IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 26/16
(IND 19/2016)
C#600/16

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and

Meleton R Maick

Appellant

Before:

The Hon John Martin QC, Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal
The Hon Dennis Morrison, Justice of Appeal

Appearances: Crister Brady (Brady Law) for the Appellant, Nicole Petit for DPP

JUDGMENT

Revised from transcript of oral judgment 7 March 2017 and Approved Released 29 March 2017

MORRISON, J.A.:

1. On 13 October 2016, Mr. Justice Quin sentenced the appellant, who is an Honduran national, to six years' imprisonment, upon his plea of guilty to the offence of wounding with intent, contrary to section 203 of the Penal Code (2013 Revision) The complainant was Mrs. Karen Fellner-Stevens ('the complainant').

2. The appellant now appeals against his sentence on the ground it was manifestly excessive in the circumstances.

3. The relevant facts are as follows. The offence to which the appellant pleaded guilty took place on 21 January 2016. On the complainant's account, she had at that time known the appellant for about one month. She knew him as an occasional visitor to her father's house which stood on the same premises on which she also lived. There, the appellant would from time to time have drinks with her father and other members of her family.

4. At about 3:30 in the afternoon of 21 January 2016, the appellant went to the complainant's house. He handed her a bag of gifts which included a pair of shoes, a pair of sandals and a blouse. However, the complainant declined to accept the gifts, whereupon the appellant asked her to keep the bag for him, which she did.

5. The appellant then left premises but returned shortly before 10:00 that same night. When he returned, the complainant was at home socialising with members of her family, including her son, her nephew and two other young men. The appellant, it appeared, reacted negatively to this scene. So he left again, returning some time later after the others had gone, and said that he had come to retrieve the bag which he had earlier deposited with the complainant. The complainant opened her door and handed the bag to the appellant, at which point it appeared that she took her eyes off of him for a short while. She next saw him walking towards her with a knife, which had been on her kitchen counter, in his hand. The appellant then lunged at her, causing her to fall to the ground on her back. He grabbed her by the neck and put the knife to her throat telling her in English that he was going to kill her. There was a struggle between them and the appellant forced the knife on to her neck, inflicting a cut to the left side of her neck and, as she held on to the knife defensively, to her thumb, in particular the webbed area between the thumb and the index finger. The complainant pretended to be dead and it was only then that the appellant released his hold on her and left the premises.

6. The police responded to a 911 call and the complainant was taken to the George Town Hospital where she was given a blood transfusion. Police officers went in search of the appellant and found him at his house hiding in a closet and wearing clothing which appeared to have blood on it.

7. The medical report would later reveal that the complainant had suffered:

    a) An abrasion at the base of the left side of her neck.
    b) A deep laceration of the left thumb.
    c) A laceration to the tip of the left middle finger.
    d) Tenderness of the left side of the abdomen.

8. However, the result of an abdominal ultrasound proved to be normal and although the attending physician classified her condition as "serious", the complainant was treated and released from hospital that same night.

9. When the appellant was subsequently interviewed by the police, through an interpreter, and in the presence of his then attorney, he admitted going to the complainant's house that night. He said repeatedly that he was drunk at the time and that it was the devil who made him do "something bad". By that time, he said, he had consumed some three six-packs of beer. He also asserted that he had known the complainant for two months, that they enjoyed an intimate relationship and he had intended to marry her.

10. In answer to a question put by one of the police officers who conducted the interview, the appellant agreed that he used the knife to cut the complainant because he was jealous of her.

11. In his Reasons for Sentence, - a draft of the transcript of which we have seen, - Mr. Justice Quin took into account the fact that the appellant's attack on the complainant was completely unprovoked. While he accepted the appellant's counsel's submission that the appellant may have been jealous, the judge considered that, on the facts as they had been outlined to the Court, the complainant had given the appellant no cause for jealousy. And, in any event, his jealousy did not justify picking up the knife and injuring the defenceless complainant, as he had done.

12. However, the judge accepted that the attack was not premeditated; that the appellant did not bring the knife on to the scene for that purpose; that he admitted his guilt to the police at a very early stage; and that, fortunately, the complainant's injuries were not as serious as they could have been.

13. Accordingly, taking all factors into account, including the appellant's early plea of guilty, the judge determined that a sentence of six years' imprisonment, taking a starting point of nine years, discounted by one third for the guilty plea, was appropriate.

14. In arriving at this conclusion, the judge considered his own previous sentencing decision, subsequently upheld by this Court, in *Kenroy Rowe v R* [CACR009/2015] , judgment delivered 17 November 2015). Although in that case the verdict of guilty of wounding with intent after a trial had also attracted a

sentence of six years' imprisonment, the judge distinguished it on the basis that there had been an element of provocation in that case.

15. Before us this afternoon, Mr. Brady for the appellant submitted that the sentence was manifestly excessive, particularly in comparison with the decision of *Kenroy Rowe v R.* Mr. Brady submitted that that decision was distinguishable on the basis of the appellant's plea of guilty in this case, as well as the difference in seriousness of the injuries suffered by the complainants in both cases. On this basis, it was submitted that, although six years might have been an appropriate starting point, given the appellant's early acceptance of responsibility he should have benefitted from a reduction in his sentence to no more than four and a half years.

16. In her written submissions, Miss Petit for the Crown also referred to *Kenroy Rowe v R*, taking the position that the case was distinguishable on the ground upon which the judge had distinguished it, which was that there was an element of provocation in that case, while in this case the appellant's attack on the complainant was unprovoked and inexplicable.

17. We were also referred to the UK Sentencing Guidelines for the offence of wounding with intent and Miss Petit submitted that the injuries inflicted by the appellant in this case would have straddled the cusp between the top of category two and the lower end of category one, therefore attracting a starting point of nine years' imprisonment. A one third discount of three years for the guilty plea would therefore fully justify the sentence of six years' imprisonment imposed by the judge.

18. In considering these submissions we start, as we must, from the position that this Court will not disturb a sentence imposed in the Court below unless it can be shown to be manifestly excessive or wrong in principle.

19. In *Kenroy Rowe v R*, upon which counsel on both sides rely, the appellant, who was a security guard at a night club, was found guilty of stabbing the complainant, a patron of the club, with a flick knife just below the heart.

20. When the complainant was taken to the hospital, he was found to be bleeding heavily into his chest cavity and a tube had to be inserted to evacuate the blood. In the view of the Court in that case, the injuries suffered by the complainant were "very serious and have had a deep impact on his life". In the result, this Court concluded that the sentencing judge in that case had been well entitled to conclude that the circumstances of the offence fell into category two of the sentencing guidelines, for which the recommended starting point is six years, in a range of five to nine years, for an offender with no previous convictions upon a plea of not guilty.

21. This very recent decision of this Court naturally begs the question whether, given the nature of the complainant's injuries in this case, as well as the appellant's plea of guilty, the sentence of six years' imprisonment can be justified in principle.

22. A similar concern arises from the decision of this Court in the *R v Ricardo Hyre* [2009 CILR Note 25] to which the judge also referred in his sentencing decision. In that case, the appellant, who was charged with wounding with intent, stabbed the complainant five times during an altercation, also in a night club.

23. Among the wounds which the complainant received was one which penetrated the muscle of the left side of his back and which, had he not received prompt and expert medical attention, would have been fatal. This Court declined to disturb the sentence of seven years' imprisonment imposed after a trial.

24. This afternoon, Ms. Petit very helpfully handed us a copy of the decision, upon which Mr. Brady also ultimately relied, in the case of *R v O'Neill Robinson* [Indictment No. 49/2010, heard 17 December 2010], in which the injuries to the complainant were significantly more serious than those of the complainant in the case now before us and, on a plea of guilty to wounding with intent, the sentence was seven years' imprisonment.

25. And lastly in this series we would refer to our own decision given just last week in *Corey Bowen v R* [CACR 015/2016, judgment delivered on 28 February 2017) in which this Court upheld a sentence of five years and three months' imprisonment imposed after a trial for serious knife injuries. In that case, as in *Kenroy Rowe v*

R, the Court found no reason to disturb the trial judge's determination that this was a category two offence, attracting a starting point of six years.

26. On the basis of these decisions, we therefore consider that, in this case, the judge's choice of a starting point of nine years' imprisonment has taken the case significantly outside of the usual range sanctioned by the guidelines and previous decisions of this Court.

27. The result of this, in our view, is that the sentence of six years' imprisonment arrived at by the judge after giving credit for the appellant's plea of guilty was manifestly excessive in all of the circumstances. However, in arriving at an appropriate starting point in this case, we accept without reservation, the significance of the special factors which the judge took into consideration. Foremost among these is the fact that this was a case of an unprovoked and vicious attack on a defenceless woman. For even if, as the appellant hinted at some point, he could possibly be taken to have been consumed by jealousy, his response was entirely inappropriate and unjustified.

28. In all the circumstances, therefore, we consider that a starting point somewhat higher than the norm for a category two offence of wounding with intent is justified in this case. Accordingly, we will apply a starting point of seven years, which we will reduce by just over a third to take into account the appellant's early plea of guilty. In the final result, we therefore allow the appeal against sentence and set aside the sentence of six years passed by the judge. In its place, we will substitute a sentence of four and-one-half years' imprisonment.