

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO. ANUHCR 2023/0020

BETWEEN:

THE KING

and

PRAKASHCANDRA LOHAR

Appearances:-

Mr. Curtis Cornelius, Counsel for the Crown

Mr. Wendel Alexander, Counsel for the Defendant

2024: November 14th, 15th, 18th, 19th, 20th, 21st.

SENTENCING REMARKS

Brief Facts

- [1] **SMITH, J.:** The defendant was indicted on an indictment filed by the Director of Public Prosecutions on three counts of Indecent Assault contrary to **section 14 (1) of the Sexual Offences Act 1995, No. 9 of the laws of Antigua & Barbuda**. A trial by jury followed and the defendant was found guilty on counts two and three and remained hung on count one. The prosecution informed the Court that there would be no retrial on count one.

The Law

- [2] The offence of Indecent Assault is governed by **section 14 (1) of the Sexual Offences Act 1995 No. 9 of 1995**. It provides a maximum sentence of five years imprisonment.
- [3] The first step in constructing a sentence is to establish a starting point of the offence. In adherence with the Eastern Caribbean Supreme Court Sentencing Guidelines for Sexual Offences re-issued on the 8th November, 2021 to establish a starting point, a case of indecent assault requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. There are four stages in step one as set out below.
- [4] The first stage is for the Court to consider the consequences by assessing the harm caused by the offence. This will include an assessment of the evidence. The complainant described the encounter

as being “degrading and made her feel dirty and less than a woman”. She described being “angry and upset” and she often burst into tears during her interview with the probation officer. She disclosed to the probation officer that “she suffered multiple anxiety attacks in recent times when having to recount the incident. She has now resorted to traveling with a knife in her bag to protect herself. The Court takes these factors into consideration and places the matter into category two.

- [5] The second stage is to consider the seriousness by assessing the culpability of the offender. The Court finds that this level of offending will fall within Level B as there was contact with the victim's body by the offender by grabbing her breast and the touching her leg in an indecent manner.
- [6] The third stage is to determine the starting point by consulting the grid. In this case the Court finds the offence falls in Category 2 Level B.
- [7] The fourth stage is to assess the aggravating and mitigating factors of the offence and adjust upwards or downwards.

Aggravating Factors of the offence

- [8] There are no aggravating factors.

Mitigation of the Offence

- [9] There are no mitigating factors.
- [10] The second step is to adjust the figure after assessing the aggravating and mitigating factors affecting the offender.

Aggravating Factors of Offender

- [11] There are no aggravating factors of the offender.

Mitigating Factors of Offender

Good Character

Mitigation and Probation Report

- [12] The report authored by Mr. Alvin Jarvis paints a picture of the defendant as being pleasant, helpful and resourceful and who works as a chef at Spices of India. He has established good relationships within the Indian community as well as with the students at the American University, delivering food

and giving rides to students and faculty alike. From the report the Court has been able to glean that he leads a productive life and is known for his kindness and humility. However, he has shown no remorse for the offending, and this is extremely worrying for the Court. The complainant has indicated that she would be amenable to a compensation order in the region of \$30,000 and an apology. The Court has consulted authorities from the region and finds this to be an exorbitant amount as this level of offending is not on the higher end of the scale. The Court will also order compensation and a written apology to be issued to the complainant.

Victim Impact Statement

- [13] As previously indicated, the probation department provided a well written report which greatly assisted the Court. The said report was tendered and admitted as AJ#1. The author indicated that the complainant was still traumatized by the ordeal endured at the hands of the defendant. The author of the report indicated that the complainant still appeared to be traumatized and expressed feelings of anger, frustration saying that the defendant's actions have made her feel "dirty and less than a woman". She disclosed also that as a result of her encounter with the defendant, she no longer accepts rides from strangers, and has resorted to arming herself.
- [14] Although the Court finds this type of offending to be serious it also finds that it is the lower end of the scale. The Court does not consider that further imprisonment is necessary in this case and will impose a compensation order and a fine. The court has looked at other decisions from the region.
- [15] The compensation order will be \$4,000.00 on each of the counts that the defendant was found guilty. The compensation is to be paid no later than 28th February, 2025 in default 6 months in prison on each count to be served concurrently. The fine of \$2000.00 is to be paid no later than 7th February, 2025 in default of payment 6 months in prison.
- [16] The Court reminds the defendant that women are not to be taken advantage of and the women of Antigua and Barbuda are to be respected.

Ann-Marie Smith
High Court Judge

By the Court

Registrar

