

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 10/72

BEFORE: The Hon. Mr. Justice Fox - Presiding
The Hon. Mr. Justice Smith
The Hon. Mr. Justice Hercules

JANET SINCLAIR

v.

REGINA

The appellant appears in person
Miss Joyce Bennett for the crown

17th & 18th February, 1972

FOX, J.A.:

This is an appeal from a conviction by His Honour Mr. Boyd Carey, Resident Magistrate for St. James, for Assault Occasioning Actual Bodily Harm.

The complainant is a constable stationed at Granville Police Station. He said that on the 15th November, 1971, he was on St. James Street in Montego Bay and heard indecent language being used on certain premises. He saw the appellant. He spoke to another lady who was with the appellant, asked her if she had used the words, and told her that he was arresting her. The appellant said: "you can't lock her up a bumbo cloth, is my friend." Constable Lawrence then told the appellant that he was arresting her for improper conduct. The appellant ran. She was held by Constable Lawrence and taken to the police station and arrested. He said that while taking her to the lock-up she held on to his shirt and bit him on his finger, giving him a wound which bled.

In cross-examination of this witness by Mr. Cunningham of Counsel who then appeared for the appellant, it was suggested to the constable that he had been at one time intimate friends with the appellant, that subsequently she had reported him for

misconduct and that as a result a departmental enquiry was pending, that he had beaten the appellant and that whatever injuries he received was by way of self-defence on the part of the appellant, and that he and another constable named Johnson used to visit the appellant and another girl named Joy at 15 Creek Street in Montego Bay. All these suggestions were denied by the complainant. He said specifically that he did not know 15 Creek Street.

The complainant's evidence was supported by the testimony of Laurel Campbell, a constable stationed at Montego Bay. He said that after the accused was arrested and taken to the Montego Bay police station he accompanied Constable Lawrence in escorting the appellant to her cell. At the main gate she refused to go inside. The constable pushed her. The appellant then held his hand and bit him on his finger. He went to Constable Lawrence's assistance. In cross-examination, Constable Campbell admitted that Constable Lawrence was trying to push her into the cell; he was using force against force. Constable Campbell denied that the complainant's finger got into the appellant's mouth and she bit him.

The appellant gave evidence. She said she was formerly a woman police constable but that at that time she was a stenographer. She had known Constable Lawrence for about three years. They had been intimate friends prior to the incident on November 15th. She had reported him to the Director of Public Prosecutions, to Senior Supt. Bell, to the Commissioner of Police and to the Custos of the parish. These reports had occurred prior to the 15th November, 1971. On the night of the 15th November, 1971 she was being driven in a motor car in Montego Bay. She reached the police station. The driver of the car stopped and spoke with Constable Levy. In the car with her ~~was~~ her friend Joy and two other men. After the car stopped, Constables Lawrence and Johnson came up and entirely without justification or excuse the two constables then drew her, the appellant, and Joy from the car and started to beat them. They were beaten to the recreation yard.

They bawled out for murder. Johnson was beating Joy who was his former girl friend and Lawrence was beating her. At the cell door Lawrence held her head and was beating it against a concrete pillar and Johnson was also beating her. Lawrence was choking her, squeezing her, and she bit him in self-defence. Later on she went to the hospital and received medical attention.

The appellant's case was supported by the evidence of one Sybil Smith. She said that she lived at 15 Creek Street, Montego Bay and she kept a boarding house there. She knew the appellant and Joy, they both boarded there. She had seen the two policemen, Johnson and Lawrence, come to visit the appellant and Joy at this house, this was sometime in November. This witness was not cross-examined by the prosecution.

The Resident Magistrate recorded a verdict of guilty against the appellant and fined her \$15 or fourteen days hard labour. She appealed against this conviction alleging as the substantial ground of appeal that the decision was contrary to the evidence. She appeared in person to argue this ground. At the very outset she pointed out that the evidence of Sybil Smith had been accepted by the prosecution, as was shown by the circumstance that she had not been cross-examined.

We consider that there is substance in this contention. The evidence of Sybil Smith went to show that Constable Lawrence was not speaking the truth when he said that he did not know 15 Creek Street and that he did not know where the appellant lived and that he was not on friendly terms with her. In our view, the consequence of a conclusion that Lawrence was not speaking the truth in these respects is to import such a measure of doubt in his evidence that, objectively assessed, and quite apart from the impression which his demeanour may have had upon the trial judge, his testimony was incapable of achieving that high standard of proof which is required in criminal cases.

There are other circumstances concerning this appeal which have given rise to considerable anxiety as to whether this

conviction was just. This appellant was unrepresented before us. She pointed out that in her evidence she had adverted to the reports she had made to various persons concerning the complainant. She said that letters which she had received from the Custos of St. James and the Director of Public Prosecutions acknowledging receipt of her complaint had been shown to the court at the trial. We saw these letters. We are unable to say whether they were shown to the court. Nevertheless, it is certain that prior to the date of the offence, these reports had in fact been made. This position has been confirmed by enquiries which the learned attorney for the crown, Miss Joyce Bennett, has made at the invitation of the court yesterday. As a consequence of those investigations, Miss Bennett appeared before us this morning and announced that, having had consultations with the Director of Public Prosecutions, and having examined a file which is in his possession in relation to the alleged complaints, she was of the opinion that it was not in keeping with her duty as a minister of justice to support this conviction. In the particular circumstances we consider the stand of Miss Bennett entirely commendable. The element of doubt in this case is distinct.

In the light of this circumstance and having regard to other considerations, we are of the view that this appeal should be allowed. The appeal is allowed. The conviction is quashed and the sentence set aside.
