

**IN THE SUPREME COURT OF BELIZE, A.D. 2019
CRIMINAL JURISDICTION**

SOUTHERN DISTRICT

Indictment No. C7/2016

THE QUEEN

V

RANDOLPH COLEMAN

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Ms. Janelle Tillett – Counsel for the Crown
The Accused appeared in person

TRIAL DATES: 28th, 29, 30th, and 31st May, 2018.
1st, 4th, 8th, and 14th June, 2018.

JUDGMENT ON SENTENCING

[1] The Accused was indicted by the Director of Public Prosecutions on a three count Indictment for two counts of sexual assault and one count of incest. At his trial he was convicted of one count of sexual assault and acquitted on the other count. He was also convicted on the count of incest.

The facts

[2] The victim was the stepdaughter of the Accused and her date of birth was the 9th day of December, 2005. Her biological mother and the Accused lived and cohabited in a common law union for around eight years prior to the commission of these offences.

[3] During the month of June 2016, the Accused took the victim into his bedroom where he touched her bottom, her breasts and vagina. He also kissed her on her lips and cheeks and placed his penis in her mouth. On a Wednesday in August of the same year, the Accused again took the victim into his bedroom and tied her hands over her head, removed her clothing and had sexual intercourse with her.

[4] On the 2nd day of June, 2017, as a result of a report made by her head teacher that the victim was behaving in a disturbed manner the school was visited by a member of the Domestic Violence Unit who had a conversation with her in the presence of a social worker. A report was later made to the police and on the following day the victim was medically examined by a doctor who found that there were tears to her hymen and opined that she was no longer a virgin. The doctor further opined that the tears to the hymen were not recent.

[5] I have considered the facts and circumstances of this case and find the following to be the aggravating and mitigating factors herein.

[6] **Aggravating factors**

1. The breach of trust committed by the Accused with his stepdaughter;
2. Acts of degradation of the victim by forcing her to perform oral sex on the Accused;
3. The gravity of the offences which were planned and premeditated;

4. The repeated acts of sexual abuse committed against the victim;
5. The emotional and psychological trauma suffered by the victim as stated in the victim impact statement;
6. The tender age of the victim who was 10 years old at the time of the commission of these offences;
7. The prevalence and public abhorrence of the offences.

[7] **Mitigating factors**

1. The remorse expressed by the Accused.

[8] After having considered and carried out a balancing exercise of the aggravating and mitigating factors, I find that the aggravating factors outweigh the mitigating ones.

Sentence

[9] In the English Court of Appeal decision of *Millberry et al v R (2003) 2 Cr App. R (S) 31* the Court opined thus in:

1. *General guidelines as to sentencing for rape were given by this court in the case of the R v Roberts and Roberts [1982] 4 Cr App R (S) 8. Lord Lane, Chief Justice presided. In giving the judgment of the court he stated:*

"Rape is always a serious crime. Other than in wholly exceptional circumstances, it calls for an immediate custodial

sentence. . . . A custodial sentence is necessary for a variety of reasons. First of all, to mark the gravity of the offence. Secondly, to emphasize public disapproval. Thirdly, to serve as a warning to others. Fourthly, to punish the offender, and last but by no means least, to protect women (or in this case young girls). The length of the sentence will depend on all the circumstances. That is a trite observation, but those in cases of rape vary widely from case to case."

2. *The (UK Sentencing advisory) Panel begins its proposals by suggesting that:*

"... there are, broadly, three dimensions to consider in assessing the gravity of an individual offence of rape. The first is the degree of harm to the victim; the second is the level of culpability of the offender; and the third is the level of risk proposed by the offender to society."

[10] Though the aforesaid *dictum* speaks to the offence of rape, I find it to be helpful in the determination of an appropriate sentence in the counts of incest and sexual assault. Thus, I will apply the aforesaid principles to the case at Bar.

- [11] The Accused seemed bent on developing an unlawful sexual relationship with the victim notwithstanding her relationship to him and her tender age. In pursuit of his course of sexual criminality, he deprived the victim of the opportunity of experiencing sexual intercourse for the first time in an atmosphere of mutual love and affection and at a mature age. Instead she was pitchforked from infancy to sexual adulthood without having passed through a period of courtship and the development of an appropriate adult relationship with a male of her choice.
- [12] The victim impact statements from the victim and her counselor highlight the emotional trauma experienced by the victim. Indeed her counselor's prognosis for her speedy recovery is rather bleak. The victim herself continues to experience a feeling of shame and embarrassment whenever her peers tease her about being raped by her stepfather.
- [13] I have already found that the aggravating factors outweigh the mitigating ones. I have also taken into consideration the *dictum* of the Court in *Millberry et al v R* aforesaid. Accordingly, I find that the imposition of a custodial sentence on each offence to be inevitable.
- [14] I cannot ignore the fact that Parliament has addressed the prevalence and increasing severity of these offences by the sentences imposed therefore. Section 45A(1)(b)(ii) of the Criminal Code provides that anyone convicted

of the offence of sexual assault on a child under 16 years of age at the time the offence was committed is liable to a term of imprisonment of 12 years whilst section 62 of the Criminal Code provides that anyone convicted for the offence of incest shall on conviction be liable to imprisonment for not less than 12 years but may extend to imprisonment for life. The Accused must be punished by the imposition of a deserved sentence.

[15] These offences committed by the Accused against his ten year old stepdaughter are brutal and heinous. The evidence discloses that the victim pleaded with him to stop as what he's doing is not right but instead he slapped her and proceeded to have sexual intercourse with her. I find that there is abundant evidence that the Accused has displayed the characteristics of a pedophile. I find for the offence of incest the mandatory minimum sentence of 12 years imprisonment is appropriate.

[16] I have not been addressed on any special reasons to impose a lesser sentence pursuant to the provisions of *Section 160 (1) of the Indictable Procedure (Amendment) Act 2017*, nor am I aware of any such reasons which arise from the facts of this case. Moreover, having regard to all the circumstances of the case I do not find that the justice of the case requires a departure from the mandatory minimum sentence aforesaid.

[17] I will impose a sentence of five years imprisonment for the offence of sexual assault. The sentences shall run concurrently and the Accused shall be credited for all time spent on remand whilst awaiting his trial. He shall receive counselling on pedophilia.

Dated this **14th day of June, 2018.**



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