

SAINT LUCIA

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

CASE NUMBER 30 OF 2005

THE QUEEN

VS.

LESTER CLEMENT

APPEARANCES: Mr. Leslie Mondesir for Crown
Mr. Lorne Theophilus for Accused

.....
TUESDAY 9TH NOVEMBER, 2005
.....

ORAL JUDGMENT ON SENTENCING

1. **EDWARDS J:** Mr. Clement, the Jury found you guilty of Indecent Assault of female under 16 years yesterday. This was one of the 3 offences left to the Jury for them to return a verdict on, from the evidence adduced in this Court on the indictment charging you with Rape. The other offence that was left to them was Unlawful Carnal Knowledge of a female under 16 years old.
2. It is obvious from the evidence that you had sexual intentions towards the Virtual Complainant before even ascertaining her age, within the short period of time that you lured her into your car, with the promise or offer to give her a ride home.
3. You called her "**Ti-Si**", demonstrating your familiarity with her father, then told her how well you knew her parents as the journey progressed.

4. The very fact that you know her parents, her aunt, and her sister Donna should have rung alarm bells in your head telling you that what you were about to do was wrong, you can't do that.
5. Instead you diverted from your course, to the wooded area near the Communications and Works Building, and took reckless advantage of her.
6. At that time she would have been 2 years and 4 months less mature than how she looks now. She was then 15 years and 7 months old. Her appearance presently leads me to conclude that it must have been obvious to you on the 28th June, 2003 that you were dealing with a child under 16 years old, since, even now she looks immature, is not so physically and womanly developed, and does not look her age. She in fact looks younger than 17 years 11 months old to me.
7. She by no means looks like the precocious, flirtatious, well developed, womanish looking 15 years and younger females, who are seen parading around the streets of Castries on a Saturday, dressed to flaunt their physical attributes, inviting sexual attention.
8. You are 33 years old, you could be the father of a daughter 15 years and 4 months old, with a maturity similar to the Virtual Complainant's, if you were a precocious teenager.
9. I have reflected hard on the Verdict of Indecent Assault, well aware of my duty to adopt a view of the facts consistent with the Verdict.
10. I must proceed on the basis of the facts which have been determined impliedly from the Verdict of the jury, when they found you **Not guilty** of Rape or Unlawful Carnal Knowledge of a female under 16 years old: (Principles of Sentencing (2nd edition) by D. A. Thomas, pages 366-369).
11. I therefore have to put out of my mind any question of the use of a knife to fulfill your sexual lust, any question that there were 2 episodes of sexual activity and any question of sexual intercourse having taken place. The Jury, apparently for some unknown reason did not accept this evidence.

12. I have assessed the factual basis for the Verdict. In making my own findings from this assessment, I concluded that the Jury must have found that when you told Inspector Moncherry - ***“I was making love to her and when I discovered that she was 15 years I stopped”*** – you had in fact done the following things:
- (a) Driven her into the gap by Communications & Works Building where you began fondling her breast and vagina, but did not have sexual intercourse with her because according to you she told you she was 15 years.
 - (b) I concluded also that the Virtual Complainant never consented to what you did, you imposed yourself and your sexual lust on her, against her wishes. Her evidence was that when you touched her on her thigh before diverting from the main Road, she told you to desist, don't touch her. She obviously did not like what you were doing, she was not a willing participant.
13. The maximum period of incarceration that the law states I can impose for the offence you were found guilty of is 2 years imprisonment. It is my view that this law should be amended since the law concerning Indecency with a female under 14 years was amended to increase the period of imprisonment to 10 years. (I note since delivering this Oral Judgment that for this offence under **The Criminal Code of St. Lucia 2004**, the penalty has been in fact increased by Parliament. The maximum period of imprisonment is now 10 years where the Virtual Complainant is between 12 years and under 16 years old – See *Section 130 (1) (b)*).
14. I have applied the guidelines established by our Court of Appeal in their triumvirate decisions in **Winston Joseph V The Queen** Criminal Appeal No. 4 of 2000 and **Benedict Charles V The Queen** Criminal Appeal No, 8 of 2000 and **Glenroy Sean Victor V The Queen**. Criminal Appeal No. 7 of 2000 delivered 31st October, 2001. Though the sexual offences for which the Appellants were convicted in those cases were not indecent assault, nevertheless as learned Counsel Mr. Theophilus submitted, the guidelines concerning the aggravating and mitigating factors listed at page 9 of the Judgments are relevant to your present conviction.

15. I am therefore required to weigh any aggravating and mitigating factors, and discount for mitigating factors where mitigating factors outweigh the aggravating factors.
16. Under Section 1098(3) (b) of **The Criminal Code 2004**. I am also required to take into account “**all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to the Court**” where I am of the opinion, that the offence was so serious that a custodial sentence on the offender should be imposed.
17. Your Counsel has urged me in his plea of Mitigation to impose a fine on you instead or some other alternative sentence.
18. I have taken into account your clean record – you have no previous convictions, the fact that you are gainfully employed, of seemingly good character and you are a father of a 4 years old daughter. But I have also taken into account your age, and your age is an aggravating factor in this case.
19. At the time you had your sexual lust for this 15 years old Virtual Complainant, your daughter who is 4 years old would have been 1 year and probably 6 months or more old.
20. I leave with you what the Good Lord said when he walked this earth among men. He said that we must “**Do unto others as you would them do to you**”. Remember you have a daughter.
21. I have also considered the effect your conduct has had on the Virtual Complainant. Fortunately for her, though she and her father have testified that it has affected her performance in school, and her grades have dropped, it appears that the effect has not been that serious, because of the obvious support, love and nurturing from her family and counseling.
22. In all the circumstances I cannot accede to the exhortation of your Counsel to impose a fine on you. I regard this offence as serious enough to justify only a custodial sentence.

23. Sexual offences against young females and children in the society of St. Lucia are way too prevalent and the situation appears to keep on getting worst. Consequently, of the 4 classical principles of sentencing i.e. **RETRIBUTION, DETERRENCE, PREVENTION OR PROTECTION OF THE PUBLIC, AND REHABILITATION**, that can be applied to the facts assessed to have been found by the jury and your peculiar circumstances, in my opinion, the 2 principles to be emphasized right now are retribution and deterrence.
24. I note that Section 1102 of **The Criminal Code 2004** requires me in sentencing an offender convicted before this Court to observe guidelines which include the rehabilitation of the offender. Further, that the gravity of the punishment must be commensurate with the gravity of the offence.
25. There are some persons in the Society who see nothing wrong with fulfilling their sexual lust on children and young females. They do not regard such offences as serious. I am here to tell them that it is not okay, they will receive a significant custodial sentence depending on the circumstances, where they are found guilty in this Court.
26. Because of the substantial disparity in the age between you and the Virtual Complainant and the fact that the assault was not a trivial one, the Sentence of this Court is that you are to be imprisoned for 18 months.

Dated this 9th day of November 2005

OLA MAE EDWARDS
High Court Judge