

## ATTORNEY GENERAL

-v-

SMITH

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BAILIFF: We are going to dismiss the appeal, but I want to say several things. Firstly, we commend the comprehensive way in which you, Mr. Le Cornu, put the case for the appellant, and we have certainly considered every matter which you put. A number of those matters certainly were very worthy of consideration, and we have considered them most carefully. We are satisfied that the Inferior Number did clearly have before it all the factors which it ought to have had. I except, of course, the question of Miss McCulloch's letter, that was not before the Court, but otherwise we are satisfied that the Inferior Number did understand, fully-understand, the conflict between the two versions of what had happened, by the complainant on the one hand and the appellant on the other. Of course it has to be accepted that if a defendant wishes to appear on his own behalf he may not be as eloquent as counsel; but as I said this morning, whether wisely or not, the law has given an appellant the right to appear for himself. I think it is often very unwise for him to exercise his right to do so, but if he wishes to do so, he does so. He may not be as eloquent as Counsel would be. But I agree that we have had to consider whether in fact, by reason of the appellant appearing for himself and not through Counsel, the Inferior Number was not in possession of all the factors, in particular of the conflict of evidence; and we believe that they were. We are quite satisfied of that, not only in what Smith himself said but also in what the Attorney General said, and of course through the reports. For example, in the psychiatric report it is clear what the case for Smith was. We do not have any doubt on that score.

Turning, therefore, to the facts - and it is the facts that we have to decide about before we can go on to consider whether the sentence of the Inferior Number was manifestly excessive - because obviously it was not wrong in principle, but was it manifestly excessive - going on, therefore, to consider the facts, we assume that the Inferior Number must have found, because we certainly have found, that there really was no reason for the Inferior Number to accept the view that Smith believed that in some way his entry onto the boat would be welcomed. We think the Inferior Number

was perfectly entitled to take the view that he had no reason to think that. We certainly ourselves take that view, and we must assume that they did. The very real distress of the victim, noticed by two men and by the Police, suggests that this was not so; her refusal to make a cup of coffee suggests that this was not so; the violence - whatever that degree of violence was, but there was some violence - suggests that that was not so. There simply is no evidence to suggest otherwise. And Smith must have known this before he actually entered the cabin; he was in effect lawfully trespassing into somebody's home. e.

Secondly, we are satisfied that the Inferior Number was entitled to think, and we assume they may have thought that Smith was at some stage holding a knife. Now we cannot be sure whether the Inferior Number came to that view. They may have considered that it was not necessary for them to come to that view. But what I can say is that this Court, had it been sitting, would have come to the view that at some stage Smith was holding a knife. And we would have come to that view because of the transcript of the examination and cross-examination of Det. Sgt. Riseborough, where it is quite clear that there had been conceded by experienced Counsel on behalf of Smith, at the Police Court, that he was at some stage, holding a knife.

And if in fact that was contrary to Smith's instructions, we cannot understand why Smith did not immediately correct his Counsel. We believe, as I say, that the Inferior Number was entitled to take the view that a knife was being held at some stage, even if it was not being held against the back of the girl as the girl claimed. And that being so, that puts an ugly interpretation on what happened. And of course, the fact that we believe that he was holding a knife is supported, to some extent, by the admitted conversation about the rape case in Scotland, where a very large number of stitches had to be inserted as a result of the bad wounds inflicted.

Again, and this is not denied, there was a handling of this girl, more than once, indecently - very indecently - in the knowledge that she objected, and a persistence in the knowledge that she objected. And there is no doubt in our minds - and the Inferior Number was perfectly entitled to come to this view - that the force used, although it did not procure much in the way of bruises, nevertheless the force used was sufficient to cause a brassiere to break.

And I think at this stage I should say this, because the Court feels very strongly on this, and the Inferior Number no doubt felt strongly too. It simply is not going to be tolerated by this

Court, that men who assault, or indecently assault, girls, should then come to this Court and say "Ah, well, I thought that she was only playing hard to get". This Court is not going to accept that as a matter of mitigation at all. If a girl objects, a man must stop. If a man does not stop, it is no good his coming to this Court and saying "Ah, well, I thought I could overcome her resistance because she was only playing hard to get". That is a view which we take very strongly, and we believe the Inferior Number was entitled to take that view too.

There were references to the expression of a view by Smith himself, he talked about the standards of morality being different today from twenty years ago. Well, as far as this Court is concerned they are not, when it comes to this sort of incident. And there was also a reference, I think, in the psychiatric report to the expression of a view by Smith that by the standards of culture in which he lived the whole transaction was common-place and trivial. Well, again, if that is a view which he really does take then all I can say is that he is going to have a very nasty shock in future if he continues to do this sort of thing. Certainly this Court is not going to accept that what happened here was common-place and trivial. It was a very serious matter indeed, and if he does not think it was serious then, as I say, he has got a very unpleasant future ahead.

Therefore, the Inferior Number was entitled to base its sentence on the facts that Smith, quite wrongly, entered into this boat without any encouragement whatsoever; that at some stage he held a knife, and he could only have held it to cause fear or intimidation or fright; that he handled this girl very indecently and persisted when she made it clear that she was frightened and objected; the force was sufficient to make the brassiere break, and the effect of it all was to cause her very considerable and genuine distress. Now in those circumstances this Court can see nothing wrong whatsoever in a sentence of eighteen months imprisonment.

The only new matter is the letter from the present girlfriend of Smith: it is a very good letter, but we incline to the view expressed by the Attorney General, indeed, I think it is the only view one can take, that whilst we think that Smith is a very lucky man to have such a person writing a letter on his behalf, at the same time it makes his actions all the more inexplicable. It certainly does not in any way excuse them: rather it tends to suggest that there was no excuse whatsoever for this very serious indecent assault. We can

see no reason whatsoever to hold that this sentence of eighteen months imprisonment was in any way manifestly excessive. And so that the appeal is dismissed.