

**BRITISH VIRGIN ISLANDS**

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
(CRIMINAL)**

**BVIHCR2011/0034**

**BETWEEN:**

**THE QUEEN**

**-V-**

**CALVIN RABSATT**

**Appearances:**

Ms. Leslie-Ann Faulkner, Crown Counsel for the Crown  
Mr. Stephen Daniels of V.E. Malone for the Defendant

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2011: October 6, 10, 18

2011: October 18, 24  
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**JUDGMENT ON SENTENCING**

**(Criminal Law – Sentencing – Offences against the Person – Sexual Offences – Rape of a child – Indecent Assault - Sentence- Aggravating and mitigating Factors – Other matters to be considered)**

**Introduction**

[1] **HARIPRASHAD-CHARLES J:** The defendant, Calvin Rabsatt is 66 years old having been born on 23 March 1945. He was indicted on one count of Rape<sup>1</sup> and two counts of Indecent Assault<sup>2</sup>. Upon his arraignment on 6 October 2011, he pleaded guilty to all three counts. He is now before the court for sentencing.

<sup>1</sup> Contrary to section 117(1) of the Criminal Code, 1997 of the Laws of the Virgin Islands.

<sup>2</sup> Contrary to section 124(1)(c) of the Criminal Code, 1997 of the Laws of the Virgin Islands, 1997 as amended by section 20 of Act No. 8 of 2006.

## The facts

- [2] The facts as outlined by the Crown and which the Defence accepted are as follows. The complainant is from the Commonwealth of Dominica. Her parents still reside there. She came to the Territory of the Virgin Islands (“the BVI”) when she was six (6) years old to live with her aunt, Christine Rabsatt, her uncle Mr. Rabsatt and cousins. She referred to Mr. Rabsatt as “papa”.
- [3] At the time of the offence in January 2010, the complainant was 14 years of age. At the time of the offences in January and February 2011 respectively, she was 15 years of age and was in Form Five at the Elmore Stoutt High School.
- [4] The edifice in which she lived with her family is a two storey structure which is divided into four (4) apartments. The complainant’s aunt was living in one of the apartments with her husband, Mr. Rabsatt. Sometime in 2010, Mr. Rabsatt and his wife had a disagreement and she moved out. The aunt allowed the complainant to remain with Mr. Rabsatt after she had moved out.
- [5] Most times when Mr. Rabsatt is out of the apartment, the complainant would use his bedroom to watch television. She would have sought his prior permission to do so.

## Count Two –Indecent Assault

- [6] In early January 2010, the complainant observed that Mr. Rabsatt was beginning to tell her things such as “***if she knows she is pretty and he will work to provide stuff for her and she must not worry herself***”. In late January 2010, whilst the complainant was watching television in his bedroom, he sat down next to her on the bed and touched her on her legs, her hands, her tummy and by her vagina. At that time, the touching was done over her clothing. The complainant told him to stop as she did not like what he was doing. She moved away from him. She questioned him as to why he was interfering with her. He responded by saying, “***he loves her and he would take care of her***”. She wanted to tell someone but she was scared. She also felt that he would get upset with her.

### Count Three –Indecent Assault

- [7] In early January 2011, Mr. Rabsatt touched the complainant again. He pushed his hand down into her underwear, touched her vagina and rubbed it. The complainant was upset and scared. She contemplated running away. Mr. Rabsatt did not want to stop and in order to get him to desist, she hung her head down as if she were saddened. Mr. Rabsatt then stopped touching her and asked what happened. The complainant told him that she was feeling sick and sleepy and she wanted to go to her room. When Mr. Rabsatt saw that the complainant wanted to cry, he stopped.

### Count One -Rape

- [8] Sometime in February 2011, at about 11.00 pm, Mr. Rabsatt arrived home. The complainant was watching television in his bedroom. He sat on the bed, took off his clothes and remained in his brief. Thereafter, he covered himself with a towel. This was the first time that he undressed in front of her. He then came closer to her and began to rub her vagina over her clothing. The complainant got up and proceeded to leave the room but he told her to wait a while. She told him she was sleepy. She was standing up against the dressing table. As she was about to leave, he stood up and said ***it won't take long and that she will get to go in her bed after***. She said that she was "clueless" as to what he meant.

- [9] He then positioned himself behind her. He placed one hand on the dressing table and the other around her. He then pushed his hand down into her pants. He began to rub her vagina. He was also rubbing her legs. She was scared and wanted to cry. She felt him pulling the towel off. He then pulled her pants down to her feet and onto the floor. He took his hand and moved her underwear to the side. The complainant then felt something hard behind of her. Mr. Rabsatt was moving the hard thing between her legs. She then realized that it was his penis that he had pushed into her vagina. He slouched down a little as he pushed his penis into her vagina whilst his other hand remained on the dressing table. He was moving in and out and back and forth. She felt pain in her vagina. She told him it was hurting her but he continued to move in and out of her vagina. About 5 or 6 minutes later, he began to make some groaning noise. He then pulled out his penis and went to sit on

the bed. She noticed some white stuff coming out of his penis and he was trying to catch it in his hands. The complainant was upset and scared so she pulled up her pants, ran to her room and locked her door. She began to cry and fell asleep. She did not tell anyone.

[10] In March 2011, the complainant realized that she did not see her monthly menstrual cycle. She did not see it the following month either. Initially, she told a close male friend and then Mr. Rabsatt. Mr. Rabsatt asked her whether that was normal. Subsequently, the complainant became ill. Her aunt took her to seek medical attention. On 3 May 2011, it was revealed that she was nine (9) weeks pregnant.

[11] Shortly thereafter, a report was made to the Family and Juvenile Department of the Royal Virgin Islands Police Force. Detective Constable Bobb conducted inquiries. Detective Bobb met with Mr. Rabsatt, cautioned him and informed him of the allegations that were made against him. Detective Bobb conducted a visual and audio interview with Mr. Rabsatt in his lawyer's presence. During that interview, Mr. Rabsatt admitted to committing the offences.

[12] As a result, Mr. Rabsatt was formally charged and arrested with one count of Rape and two counts of Indecent Assault.

### **Plea in mitigation**

[13] Learned Counsel Mr. Daniels who appeared as Counsel for Mr. Rabsatt made a very passionate plea in mitigation beseeching the court not to impose a custodial sentence on Mr. Rabsatt because he was old, frail and bedridden. He submitted that because of his physical incapability, Mr. Rabsatt is not a threat to society and any length of incarceration, however short, would be a burden to the prison system. Mr. Daniels is uncertain whether the prison can accommodate a man like Mr. Rabsatt. Mr. Daniels informed the court that Mr. Rabsatt suffered a ruptured appendix about two years ago which has resulted in his wife caring for him 24 hours a day.

- [14] If I understood Mr. Daniels well, essentially, he is saying that regardless of the gravity of the offences, Mr. Rabsatt should not be incarcerated since he is physically ill. Further, because of his ill health, he does not pose a menace to society.
- [15] Mr. Rabsatt brought two character witnesses to testify on his behalf. One is a renowned and respected doctor and politician in this Territory, the Honourable Dr. Kedrick Pickering. Dr. Pickering deposed that he has known Mr. Rabsatt all of his life since they lived in the same village and he was shocked when he heard of this incident. The next character witness was Mr. Rabsatt's wife, Christine Rabsatt. She spoke extensively about her husband's illness. She testified that he cannot go to the bathroom alone as he gets dizzy. She stated that he cannot care for himself and as such, she cares for him 24 hours a day.
- [16] I also received letters from two other character witnesses. One such letter came from Mr. Elmore Stoutt, former principal of the Elmore Stoutt High School and a former legislator. He has known Mr. Rabsatt since the mid-fifties. He spoke highly of Mr. Rabsatt dubbing him as "a highly respected, responsible and trusted member of the East End community".
- [17] Mr. Naaman Chalwell, Pastor of the Church of God of Prophecy also sent a letter. He also has known Mr. Rabsatt for over 50 years. He stated that "Mr. Rabsatt is a quiet and hardworking man who has worked in the taxi industry for many years....Mr. Rabsatt is a law-abiding citizen". Pastor Chalwell seeks leniency and mercy on Mr. Rabsatt's behalf. He feels that if Mr. Rabsatt is incarcerated, he will not manage well in prison.

#### **Mr. Rabsatt's health**

- [18] The Defence put forward the health of Mr. Rabsatt as the most compelling reason why he should not be incarcerated. However, no medical person testified to that effect. The court, on its own volition, delayed sentencing so that the Prison Nurse, who observed Mr. Rabsatt during his brief period of incarceration at Her Majesty's Prison, could testify. Nurse Arlene Davis has been a nurse for the last 30 years. She noted that Mr. Rabsatt's vital signs were stable but he is not in a position to do much for himself. She noted that both of

his legs were swollen. He was scheduled to undergo some laboratory tests and to see a doctor (as is routine with sick inmates). Not being a qualified medical practitioner, Nurse Davis could not provide a diagnosis of Mr. Rabsatt.

[19] In order to get a fuller appreciation of Mr. Rabsatt's health, once again, the court delayed its sentencing to hear from a qualified medical practitioner.

[20] Dr. Olimide Odebajo, deemed an expert in general medicine, testified on 18 October 2011. He stated that he examined Mr. Rabsatt at Her Majesty's Prison. His examination revealed an elderly man, not in any obvious distress but with abnormal small step gait due to arthritis. He was not pale, not jaundiced and not dehydrated. He is also not a known diabetic or hypertensive but claimed that he was admitted in hospital over two years ago for syncopal attack. He was conscious and alert at the time of examination and well oriented in place, person and time. His cranial nerves were globally intact.

[21] Dr. Odebajo disclosed that Mr. Rabsatt has a bladder infection and arthritis. For the latter, he will need assistance. In the doctor's opinion, Mr. Rabsatt is not in the best state of health. He is sick but not very sick.

### **Victim Impact assessment**

[22] Dr. Virginia Rubaine is a well-respected clinical psychologist in this Territory. She specializes, among other things, in child psychology. She had therapy sessions with the complainant and saw her on 5 October 2011. Dr. Rubaine testified that in terms of behavioral attributes, the complainant is very confused and naïve. She feels that her maternal aunt had abandoned her. She perceived that she is being blamed for what happened. She expressed anger and rage towards Mr. Rabsatt but does not consider him a bad person.

[23] Dr. Rubaine opined that although the complainant is coping better now, she will need long term psychological intervention as she is still confused as to what is going to happen to her in the future since she will be a mother at 15 years with no nuclear family support.

### Submissions for the Crown

[24] Ms. Faulkner did an admirable job in preparing a properly tabulated bundle. I am immeasurably grateful for this. She referred to the guiding principles for the sentencing of sexual offenders which were elucidated by our Court of Appeal in the consolidated appeals of **Winston Joseph v The Queen, Benedict Charles v The Queen and Glenroy Sean Victor v The Queen**<sup>3</sup>.

### Aggravating Factors

[25] Learned Crown Counsel identified four aggravating factors and three mitigating factors. The aggravating factors were identified as follows:

- (1) **The age of the complainant vis-à-vis the age of the defendant.** Mr. Rabsatt was between the ages of 64-65 whilst the complainant would have been 14-15 years at the time of the incidents. This indicates an approximate age disparity of 50 years.
- (2) **Seriousness and Prevalence of Offences** (as per Creque JA in **The Director of Public Prosecutions v Shaunlee Fahie**).<sup>4</sup> Also, Lord Lane CJ in **R. v. Roberts (Hugh)** [1982] 1 WLR 133, at pages 134-135 stated:

“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence.... A custodial sentence is necessary for a variety of reasons. First of all to mark the gravity of the offence. Secondly to emphasise public disapproval. Thirdly to serve as a warning to others. Fourthly to punish the offender, and last, but no means least, to protect women. The length of sentence will depend on the circumstances.”

- (3) **Breach of Trust** (Mr. Rabsatt was the complainant's step-uncle and a father figure as he helped raised her from the age of six years old. They lived as a family, in the

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<sup>3</sup> St. Lucia Criminal Appeal No. 4 of 2000, Criminal Appeal No. 8 of 2000 and Criminal Appeal No. 7 of 2000 (consolidated).

<sup>4</sup> HCVAP2008/003 [Territory of the Virgin Islands] [unreported]. Judgment delivered on 11 January 2010.

same household. She was entrusted into his care and he owed her a responsibility to care and protect her.)

(4) **The complainant has suffered psychologically.** (She had contemplated running away and is confused about life<sup>5</sup>).

### Mitigating Factors

[26] The Crown has identified three mitigating factors namely:

- (1) No previous convictions;
- (2) Plea of guilty at the first available opportunity;
- (3) No violence was used on the complainant.

[27] As stated earlier, Ms. Faulkner submitted many local, regional and UK authorities to assist the court in determining the proper starting point and sentencing range for these offences. The local authorities cited were: **R. v. Camillus Paris**<sup>6</sup>, **R. v. Donald Rogers**<sup>7</sup>, **R. v. Derek Cort**<sup>8</sup>, **R. v. Kemuel Dublin**<sup>9</sup>, **R. v. Frankly Huggins**<sup>10</sup> and **R. v. Claudius Frett**.<sup>11</sup> It is significant to note that, in these cases, none of these accused pleaded guilty. They were all convicted after trials.

[28] Regional authorities included **Dwight Dookie v. R.**<sup>12</sup> and **Roger Naitram et al v R.**<sup>13</sup> The UK authorities referred to are as follows: **R v. Milberry**; **R v. Morgan**; and **R v. Lackenby**<sup>14</sup> **R v Billam**<sup>15</sup>; **Attorney General's References Nos. 91, 119 and 120 of 2002**<sup>16</sup>, **R v Puru**<sup>17</sup> and **R v Loff James Lennon**.<sup>18</sup>

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<sup>5</sup> See evidence of Dr. Virginia Rubaine, expert witness.

<sup>6</sup> BVIHCR 2010/0014, (Hariprashad-Charles J) Judgment on Sentencing – April 8 and August 29 respectively.

<sup>7</sup> BVI Criminal Case No. 24 of 2009, (Hariprashad-Charles J) Judgment on Sentencing 25 June 2010.

<sup>8</sup> BVI Criminal Case No. 20 of 2009, (Hariprashad-Charles J) Judgment on Sentencing 31 May 2010.

<sup>9</sup> Criminal Case No. 8 of 2009.

<sup>10</sup> BVIHCR2009/001 – Written Judgment delivered on 13 July 2010 [unreported].

<sup>11</sup> BVIHCV2001/007- no written judgment provided. The facts are that Mr. Frett was convicted of raping his daughter who at the time was a student at the BVI High School. He was sentenced to 12 years for rape and 8 years for incest.

<sup>12</sup> (St. Lucia) Criminal Appeal No.1 of 2007.

<sup>13</sup> HCRAP2006/005, HCRAP2006/006 and HCRAP2006/008 [Antigua & Barbuda] CA. Judgment delivered on 15 December 2010, per Baptiste J.A.

<sup>14</sup> [2003] 1 Cr. App. R. 25.

## Court's considerations

[29] First and foremost, the court always bears in mind the four cardinal principles of sentencing namely "retribution, deterrence, prevention and rehabilitation."

[30] Now, sentencing is a two-stage process. It requires consideration of both the aggravating and mitigating factors. The court must seek to determine what sentence fits the offence. Further, can that sentence be reduced in light of the mitigating factors relating to the offender? The evaluative process of weighing the mitigating and aggravating factors was expounded by Byron CJ in **Winston Joseph et al** and recently endorsed in **Roger Naitram et al v The Queen**.<sup>19</sup> In **Winston Joseph et al**, Byron CJ listed some of the most common aggravating and mitigating factors. At paragraph 17, he stated:

"The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors...It is not enough for the court merely to identify the presence of aggravating and mitigating factors when sentencing. A sentencing court must embark upon an evaluative 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."

[31] The court is assisted by the provision of guidelines which establish benchmarks or starting points for the different types of offences, however, the court must bear in mind that guidelines are not to be slavishly followed. In **Roger Naitram et al**, Baptiste JA stated (at paras 17 and 18):

"Sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence which is appropriate. It follows therefore that a sentencing judge can depart from guidelines if adherence would result in an unjust sentence. The existence of a particularly powerful

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<sup>15</sup> (1986) 8 Cr. App R (S.48).

<sup>16</sup> [2003] 2 Cr. App. R. (S.) 55.

<sup>17</sup> [1985] LCR 817.

<sup>18</sup> [1999] 1 Cr. App. R. (s) 117 CA.

<sup>19</sup> HCRAP2006/005, HCRAP2006/006 and HCRAP2006/008 [Antigua & Barbuda] CA. Judgment delivered on 15 December 2010, per Baptiste J.A.

personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish reason for so departing.”

### **Indecent Assault**

[32] Section 124 (1)(c) of the Criminal Code 1997 (as amended by section 20 of Act No. 8 of 2006) of the Laws of the Virgin Islands provides that “*any person who makes an indecent assault on a woman commits an offence and is liable on conviction for a term not exceeding seven years.*”

[33] It follows that the maximum penalty that can be imposed for the offence of indecent assault is seven (7) years. However, a judge has a wide discretion on sentencing. In determining the appropriate sentence, regard must be had to the particular circumstances of the case.

[34] In **Donald Rogers** (supra), I stated at paragraph 32:

“Although indecent assault is less serious than rape, the latter carrying a maximum penalty of life imprisonment that does not make indecent assault any less traumatic to the victim. Thus, in determining an appropriate sentence for this type of sexual offence, the Court will have reference to the various types of harm that can result from the offence, some of which are outlined in the Sentencing Guidelines for Sexual Offences by the Sentencing Advisory Panel 2003, which was referred to by the Crown. These include:

- o Violation of the victim’s sexual anatomy;
- o Exploitation of a vulnerable victim;
- o Embarrassment, distress or humiliation of the victim;
- o Infringement of standards of socially acceptable behavior;
- o The physical/psychological harm caused by non-consensual offences;
- o The relationship between the victim and the offender and
- o Abuse of a position of trust.”

[35] At paragraph 37, I continued:

“In weighing the gravity of the offence, regard must be had to “the degree of harm to the victim...the level of culpability of the offender... and the level of risk posed by the offender to society.”<sup>20</sup>

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<sup>20</sup> R v Millberry et al [2003] 2 Cr App R (S) 31.

[36] In **Loff James Lennon** [supra], Henry L.J. said at page 6:

“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”.

[37] Those remarks are equally applicable to the present case.

[38] In the present case, the indecent assault on Count Two involved touching of the complainant on her legs, her hands, her tummy and by her vagina. The touching was done over her clothing. The indecent assault on Count Three also involved touching. But this time under her clothing. He pushed his hand down into her underwear, touched her vagina and rubbed it.

[39] The aggravating and mitigating features identified at paragraphs [25] and [26] above are also relevant to this offence.

## **Rape**

[40] Section 117 (1) of the Criminal Code 1997 provides that “*a man who rapes a woman commits an offence and is liable on conviction to imprisonment for life.*”

[41] The maximum penalty for rape is life imprisonment. Indeed, it is a serious offence which nearly always results in custodial sentences. In **R. v Christopher Millberry** [supra], Lord Lane, referring to the general guidelines as to sentencing for rape in **Roberts and Roberts**<sup>21</sup> had this to say:

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<sup>21</sup> (1982) 4 Cr. App. R. (S) 8. See page 3 of Millberry’s judgment.

“Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial sentence.... A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly, to emphasise public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last but by no means least, to protect women (or in this case, young girls). The length of the sentence will depend on all the circumstances. That is a trite observation, but those in cases of rape vary widely from case to case.”

[42] **In R v Puru**<sup>22</sup>, Woodhouse P. made a litany of comments in relation to rape. He said at page 821 [g]:

“The Court certainly must and actually does keep in mind the public anxiety and the natural public resentment that such conduct occasions. That very fact, however, inevitably poses very difficult sentencing problems when the matter is not by reference to individual cases but in a wider way. Rape always involves a disgraceful exercise of physical power over the victim and degradation of her human personality.

But there are some cases which have particularly aggravating features. **There are cases involving very young girls** or elderly women. There are deplorable examples of gang activity. There are instances of the victim being snatched off the street or invaded in the privacy of her own home. And there are cases involving serious physical violence or acts of sexual perversion and other forms of degradation. So clear distinctions must inevitably be drawn to take care of bad and finally the worst kinds of case. There is the added fact that if this margin is not kept in mind in relation to lesser offences then there could be the grave risk of the more serious attacks, even to the point of murder, by offenders who though that there was nothing to be gained by a residual restraint which might lead to detection.

The extent to which all this can properly be translated into length of sentence must inevitably vary from case to case. The important consideration is to ensure that there is an appropriate degree of flexibility left to the Judge so that the punishment can actually be made to fit the crime. “

[43] All of the judicial authorities relied on by the Crown establish that offences of rape invariably call for an immediate custodial sentence even if the defendant is a first offender with a prior good character. In **Winston Joseph**, Byron CJ stated at paragraph 16 that the starting point for rape committed on an **adult** [emphasis added] without any aggravating or

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<sup>22</sup> [1985] LRC (Crim) 817.

mitigating features, should be eight (8) years in a contested case, and a minimum of three years on a plea of guilty.

- [44] It is however appreciated that whilst the **Winston Joseph** guidelines are directly applicable to this case, they must be read in conjunction with the necessary modifications with the statutory regimes existing in each member state and also, that more than a decade has passed since those guidelines were promulgated. If the court were to slavishly use these guidelines without making the necessary modifications, then the sentences may be inappropriately high or inappropriately low. Therefore, it is essential that having taken the guidelines into consideration, my task is to stand back and look at the circumstances of the case as a whole and impose a sentence which will be appropriate having regard to all the circumstances.
- [45] The court has a wide discretion on sentencing and a wide range of options are available. For our purposes, the principal considerations are: (a) the entire course of conduct as the offences consist of a series of criminal acts of the same or a similar character; (b) the injury, loss or damage resulting from the offence; (c) the deterrent effect any sentence may have on the prisoner or other persons; (d) the need to ensure that the prisoner is adequately punished for the offence; (e) the character, antecedents, age and physical or mental condition of the prisoner.
- [46] I have considered all the circumstances of the case and the submissions made by the Crown as well as by the Defence. I have considered all that was said in mitigation particularly the fact that Mr. Rabsatt pleaded guilty at the first available opportunity and saved the complainant the trauma associated with re-living that abominable experience in the witness box [the guilty plea accounts for a one-third discount] and he had no prior brush with the law. He was a law-abiding citizen until these unfortunate events. However, I also note the remarks of the court in **R v Billam** and **R v Milberry** that “the defendant’s good character, although it should not be ignored, does not justify a substantial reduction of what would otherwise be the appropriate sentence”.

- [47] The fact that Mr. Rabsatt is not at his best is also a mitigating feature of this case. His lawyer described him as “bed-ridden”. This is far from the truth. I believe this was a slip of his tongue. But, it is plain that Mr. Rabsatt is not in the best of health. The fact that he collapsed in court a few days ago during sentencing (which had to be delayed to today) may have been a combination of many factors. I ought not to speculate. But, according to Dr. Odebajo, an examination of Mr. Rabsatt revealed “an elderly man, not in any obvious distress but with an abnormal small step gait caused by his arthritis. He is not diabetic or hypertensive.” Fundamentally, this corroborates what Nurse Davis said to the court.
- [48] My task now is to weigh the mitigating factors vis-à-vis the aggravating features in this case to determine the appropriate sentence. As indicated by the Crown, there are four particularly aggravating features about the sexual offences committed on this child.
- [49] Firstly, the complainant is related to Mr. Rabsatt. She called him “papa.” The breach of trust committed is untold. In my opinion, Mr. Rabsatt exploited a vulnerable child whose parents are not around. He should have been nurturing her.
- [50] Second and quite significantly, the complainant has suffered psychologically. She has even contemplated running away.
- [51] Third, the prevalence of offences of a sexual nature. Crimes of a sexual nature are certainly on the rise in this Territory and nearly all the time, those crimes are committed by someone the victim knows.
- [52] Last and by no means the least, the age of the complainant vis-à-vis the age of Mr. Rabsatt. He was between the ages of 64-65 whilst the complainant would have been 14-15 years at the time of the incidents. This indicates an approximate age disparity of 50 years.
- [53] The overarching duty of the court is to do justice to the case. In doing so, the court has to have regard to all the surrounding facts and circumstances of the case including the aggravating as well as the mitigating factors. Despite a frail Mr. Rabsatt, there is no doubt

that a custodial sentence is still warranted. The prison has a full time nurse on duty and a doctor on call. These personnel can adequately care for Mr. Rabsatt whilst he is an inmate there. I presume that they can do a better job than Mr. Rabsatt's wife who is not medically trained.

[54] On the other side of the coin is a young vulnerable girl. She now lives in foster care as her parents are not around. She knows not what tomorrow will bring. She is expectant and will be a mother in less than two months. She is a "baby" having a baby. It is unknown who the father of the child is. It may or may not be Mr. Rabsatt. Given that state of uncertainty, I cannot consider her pregnancy as an aggravating factor in sentencing.

[55] Undoubtedly, the plain duty of the court is to protect victims of sexual attacks particularly when they are so young and vulnerable, as the complainant. A message has to be sent out to all pedophiles that the courts will not tolerate their sick perversions. Unfortunate as it may be, Mr. Rabsatt falls in this category. I cannot imagine what drove this once law-abiding citizen to commit such wicked acts. I agree with Mr. Daniels that Mr. Rabsatt may not re-offend again and thus, he does not pose a menace to society. However, he must still be punished for what he did. If it was his first sexual encounter with the complainant, I may have been a bit more sympathetic and lenient. But, in my opinion and to use informal language, Mr. Rabsatt was "eyeing the complainant up." He started by making sexual overtures by uttering words to the effect "how pretty she is and that he will work to provide stuff for her" and "he loves her and he would take care of her". Surely, a law-abiding citizen, who was described by the illustrious Elmore Stoutt as "highly respected, responsible and trustworthy" should have known better.

### **The sentence**

[56] I hereby sentence you, **CALVIN RABSATT** as follows:

**Count 1- Rape – 8 years imprisonment**

**Count 2- Indecent Assault – 9 months imprisonment**

**Count 3 –Indecent Assault – 9 months imprisonment**

[57] The three counts will run concurrently with each other from 6 October 2011. For the avoidance of any doubt, Mr. Rabsatt is sentenced to eight (8) years imprisonment.

[58] I will further order that the complainant continue to receive psychological intervention from Dr. Rubaine – over such intervals to be determined by the said doctor.

**Indra Hariprashad-Charles**  
High Court Judge