

IN THE SUPREME COURT OF BELIZE, A.D. 2019

CRIMINAL JURISDICTION

SOUTHERN DISTRICT - TOLEDO

INDICTMENT No. C17/2017

THE QUEEN

V

DAVID CHOCO

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Mr. Cecil Ramirez - Counsel for the Crown
Mr. Hurl Hamilton - Counsel for the Accused

TRIAL DATES: 8th, 17th, 22nd, and 23rd July, 2019

SENTENCING

Judgment on Sentencing

[1] The Accused was indicted by the Director of Public Prosecutions on three counts of the offence of rape of a child contrary to the provisions of *Section 47A (b) of the revised edition of the Criminal Code 2011 as amended by Act No.2 of 2014*. To this indictment the Accused entered a plea of not guilty on all counts and after a fully contested trial he was found guilty by the jury on all three counts as indicted.

The Facts

[2] The Accused is the father of the victim.

[3] On Sunday 21st June, 2015, the Accused, the victim, her mother, and siblings attended a Father's Day party at a friend's house at which event the Accused consumed alcohol. On their return home he requested food and on the instructions of her mother the victim took her father's food to the kitchen. The Accused met her in the kitchen, lifted her skirt, removed her underwear and had sexual intercourse with her, without her consent.

[4] On Friday 28th August, 2015, sometime around 6.30 p.m., the Accused sent the victim to have a bath. When she returned to her room, naked, except for a towel wrapped around her, the Accused came to her room, removed the towel and had sex with her without her consent on her bed.

[5] Finally, on Saturday 24th October, 2015, at around 7.00 p.m., whilst in the kitchen, the Accused approached the victim and had sexual intercourse with her on the kitchen table without her consent.

The Law

[6] After due consideration of the evidence adduced by the Crown and accepted by the jury, I find the following to be the aggravating and mitigating factors:

Aggravating Factors

1. The predatory sexual behaviour by the Accused against his daughter;
2. This horrific offence was committed on three occasions;
3. The breach of his position of trust;
4. The prevalence of this type of offence within the district and the jurisdiction;

5. The relatively tender age of the victim;
6. There has been no expression of remorse by or on behalf of the Accused;
7. Public abhorrence at this type of offence.

Mitigating Factors

1. The Accused is a first offender.

Sentence

[7] The Accused by his criminal conduct has left the family fractured and disjointed. The victim in her testimony stated that, she never complained to her mother about the sexual assaults, but instead, complained to her school counsellor because she believed that there was nothing that her mother could have done to help her with the situation she faced.

[8] She was removed from the family home and since then has not returned thereto. Indeed, she has been removed from the Southern District. I find that apart from the physical acts of sexual intercourse against his daughter what makes these offences much more egregious is the victims' bizarre introduction to sexual intercourse at the age of 13. She has been deprived of the opportunity of having sex in an atmosphere of mutual love and affection after having reached the age, and stage of maturity and for her to experience an appropriate period of courtship.

[9] This Court is not unaware of the prevalence of this offence within this jurisdiction. Undoubtedly, Parliament is also aware thereof and has enacted suitably draconian legislation for the sentencing of those found guilty of this offence.

[10] The Criminal Code provides for the institution of a mandatory minimum sentence of 15 years imprisonment for anyone convicted of this offence. The Accused was granted leave to address the Court. He essentially stated that, “he was the sole breadwinner for his family and as such the Court should be lenient with him”. He also stated that, “he has never been in trouble with the law before; hence, the Court should take this fact into consideration.”

[11] These sentiments have been repeated by the Defence Counsel in his address to the Court in his plea for a lenient sentence for his client. The Court reminded Counsel of the provisions of the section under which his client was indicted and the mandatory minimum sentence provided therein. Mr. Hamilton, urged the Court, to exercise its discretion and impose a lighter custodial sentence than that prescribed by Parliament.

[12] The mandatory minimum sentence prescribed for certain offences may be reduced pursuant to the provisions of *Section 160 of the Indictable Procedure Act as amended by the Indictable Procedure (Amendment) Act 2017* to wit:

“160 (1): Where any person is convicted of a crime punishable by a mandatory minimum term of imprisonment under the Code or any other Enactment, the court may, if it considers that the justice of the case so requires, having regard to special reasons which must be recorded in writing, exercise its discretion to sentence the person to a term of imprisonment, as the case may be less than the mandatory minimum prescribed for the crime for the Code or any other enactment, as the case may be.

(2) Notwithstanding the provisions of this Section, the court may not sentence an offender who is 18 years of age or over, to less

than the prescribed mandatory minimum term where the crime he has been convicted of is,


(b) An offence under Section 46(rape), 47(1) (unlawful sexual intercourse with a person under the age of 14 years), 47A (rape of a child) or 62 (incest) of the Code.”

[13] A perusal of the section of the ***Indictable Procedure Act*** aforesaid reveals that the discretion given to the Court therein is expressly provided to be inapplicable in this case where the Accused is convicted for the commission of offences contrary to the provisions of ***Section 47A of the Criminal Code***.

[14] There have not been any submissions’ by Defence Counsel nor is the Court on consideration of the evidence and mitigating factors herein aware of facts or circumstances which may amount to special reasons for the Court to exercise its inherent discretion to impose a sentence lower than the prescribed mandatory minimum sentence. Indeed, I do not find in all the circumstances of this case that a sentence of 15 years imprisonment is disproportionate.

[15] Accordingly, the Accused is sentenced to a period of imprisonment of 15 years on each count. The sentences shall run concurrently and shall commence on the 23rd July, 2019.

Dated this **Monday 20th day of January, 2020**



Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court