APPEAL COURT, HIGH COURT OF JUSTICIARY

[2018] HCJAC 67
HCA/2018/000153/XC

Lady Paton
Lord Drummond Young
Lord Malcolm

OPINION OF THE COURT

delivered by LADY PATON

in

APPEAL AGAINST CONVICTION

by

SANDRA DENNIE

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: Keenan (sol adv); Paterson Bell, Solicitors
Respondent: Farquharson QC, AD; Crown Agent

26 October 2018

[1] The appellant was charged with the following offence:

> "on 11 January 2017 at [an address in Rigside], you… did assault Carol Anne Connolly… and did repeatedly punch and kick her on the head and body and strike her head against a glass vivarium and repeatedly strike her on the body with glass to her severe injury and permanent disfigurement".

The offence was said to have been committed while on bail.

[2] The evidence at the trial established that the appellant attacked the complainer in the kitchen and living room at that address. In the living room was a glass spider tank positioned on a table, and wine glasses left on the floor. In the course of the struggle between the appellant and the complainer, both the glass tank and the wine glasses were shattered and the complainer sustained a laceration to her forearm and a deep open cut to her leg.

[3] When returning their verdict of guilty the jury deleted the words: "and strike her head against a glass vivarium and repeatedly strike her on the body with glass".

[4] In this appeal, Mr Keenan for the appellant submitted that the jury's verdict was perverse or at least inconsistent. The deletion of the above words demonstrated that they must have concluded that the appellant did not assault the complainer with glass. Accordingly the words "to her severe injury and permanent disfigurement" should be deleted.

[5] For the Crown, the advocate depute contended that the verdict was neither inconsistent nor perverse. The injuries had occurred in the course of an ongoing assault. The jury were entitled to conclude that they were caused by the assault.

[6] We have no difficulty accepting the Crown's submissions. The fact that an assault took place was accepted. As the sheriff narrates in paragraph 11 of her report (noting the evidence of Ms Gemmel):

> "The appellant attacked [the complainer]. She flew for [the complainer] and started punching and kicking her to the head and body. The fight took place in the kitchen and in the living room… A big glass spider tank sat on the table in the middle of the living room. The appellant and the complainer were grabbing each other and throwing each other about. They fell onto the glass tank and then onto wine glasses which were on the floor."

[7] In our opinion, if a person is assaulted, and as a result is physically forced against a surface or object made of glass which breaks or shatters, causing lacerations, the assailant is responsible for those injuries even if he did not actually strike the complainer with an object made of glass. Similarly, if a person is assaulted, and as a result falls against or comes into contact with such a surface or object and suffers lacerations, the assailant is again responsible for these injuries.

[8] It was suggested by Mr Keenan that the verdict could only have been returned if the libel included a reference to the assault occurring when the parties were struggling or rolling about on the floor, or words to that effect. There is no merit in that submission. The evidence was clear. The injuries were sustained while the complainer was being assaulted by the appellant, and were a direct consequence of the assault. There was no need for the libel to be amended in the manner suggested.

[9] We are not therefore persuaded that the jury's verdict was inconsistent or perverse. The appeal is refused.