

BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

HIGH COURT CRIMINAL APPEAL NO. 1 OF 2001

BETWEEN:

ELTON BEAZER
DENROY STEVENS

Appellants

and

THE QUEEN

Respondent

Before:

The Hon. Sir C.M. Dennis Byron
The Hon. Mr. Satrohan Singh
The Hon. Mr. Albert Redhead

Chief Justice
Justice of Appeal
Justice of Appeal

Appearances:

Mr. S. Hayden Douglas for the Appellant
Mr. D. Abednego for the Respondent

2001: June 18;
September 17.

JUDGMENT

[1] **BYRON, C.J.:** This is an appeal against sentence only. On 8th March 2001, the appellants both pleaded guilty to causing grievous bodily harm on 30th April 2000, to Yolana Santana and Jhoselin Del Orbe with intent to do them grievous bodily harm and were sentenced to 7 years imprisonment by Benjamin, J. The offence under Section 163 of the Criminal Code carries a maximum penalty of life imprisonment.

[2] The incident giving rise to the conviction was particularly violent. Both appellants were customers and both complainants were waitresses in a Bar in Virgin Gorda on the evening of 30th April 2000. Appellant Beazer made a sexual advance to complainant Santana and she slapped him. Appellant Stevens told appellant Beazer that he should beat up Miss

Santana who was held by the hair by appellant Stevens and beaten first by him and then by appellant Beazer. She ran to the kitchen and was followed. Appellant Beazer hit her with Bar furniture. Appellant Stevens pushed in the kitchen door which fell on her and he stood on it. After she was dragged out both men beat her with their fists and kicked her, and appellant Stevens beat her with the stick of a mop across her back. She ran from the Bar and went to a nearby parking lot, and entered a vehicle there, belonging to Immigration Officer Wheatley, who was in the car with his daughter. Both men opened the door of the vehicle and threw punches, some of which struck her as well as Mr. Wheatley's daughter. Mr. Wheatley eventually managed to drive away in the direction of the police station.

- [3] Miss Del Orbe a co-worker, attempted to intervene while the beating was in progress in the kitchen. She was pushed away so violently that she went through the door leading outside. While the men were attacking Ms Santana in the Immigration Officer's jeep, she attempted to distract them by shouting to them and breaking a bottle. When the vehicle drove off both men turned to her. She ran to another Bar and entered the kitchen. They followed her, and pushed away the cook. Beazer held her by the hair and kicked her, and Stevens hit her in the nose with his fist then used a bottle to hit her in her head. Beazer kicked her in the lower part of her stomach and Stevens continued punching her to the back of her neck. She fainted.
- [4] Both complainants were hospitalized. One spent five days continually and the other spent two days and then had to return for another three days. The injuries sustained did not include permanent injury or disfigurement. Ms Del Orbe sustained a fracture to the nose, and both complainants suffered extensive bruising, cuts to the head, swollen arms, scratches and pains to the body.
- [5] Several submissions were made on the principles of punishment in this case and I think it necessary to briefly comment.

- [6] Counsel highlighted the mitigating factors. The appellant Stevens was 28 years old, unmarried with one child and was employed with a trucking company. The incident was not premeditated. In addition he pleaded guilty, apologized to the complainants in open court and told the court that he was willing to pay compensation, which offer incidentally, the complainants rejected.
- [7] Appellant Beazer was 28 years old and was stated to be engaged to be married. He has one child and was employed with the Water and Sewage Authority in Virgin Gorda. This appellant too, pleaded guilty, apologized to the complainants in open court and expressed willingness to pay compensation, an offer which was rejected by the complainants. Counsel rather eloquently sought to categorise the offence as being disorderly misconduct rather than excessive violence. I agreed with the theory of that proposition, but I was not persuaded on the facts of this case. However, I accept that in that context note has to be taken of the fact that no weapons, such as guns or knives were used.
- [8] The personal antecedents of these men were clouded by the fact of previous convictions. The trial judge disregarded the convictions against appellant Beazer because they were minor offences. However the offences committed by appellant Stevens included matters of personal violence which demonstrated a predisposition to violence.
- [9] In a very well researched presentation counsel for the appellant provided a comparative study of sentences.
- [10] Much reliance was placed on the case of *Bassano Hendricks* (**Bassano Hendricks v The Queen, (unreported) BVI Crim. App. No. 1 of 1996**) who was convicted of murder and on appeal the crime was reduced to manslaughter on the ground of provocation, and a sentence of 10 years was imposed. The point being made, was that there should be significant difference in the severity of the punishment for a crime where the injury inflicted was so much less severe and the consequences were not permanent.

- [11] This must be regarded as a very serious crime. The incidence of violence against women in our communities has become a serious problem and the court must attempt to curtail this by its sentencing policies. Unless it does so, the perpetrators of violence against women may very well believe that they have a licence to do so unimpeded. Our sentencing policy must necessarily be directed at changing behaviour, especially those abhorrent to human decency.
- [12] Although the injuries sustained were not permanent, the incident was particularly violent and terrifying. The assault was wild and reckless and involved damage to property and involvement of other persons who happened to be in the vicinity. Counsel for the appellants submitted that the only explanation is that there was a complete loss of self-control. Of course while this is to be taken into consideration, it should be noted that in our jurisprudence loss of self-control is only a defence to the crime of murder and then it is only a partial defence, by reducing it to manslaughter. In a sense, when the appellants suffered a complete loss of self-control it was a matter of degree and perhaps chance, that the consequences of the crime were not more severe and permanent. I would regard the manner of the commission of this offence as aggravated.
- [13] The only mitigating factors in this case relate to the behaviour of the appellants after they cooled down and had the benefit of legal advice. They have pleaded guilty and apologized to the complainants. We have often expressed the view that a discount should be given for guilty pleas. They have acknowledged that their behaviour was inexcusable and expressed this with remorse. The offer of compensation is also a factor in their favour. Of course the refusal to accept it by the complainants is also reasonable and understandable. When one has been the victim of an aggravated crime, money by itself is no substitute for justice as the complainants very simply but clearly articulated in court. Nonetheless, these are factors to be regarded as circumstances which should mitigate the severity of the punishment imposed.
- [14] The antecedents of the appellants show that both have had an unruly history. The antecedents of Stevens however, are much more violent than those of Beazer and it has

been necessary to consider whether the difference should result in different levels of punishment. I have concluded that the previous convictions of Stevens for violence show a propensity for violence, and a failure to learn from his previous brushes with the criminal justice system, which require some difference in punishment and I would consider that he should be treated more severely than Beazer. This is also appropriate because the whole incident was instigated when he told Beazer to beat up Ms Santana and held her hair and started on her.

[15] In terms of duration of punishment, the learned trial judge heard and considered in full the pleas in mitigation. We have concluded that he did give discount according to the principles I have expressed. The only principle that he did not adhere to is the differential between Beazer and Stevens.

[16] I would consider that the sentence should be varied by reducing the appellant Beazer's sentence from 7 years to 5 years.

Dennis Byron
Chief Justice

I concur

Satrohan Singh
Justice of Appeal

I concur

Albert Redhead
Justice of Appeal