that she left for her home and knew nothing and had nothing to do with the assault on the complainant.

Mr. Chuck submitted that the issue of identification was raised and the Resident Magistrate failed to deal with it. The Resident Magistrate, he said, should recognise the dangers of mistaken identification because the appellant asserts she was not there. He, however, agreed that the identification evidence of the complainant was positive and that the incident followed on the earlier verbal confrontation, also that the appellant called the complainant by name before she splashed her. He further conceded that the Resident Magistrate in rejecting the defence and finding the Crown's case proven beyond reasonable doubt, did not allow any room for a fruitful pursuit of this submission.

The second ground of appeal was not pursued as such but the submissions were used to support the appellant's contention that the sentence was manifestly excessive.

Mr. Chuck submitted -

- "(a) There was no medical evidence at trial.
- (b) The injuries suffered are inconsistent with infliction on the complainant of a corrosive substance and more consistent with muddy water. Hence, the charge should be, at most, common assault.
- (c) The medical certificate examined by the Court clearly demonstrates that the substance could not be acidic or caustic - since greater injuries would have been caused to the complainant's eye.
- (d) That the finding of the learned Resident Magistrate:

'That this liquid was a corrosive substance causing burns to the complainant dress.'

is unsupported by the evidence."

The complainant's evidence was that after the assault "my eyes were swollen - my face red and partially discoloured. It was burning me." Corporal Ashley observed, "the left side of her face was swollen and red as also her left eye."

After delivering his verdict and before he imposed sentence, the Resident Magistrate looked at the medical certificate which had not been tendered by the prosecution as a part of its case. He noted that the certificate disclosed -

- "1. Reddened left eye
- 2. Mildly swollen conjunctiva of left eye done by liquid."

There was no evidence of scarring of the complainant and her testimony and that of the officer do not support the findings of the learned Resident Magistrate that "the liquid was a corrosive substance." The complainant did not aver that the substance caused burns to her dress. The medical certificate viewed in contemplation of sentence does not support the statement made by the Resident Magistrate before sentence that the attack "caused burns to the complainant's face."

In imposing sentence, the Resident Magistrate observed that "the act of the accused was a particular (sic) serious one she armed with a corrosive liquid waylaid the complainant and attacked her causing burns to complainant's face. Sentence meant to be punitive and exemplary." In that the liquid caused some irritation to the eye and facial discomfort, it could be said that the liquid was an irritant.

The basis of the sentence of two months imprisonment at hard labour was the nature of the assault and the fact that the liquid was corrosive and caused burns to the complainant's face and dress. These findings are not supported by the evidence. The sentence could not be maintained as the premise for its imposition cannot be supported.

We find the conviction unassailable and accordingly, dismiss the appeal against conviction. The appeal against sentence is allowed, the sentence of imprisonment set aside, and a sentence of a fine of \$2,000.00 or two months imprisonment at hard labour, substituted.