

**IN THE SUPREME COURT OF GRENADA
AND IN THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CRIMINAL)**

GRENADA

CASE NO. GDAHCR2021/0034

BETWEEN:

THE KING

and

ALEC IAN CHARLES

Appearances:

Mr. Jordan Marshall, Crown Counsel for the Crown
Mr. Jerry Edwin of Counsel for the Defendant

2024: March 8; 11.

JUDGMENT ON SENTENCING

[1] **INNOCENT, J.:** The defendant was indicted on 21st September 2021 on the charge of rape contrary to section 177(1) of the Criminal Code in relation to an incident which occurred on 9th April 2016. On 5th November 2021, the defendant was arraigned and he entered a plea of not guilty to the charge contained in the said indictment. On 9th November 2021, the Crown filed an amended indictment. The amendment sought to correct a clerical error in the spelling of the Defendant's name. However, the record of proceedings does not reflect whether the Defendant was again arraigned on the amended indictment.

[2] On 13th February 2024, the matter was fixed for trial on 19th February 2024. However, the trial did not proceed. On 19th February 2024, on application made by Counsel for the Defendant, the Defendant was arraigned; and upon his arraignment the Defendant entered a plea of guilty to the charge of rape contained in the

indictment. This plea was accepted by the Crown and the matter was set down for a sentencing hearing on 7th March 2024. However, the sentencing hearing proceeded on 8th March 2024 instead.

- [3] At the sentencing hearing the court heard the oral submissions of Counsel appearing for the Crown and Counsel appearing for the Defendant. The virtual complainant who was present at the hearing was invited by the court with the concurrence of Counsel to testify on oath and Counsel was given the option to put questions to the witness to which they declined.
- [4] The undisputed facts are as follows. On 9th April 2016, the Defendant was present at a shop operated by the virtual complainant. At some point the virtual complainant went to sleep inside of the shop after all of the patrons had left except the Defendant. While the virtual complainant was asleep she felt someone on top of her and “something” in her vagina. According to the virtual complainant, she felt a burning sensation in her vaginal area. She pushed the individual off of her. She opened her eyes and realised that the shop was dark; which was not the same condition in which she left it before she fell asleep. She turned on the light and saw the Defendant attempting to pull up his pants. His penis appeared erect.
- [5] The Defendant spoke to the virtual complainant and promised to pay her. The Defendant then ran away. The virtual complainant raised an alarm and the Defendant was chased by one of the virtual complainant’s cousins. The police were called. The police arrived and the virtual complainant attended at the police station to make a report. The virtual complainant was later examined at a medical facility. In an interview under caution conducted by the police, the Defendant cooperated fully with the police and admitted to the acts complained of.
- [6] By the Defendant’s own admission, the Defendant said that he went and laid next to the virtual complainant. He attempted to wake her by shaking her but she did not wake up. He removed her pants and at that point she still had not awoke. He then went over and pushed his penis in her vagina. The virtual complainant woke and pushed him off of her and started raising an alarm. The Defendant got dressed and

left the shop. The Defendant admitted that the virtual complainant did not give her consent to him having sexual intercourse with her. He also admitted that he did in fact offer the virtual complainant compensation for having sex with her; presumably to forestall any likelihood of her reporting the matter to the police.

- [7] The Defendant has been on bail from the day subsequent to his arrest and accordingly has spent no time on remand. He has no previous convictions for any or any similar offence.
- [8] The Defendant is now before the court for sentencing. The penalty prescribed for conviction on indictment for the said offence is a term of imprisonment not exceeding 30 years.
- [9] In sentencing the Defendant the court has adopted the following approach. The court will first determine a starting point sentence by assessing the seriousness of the offence having regard to the degree of harm or consequences attendant on the commission of the offence; and the Defendant's degree of culpability in the commission of the offence. This starting point sentence will be adjusted upward or downward within the prescribed range of sentences for the commission of this offence having regard to the aggravating and mitigating facts in the commission of the offence and in relation to the Defendant himself. The court will then consider what discount from the notional sentence that the Defendant is entitled on account of his guilty plea and any unreasonable delay in bringing the matter to trial.
- [10] The court has assessed the degree of harm at category 3 and the degree of culpability at Level B.

Harm

- [11] The circumstances of the Defendant's present offending are not egregious. Apart from the obvious embarrassment caused to the virtual complainant; particularly since immediately after the commission of the offence other persons in the community were alerted to the acts committed by the Defendant. There was no evidence of the virtual complainant suffering any or any serious personal injury due

to the application of force to her person. Although the virtual complainant testified in relation to the psychological harm suffered by her, it did not appear that this was significant. The virtual complainant was 40 years old and the Defendant 42 years old at the time of the commission of the offence. Therefore, there was no significant disparity in their relative ages.

[12] There was a degree of familiarity between them; however, they were not personal friends. It appears that the Defendant visited the virtual complainant's shop frequently and he was well known to her. From all indications it appears that they shared a mutual penchant for alcoholic beverages which may have precipitated the incident giving rise to the present proceedings.

[13] Ultimately, it did not appear that any of the factors present in Categories 1 and 2 laid down in the sentencing guidelines for this offence were present in the commission of the offence.

Culpability

[14] The court assessed the Defendant's level of criminal culpability in the commission of the offence at Level B as none of the factors expressed at Level A were present in the commission of the offence.

[15] Therefore, based on the guidelines the starting point sentence is 25% of the prescribed statutory maximum sentence for the commission of this offence. This amounts to a period of 7 ½ years' imprisonment.

Aggravating factors – offence

[16] The court has discerned at least two aggravating factors in the commission of the present offence. One, the Defendant's attempt at suppressing the detection of the commission of the offence by offering to pay off the virtual complainant. Two, the fact that the Defendant entered the virtual complainant's premises invited.

Mitigating factors – offence

- [17] The court has identified the following mitigating factors relative to the commission of the offence. There was no threats or the use of violence in the commission of the offence. There was no disparity of age between the Defendant and the virtual complainant. For all intents and purposes, the commission of the offence may best be described as fleeting and transient and did not involve any period of prolonged intercourse.

Aggravating factors – Defendant

- [18] The court has discerned no aggravating factors relative to the Defendant.

Mitigating factors – Defendant

- [19] In terms of his personal circumstances, the Defendant is now 52 years old. He has a common law wife and a 13 year old daughter with whom he resides. He has three other children who now all over the age of 18 years. He appears to make a significant financial contribution to the household.
- [20] The Defendant is presently gainfully employed as a heavy equipment operator. He has no previous convictions for any or any similar offence. He cooperated fully with the police authorities.
- [21] In the premises, the court will adjust the figure of 7 ½ years imprisonment downwards taking into account the aggravating and mitigating factors present in the case. Therefore, the sentence that the court is minded to impose is 5 years imprisonment.

Discount for guilty plea

- [22] The court is not minded to credit the Defendant with a full discount of 1/3 of the notional sentence as his guilty plea was not entered into at the earliest opportunity. Therefore, the court will discount a period of 2 years' imprisonment from the sentence of 5 years' imprisonment.

Sentence

- [23] Therefore, the sentence that the court shall impose is a term of 3 years' imprisonment. However, the court has taken into account the inexplicable delay in the conduct of the matter. Hence, an additional period of 1 years' imprisonment will be deducted from the sentence of 3 years' imprisonment to take account of the delay.
- [24] The court has given consideration to whether there is the necessity of imposing an immediate custodial sentence in this case. Having considered the personal circumstances of the Defendant, the court has formed the view that any period of imprisonment served by the Defendant may have the likelihood of derailing the ordinary course of his everyday life and that of his family. Therefore, the sentence of 2 years' imprisonment which the court is minded to impose shall be suspended.
- [25] Therefore, the Defendant is sentenced to 2 years' imprisonment which shall be suspended for a period of 1 year. The sentence of 2 years' imprisonment herein shall not take effect unless, during the period of 1 year from the date sentence is pronounced, the defendant commits another offence punishable with imprisonment and thereafter a court having power to do so orders that the original sentence shall take effect with or without variation of its terms.

Shawn Innocent
High Court Judge

By the Court

Registrar