

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA

CASE ANUHCR 2019/0013

REGINA

V

NS

APPEARANCES

Mr Curtis Cornelius for the Crown.

Mr Michael Archibald for the defendant.

2019: JULY 11

SENTENCE

For incest

- 1 **Morley J:** NS falls to be sentenced for incest on his daughter SR¹ on 23.07.17, when she was aged eleven and he was aged 49. The count represents a specimen to reflect several occasions at around that same time.

- 2 Concerning the pleaded count, NS was an Antiguan police corporal, who returned home from work in the morning and went to bed. SR was visiting her father, as she lived elsewhere with her mother RB. Her stepmother BB left the house. SR entered NS' room to watch tv as it was the only room she could. At some point her father woke, he told her step-siblings TY and TA to

¹ Neither the defendant nor the child can be identified as to do so will identify the child who is entitled to anonymity.

play outside, (TY also being eleven), and he told SR to lock the front door. Then in the bedroom, while she was sitting on the bed, he hugged her with his right hand, kissed her on the lips, and pushed her panty to the right side so he could place his penis into her vagina. He did not use a condom. He was having sexual intercourse with her for about two minutes when TY saw through the window his father on top of SR, having sex, and reported this to his mother BB when she came home. NS made immediate admissions to his wife, saying *'I don't know how it happened'*, and then in police interview, *'I did it, I won't deny it'*, plus in Q&A said he had had sex with SR several times. On medical examination, SR had no intact hymen, and no injuries.

- 3 In the pre-sentence report by Garolyn Cornelius Hector, dated 27.06.19, concerning the interview for victim impact with SR, who wants one day to be a doctor, it was reported: *'The interview was emotional as many times SR burst into tears. She explained she has been wanting someone to trust to share her feelings with and that most times she pretends to be ok so she does not bother anyone or cause them undue worry...She said she was forced into having sex, that her father held her to the bed, that she blames herself for her father being in prison, that if no one found out it probably would have continued...She misses being with her step family. She struggles with her memories and emotions, and though she tries to forget, the memories continue to haunt her...when certain topics come up at school in the Home and Family Life Education classes she has to leave the class to go to the bathroom to cry. The feelings come up at the wrong time and she tries hard to control them... she gets very moody and a smile on her face does not mean she is happy.'*
- 4 Further in the same report, her mother RB explained: *'SR is lost, she cannot understand why this would have happened....she still wanted to visit her father...she has become aggressive ...and has written notes about missing her dad and wanting to see him. The mother is also very concerned because she has found notes around the house written by her daughter with statements saying she wants to kill herself.'* Moreover, on 10.07.19, as part of assessing the impact of this offending, I heard evidence from RB, who handed me a note she found in May 2019 SR had written, though an attempt had been made to destroy it, in which she wrote in painfully neat handwriting ten times the line *'I miss my dad, I feel like killing myself!!!!'* RB added the offending has had a life changing effect on SR, who is bullied and teased at school

as it has not been possible to keep it private in so small a community. Though it seems she is academically brilliant, she has become aggressive, she misses her father, and blames herself for his being in jail and that he had sex with her. She cries when told she will not see him again for a long time. Further NS has made no provision for SR since he went into custody despite remaining RB thinks on police half-pay, and she has had little support or counselling for SR from the authorities, while as her mother suffering the indignity of locals pointing their finger at her knowing what has happened.

5 As to NS, from the report, the offending has come as a shock to all who know him. He has sullied the good name of the Antigua police. He has expressed evident remorse and has been visibly tearful in court, where no one would come forward in court to speak for him as he had hoped and for which purpose there had been an adjournment of the sentence from 05.07.19. I have no doubt he thoroughly regrets his behavior and is astonished at himself. He pleaded guilty at the first opportunity and shall receive the full credit of one-third.

6 However, it needs to be understood by NS and by the wider community that inflicting sexual intercourse on his daughter several times at the age of eleven has had and will continue to have the most far-reaching deep-rooted psychological consequences for SR. In a very real sense, in the popular mind he raped her, even though the offending is charged as incest, and the court is mindful of the difference. Remember, she was only a little girl. She describes him holding her to the bed. She cannot be imagined to have consented to his actions, and in law being under 16 could not have done so. He has blighted her life. The effects of incest on a child are known from studies to be enormous². It will be a significant and destructive subconscious driver to her personality. She will likely distrust men, affecting many interactions she may have as an adult, quite probably keep this as a dark secret from her dearest, who may then never fully understand her in a loving relationship, her relations with her own children if so blessed will likely be affected, and the impact will probably take many decades to diminish, if ever.

7 This is very serious offending being the infliction of sexual intercourse on a child, and in breach of the most fundamental trust of all, namely where a daughter trusts a father to do right by her.

² See eg <https://www.psychiatrictimes.com/sexual-offenses/ramifications-incest>.

- 8 On Antigua & Barbuda, the maximum sentence for incest with a person under the age of 14, contrary to **s8(3) Sexual Offences Act 1995** is life imprisonment.
- 9 Passing a life sentence on Antigua would mean a full life sentence without release. There being a plea of guilty, such a sentence does not arise here, but there shall instead be a determinative sentence expressed as a specific period of imprisonment.
- 10 If 'life imprisonment' equates notionally to 30 years, in my judgment the starting point for this offence, which reflects several occasions of intercourse with his daughter aged only eleven, should be 75% of life, being 22.5 years. I recall in the sentence of EB passed on 02.05.17, where there was intercourse on incalculable occasions with his daughter aged 9-14, the starting point was just below 30 years, being 28 years. It seems correct therefore that in this case, where the daughter is older at the commencement and the offending limited as to its period, that 22.5 years is correct.
- 11 Turning to further features of the offence, it is an aggravating feature NS is a serving police officer, who has been expected to uphold the law and whose behavior has breached the trust of the police and community, so that I increase the sentence by 2.5 years to 25 years.
- 12 Turning to features of the offender, it is a mitigating feature he is of good character, now 51, never in trouble before, with evident remorse, and early admissions, so that this can reduce the sentence by a year, to 24 years. I allow this reduction notwithstanding he has been expected to be of good character to serve as a police officer, because his offending has not been specifically connected to his police standing.
- 13 Because he has pleaded guilty, at the earliest opportunity, he will receive full credit, meaning a reduction of one-third, so that the sentence reduces from 24 years to 16 years.
- 14 Time spent on remand shall count, to be calculated by the prison.
- 15 Concerning ancillary orders, mindful he has been receiving half-pay since his arrest in 2017 but has made no financial contribution to SR, mindful she is an exceptional student, while also

mindful no sum of money can ever make up for his behaviour, but nevertheless it may help her to become a doctor, I order that he shall arrange to pay \$40000ec to her in compensation as a contribution to her studies, over the coming 12 months, or he shall serve a further six months in default at the conclusion of his sentence.

- 16 *NS, please stand up.* What you did was disgusting. For the offence of incest on your daughter SR when a little girl aged eleven, on 23.07.17, reflecting several occasions at around that time, for the reasons I have explained the sentence shall be 16 years imprisonment. Time spent on remand will count. You shall be eligible for remission after serving two-thirds of the sentence if of good behavior. In addition, you will pay compensation to SR of \$40000ec within 12 months, to help with her studies, or you will serve a full six months in default at the end of your sentence, and for which there is no remission. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

11 July 2019