

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

SAINT LUCIA

CRIMINAL CASE NO. SLUHCR 2010/0012

BETWEEN:

THE QUEEN

Claimant

AND

ELWIN LANSIQUOT

Defendant

Appearances:

Mr. Alfred Alcide, Counsel for the Defendant
Ms. Tina Mensah, Crown Counsel for the Crown

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2013: March 22
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JUDGMENT ON SENTENCING

[1]. **CUMBERBATCH, J.:** On Saturday 9th September, 2006 Rachael Rivera (‘the virtual complainant), together with the defendant and one Toni Carpinelli, the defendant’s girlfriend travelled to St. Lucia from New York, USA. This trip which was arranged and financed by the defendant was fraught with problems from the time the parties arrived on the island. After managing to secure accommodation for the virtual complainant and his girlfriend in the village of Canaries, the defendant took them on what was supposed to be a sightseeing tour.

- [2]. On the morning of the 12th September, 2006 the party left their accommodations to visit a waterfall. Because of the nature of the topography they could not be taken there by vehicle hence after going a certain distance by taxi, they were left to continue on foot to the falls. After walking for about half an hour through rough and hilly terrain the virtual complainant and her friend Toni asked the defendant to turn back indicating that they were not feeling well and did not want to continue the trip. The defendant refused and became angry and agitated. The defendant then took a machete from a knap sack which he had with him and told the virtual complainant and Toni that he was an expert at handling a machete and could chop off their heads and leave their bodies to rot.
- [3]. Whilst still armed with the machete the defendant told Toni that he will have sex with her friend the virtual complainant. The virtual complainant became very afraid and pleaded with the defendant for her life and not to hurt her. The defendant physically assaulted the virtual complainant and thereafter removed all of her clothing, performed oral sex on her and inserted his fingers then his penis in her vagina. All this time the virtual complainant was in tears and pleading with the defendant to stop. After the defendant had sex with the virtual complainant for about ten (10) minutes he stopped and began to masturbate. When he was finished he threw the virtual complainant's clothes to her and insisted on continuing on the trip to visit the waterfalls. They walked through the bushes until nightfall and ended up spending the night in the bushes. On the following day they were met by some villagers who rescued them and offered them accommodation at their house. They eventually learnt that the police were looking for them and after meeting with members of the Royal Saint Lucia Police Force, the virtual complainant and Toni reported what had occurred and the defendant was taken into custody.

- [4]. The virtual complainant was medically examined and was found to have sustained multiple bruises to her left upper back, right forearm, upper left buttock, hips thighs, ankles and abrasions to her right calf and left upper arm. She also suffered bruises to her pelvic region and perineum.
- [5]. On the 19th September, 2006 the defendant was charged with the offence of rape contrary to section 123(1) (a) of the Criminal Code and a preliminary inquiry was held. On the 9th July, 2008 the defendant was committed to stand trial in the High Court for the offence of rape and on the 27th August, 2010 he was indicted by the Director of Public Prosecutions for the offences of rape, unlawful sexual connection and gross indecency.
- [6]. At his arraignment, the defendant pleaded not guilty and after case management applications including one for the virtual complainant's testimony to be done by way of video link on 14th May, 2012 the defendant's trial was set to begin. On that date and after a jury was empanelled the defendant changed his plea to one of guilty to all counts of the indictment.

[7]. **THE HEARING**

After the defendant was allocuted, the court ordered a pre-sentence report and psychiatric report of the defendant be produced. The court, at the request of defence counsel Mr. Alcide, requested a psychosocial assessment of the defendant be conducted.

- [8]. The pre-sentence report painted a picture of the defendant as a confused and misguided person who secured friendships with the opposite sex through financial inducements. He openly boasted of his promiscuity, his sexual prowess and his preference for Caucasian women. Though he expressed remorse for what he did to the virtual complainant, the probation officer stated that the defendant was nonplussed that the virtual complainant denied their sexual involvement as he was of the view that she accompanied he and his girlfriend as a threesome on vacation in St. Lucia.

- [9]. The defendant's personality is summed up by the probation officer in the following words of the pre-sentence report:

“However, Ewin Lansiquot presents to the world not only an attractive physical structure but also, his sensuality. In this regard it is the defendant's salaciousness which is being questioned especially in the consistency of relationships with white females. Elwin's sublimity has been undoubtedly matched as evidenced with the ever constantly changing number of young Caucasian women being presented at various times and periods as girlfriends or paramours, more particularly on his holidays or escapades to St. Lucia. It does appear that there have been much misguided assumptions in the defendant's psyche, to believe that in giving materially, is akin to ownership, possession, sexual reciprocity and rights of passage to sexual intercourse.....

In general, Elwin Lansiquot's sexual behaviour towards females in particular, white girls have been a continuing source of concern and trepidation to all, inclusive of close family members and community residents alike”.

- [10]. The collective concern of residents of the community and close family members is that the defendant is in need of prompt treatment for his obvious inappropriate sexual conduct which affects his behavior towards females in particular those of Caucasian race, before his re-integration to the society.

- [11]. The victim impact statement of the pre-sentence report discloses that the virtual complainant described the character of the defendant as being deceitful, disgusting, filthy and a rapist. She stated that during her ordeal she experienced what it was like to be violated. She has as a result of

her ordeal suffered psychological trauma and on her return to the United States of America she has been for the past three (3) years been undergoing therapy in the form of counseling.

[12]. Mr. Alcide for the defendant in his written submissions has urged the court to impose a sentence which is reasonable having regard to the circumstances of this case and the personal circumstances of the defendant. He considered the following to be the mitigating factors herein:

1. The age of the defendant and his employment history;
2. The defendant's previous good character; and the lack of an antecedents;
3. The guilty plea eventually entered by the defendant;
4. The problems highlighted in both the probation report and the psychosocial report;
5. The defendant's cooperation with the police during the investigation of the matter and the probation officer in preparing this report.

[13]. Defence counsel submitted that though he appreciates that a custodial sentence would be justified in this case, the mitigating factors aforesaid should enable the court to impose a lenient sentence. In this regard, counsel also urged the court to take notice of the special personal circumstances of the defendant as outlined in the pre-sentence report and the psychosocial assessment.

[14]. Mr. Alcide further contends that his client is in denial and does not appreciate the gravity of the offences which he has committed hence the fact that he has not expressed any genuine remorse. In this regard, counsel referred to the opinions expressed in the psychiatric and psychosocial reports. He accepts the aggravating factors stated by crown counsel and submits that the mitigating factors outweigh the aggravating ones.

[15]. Ms. Mensah for the crown submits the following to be the aggravating and mitigating factors herein:

1. The acts perpetrated by the defendant were pre meditated. The witness Milton Henry asked the defendant numerous times as to what time he should return to the waterfall to pick them up and the defendant did not want Milton Henry to return;
2. Violence was used on the virtual complainant;
3. The virtual complainant was threatened with a machete;
4. The virtual complainant has suffered psychologically from the incident – the pre-sentence report states that the virtual complainant has suffered psychologically and has been receiving counseling for the past three (3) years;
5. The virtual complainant trusted the defendant as he was her friend's boyfriend and would not have gone on the trip to St. Lucia and to Canaries waterfall had there not been a relationship of trust;
6. The defendant has not expressed genuine remorse for his actions. Further, the defendant seems to be maintaining that there was this prior sexual relationship with the virtual complainant.

[16]. Crown counsel contends that based on the opinions and statements in the pre-sentence report and psychiatric reports, the defendant has an unhealthy fascination with women. She submits that the defendant needs help to develop more socially acceptable relationships with women to assist with his rehabilitative process and prevent re-offending.

[17]. **THE LAW**

Both counsel in their written submissions have provided the court with authorities containing the principles of the relevant law on sentencing which they have invited the court to apply. The court has given due consideration to counsel's submissions.

[18]. The court has considered the dictum of Sir Dennis Byron on sentencing in sexual offences in the decision of *Winston Joseph v Regina* to wit:

“The actual sentence impose will depend upon the existence and evaluation of aggravating and mitigating factors, the more common of which I attempt to list below. It is not enough for the 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 be toward a lower sentence. If however the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher.”

[19]. Sir Dennis went on to set out matters which may be considered to be aggravating and mitigating factors to wit:

AGGRAVATING FACTORS

- i. If the girl has suffered physically or psychologically from the sexual assault;
- ii. If it has been accompanied by perversions abhorrent to the girl, e.g. buggery or fellatio;
- iii. Violence is used over and above the force necessary to commit the offence;

- iv. The offence has been frequently repeated;
- v. The defendant has previous convictions for serious offences of a violent or sexual kind;
- vi. The victim has become pregnant as a result of the crime;
- vii. The victim is either very young or very old.

MITIGATING FACTORS

- i A plea of guilty should be met by an appropriate discount, depending on the usual considerations, that is to say how promptly he confessed and the degree of contrition and other relevant factors;
- ii Where it was consensual, if it seems that there was a genuine affection on the part of the defendant rather than the intention to use the girl simply as an outlet for sexual inclinations;
- iii Where the girl made deliberate attempts at seduction;
- iv Where the defendant is a first offender and/or is a youth.

[20]. The Sentencing Guidelines for Sexual Offences as issued by the Sentencing Advisory Panel 2003 lists the following factors to be considered;

- (a) Violation of the victim's sexual anatomy;
- (b) Exploitation of a vulnerable victim;
- (c) Embarrassment, distress or humiliation of the victim;
- (d) Infringement of standards of socially accepted behavior;
- (e) The physical/psychological harm caused by non-consensual offences;

- (f) The relationship between the victim and offender;
- (g) Abuse of a position of trust.

[21]. I will now apply these principles and guidelines to the case at bar. I find the following to be the aggravating and mitigating factors in this case:

AGGRAVATING FACTORS

1. The defendant's repeated violation of the victim's sexual anatomy;
2. The defendant's abuse of the position of trust. The victim trusted the defendant as the boyfriend of her good friend and felt she would be safe in his company;
3. The defendant's use of violence against the virtual complainant as is evidenced by the injuries suffered by her;
4. The use of a machete by the defendant to threaten the virtual complainant;
5. The psychological effect of the acts of rape on the victim as is evidenced in the pre-sentence report;
6. The absence of remorse by the defendant;
7. The defendant planned and premeditated the commission of these offences.

MITIGATING FACTORS

1. The hitherto clean criminal record of the defendant;
2. The defendant's guilty plea.

[22]. The court will consider and apply the classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation as laid down by Lawton LJ in R v Sergeant and approved by Sir Dennis Byron CJ in Desmond Baptiste et al v Regina.

RETRIBUTION

The defendant seemed bent on indulging in a simultaneous sexual arrangement commonly called a threesome with the virtual complainant and his girlfriend whilst in St. Lucia. Thus his assaults and subsequent rape and sexual violation of the virtual complainant was planned and premeditated. The court must of necessity show its abhorrence by the sentence it imposes for this kind of conduct aptly described by the virtual complainant in the pre-sentence report as filthy and disgusting. There can be no gainsaying of the fact that the virtual complainant who came here at the invitation of the defendant to experience the beauty of his homeland was the victim of a horrendous ordeal.

DETERRENCE

The court has observed the fears expressed in the pre-sentence report and psychological assessment of the likelihood of the defendant re-offending to fulfill his misguided fantasies. The court is also aware of the undesirable increase of sexual offences some of them quite heinous in this society.

Hence the court must impose a suitable sentence to deter the defendant and those members of the society who plan on committing sexual offences from doing so.

PREVENTION

The psychosocial report at page thirteen (13) states thus on the question of the defendant's prospects for recidivism:

"Elwin Lansiquot's prospects or recidivism appear moderate to high as calculated using Static-99 Sex Offender Risk Assessment, in conjunction with personal observation and conclusions based on training and experience.....The safety and

welfare of community members is of utmost importance as regards a convicted felon, especially one with a history of sexual assault. Still one cannot give up on the prospects of his restoration."

The court has considered this unchallenged expert opinion aforesaid and has concluded that there is a possibility of the defendant re-offending hence he should be sentenced to an appropriate period of imprisonment to ensure his restoration.

REHABILITATION

It is common ground that the defendant is in need of professional help to rehabilitate him for his re-entry to society. The psychologist has outlined a course of treatment for him to address his sexual problems. However, he laments the unavailability of a stable home environment at his disposal as his siblings and surviving parent all reside in the United States of America. Moreover, it does not appear from the pre-sentence report that persons in the community are ready willing and prepared to support him.

[23]. Mr. Fearon opines that any significant change or appropriate behavioural modification is dependent on the defendant's responsiveness and amenability to the treatment outlined for him and that his road to recovery and rehabilitation will be a long and arduous one.

[24]. I have evaluated the aggravating and mitigating factors in light of the circumstances of this case and the relevant principles of law and find that the aggravating factors significantly outweigh the mitigating ones.

[25]. **SENTENCE**

The Criminal Code provides inter alia that anyone convicted of the offence of rape contrary to section 123(1) (a) is liable to a sentence of life imprisonment. The Code provides a maximum sentence of fourteen (14) years imprisonment for the offence of unlawful sexual connection while the maximum sentence for the offence of gross indecency contrary to section 132 of the Code is ten (10) years imprisonment.

[26]. I have considered the aggravating and mitigating factors herein and the sentencing guidelines as outlined in the case of *Winston Joseph v Regina*. I have also taken into consideration the peculiar facts and circumstances of the defendant's personality together with the facts of this case which I find to be horrendous and heinous.

[27]. The defendant subjected the virtual complainant to a nightmare using force over and above what was necessary to commit rape as is evidenced by the injuries found on her. What makes the circumstances of this case even more egregious is that the virtual complainant being in a foreign country was at the mercy of the defendant at whose invitation she came here only to be the victim of his misguided sexual fantasy.

[28]. The report of the psychologist paints a bleak picture for the speedy recovery of the defendant. Indeed his prognosis aforesaid is that the journey will be a long and arduous one. Moreover, the psychiatrist has recommended that the defendant be treated by way of psychotherapy for what he described as depressive disorder. I have also considered the real likelihood of the defendant re-offending with similarly devastating effects if his rehabilitation is not satisfactorily completed before his re-integration to the society.

[29]. In *R v Loff James Lennon Henry L.J.* opined thus:

“It is not the purpose of the judgment to seek to lay down guidelines for sentencing in cases of indecent assault. It is never easy to sentence in such cases. The circumstances of each case will vary greatly....What the judge must do, as I see it, is to tailor the sentence to the particular facts of the case before the court. In most cases, the personal circumstances of the offender would normally take second place behind the plain duty of the court to protect the victims of sexual attacks and to reflect the clear intention of Parliament that offences of this kind should be met with greater severity than may have been the case in former years when the position of the victim may not have been so clearly focused in the public eye”.

[30]. In *Roger Naitran et al v Regina Baptiste* JA cited the following dictum of the Lord Chief Justice in *Millberry v Regina* (2002) EWCA Crim. 2891 at paragraph 34:

“Before concluding our general guidance with regard to sentencing on rape and turning to the cases of the individual appellants, we would emphasise that guidelines such as we have set out above can produce sentences which are inappropriately high or inappropriately low if sentencers adopt a mechanistic approach to the guidelines. It is essential that, having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances... Guideline judgments are intended to assist the judge arrive at the correct sentence. They do not purport to identify the correct sentence. Doing so is the task of the trial judge.”

[31]. Baptiste JA having cited the aforesaid passage went on to opine thus:

"I fully adopt the above quotation from the Lord Chief Justice. Sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence which is appropriate. It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence. The existence of a particularly powerful personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish reasons for so departing.

[32]. I have considered the dictum of Henry LJ and Baptiste JA aforesaid and the extraordinary circumstances of this case and the defendant herein before stated at paragraphs 27 – 29. Here I have concluded that a departure from the guidelines in *Winston Joseph v Regina* is warranted herein.

[33]. I have considered the mitigating factors herein namely the defendant's clean criminal record and the guilty plea. Though he did not offer a plea of guilty at the earliest possible opportunity and did so on the morning of his trial, I shall credit him for preventing the virtual complainant from reliving the horrendous experiences of the 12th September, 2006.

- [34]. In the circumstances, for the offence of rape, I find a benchmark of eighteen (18) years imprisonment to be appropriate. I will deduct three (3) years for his guilty plea and three (3) years for the delay in bringing his trial to a stage of finality. I find for the offence of unlawful sexual connection a benchmark of ten (10) years imprisonment to be appropriate. I will deduct two (2) years for his guilty plea and two (2) years for delay. I find for the offence of gross indecency a benchmark of six (6) years imprisonment to be appropriate. I will deduct two (2) years for the guilty plea and two (2) years for the delay.
- [35]. Accordingly, the defendant is sentenced to twelve (12) years imprisonment for rape, six (6) years imprisonment for unlawful sexual connection and two (2) years imprisonment for gross indecency. These sentences shall run concurrently. The defendant will be credited for all time spent on remand whilst awaiting his trial. He shall receive the necessary counseling and psychotherapy as recommended by Mr. Fearon in the psychosocial assessment.


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FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE

