4.3.85

IN THE GRAND COURT OF THE CAYMAN ISLANDS (Criminal)
HOLDEN IN GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. MR. JUSTICE HULL

CASE NO. 1228/84
APP. NO. 49/84

MARGARET ROSELYN DILBERT V. REGINA

WOUNDING

Mr. Polack for the appellant.
Mr. Ground for the Crown.

DECISION

This is an appeal against conviction on the ground that the verdict in the lower court was unsafe. In other words the ground is substantially the same as that provided in section 2(1)(a) of the United Kingdom Criminal Appeal Act 1968.

By way of contrast, the relevant grounds for appeal from verdicts in criminal trials in the Grand Court are similar to those under the earlier English legislation, i.e. that the verdict is unreasonable or cannot be supported having regard to the evidence. The 1968 United Kingdom Act therefore now gives the Court of Appeal there a wider discretion than our Court of Appeal has. The first question that has occurred to me in the present case is whether, in hearing appeals from the Summary Court, I ought to entertain an appeal on the wider basis, bearing in mind that there is a further right of appeal from this court, sitting in its appellate jurisdiction, to the court of appeal in certain instances.

Having regard to the wide terms in which the appellate jurisdiction of the Grand Court is couched in the Criminal Procedure Code, particularly in sections 156, 170 and 172, I think I can do so.

Although this case involves a relatively minor fracas, it has its difficulties.

The person who first brought it to the attention of the police was the defendant. She did so by way of complaint about the conduct of the complainant.

The police thought it proper, after inquiry, to charge the defendant. The learned Magistrate had the advantage of seeing and hearing all the witnesses. He came to the judgment that the defendant was at fault. He has the burden and the experience of hearing and determining summary charges, of judging the credibility of witnesses and of reaching a summary decision on the evidence. In matters involving a fracas such as this, he has the responsibility and experience to decide summarily whether self defence has gone beyond the bounds of reasonable conduct. This court will not lightly interfere with his findings of fact. If I were asked to hold that his decision was unreasonable or could not be supported by the evidence, I should have refused to do so.

On the rather wider consideration whether or not the verdict may be unsafe, I think the following aspects of the evidence are relevant.

The complainant went to the shop where the defendant worked. A quarrel started. The defendant, who was the manager, said that she told the complainant to leave. Miss Suckoo, an employee, also said this. In cross-examination, the complainant admitted that she was told that, if she didn't leave, the police would be summoned. It reached the point, as I have mentioned, where the defendant did call the police.

There is conflict as to who began the fighting, but the Magistrate's finding that the defendant used too much force implies that he accepted that she had at some stage acted in self defence. Miss Suckoo said that complainant rushed at the defendant after the police were called, although she did not see who struck the first blow.

The defendant has no previous convictions. The complainant has a previous conviction for violence.

All of this in my view points strongly towards the fact that it was the complainant who by her conduct incited, or provoked, the disturbance, and were it not for the consideration of the nature of the injury she sustained, there seems little doubt but that the defendant would not have been charged with anything.

So as the learned Magistrate intimated, the case turns on whether or not the defendant exceeded the legitimate boundaries of self defence.

The evidence is that the defendant admitted to the police that she struck the complainant with a piece of wood. It is not in dispute that the complainant sustained a wound on the left side of her head which caused blood

to flow. It was sufficient for a police officer on arrival to observe the blood at the shop and it was sufficient for the complainant to go to the hospital for treatment. Miss Suckoo said that the blood "started to rush" from her head.

Mr. Polack said that the Magistrate failed to address the issue of self defence. As a proposition I think that is wrong. His remarks show that he focussed on that issue. The question is rather whether his disclosed reasons were too brief.

Mr. Polack says that the given reason of the defendant's bigger stature alone is insufficient. I am unable to accept that the precise literal meaning of that word is what the Magistrate meant. He is an experienced Magistrate. He had the various elements of the evidence before him. I think he meant simply that the defendant was a bigger person, which she herself admitted in cross-examination.

The broader question is whether or not in all the circumstances the force was excessive. The complainant had no business in the shop after being required to leave by the manager. It seems fairly clear that she instigated or provoked the trouble. There is no evidence that the defendant is a violent woman. I hope I will not be accused of a double standard, by either feminists or chauvinists, when I observe that in my view women are physically less belligerent than men. The evidence and the Magistrate's findings indicate that she didn't start the fighting. Once it had started I think it is likely that she would be distressed and frightened, in her own shop. I think that women are likely to be less adept at fighting and less likely to judge the consequences of a blow. Flesh wounds to the head can easily draw blood.

I do not say so in any critical sense of the Magistrate, but in the absence of fuller reasons, I feel, overall, that it would be unsafe to sustain this conviction. Accordingly it will be quashed.

D. [signature]

Judge

4th March, 1985