

DECIDED
30 November 1977

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0 (original Accused) versus TEE -REPJBrIC RSIDENT (Original Prosecutor)
CHARGE: Assaulting causing actual bodily harm s 241 of the Penal Code Cap. 164 JJDCEIJJHT LUGA1INGIEA, J. The appellant fought with a barmaid in a bar at C-ei'ta. Being aggrieved, he reported the incident at the Police Station the same night, It seems that the complainant woman was picked up or called to the Police Station two days later and questioned. She naturally represented that the appellant had assaulted her unlawfully and the police turned on the appellant and charged him with assault occasioning actual bodily harm. His own report was swept under the carpet. He was convicted and sentenced to nine months' imprisonment with an order for compensation. He then appealed against conviction and sentence In convicting the appellant the trial magistrate relied on the evidence of D/Cpl Angeline (P7 2) and Deonatus Mayaya (P 3) who found the appellant on top of the complainant. None of these witnesses however, saw the start of the fight or knew the reason therefor. I am therefore inclined to the defence story that the appellant declined the complainant's offer to open his bottle of beer and got it opened by another woman and that this annoyed the complainant who then uttered obscenities, extolling her genital, poured the appellant a beer and then grabbed the appellant by the neck and tore his shirt, whereupon the appellant tackled her and landed her on the floor. In effect the complainant said the same thing although she naturally apportioned the first insults to the appellant. In these circumstances it would have been fair to speak of a fight rather than an assault. Had the appellant been the aggressor it would not have taken the complainant two days to complain; and only after she had been arrested or summoned to the Police Station. It shows that she was not convinced of her innocence. This also explains why I/Op1 Ligeliroyer took any steps against the appellant although he witnessed part of the fight. In all fairness, therefore, both combatants should have been charged with affray contrary to s. 87 of the Penal Code rather than pick on the appellant alone and, ironically, after he had lodged a complaint I am therefore not satisfied that the assault was not justified for it appears to have been a commensurate reaction to the complainant's attack. Even if the conviction could be sustained, the sentence was manifestly on the high side There is no reason why the

appellant was not given the option of a fine. Hy brother who admitted this apoa similarly remark :d tht the seritnce bordered on the vindictive., It definitely appears so.. As was oubmitted by learned couneel for the Reptiblic, Hr. Rwechungura, th±s'viaa a proper case for canditioual; discharge with a token compensation., .. . 2 On acc6u, q.f. tie aecioiT1 I iavc eçDc I S11cYN the appc-.l in its e ib.rety, qun tie coivicticxi cna sc side the sentarce and ordeI for eb atioi T1c ppIJnt shoi1c1 bc iinediate1y freca unless furtcZ' acmcCially 1- 1d. 1 •:_ MVtAi ZA • V LUGIL.II' RA, 30T1 1JOvELBCL1977., JUDGE• 4 S..

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