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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 162/84

746

BETWEEN APERAHAMA

Appellant

A N D POLICE

Respondent

Hearing: 3 July 1984

Counsel: H H Roose for Appellant
P J Morgan for Respondent

Judgment: 3 July 1984

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ORAL JUDGMENT OF WHITE J

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In this appeal against conviction and sentence the appellant was convicted of hiring a taxi and failing to pay the fare, and assault. She was sentenced to eighty hours' community service on the assault charge.

The appellant has set out grounds of appeal in her Notice of Appeal but the grounds relied on by counsel are more specifically stated and I have had the opportunity of hearing counsel on these today. The appeal was withdrawn in respect of the conviction and sentence for failing to pay the taxi fare. The appeal, accordingly, was limited to the conviction on the charge of assault and the claim that the term of community service for that offence was manifestly excessive.

In considering the evidence the learned District Court Judge concluded that following the appellant's refusal to pay the fare charged the argument between the appellant and the taxi driver "escalated", particularly after they arrived at the Police Station. She went on to find, having seen and heard the witnesses and the Police evidence, that the taxi driver's version was

correct and that the appellant had attacked her and injured her.

It has been correctly pointed out that there were matters of credibility in this case; it was a question of finding the facts and the question of finding the facts was for the District Court Judge. Indeed, it was not submitted that those findings could be said to be demonstrably wrong and on these matters for the Judge in the Court below, findings are recorded as I have indicated.

If the evidence of the taxi driver was accepted, as it was, despite the denials of the appellant, there was ample evidence, in my opinion, to support a finding of assault. In my view the appeal against conviction must fail.

As to sentence, I have noted again what was said by counsel and Mr Roose fairly pointed out that this was a case where community service was appropriate but he submitted that eighty hours' was, in the circumstances, manifestly excessive.

I am unable to agree. The facts as found, in my view, and the background to the case which has been referred to by counsel, were sufficient to justify a sentence of community service and it has not been shown, in my opinion, that eighty hours' was manifestly excessive.

In my view that sentence and the other orders should stand.

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