

IN THE COURT OF APPEAL OF BELIZE, A.D. 2009

CRIMINAL APPEAL NO. 6 of 2009

BETWEEN:

LEVI JACKSON

Appellant

AND

THE QUEEN

Respondent

BEFORE:

The Hon. Mr. Justice Mottley

-

President

The Hon. Mr. Justice Sosa

-

Justice of Appeal

The Hon. Mr. Justice Barrow

-

Justice of Appeal

The appellant in person
Mr. Cecil Ramirez for the Crown.

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1, 3 and 19 March 2010.

BARROW JA:

[1] This appeal proceeded against sentence only and for the reasons following, this Court upheld the sentence of 12 years' imprisonment for rape imposed by Legall J.

The facts

- [2] The complainant testified that around 8:30 one night she left her place of employment situate near mile 5 on the Western Highway intending to go to her home at mile 8 on the Western Highway. Her mate did not come to collect her at the appointed time so she walked along the road for a while hoping to get a ride. The appellant, who was driving his taxi, stopped to offer her a ride. He was a former co-worker so she accepted his offer of a ride; she knew he lived in Hattievile. After he drove off with her he invited her to his home and she declined. He repeated the invitation a number of times, offering her an increased sum of money each time. Then he added food for her children to his offers. When the vehicle neared mile 8 she asked the appellant to let her out. Instead of stopping the appellant increased speed. She started screaming for him to let her out. He told her to come to his house for just five minutes and he would bring her back. She continued to protest. She was “frighten, frighten, frighten”, she said. The vehicle reached Hattievile and she thought she would jump out when it slowed for a speed bump located before the Hattievile Police Station.
- [3] Before he reached the speed bump the appellant stopped the car and reversed, telling the appellant that he was not simple. The complainant opened the car door and tried to get out, getting as far as placing one foot out the car but the appellant increased speed and grabbed her by the hand and told her to shut the door. The appellant then remotely locked the car doors. He turned at the Hattievile round about and drove along the road to Burrell Boom. The complainant said she resumed screaming and demanded to be taken home. The appellant had continued holding her hand, digging his fingernails into her hand.

[4] The journey continued with the appellant cursing the complainant for a while then making lewd requests of her and then slapping her twice in the face because she was preventing him from touching her private parts. The appellant persisted and managed to loosen the complainant's pants and rub her vagina. After driving for 10 to 15 minutes the appellant turned into a deserted road, stopped the vehicle and kept insisting that the complainant have sex with him. She kept refusing. Finally the appellant got out the vehicle, went to the complainant's side, pulled her out the vehicle by her hair, held her hand and began to take off her clothing. When she tried to release his grip he told her if she ran he would stab her because he had killed already and that he would chop her up and throw her in the water. He showed her a small machete. She continued to resist his efforts and he punched her in the face, head butted her nose, punched her in the mouth and choked her. He told her about three times to choose between having sex and losing her life. He threatened to shoot her if she ran, after he had taken off her clothes and was taking off his clothes. While overpowering her the appellant bit the complainant on the face and hand. He finally managed to throw the complainant to the ground and to have sex with her.

[5] When the appellant had finished the sex act he pushed the complainant, naked, back into the vehicle and seated himself. After a while he said he could not let her go home because she would tell the police. It appeared to her that for over an hour he was considering what to do with her because he kept repeating that he could not allow her to go home because she would tell the police. She stopped her crying and began to plead with him, trying to convince him that she would not tell the police. He kept repeating that she would go to the police. And she kept telling him she would not. Finally he told her he was sorry and he just wanted to be her man. Then he let her have her clothes and drove the two of them back towards the main road. The car stuck in mud. They walked to the road side and she

got a ride to the police station in Hattieville, leaving the appellant behind. The time she reached the police station was 2:30 a.m.

- [6] The story the appellant told in sworn testimony confirmed the basic story told by the complainant but he maintained it was consensual intercourse and that he only had oral sex with her. It was a fantastic and rambling story the appellant told that simply beggared belief and, since the appellant abandoned his appeal against conviction no point would be served by its recapitulation.

The approach to this sentencing

- [7] The starting point in sentencing for rape is section 46 of the **Criminal Code**, Chapter 101 of the Laws of Belize which provides for a minimum sentence of 8 years' imprisonment. It is not open to the court to impose a lesser sentence but the presence of mitigating factors in the commission of the rape will persuade the court to keep the sentence at the minimum. In this case there were no mitigating factors.
- [8] The presence of aggravating factors in the commission of the crime, especially if they outweigh the mitigating factors (if any), may require an increase in the sentence beyond the minimum. In this case there were serious aggravating factors. The appellant abducted the complainant and kept her against her will for some five hours. During this time he repeatedly hit and bit her. He threatened to kill her and showed he had the means to do so and claimed to have done so before, making it appear to be no empty threat. Worst, after the appellant had violated the complainant, he kept her in what must have been a state of sheer torture for over an hour considering aloud what to do with her since he could not let her go because she would report him to the police. On a dark and deserted dirt road in the countryside, in the middle of the night, miles from

habitation, under the total control of her abductor and rapist, the complainant must have been utterly terrified that he was going to kill her.

[9] The aggravating factors made this a bad case of rape calling for a substantial increase in the sentence beyond the minimum. To the very end, even after the appellant had accepted he had no basis for appealing his conviction, the appellant refused to acknowledge his crime and show remorse. We were satisfied that the sentence of 12 years' imprisonment was not excessive.

MOTTLEY P

SOSA JA

BARROW JA