A

ATTORNEY-GENERAL

v.

SAMBHU PRASAD

B

[SUPREME COURT, 1967 (Mills-Owens C.J.), 10th, 27th February]

Appellate Jurisdiction

Criminal law—appeal—appeal by Crown against acquittal in Magistrate's Court—no question of law involved—principles to be applied by appellate court.

C *Criminal law—evidence and proof—appeal by Crown involving only questions of fact—principles to be applied by appellate court.*

Where an appeal is brought by the Crown against the acquittal of an accused person on grounds which do not involve a point of law the principles which are applied in the determination of civil appeals on questions of fact from a judge sitting alone will be applied by the appellate

D court with greater force.

Cases referred to: *Yuill v. Yuill* [1954] P.15; [1945] 1 All E.R. 183: *Watt v. Thomas* [1947] A.C.484; [1947] 1 All E.R.582: *Hontestroom SS. v. Sagaporack SS.* [1927] A.C.37; 136 L.T.33.

Appeal by Crown against the acquittal of the respondent in the Magis-

E trate's Court.

J. R. Reddy for the appellant.

F. M. K. Sherani for the respondent.

The facts sufficiently appear from the judgment.

F MILLS-OWENS C.J.: [27th February 1967]—

This is an appeal by the Attorney-General against the acquittal of the respondent, one of three accused persons jointly charged with unlawfully doing grievous harm to the complainant. All three were acquitted on a trial before the Magistrate's Court. The appeal is in respect of the respondent's acquittal only. The main injury was the alleged kicking of the

G complainant in the eye by the respondent, wearing sharp pointed shoes. The appeal rests entirely on the matter of evaluation of the evidence, in particular the credibility of the alleged witnesses to the assault, namely the complainant, his companion and other alleged eyewitnesses. The Magistrate expressed himself as being unable to place reliance on them, and as being left with a doubt. The appeal is based largely on the argument that as the medical evidence gave credence or support to the form of assault alleged by those witnesses they were in effect thereby corro-

H borated. There were other features in the appeal, but substantially of a peripheral nature, directed to independent evidence that the complainant was not drunk, as the defence alleged he was, and, more importantly, that the respondent was in fact wearing sharp pointed shoes which he denied.

It would certainly appear, on a mere reading of the record, that there was a strong case for the prosecution, against the respondent in particular. On the face of the record one would gain the firm impression that the defence story that the injuries were caused to the complainant by a drunken fall was a concocted story. But quite clearly the whole case for the prosecution depended on the credibility of the complainant and other witnesses to the alleged assault. The medical evidence could not be taken as establishing beyond reasonable doubt that the injuries to the complainant could not have been caused by some means other than the alleged assault. The so-called independent evidence of the wearing of sharp-pointed shoes by the respondent related to a period some hours earlier, and again depended on the credibility of the particular witness. Whether or not the complainant was in a drunken state, in which he might have fallen and thus caused his injuries himself, also depended on the oral evidence of witnesses. There was no point of indisputable, or accepted, fact that of itself corroborated the case for the prosecution.

Naturally there is no English authority on the question of the approach to be made by an appellate court where an appeal is brought against an acquittal otherwise than on a point of law. In these circumstances, as it appears to me, resort must be had to the authorities dealing with civil appeals from a judge sitting alone as a tribunal of fact as well as law. For the purpose of convenience I quote from the Annual Practice for 1965 at p.1653:

> "Not to have seen the witnesses puts appellate judges in a permanent position of disadvantage against the trial judge, and unless it can be shown that he has failed to use or has palpably misused his advantage — for example has failed to observe inconsistencies or indisputable fact or material probabilities (*Yuill v. Yuill* [1945] P.15; *Watt v. Thomas* [1947] A.C.484) — the higher court ought not to take the responsibility of reversing conclusions so arrived at merely as the result of their own comparisons and criticisms of the witnesses, and of their own view of the probabilities of the case (per Lord Sumner in *SS. Hontestroom v. SS. Sagaporack* [1927] A.C. at p.47)."

In a criminal case obviously these observations must be taken to apply with greater force. It is unfortunate that the person or persons responsible for the complainant's loss of his eye should go unpunished, but for the reasons I have given the appeal cannot possibly succeed and it is accordingly dismissed.

Appeal dismissed.