

COURT OF APPEAL

23rd January, 1989

Before: Sir Charles Frossard, (President)
R.D. Harman, Esq., Q.C., and
L.J. Blom-Cooper, Esq., Q.C.

The Attorney General

- v -

Gary John Barnes

Application for leave to appeal against
sentence of 5 years' imprisonment
on Count of Grave and Criminal Assault.

The Attorney General for the Crown
Advocate G.R. Boxall for the Applicant.

JUDGMENT

MR. HARMAN: On the 25th April, 1988, this applicant appeared before the Deputy Bailiff and a Jury of the Royal Court charged in an indictment containing two counts to which he pleaded not guilty. Count 1 charged him that between the 10th and 11th July, 1987, at a hotel in St. Helier, he committed a grave and criminal assault on
W , who was aged five.

He now, following the dismissal of an application for leave to appeal against both conviction and sentence by the Bailiff in June of last year, makes application to this Court for leave to appeal against his sentence of five years' imprisonment.

This, in our opinion, was a dreadful case. It is submitted to us now by Mr. Boxall that the sentence was manifestly excessive, having regard to the nature of the injuries, although not, it would seem, on account of the circumstances and that a substantial reduction in that sentence would be just and appropriate.

One feature of the offence was of course the age of the child. Another was the circumstances in which the assault was committed, namely in that child's bedroom, or rather the bedroom of her parents where she was sleeping in their temporary absence from the hotel, where her father is the licensee.

The applicant went back in the middle of the night, in an intoxicated state, to that hotel which he had visited in the afternoon. Somehow, and he has never explained how, he got into the bedroom where the child was asleep. He plainly attacked her. He must have attacked her in a sexual way, because of the injuries to her private parts. She was examined in the small hours of the morning by a Dr. Noel. She was examined again in the afternoon. She was still bleeding from her private parts in the afternoon and she afterwards had a septic infection which required antibiotics. That was eleven days afterwards.

It is suggested to us that the evidence with regard to the petechii is not necessarily consistent with what was suggested at the trial.

The fact of the matter is that this was, on any view, a grave case and in the high bracket of a case of grave and criminal assault. We think that the sentence imposed by the Court was clearly just and right.

We therefore dismiss the application for leave to appeal.

Authorities

Thomas: "Principles of Sentencing" (2nd Edition): p.95: Gunn (25..4.72:
4/B/71).

A.G. -v- Grogan: 13 Dec: '83, J.J. unreported.

