

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CASE NO. DOMHCR2014/0024

BETWEEN:

THE STATE

And

DICKSON VICTOR

Appearances:

Ms. Evelina E-M. Baptiste, Director of Public Prosecutions for the State

Mr. Tiyani Behanzin for the Defendant

2015: 9th February

JUDGMENT ON SENTENCING

- [1] **Thomas, J.:** Dickson Victor is before the court for sentencing having been found guilty of indecent assault, contrary to section 13 (1) (c) of the **Sexual Offences Act¹**, 1998.

Relevant facts

- [2] On the morning of 1st June, 2013 the victim, a 23 year old at that time, left the Waterboys Club and was walking towards her transport which was in the vicinity. When she got to the vehicle she saw the driver in an altercation and decided to wait on him in front of a green truck. While there, she felt someone hold her hand from behind and she saw it was the prisoner who proceeded to say he had not seen her for a long time and was still holding her hand.
- [3] She told him she was not his friend and pulled away her hand. The prisoner continued pulling the victim. The victim pulled away again. He kept pulling and the victim asked him to let her go which he did not. She shouted and the Prisoner

¹ Laws of the Commonwealth of Dominica

pulled her and she tripped and almost fell over. She shouted again and the prisoner told her if she didn't stop he would stab her.

- [4] They were now in a dark alley away from the street light. The prisoner was in front of her and she tried pushing him away but he blocked her path. After the victim said again that she wanted to go and he repeated that he will stab her and rested his hand on her waist. At this point the victim said she was afraid and stopped shouting.
- [5] The prisoner then told her to pull down her pants. She said that she did so because she was afraid of what he would do. She said she pulled down her pants but not all the way; only between the thigh and the hip.
- [6] The prisoner asked her to suck his penis and she said she didn't want to and he held her head and pulled it down to his penis. She said she did so and then stopped.

Social Inquiry Report

- [7] Consequent on the finding of guilty, the court ordered the preparation of a Social Inquiry Report on the prisoner which was prepared by Anestine Baron, Probation Officer. It is dated 6th February, 2015.
- [8] In the report, the Probation Officer, obtained and included in the report, information on the prisoner's family history, the prisoner's education, employment and his attitude to the offence. The victim and the members of her family were also questioned. In this connection persons in the communities were also questioned about the two persons.
- [9] The following, in part, constitutes the Probation Officer's assessment:

"GENERAL ASSESSMENT"

Based on the assessment, the Honourable Court's attention is drawn to the following:

- **Dickson's Sentiments:** Dickson maintains that he did not sexually assault the victim. He stated that he does not feel sorry about the incident but rather feels bad for himself because he is innocent of the charge against him. In his view, he does not deserve to receive a custodial sentence.
- **Family History:** Dickson was raised by his mother and maternal grandmother; his father contributed minimally towards his upbringing.

Revelations made are that he was not exposed to instances of domestic violence within the home environment, and neither was he a subject of child abuse.

- **Public Sentiments:** Most individuals interviewed, described Dickson as a good individual. However, views were also expressed that Dickson sometimes display an aggressive manner.
- **Victim's Sentiments:** Lashorn stated that the incident affected her emotionally and academically. According to her, she still thinks of the incident to the point that she wakes every morning at three o'clock with the fear that she may be assaulted. In an emotional undertone, Lashorn expresses that immediately after the incident occurred she contemplated suicide given that she was traumatized from being sexually abused as a child and had to receive counseling to deal with the aftermath of the abuse. Lashorn does not believe that justice was done to her and the impact of Dickson's action against her, when the charge of rape was dropped against him. She maintains that he should be held accountable for his actions and that he should receive a custodial sentence.
- **Sentiments of Victim's Family:** The view of the victim's mother is that Dickson should receive a custodial sentence for his action against her daughter. Ms. Christopher is of the view that Lashorn's experience was a difficult one, and dealing with the situation created an additional emotional burden for Lashorn.

CONCLUSION

The effects of abuse on any individual can be devastating. Sexually assaulted victims may feel significant distress and suffer with a wide range of psychological symptoms. Among the effects of sexual assault are feelings of shame, distrust of others, antisocial behaviours and unwanted pregnancies.

Based on information gathered, the incident has had an adverse effect on the victim's emotional and psychological state of mind. The victim noted that she is still traumatized by the experience and that the experience suffered under the hands of Dickson will forever be etched in her mind. It should be noted that at one point the victim was suicidal.

Dickson did not express remorse towards the victim but rather maintained his innocence. He however stated that he feels sorry for the situation which he has found himself in.

Taking into consideration all the views expressed, the fact remains that Dickson Victor was found guilty for the offence of indecent assault. His action cannot be trivialized. The incident has left a lifelong indentation on the emotional life of Lashorn Laudat.

In putting forward a recommendation in dealing with the matter of Dickson Victor, consideration should be given to the information emanating from the interviews. All views, with the exception of Dickson and his family, are that he should receive a custodial sentence bearing in mind the offence for which he is charged, the fact that he still maintains his innocence as opposed to showing remorse for his action, and the possible lasting effects on the victim's life.

With an understanding of the prolonged impact of assault, the offence committed by Dickson Victor needs to be deterred in the strongest way possible. A strong message needs to be sent that females have to be respected and protected. Acts of assault can disrupt this and may result in the persistence of challenging lifestyles and behaviours such as defiance, withdrawal, delinquency and promiscuity.

My hope is that the contents of this report will assist the court in issuing the appropriate sentence to Dickson Victor.”

[10] Given the offence of indecent assault and the manner and time of execution, the court must consider the attitude the court has in relation to this type of sexual offence.

[11] This brings into sharper focus the prisoner and the offence for which he was found guilty. There are certain matters which must be considered. The first is:

1. Nature of the offence- indecent assault.

In the case of **R v. Donald Rogers**², Hariprashad-Charles J. had this to say:

“The victims of these kinds of sexual assault must carry their memories with them for the rest of their lives. It is therefore society’s duty to ensure that these victims must not carry the burden of silence and shame and must come to court and prosecute these matters as the virtual complainant did.”

[12] Also in **The Queen v. Donald Rogers**³ again spoke of indecent assault in these terms:

“Indecent assault is largely a non-penetrative sexual offence but no less despicable on that account. In the words of Lord Griffiths, in R v. Court, ‘although the offence of indecent assault may vary greatly in its gravity from an unauthorized teenage sexual groping at one end of the scale to a near rape at the other, it is in any circumstances a nasty, unpleasant offence...”

2. Manner of execution. This was described above.
3. Maximum penalty under the law is 5 years.
4. Age of the prisoner is 27. Date of birth is September 04, 1987 and the victim was 23 at the time.
5. Aims of sentencing.

²BVI Criminal Case No. 24 of 2009, (Hariprashad-Charles J) Judgment on Sentencing 25 June 2010.

³ Loc Cit

In Vol. 11 (2) of **Halsbury's Laws of England**⁴ these are stated to be: retribution, deterrence, referring and protection. They are explained thus:

"The aims of sentencing are now considered to be retribution, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion from the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation. However, the protection of society is often the overriding consideration. In addition, reparation is becoming an important objective in sentencing."

6. Previous convictions

These are for threats, assault and battery.

7. In the Social Inquiry Report, the Probation Officer records the following:

"Dickson did not express remorse towards the victim but rather maintained his innocence. He however stated that he feels sorry for the situation which he has found himself in.

Taking into consideration all the views expressed, the fact remains that Dickson Victor was found guilty for the offence of indecent assault. His action cannot be trivialized. The incident has left a possible lifelong indentation on the emotional life of Lashorn Laudat.

In putting forward a recommendation in dealing with the matter of Dickson Victor, consideration should be given to the information emanating from the interviews. All views, with the exception of Dickson and his family, are that he should receive a custodial sentence bearing in mind the offence for which he is charged, the fact that he still maintains his innocence as opposed to showing remorse for his action, and the possible lasting effects on the victim's life.

With an understanding of the prolonged impact of assault, the offence committed by Dickson Victor needs to be deterred in the strongest way possible. A strong message needs to be sent that females have to be respected and protected. Acts of assault can disrupt this and may result in the persistence of challenging lifestyles and behaviors such as defiance, withdrawal, delinquency and promiscuity.

⁴ para. 1188 pg. 995

My hope is that the contents of this report will assist the court in issuing the appropriate sentence to Dickson Victor.”

8. Plea in mitigation

Sentencing

[13] In **Loff James Lennon v R**⁵, Henry LJ had this to say:

“It was 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”.

[14] The court finds the dictum to be very relevant and pertinent in the context of jurisdictions where the maximum sentences vary depending on the age of the victim. And this is well illustrated by Madam Justice Hariprashad Charles in **R v. Camilus Paris**⁶ where she noted the variations in relation to the indecent assault of a child under 13 years where the maximum sentence is 10 years. She notes that the sentences range from a fine of \$1,400.00 or 6 months, to a 3 year suspended sentence to 18 months to 5 years, to 2 years regionally, to 2 years and 3 years in the U.K.⁷

[15] The case of **Camilus Paris**⁸ involved a victim between 6-8 years and both indecent assault and rape were involved. The sentence for the indecent assault was 15 months. This was in 2011. In **R. v. Donald Rogers**⁹ in 2010 involving a god father and god daughter, a minor, the sentence was 18 months.

⁵ [1999] 1 CR. App. R (S) 19 CA

⁶ BVIHCR2010/0014

⁷ R v. Terry Hodge BVI Criminal Case No, 11/2014

⁸ Loc Cit

⁹ Supra

[16] In the St. Lucia case of **R. v. Marc St. Rose**¹⁰, the prisoner was sentenced to 1 year imprisonment for indecent assault which involved putting his mouth on the victim's breast and licking and kissing her vagina.

[17] The approach in arriving at the sentence is set out in **Winston Joseph et al v. R.**¹¹ in which Sir Dennis Byron CJ said this:

"The actual sentence to be imposed depends upon the existence of and evaluation of aggravating and mitigating factors, the more common of which I will attempt to list below. It is not enough for the court merely to identify the presence of aggravating factors when sentencing. A sentencing court must embark upon an evaluation 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."

Mitigating and aggravating factors

Mitigating factors

[18] The court can discern no mitigating factors – not even an apology to the victim. Rather than that he tells the Probation Officer he is not guilty after putting forth witnesses, who for the most part did him more harm than good. For example, Ms. Dyer who put him on a truck going home at 3 a.m. when he himself said he was at Peter's Club at the time with friends. And more importantly, the virtual complainant put him in the alley at that time of 3 a.m., which the jury accepted.

Aggravating factors

[19] The court finds a number of aggravating factors including: the use of threats to stab her; the manner of execution- the virtual complainant's head was pulled down to suck his penis after she refused to do so; the actual location itself exposed the virtual complainant to other persons attacking her; the time of the offence when most people are asleep except those who are looking for things they did not leave anywhere.

¹⁰ SLUCRD2009/0429-431

¹¹ Criminal Appeal No. 4 of 2000 (St. Lucia)

[20] It is clear to the court that the aggravating factors outweigh the mitigating factors of which there was none. At the same time the court notes that the victim told the Probation Officer that she had nightmares, could not sleep and contemplated suicide. This was also said by the victim in the BVI case of **Donald Rogers** which involved a godfather and godchild.

[21] Empirical evidence shows that sexual crimes against persons, mostly females are humiliating and demeaning and involve all kinds of psychological factors and even ridicule and scorn. It happened in the open where her person was exposed substantially.

[22] But the Commonwealth of Dominica is at a different juncture now when sexual offences are on the rise. This is where one of the aims of sentencing comes in, that is deterrence. This must show all those who want or intend to walk the path of Dickson Victor and others, that they do so at great risk, given the consequences of the law and the duty of the courts to protect the society. Dominica must be continued to be known as the Nature Isle of the Caribbean and all this positive.

Sentence

[23] Taking into account the facts of the case, the aggravating factors and the prevalence of sexual offences in Dominica; the sentence is 3 years. Time on remand must be deducted from the sentence.

Errol L. Thomas
High Court Judge [Ag.]