Regina v Stephen Comfort

No: 200605093 A2

Court of Appeal Criminal Division

11 January 2007

[2007] EWCA Crim 104

2007 WL 2826

Before: Mr Justice Underhill Sir Charles Mantell

Thursday, 11 January 2007

Representation

Miss M Stevenson appeared on behalf of the Appellant.

Miss D Wilson appeared on behalf of the Prosecution.

Judgment

Mr Justice Underhill:

1 On 24th August 2006 the appellant, who is a young man, then aged 18, of previous good character, pleaded guilty at Kingston Crown Court to racially aggravated assault occasioning actual bodily harm. The victim of the assault was a Sikh gentleman waiting at the bus stop outside Richmond station at about 10.45 at night. The appellant was one of a group of youths who started by chanting racial taunts at the victim. He then approached the victim in an aggressive manner plainly, as the judge found, intending to provoke a violent incident. He called the victim a “Paki cunt”. He said, “I'm going to fucking do you”, and he said that he would get “the NF boys” down to shoot him. He then spat in the victim's face, punched him hard in the head, got him into a headlock and pulled him to ground. As the victim got up again, the appellant punched him several times and kicked him. The victim's glasses were damaged and his turban pulled off. He suffered cuts to the face and chips to three of his teeth. He was left with bruising, and pain in his head, his eye, his neck, his shoulders and his legs. The incident only ended when a passer-by intervened and pulled the victim to safety.

2 The appellant was arrested at the scene. On interview he admitted the assault but denied the spitting and the racial comment. However, in the event he pleaded guilty at the first available opportunity.

3 The judge sentenced the appellant to 3½ years' detention in a Young Offenders Institution. He emphasised that, as we fully agree, this was a particularly nasty piece of unprovoked racial violence. He also described it as having been “planned”, and said that that was a serious aggravating feature. He made it clear that the element in his sentence attributable to the racial aggravation was 18 months.

4 As we have said, we regard this as a very bad case of racially aggravated violence. It was completely unprovoked; it was prolonged and persistent; it took place in a public place at night. It was deeply upsetting not only to the victim but to a number of bystanders. It is the sort of behaviour against which members of ethnic minorities must be protected. Having said all that, we are driven to the conclusion that the sentence passed was excessive essentially for two reasons.

5 First, we do not think that the judge was right to find that the offence was planned, at least in the sense in which that term is normally used — that is that the appellant, either on his own or with his friends, had deliberately set out at an earlier stage to find and abuse and attack a

member of an ethnic minority. The evidence was in fact that he was very drunk, and all the signs are that this was a spontaneous incident fuelled by drink. This is not of course a mitigating factor, but it does mean that it does not have the aggravating aspect of a racial assault planned in advance and in cold blood. In fact, what the judge seems to have meant by saying that the offence was planned was that the incident developed by the appellant taunting the victim with a view to picking a fight. That is no doubt true, but is not the same thing.

6 Secondly, weight has to be given to the appellant's age, his previous good character (which was supported by two positive references from his employer and a quite favourable pre-sentence report) and the fact that he had pleaded guilty at the earliest opportunity. The sentence passed is in fact equivalent to a sentence of 5 years after a trial.

7 Having regard to those factors, it seems to us that the right sentence would have been one of 2½ years' detention in a Young Offenders Institution, representing 18 months in relation to the assault, with a further 12 months to reflect the element of racial aggravation.

8 In reaching that view, we have had regard to a number of authorities helpfully supplied to us by Miss Stevenson for the appellant. It is unnecessary for us to refer to all of them, but we found particular assistance from the decision of this court, presided over by Rose LJ, in *Attorney-General's Reference (No 92 of 2003) [2004] EWCA Crim 924*. The level of sentencing indicated in that case confirms that in our view the sentence which we have proposed was the appropriate sentence in this case, and we accordingly allow the appeal to that extent.