

BETWEEN

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1397

Appellant

A N D POLICE

Respondent

Hearing: 5 November 1984

Counsel: Margaret J. Lockie for Appellant
A.D. Garland for Respondent

Judgment: 5 November 1984

ORAL JUDGMENT OF HOLLAND, J.

I am sure that Miss Lockie for the appellant has said everything that can be said on behalf of this appellant, but the appeal could not in my view ever have succeeded. The issue is entirely one of fact. There is undisputed evidence that in a crowded bar the complainant was punched, causing bleeding from his lip. At the time of the punch someone said "You nark". The appellant was one of those close by him in the bar. He was seen shortly after the accident. He denied assaulting anybody, but a police constable saw that he had blood stains on the knuckles of his right hand. He was taken to the police station where he was ultimately bailed. At the time he was overheard saying "It was worth it".

Counsel for the appellant submitted to the District Court Judge, as she does to me, that the stains on the appellant's hands could have come from the blood

on the complainant's clothing which could have occurred from him simply accidentally coming into contact with the complainant. She also says that the statement "It was worth it" is not directly related to having struck a blow at the complainant, and that although it was said at the time he was bailed it was taken in isolation and could relate to a number of incidents.

At the conclusion of the Crown case a submission of no case to answer was made. That was rejected. No evidence was then called for the defendant. It is submitted because the District Court Judge has not in his final judgment referred to the onus of proof beyond reasonable doubt that he has not distinguished between the evidence required to support a prima facie case and the evidence required to establish a conviction. I am not impressed with that submission. It is unnecessary for a District Court Judge every time he gives judgment to refer to the fact that the truth must be beyond reasonable doubt and he does say that he is satisfied as to the guilt. In this case I am quite satisfied also the District Court Judge was entitled to take into account the failure of the defendant to give evidence, but quite regardless of that the evidence of the blood on the knuckles, coupled with the fact that he was closely in the company of the complainant and then the remark that it was worth it leads me inevitably to the conclusion, as it did to the District Court Judge, that the blood was on the appellant's hands from him having delivered the punch and his statement that it was worth it meant exactly what it said, namely that no matter

what happened to him it was worth it for him to have punched the complainant.

I agree entirely with the conclusions of the District Court Judge. The appeal will be dismissed.

(A. D. Holland)