

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. 74 of 2003

BETWEEN:

THE QUEEN

And

FELIX DOMINIQUE

Appearances:

Mrs. Victoria Charles-Clarke, Director of Public Prosecutions (Ag) for the Crown
Accused in person

2004: March 16
March 17

JUDGMENT ON SENTENCING

1. **HARIPRASHAD-CHARLES J:** Briefly, the facts of this case are that on Saturday, 18th May 2002, Nancy Degazon, who lives with her grandmother in Ciceron was going to her aunt's house which was about 50 feet from her home. She had to pass the Accused' home to get to her aunt's home. The Accused was standing at the door of his house. He pulled her inside his house, locked the door with a padlock from outside and jumped through a window to get into the house. He then closed the window and put Nancy to lie down on a bed. He pulled down her panty, unzipped his pants and pushed his penis in her vagina and proceeded to have sexual intercourse with her. After he was finished, he went and sat in a corner. He called her to come and sit down on his laps. She refused to go. He then took her and put her to sit on his laps. Her uncle, Linus was calling for her. She did not answer. Linus passed at the back of the Accused' house and peeped through a hole. There he saw

the Accused sitting on the floor of the house and Nancy sitting on top of him. Linus called out to Nancy to come outside. He saw her stood up and pulled her pants which were under her "bam-bam." When Nancy came outside, Linus interrogated her and she said that the Accused pulled her inside and he was 'bulling' her. Linus spoke to the Accused and told him "that a big man like you, that is what you doing to my niece." The Accused did not answer.

2. Later that said afternoon, Nancy was taken to the Criminal Investigations Department and then to Victoria Hospital. At Victoria Hospital, Dr. Andre Edwards examined her and found an abrasion on each minor lip on the inside of the vagina with some bleeding. He found that there was no hymen. Among other things, swabs of the vagina, anus and throat were collected and subsequently sent to Mr. Louis Murray, the Forensic Scientist at the Ezra Long Laboratory at Victoria Hospital for testing. On the vaginal swab, he found spermatozoa at the score of 1+ on the scale of 0 – 4 +. Spermatozoa was not observed on the anal swab or on the salivary swab. He opined that the presence of spermatozoa indicated that the vagina was exposed to seminal fluid but he was unable to identify the source of the spermatozoa. He attributes this to the lack of facilities including DNA at his Laboratory.
3. The Police conducted more investigations into this matter and the Accused was formally arrested and charged with unlawful carnal knowledge. He pleaded not guilty to the offences of unlawful carnal knowledge and indecency with child. A Jury was empanelled to hear the case.
4. After an hour of deliberation, a Jury returned a verdict of guilty of unlawful carnal knowledge. The Accused is now before the court for sentencing.

Sentencing

5. Section 215 of the Criminal Code of Saint Lucia states as follows:

“Whoever unlawfully and carnally knows any female under the age of 13 years of age, whether with or without her consent, is liable indictably to imprisonment for life, and to flogging.”

6. So the penalty for an offence of this magnitude is ‘imprisonment for life and flogging.’
7. The judicial pronouncements by the Court of Appeal on 17th September and 31st October 2001 in the consolidated criminal cases of *Winston Joseph v The Queen*¹, *Benedict Charles v The Queen*² and *Glenroy Sean Victor v the Queen*³ provide the guidelines for sentencing in sexual offences cases with the intention of promoting greater consistency in the approach to sentencing. At page 6 of the judgment, Sir Dennis Byron, Chief Justice stated:

“The Court has to adopt a sentencing policy which is aimed at combating the growing prevalence of these crimes in our country, Saint Lucia while at the same time not denying persons committing these crimes the application of the basic human rights prescribed by our constitution.”

8. At paragraph 13 of that same page, Sir Dennis continues:

“Starting at a minimum where the girl is not far from her 13th birthday and there are no aggravating factors at 8 years and upwards. It scarcely needs to be said the younger the girl when the sexual approach commences the more serious the crime. The existence of a maximum sentence of life imprisonment for this offence would allow a rapid escalation of the term of imprisonment as the age of the complainant decreases.”

9. However, the actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors. But Sir Dennis warned at page 8 of the judgment:

“It is not enough for a court merely to identify the presence of aggravating and mitigating factors when sentencing. A sentencing court must embark upon an evaluative process. It must weigh the mitigating and aggravating factors. If the aggravating factors are outweighed by the mitigating factors then the tendency must

¹ Criminal Appeal No. 4 of 2000 (Saint Lucia) unreported

² Criminal Appeal No. 8 of 2000 (Saint Lucia) unreported

³ Criminal Appeal No. 7 of 2000 (Saint Lucia) unreported

be toward a lower sentence. If however, the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher."

10. These guidelines were re-affirmed in January of this year in yet another Saint Lucian case of *Gregory Burton v The Queen*.⁴

Aggravating Factors

11. The sole aggravating factor is that the victim, Nancy Degazon is really very young. She was only 9 years old at the date of the commission of the offence. In fact, she had just turned nine.

Mitigating Factors

12. The antecedent of the Accused shows a clean criminal record. He is a first offender before the Court.
13. The Accused has no wife, girlfriend or children. He lives alone in a wooden house at Ciceron very close to Nancy's home. He knows her well as he is her mother's friend. He is a gardener and seems to live a quiet life.
14. This is a case where the mitigating factor equalizes the aggravating factor. However, the appropriateness of sentence will have to reflect the culpability of the Accused by taking into consideration the seriousness of the offence and also the growing prevalence of these crimes.

Conclusion

15. The rapid upward surge in cases of a sexual nature involving really young girls cannot be underestimated and ignored. These crimes are a menace to society. Women in particular are clamouring for the imposition of stiffer penalties by the courts. They are calling for a return of the cat o' nine-tails. But, the court must follow established guidelines when sentencing an accused person. This does not in any way, suggest that the court is insensitive to public outcry.

⁴ (Criminal Appeal No. 1 of 2002) (unreported)

16. In determining the appropriateness of sentence to be imposed on this Accused, I would restate the pronouncements of Sir Dennis in the trilogy of cases already cited. At pages 6 - 7 of the judgment, he said:

" It scarcely needs to be said the younger the girl when the sexual approach commences the more serious the crime. The existence of a maximum sentence of life imprisonment for this offence would allow a rapid escalation of the term of imprisonment as the age of the complainant decreases."

17. Having taken all factors into consideration including the fact that Nancy must have reposed considerable trust and confidence in the Accused who was friendly to her mother, the sentence of this court is that the Accused, Felix Dominique be incarcerated for a period of 12 years with hard labour.

Indra Hariprashad-Charles

High Court Judge

