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ROYAL COURT

Criminal Assize

56A.

25th April, 1991

Before: The Bailiff, and
Jurats Hamon, Gruchy and Vibert

Attorney General
- v -
Helier Charles Vibert

Sentencing, following conviction on the 13th March, 1991, on one count of grave and criminal assault, and one count of indecent assault.

C. E. Whelan, Esq., Crown Advocate.
Advocate M. St. J. O'Connell for the accused.

JUDGMENT

BAILIFF: In cases of this nature it is incumbent upon the Court to pass a sentence of sufficient length that will not only reflect society's abhorrence at behaviour of this sort against women, but will also act as a deterrent.

Far from it being a mitigating factor that the woman in this case was under the influence of drink , we think it is an aggravating factor, because it indicates to us that you, Vibert, thought that the

fact that the woman was intoxicated would make it easier for you to do what you wanted to do to her.

It is always difficult in cases of this nature in which earlier cases are referred to the Court to be sure that the circumstances of those cases are so close to these circumstances that we should properly regard them as parallel to the extent of imposing the same sentence.

I have said that because in the recent appeal case which was heard by the Appeal Court in this Island on the 8th April, 1991, and over which I presided, that of Fogg, the Court cited some words which I am going to repeat, or at least some of them, of Dunn LJ in the case of R -v- de Havilland (1983) 5 Cr. App. R (S) 109, 114:

> "We think it desirable to say a few words about the increasing practice of citing decisions of this Court relating only to sentence. Apart from the statutory maxima and certain other statutory restrictions, for example, those on the sentencing of young offenders, the appropriate sentence is a matter for the discretion of the sentencing judge. It follows that decisions on sentencing are not binding authorities in the sense that decisions of the Court of Appeal on points of substantive law are binding both on this Court and on lower courts. Indeed they could not be, since the circumstances of the offence and of the offender present an almost infinite variety from case to case. As in any branch of the law which depends on judicial discretion, decisions on sentencing are no more than examples of how the Court has dealt with a particular offender in relation to a particular offence".

It is therefore also worth mentioning, I think, that whilst cases are cited from the Court of Appeal, there are of course innumerable other cases in England, in the Crown Courts, where sentences have not been appealed, rather like those you cite to us, Mr. Whelan, from your list of sentences passed by this Court against which no appeal has been made. There must be many unappealed English cases which may well lay down a norm about which we are ignorant and we have to rely therefore, on the Court of Appeal cases, but they are not any more than guidelines.

It is quite clear from the decision which I have mentioned citing the case of de Havilland that that warning has been adopted by our Court of Appeal here and we have had regard to it in considering the proper sentence in this case.

We were invited earlier by Mr. O'Connell to examine in detail the evidence that was adduced before the Jury and to accept part and to reject part. That is something we feel unable to do. The Crown presented its case before the Jury and relied on the evidence to support the facts which it said constituted the offence. The Jury found the prisoner guilty and we must therefore infer that they accepted the version of the Crown's evidence and we cannot look behind their decision. To do otherwise would be to re-open almost every case and that would put the Sentencing Court in an impossible position.

The Court of course can have regard to a number of matters such as the demeanour of the prisoner, or if he were telling lies, but that only goes to general mitigation and nothing more in considering how to sentence. We cannot, however, look behind the general decision of the Jury. That would be a most difficult task and one which this Court would not feel justified in doing.

Looking at the cases which we have had referred to us, and at the principles which seem to flow from those cases, we have to ask: what is the appropriate sentence in this case? For the Crown Mr. Whelan has, very fairly, limited his conclusions in respect of the grave and criminal assault to the injuries to the face. We have no doubt from the evidence that was given that the victim was punched and her breasts were grasped and there were a number of non-sexual injuries around the jaw and the upper part of the throat. We have, at the invitation of Mr. Whelan, discounted any other non-sexual injuries in respect of this count.

When we come to the indecent assault, we have no doubt that the circumstances of indecency were very unpleasant. From the evidence before the Jury which they accepted -and they accepted the word of the victim- they no doubt had regard to the fact that she was drunk, but

nevertheless accepted her evidence as against that of the accused. Something was done to her which terrified her whilst she was unconscious or semi-conscious. There is no doubt in our opinion that you, Vibert, were taking all the advantage you could of this almost defenceless woman.

As I have said earlier this Court must impose a sentence in cases of offences against women of this sort which will not only reflect the public's abhorrence, but will also deter others.

We cannot find that the conclusions asked for are in any way excessive or wrong and therefore you are sentenced on Count 1 to eighteen months' imprisonment and on Count 2 to three and a half years' imprisonment, concurrent.

Authorities

AG -v- Heuzé (24th October, 1988) Jersey Unreported. C of A.

Thomas' Principles of Sentencing (2nd Ed'n) pp. 125-127.

Thomas' Current Sentencing Practice pp. 2231; 2240; 2240/1; 2240/2.

R -v- Currie (1988) 10 Cr. App. R. (S) 85.

David Terence Currie (1988) 10 Cr. App. R. (S) 452.

AG -v- Schollhammer & Udoh (22nd January, 1990) Jersey Unreported. C. of A.

AG -v- Fogg (8th April, 1991) Jersey Unreported. C of A.