

SAINT LUCIA

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

CASE NO. 58 of 2003

BETWEEN:

THE QUEEN

and

IVAN HENRY MILTON

Appearances:

Mr. Leslie Mondesir, Crown Counsel III for the Crown
Accused in person

2004: March 23
March 25

JUDGMENT ON SENTENCING

1. HARIPRASHAD-CHARLES J: On 23rd March 2004, a Jury found the accused, Ivan Henry Milton guilty of rape and abduction. He is now before the court for sentencing.

The Facts

2. During the month of January 2003, the virtual complainant, Beatrice Cetoline was working at Williams Bakery on Chaussee Road in the City of Castries. Two days before the incident, the accused went to the bakery enquiring of Ms. Cetoline about the whereabouts of a female friend. They began speaking and he befriended her. He told her that he could find her a better job with his employer, Kenty's Wholesale and that he would arrange a meeting between herself and his boss.

3. They began interacting with one another. On 23rd January 2003, at about 12.45 p.m., he came to her workplace and asked her if she had lunch. She replied in the affirmative. He went away and returned with a smalta and 2 pens. Beatrice gave the smalta to a male friend who was standing there at the time.
4. They agreed to meet later that night after work so that she could meet his boss. She finished work at about 7.00 p.m. He waited for her outside the bakery. He took her to the first Kenty's store. It was closed. They went to the second Kenty's Store. A lady told them that the boss was at the third one in the CDC building. They went there. They had a few drinks. She drank a malt and a piton beer. He had 2 beers. No boss came. It was time for Beatrice to go home. The accused decided to accompany her to the bus stand. They walked through various streets in the city of Castries. When they got to a pink and white house across the road from the Salvation Army on High Street, the accused grabbed her hand and took her into a yard and through an alleyway to a room. The door was locked. He retrieved the key from under the rubbish. He opened the door, took her inside and locked her there and left. Shortly thereafter, he came back with a lighter. He lit a candle and told her to take off her clothes. She hesitated. The accused threatened her by saying that he would lash her over her fucking mouth and he will have the fellows outside the house to 'make a next on her.'
5. Beatrice took out her clothes. She told him that she was not having sexual intercourse with him unless he wears a condom. He put on a condom. He then had sexual intercourse with her. After he was finished, she told him that she wanted to go home. The accused said that he would let her go at six in the morning. He told her to lay down and take a rest. She laid down but could not sleep. She told him that she was feeling cold. He came and started whining on her. She told him that she wanted to urinate. He accompanied her to 'pee' outside of the door. After she was finished, they came back outside. He locked the door inside and held the key. She went and lay down.
6. The accused came near to her and he started whining on her. He had sex with her a second time. All that time, he was holding her hand so she could not move.

7. After he had completed the sexual act, he told her to take a rest. She could not. Some time later, she saw light coming through the window. She realized it was dawn. She told him that it was time to go home. He said that he had one more round to take before she went home. He had sex with her a third time. When he was finished, he asked her to dress. She got dressed and he gave her a walkman radio. She did not take it. He told her that he will give her a slap on her face if she does not. She took the walkman and left. He followed her. She walked straight to the bus stand and went home.
8. She got to her home at about 7.25 in the morning of the 24th January. At her home, she recounted the grisly and horrible experience to her mother and father. She told them that a man had raped her. She was hysterical and wept persistently. Her parents advised her to make a report to the police. Her boyfriend then took her to Victoria Hospital. At Victoria Hospital, she was advised to go to the police.
9. She went to the police. After making a report, WPC Heather Emmanuel accompanied her to Victoria Hospital. She waited there for a good while before she saw Dr. Kenneth Carlton Freeman, a medical doctor in the Accidents & Emergency Department. He opined that when he saw Beatrice, she appeared very distressed and sad and she was weeping a lot. As a result, she was unable to give a fluent account of the story to the doctor. He examined her and found a 1 cm abrasion to the mucosa of the vaginal wall at approximately the 8 o'clock position. He stated that the abrasion could have been caused by an erect penis. He took samples from the vagina, anus and throat. The samples were never tested because of on-going administrative problems at the Ezra Long Laboratory.
10. The accused was subsequently arrested and charged with rape and abduction.
11. Though unrepresented by Counsel, the accused put forward a strong defence. He said that he and Beatrice had consensual sex. She screamed rape because he did not give her the \$100.00 he had promised her. He alleged that she did not shout or scream and ran away when the opportunity presented themselves because she consented. He also alleged that High Street is a busy street and had she screamed, chances are that

someone could have heard her. He alleged that she only made a report because her boyfriend influenced her to do so.

12. Obviously, the Jury did not believe him. They returned verdicts of guilty of rape and abduction.

Sentencing

13. The guidelines for sentencing in cases of a sexual nature were laid down by the Court of Appeal on 17th September and 31st October 2001 in the consolidated criminal cases of *Winston Joseph v The Queen*¹, *Benedict Charles v The Queen*² and *Glenroy Sean Victor v the Queen*³. The objective is to promote greater consistency in the approach to sentencing.

14. Section 238 of the Criminal Code states that “whoever commits rape is liable indictably to imprisonment for life and to flogging.”

15. Sir Dennis Byron, Chief Justice in delivering the Judgment of the Court stated at page 8:

“Where a rape is committed by two or more men acting together, or by one man who has broken into or otherwise gained access to a place where the victim is living or by a person who abducts the victim and holds her captive the starting point should be 10 years.”

16. Sir Dennis continued (at page 8):

“The actual sentence 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 “

¹ Criminal Appeal No. 4 of 2000 (Saint Lucia) unreported

² Criminal Appeal No. 8 of 2000 (Saint Lucia) unreported

³ Criminal Appeal No. 7 of 2000 (Saint Lucia) unreported

Aggravating Factors

17. The sole aggravating factor is that the victim suffered physically as a result of the sexual assault. She suffered a 1 cm abrasion to the mucosa of the vaginal wall.
18. The accused also has 15 previous convictions, all of which are spent. Though they are spent convictions, two of them were of a sexual nature for indecent assault and I do not think that the court could disregard this completely.

Mitigating Factors

19. The Accused has not furnished this court with any circumstance to enable me to conclude that the sentence could be mitigated except to state that he is 37 years old with 2 young children. He has also been on remand for 14 months.

Conclusion

20. In the Sean Victor's case, the Court of Appeal reduced a 30 years rape sentence to 5 years. The Court of Appeal concluded that it was a case where they found no aggravating factors. The appellant mitigated the offence by a guilty plea after confessing to the police at the commencement of the investigation. In addition, he told the police that the victim had given him the impression that she would have had consensual sexual intercourse with him.
21. The facts of this case are different. Having taken all factors into consideration, the sentence of the court is that the Accused, Ivan Henry Milton is sentenced to 10 years imprisonment for rape and 5 years for abduction, the 2 terms to run concurrently.

Indra Hariprashad-Charles
High Court Judge

