

SAINT LUCIA

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

CASE NO. 74 of 2003

BETWEEN:

THE QUEEN

And

KENNETH CRAFTON aka BABA

Appearances:

Mr. Leslie Mondesir, Crown Counsel for the Prosecution
Mr. Lorne Theophilus for the Accused

2004: February 13, 24
February 24

DECISION

1. **HARIPRASHAD-CHARLES J:** The Accused, Kenneth Crafton also known as “Baba” was indicted by the Director of Public Prosecutions on four counts of sexual offences: two for unlawful carnal knowledge and two for indecency allegedly committed between April 15th and May, 6th 2002 at La Clery, near the City of Castries.
2. After two days of evidence, a mixed Jury found the Accused guilty on two counts of unlawful carnal knowledge under Section 215 of the Criminal Code of Saint Lucia. He is before the Court for sentencing.

The facts of the Case

3. The facts of this case are shuddering and shocking. It involved 12-year old Nicole Goodman, a school girl in common entrance class at a public school in the City of Castries and the 47-year old Accused, a baker by profession from the outskirts of Castries. In her testimony, Nicole provided graphic details of two sexual encounters with the Accused that took place at his home. On her first encounter, he wrote something on a piece of paper and asked her to write her name under it. She obeyed. He then drew on the floor two circles and inside of each circle, he drew a triangle. Afterwards, he took a blue plastic bathtub, put water in it and poured a green liquid from a small bottle into the water. He then asked Nicole to remove her clothes and bathe in the water. She did. After a refreshing bath, the Accused gave Nicole a white towel to dry herself and asked her to stand in the circle. He then took the same piece of paper on which she had written her name and pushed it in her vagina. The Accused proceeded to suck her breasts and vagina, pushed his penis in her vagina and had sexual intercourse with her. She asked him why was he doing that and he replied that was on the paper.
4. On her second sexual encounter with the Accused, some more rituals were performed including the making of a cross on Nicole's back and chest. The Accused asked her to go to the bedroom where he again, had sexual intercourse with her. He told Nicole that these rituals were performed in order to assist her with her education and would 'open' her brains.
5. Subsequently, she made a report to the Police. The Police took her to Dr. Marius, a qualified Gynaecologist and Obstetrician practising on the island. Dr. Marius examined Nicole and found that she was a sexually active young lady who was no longer a virgin.
6. More investigations were conducted into this matter and the Accused was formally arrested and charged with two counts of unlawful carnal knowledge.

Sentencing

7. Section 215 of the Criminal Code of Saint Lucia states as follows:

“Whoever unlawfully and carnally knows any female under the age of 13 years of age, whether with or without her consent, is liable indictably to imprisonment for life, and to flogging.”

8. So the penalty for an offence of this magnitude is ‘imprisonment for life and flogging.’ Flogging is regarded as barbaric, degrading, and inhumane and will soon be removed from our statute books.

9. The guidelines for sentencing in sexual offences cases were laid down by Sir Dennis Byron, Chief Justice in the consolidated appeals of *Winston Joseph v the Queen*¹, *Benedict Charles v the Queen*² and *Sean Victor v the Queen*³ on 31st day of October 2001. All of these cases emanate from Saint Lucia. At page 6 of the judgment, Sir Dennis pronounced:

“Starting at a minimum where the girl is not far from her 13th birthday and there are no aggravating factors at 8 years and upwards. It scarcely needs to be said the younger the girl when the sexual approach commences the more serious the crime. The existence of a maximum sentence of life imprisonment for this offence would allow a rapid escalation of the term of imprisonment as the age of the complainant decreases.”

10. However, the actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors. But Sir Dennis warned at page 8 of the judgment:

“It is not enough for a 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.”

11. Fully cognizant of the guidelines, I will firstly attempt to weigh the mitigating factors against the aggravating factors and secondly, to embark on an evaluative process in order to determine the appropriateness of a sentence.

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

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

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

12. I pause to observe that these guidelines were re-affirmed in January of this year in yet another Saint Lucian case of *Gregory Burton v The Queen*.⁴

Mitigating Factors

13. The mitigating factors in this case are:

- (i) The Accused is a man of good character.
- (ii) Since 1992, the Accused has had no brush with the law.

Aggravating Factors

There are several aggravating factors namely:

- (i) The offence has been frequently repeated. At least, on two different occasions in this case.
- (ii) It has been accompanied by abhorrent perversions e.g. buggery or fellatio. A broad meaning of 'perversion' in my mind does not exclude sexual activity which takes the form of rituals.
- (iii) While the Accused has fifteen previous convictions, they could be regarded as "spent." However, a court must be mindful of the seriousness of the offences. Though not sexual in nature, three of the offences could be categorized as serious- 2 for housebreaking and 1 for robbery. For these 3 offences, the Accused was incarcerated for a number of years.

14. It is pellucid that the mitigating factors are outweighed by the aggravating factors. The guidelines suggest that in such a case, the sentence tends to go higher.

15. In determining the appropriateness of sentence, I am obliged, also to embark on an evaluative process. I was kindly provided with a Probation Officer's Social Inquiry Report on the Accused from the illustrious Mrs. Lucy Myers at very short notice.

The Accused

16. The Accused was born and raised in Castries. His parents shared a common law relationship before they eventually got married. He has nine siblings – five of whom live abroad. His father was an alcoholic and they were all physically, mentally and verbally

⁴ (Criminal Appeal No. 1 of 2002) (unreported)

abused as children. They were subjected to severe punishment such as holding stones above their heads on pain of being whipped if the stones fell.

17. The Accused never finished school and started his working life at age 15 as a porter for Minvielle & Chastanet Limited. He later worked intermittently as a security guard and a baker. He got involved in the furniture business and now co-owns one with one "Big Youth." He also owns his house at La Clery as well as a motor car.
18. He has five children ages 15, 7, 6, 5 and 2. The children are from three separate unions. Three of the children live with him. He is considered a good father who contributes towards the welfare of his children. He is presently involved in two common law relationships.
19. Neighbours and friends describe the Accused as a generous man always ready to assist others. They claim that he is a jovial and sociable individual and a very hard-working businessman. In the neighbourhood, he is regarded as a peaceful person.
20. The Probation Officer assessed the Accused as a recidivist who has been able to stay out of prison for the last 12 years. He has not accepted the verdict and says that he could not be remorseful for something he did not do. He claims that he will commit suicide if he goes to the Bordelais Correctional Facility because he feels that justice was not done.

Conclusion

21. The issue of sexual assault is a rather sensitive one but at the end of the day, I must act in accordance with the guidelines established by the Court of Appeal. I have done the evaluative process that the law requires of me. I have taken into consideration the age of Nicole Goodman and the fact that she reposed trust and confidence in the Accused; however naïve she was. Then, the Accused has a serious criminal record. These are the two most compelling factors for a rapid escalation of the sentence.

22. I also accept Mr. Theophilus' submissions that the case of Gregory Burton does not apply. He referred to the case of *The Queen v Kenneth Emmanuel*⁵. It bears more similarity to the present case. In that case, Mr. Emmanuel was sentenced to seven years imprisonment for unlawful carnal knowledge.
23. There are two counts of unlawful carnal knowledge. I will invoke section 1279 of the Criminal Code of Saint Lucia. The Accused, Kenneth Crafton is sentenced to ten (10) years imprisonment on each of the count to run concurrently.

INDRA HARIPRASHAD-CHARLES
High Court Judge

⁵ Crim. Case No. 57 of 2000 (unreported) (Saint Lucia)