

1973

CAYMAN ISLANDS

IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL NO. 7/72

BEFORE: The Hon. Mr. Justice Smith - presiding
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Graham-Perkins

VINCENT PANTRY v. Cpl. LINDSAY CACHO &
THE ATTORNEY GENERAL
- False Imprisonment

H.E. Edwards, Q.C.
and Miss Annie Bodden - for Plaintiff/Appellant
Seymour Panton,
Asst. Attorney General - for Defendants/Respondents

MARCH 15 & 16, 1973

EDUN, J.A.:

In the action of false imprisonment the plaintiff/
appellant claimed damages from the Respondents, Lindsay Cacho,
Corporal of Police, and the Attorney General of the Cayman
Islands. The learned judge of the Grand Court dismissed the
action with costs to both respondents. Against that judgment
there is this appeal.

The facts are that on the 10th of October, 1971, Cpl.
Cacho was on traffic duty. He noticed the licence disc of
a car driven by one Pearson had expired and as a result he
requested Pearson to drive the car to the police station. He
had a right to do so under section 9(11) of the Motor Vehicles
Law, Cap. 106 to seize the car. Pearson refused to do so. The
Corporal then asked him for his name and address; Pearson refused.
The Corporal told Pearson that he was going to arrest him; the
corporal was entitled to do so under section 22 of the said

Motor Vehicles Law; Pearson resisted and assaulted the corporal.

The appellant, Vincent Pantry, was a passenger in that car and he claimed that as the corporal struggled with Pearson he stood by watching them. He then stepped up. Pearson was getting the better of the corporal. He tried to restrain Pearson but as he could not hold Pearson he left him alone. The corporal called for help, then two constables arrived and they subdued Pearson and took him to the police station. As the appellant was about to leave the scene the corporal came and held him by the hand and took him to the police station where he was charged and detained until he was bailed. The appellant repeated that he never touched the corporal, and denied ever resisting or obstructing him in any way. Ruth Thompson supported the appellant's evidence. The appellant was later charged for assaulting and obstructing the police officer in the execution of his duty and was acquitted; Pearson was convicted of assaulting the police officer in the execution of his duty.

The corporal, on the other hand, said that before Pearson could answer him, the appellant told Pearson not to give his name, and whilst he was arresting Pearson and Pearson was assaulting and resisting him, the appellant held him from behind. That enabled Pearson to kick him in the stomach and punch him in the side of his face. It was after this that he was rescued by two other constables. He said he arrested the appellant on the scene.

Learned attorney for the appellant submitted, in the main, that when the whole evidence is considered the learned judge of the Grand Court was wrong in coming to the conclusion that it was the appellant who held the corporal from behind and so he urged that the corporal unlawfully assaulted and falsely imprisoned the appellant.

A fact may be proved not only by direct evidence but also by circumstantial evidence. The corporal claimed, on oath, that it was the plaintiff himself and no one else who held him from behind, thus assaulting and obstructing him.

The evidence discloses that -

- i) though there was a large crowd gathered and was behind the corporal, none of them interfered with the corporal from behind;
- ii) the appellant himself said, on oath, "plenty people were around concerned with Fosse Arch's funeral."

He also said -

into
"When I went/ struggle no others were engaged in it. The others were around just laughing."

The learned judge had seen and heard the various witnesses in the case and there was evidence by the corporal on oath, that - in chief -

- a) the someone who held him from behind was the plaintiff.

'I struggled with the man who held me.' and under cross-examination -

- b) 'Pantry held me from behind. At first I did not know who it was. I knew after I was released. I saw him. He was directly behind me. I never saw him hold me. I am definite it was Pantry.'

As against that evidence there is the contradictory evidence of the appellant and his witness.

In my view, the truthfulness or untruthfulness of the corporal's evidence depended to a large extent upon the view the learned judge took of his demeanour and of the advantage of having seen and heard him. In Gross v. Lewis Hillman Ltd., (1969) 3 A.E.R. 1476, Cross, L.J., as he then was, said at p. 1481, -

"A Court of Appeal is not entitled to disturb findings of fact made by the trial judge which

depend to an appreciable extent on the view that he took as to the truthfulness or untruthfulness of a witness whom he has seen and heard and the Court of Appeal has not, unless it is completely satisfied that the judge was wrong. It is not enough that it has doubts - even grave doubts - as to the correctness of the judge's finding. It must be convinced that he was wrong."

I agree with those observations and those observations are not in any way in conflict with the decision of Powell and Hibbert, 6 W.I.R. p. 43, cited to us by learned counsel for the appellant.

After a careful examination of the evidence I fail to see in what way this Court can conclude that the learned judge of the Grand Court was at all wrong in his conclusion concerning the veracity of the corporal's testimony before him. For these reasons I would dismiss the appeal.

GRAHAM-PERKINS, J.A.:

I, too, would dismiss the appeal.

SMITH, J.A.:

I agree that the appeal should be dismissed. In my view the learned judge could reasonably hold on the evidence that it was the plaintiff who held the defendant Cacho, and once that was established it was an end of the plaintiff's case.

The order of the Court is that the appeal is dismissed with costs to be taxed or agreed. The judgment of the Grand Court is affirmed.
