

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA & BARBUDA

CASE ANUHCR2016/0034

REGINA

V

EB

APPEARANCES

Miss Rilys Adams appeared for the Crown.

Mr Lawrence Daniels appeared for the defendant.

2 May 2017

- 1 **Morley J:** EB¹ (born in 1972) falls to be sentenced for what has been agreed between counsel is a *specimen count* of incest on his daughter S (born in 1997), to which he pleaded on 17.02.17, relating to his having sexual intercourse with her regularly from aged 9 up to 14, between 2007 and 2011, though the single count pleads specifically between 01.01.10 and 31.08.10.

¹ The defendant cannot be identified as to do so will identify the complainant.

- 2 S earlier had tried to report activity to her stepmother when aged 10/11 (2007-9), but had not been believed. She reported it to her stepmother's sister in November 2012, and was taken out of the home for a time, though had to return to the care of her father in February 2014. She also reported in 2013 to a pastor, who told her to pray for her father, and to forgive him. Activity continued from February 2014 until 26.07.14, at which point S reported matters to the police, and then moved to live with her friend's parents. This sentence does not reflect any alleged activity or threats to her following her return to her father.
- 3 Sentence will be specifically for the time period below the age of 14, being aged 9 to 13.
- 4 The effect of incest by a father on his child-aged daughter is known to be huge. He has likely ruined her life and mental wellbeing. In her statement, S describes how she never wanted his sexual advances, and how she became wayward, disrespectful, becoming weak at school, suffering low self-esteem, saying, *'during the sex I blank out what he was doing by thinking about something else. It made me feel depressed, I feel like I am nobody'*. In the pre-sentence report (PSR) prepared by C Marsha James-Pharoah of 24.04.17, it says S *'blames herself for what happened since she never tried to fight him as she was scared...the stress of the matter has caused her to lose weight...she has locked herself away from others. she has expressed forgiveness for his actions even though he never said that he was sorry...the one question she would like to ask her father is 'why''*.
- 5 As part of the sexualisation of his young daughter, as reported in the PSR, *'he made her responsible for shopping, cooking, doing the laundry, cleaning the house, and taking care of her younger siblings, and preparing them for school'*. She was robbed of her childhood, having to play wife to him, and mother to her siblings, and one can only imagine how lonely it has been for her, especially given she was at first not believed, and her blaming herself.
- 6 S is now only 19, and it will take many years to understand the full impact of her father's behavior. The classic expectation is she will probably distrust men, be inhibited from forming a loving and caring relationship, and may feel she cannot tell any others of what happened to her, including a future husband or children, so that she may carry events as a terrible secret disturbingly deep within.

- 7 The maximum sentence is life. I will approach this case on the basis the sexual activity was always unwanted and was similar to, though legally not the same as, rape, multiple times, on a girl under 14, beginning as young as 9. In addition, there is the enormity of the breach of trust, in that her father was to care for her, and instead profoundly abused her. Considering that the starting point for multiple rape of a child could rightly be life imprisonment, and reminding myself that the instant offence is not rape but incest, I find the starting point for what EB did to his daughter to be 28 years.
- 8 There are no additionally aggravating features.
- 9 I find the mitigation is limited to the defendant being of good character, and having made admissions to police. However, the value of these as mitigating features is limited, as a father can be expected at all times to care for his daughter, and not inflict sexual intercourse on her. These in combination will reduce the sentence by one year to 27 years.
- 10 Though he had pleaded not guilty before a different judge at the beginning of Assizes on 27.09.16, nevertheless I consider that the defendant pleaded guilty at the first practicable opportunity, when I had his case listed before me for the first time, and I have said he will receive maximum credit, particularly as he has spared his daughter giving evidence, being of a third, which I calculate as 9 years. It is his plea that most helps him, not his good character. It reduces his sentence to 18 years' imprisonment.
- 11 The sentence of this Court on a plea to a specimen count of multiple acts of incest by EB on his daughter S from the time she was aged 9 through to turning 14, will be 18 years' imprisonment. Time spent on remand will count toward the sentence. Remission will arise, subject to good behavior, after serving two-thirds.

The Hon. Mr. Justice Iain Morley QC

2 May 2017