IN THE SUPREME COURT OF BELIZE, A.D 2022

(CRIMINAL JURISDICTION)

Central Division

Indictment C29/2018

THE QUEEN

v.

PAUL JEX JR

-

RAPE

BEFORE the Hon. Mr. Justice Ricardo Sandcroft

Appearances: Mr. Riis Cattouse along with Mr. Robert Lord, both Crown Counsel for the Crown

Mrs. Kia-Marie Diaz-Tillett, for the Accused

Thursday, 7th July 2022

Accused Found Guilty

SENTENCING JUDGEMENT

Facts

1. The complainant, Ms. Jesenia Orellana testified that she was at Burrell Boom at Mr. Sarkis Abou-Nehra's. That she was in her house at the back of Mr. Abou-Nehra's house. It was about 6:00 in the evening when she heard some dogs barking, so her husband went out to see why they were barking.
2. He had been outside for over an hour when Ms. Orellana went to see what was happening. She did not see anything, so she went back inside and while there, she read a text on the phone.
3. After reading the text, she went back outside and called out her husband's name and he answered. She saw a shadow and then a male ran up to her.
4. The man put a knife around her neck and then another person got her five-year old. Jesenia Orellana also testified that she had her one-year-old in her arms.
5. They took them to the garage. They told them to kneel and then afterwards they dragged her husband to the garage.
6. Afterwards they took them from the garage and they took her and her one-year-old to their house at the back of Mr. Sarkis Abou-Nehra's house. This person put her to sit on the bed.
7. He started to search the house when he found a black box that had $388.00, which he took.

8. He then showed her the cell phone and informed her that someone was calling. The complainant further testified that the call was from Mr. Abou Nehra's son who was calling to find out if anything was happening. The complainant told him that nothing was happening. Meanwhile, one of the intruders had a knife around her neck, so she told Mr. Abou Nehra's son that they were at church.
9. After the phone call ended, someone brought in her husband and her five-year-old. Then they told her and her husband that they were ready to go into the big house.
10. Mr. Abou Nehra's house was to the side. They put Ms. Orellana to sit on a sofa along with her five-year-old and her one-year-old. After she saw them rummaging through the house, she saw them taking things from all around the house. Then, they opened up Mr. Sarkis Abou Nehra's bedroom.
11. Jesenia Orellana testified that she saw them dragging things from his room. After that one of the persons came up to her and asked her if she knew the password for the safe.
12. The complainant also testified that apart from her and her family, six other persons entered Mr. Sarkis Abou Nehra's house. Two persons came out with three guns from Mr. Abou Nehra's bedroom; one of the persons sat on a seat and pointed two of the guns at them.

13. After that, one of the persons came up to her and put the gun to her. He told her to go upstairs. She did not want to go upstairs so he told her that he was going to kill her one-year-old if she didn't go upstairs. So, she went upstairs while he pointed the gun at her back.

14. When they got upstairs, they went into the left room. When they went inside, he locked the door. This person told her to lay the baby on the bed, but the baby started to cry. She picked her up and put her back to lay down. This person got the gun and pointed it to her one-year-old then told her that he was going to kill her one-year-old if she did not have sex with him. This person forced her to take down her underwear, after she took it down, he forced her, telling her to lie down, open up her legs and then he forced her to have sex with him. He put his penis in her vagina, then he started to move up and down. This lasted for about 15 minutes then he took out his penis out of her vagina and came on her stomach.

15. Jesenia Orellana also testified that after the sexual assault, she asked him if she could go and clean up herself. She went into the bathroom leading from that bedroom. Ms. Orellana got some brown and white towel and cleaned up where he came on her stomach. After that, she went back to put on her underwear when he used the same brown and white towel and cleaned his penis and his leg. He put it on the table beside the bed.

16. That after the sexual assault, Jesenia Orellana went back downstairs and the same man told her that he was going to tell the rest of the persons to

make no one else touch her or he was going to kill them. So, he put her to sit on the sofa downstairs.

17. She saw the rest of the persons stealing from the house. They had TV's as well as the DVD camera system. They put everything outside and then when a car came, they packed everything they were stealing from the house into it. Then they left.

18. The complainant further testified that the person who assaulted her was about 6 feet, that she was not too good with height, but he had his hair low, he had brown eyes, and he was light brown in complexion. He had a tattoo on the inside of his right hand.

19. The complainant also testified that from the moment she first saw him to when she last saw him, in her view was for about seven (7) to eight (8) hours. Jesenia Orellana further testified that the man had on a mask, but that whilst he was having sex with her, he took it off for a little while.

The only light upstairs came from outside while all the lights were on downstairs.

Discussion of Sentencing Principles

1. Professor Mensa-Bonsu's Invaluable book, **Criminal Law, Series – "The General Part of Criminal Law Volume I"** has tackled and dealt with this phenomenon in such detail that it is impossible for me not to quote portions of it in extenso to support my decision.

On purpose/aims of punishment the learned Author wrote thus:

PURPOSE /AIMS OF PUNISHMENT

"It is appropriate at this point, to examine the question of the purpose of the institution of criminal punishment. Why do we have punishment at all? Why not something else altogether? Why do we punish people who commit offences? The question can be answered shortly by stating that there has not as yet been found any method of ensuring compliance with rules that have been handed down either within the family or within the state.

The fact that punishment per se has its own intrinsic worth does not mean that it is imposed mindlessly, without a consideration of the ends it's imposition on offending individuals is intended to achieve. The **imposition of punishment therefore has various aims. The main aims for the imposition of punishment are generally acknowledged to be:**
(1) **retribution*;*** (2) **deterrence*;*** (3) **prevention**;(4) **reformation**;(5) **rehabilit ation**; and (6) **justice**. **These purposes are divisible along the two main lines of** r**etributive and utilitarian theories.**

THEORIES OF PUNISHMENT

RETRIBUTIVE THEORIES

Retribution

There are two main theories of retribution. The first is grounded in revenge .i.e. that State should avenge the wrong done to the victim, by paying the offender back in his own coin. The adherents of this theory believe that an offender must be made to suffer to the same extent that the victim suffered. The Mosaic law captures the idea in the maxim "A tooth for a tooth an eye for an eye". This is a largely discredited view of the purpose of punishment for one might end up imposing punishment for the sake of punishment.

The second and more respectable view of retributive punishment is that the punishment must fit the crime. This view takes the position that an individual offender must get his just deserts. In many ways most systems of criminal justice adhere to this view for there are different degrees of punishment for different degrees of criminal activity. The very fact that different degrees of punishments are prescribed for offences with various degrees of gravity itself is an indication of a built-in system of retribution. The effort to make the offence fit the crime also has the result of making the punishment reflect the communities' values, e.g. murder is punished more severely than manslaughter, and robbery is in turn punished more severely than stealing…

Clearly, from this manner of categorization, it can be appreciated that this community considers the resort to weapons in times of conflict between individuals as more grievous than the use of body parts such as hands. Thus although the same degree of injury may be caused by the use of hands as by offensive weapons, the use of the latter offence is considered to be a more serious offence than the former. All punishment is essentially retributive since it is invoked in response to the commission of a crime, and not merely because its imposition could prevent crime."

Prof. Mensa-Bonsu again on pages 130-131 sums the utilitarian theory of punishment as propounded by Jeremy Bentham which deals with deterrence as follows:-

"UTILITARIAN THEORIES

The utilitarian theory as espoused by Jeremy Bentham is essentially to the effect that laws must ensure the greatest good for the greatest number of people. Thus whatever the law-making effort engaged in it must produce useful results that would ensure that happiness of the greatest number. For this reason, punishment must not be considered as an end in itself, but as a means to an end. It must serve a purpose, or it is an exercise in waste.

When punishment succeeds in reducing crime because people realise that offenders would be punished, that is a useful end. Therefore the concept of deterrence is very prominent in the arsenal of utilitarian.

Deterrence

Adherents of this theory believe that punishment should serve a deterrent purpose so as to indicate to the community that conduct of the nature punished would not be tolerated in the society. Deterrence operates on two different levels: General deterrence and Specific deterrence.

i. General deterrence

This refers to the effect of the imposition of a particular punishment on the generality of people within a given society. Thus, when a convicted person is punished severely as an example to all and sundry, the hope is that the fear of the sanction would ensure that other like-minded people would be discouraged from pursuing any such activity. The general public would be thus discouraged from undertaking any like acts. Deterrent sentences tend to be severe and may often be unfair to the particular individual, but utilitarian would argue that it is better for one individual to be sacrificed to preserve the happiness of the greater

majority than that the individual should be protected, at the cost of failing to teach the rest of the community the necessary lessons."

ii. Specific deterrence

Specific deterrence refers to the use of punishment for criminal activity intended to discourage the accused from re-offending. The objective is to persuade the person who committed the crime from breaking the law in the future.

2. Sentencing is one of the most difficult parts of criminal law. It is important that everyone knows the principles a Judge or Magistrate uses when fixing a sentence. Everyone means the victim, the accused, the witnesses, their families and friends, the police, the lawyers, the community, the press and the public at large**.** There are many factors to be taken into account and balanced against each other. Different Judges and Magistrates may fix different sentences for the same offence and offender. Consistency is important. No two cases are exactly the same. It would be wrong if widely different sentences were passed for two cases which are generally the same. It is important that reasons are given for the sentence in every case. Everyone should know how a particular sentence is fixed. Sentencing also includes other orders such as compensation, restoration of property, and forfeiture of proceeds of crime.

3. Sentences courts pass, considering the public interest to prevent crime and the objective of sentencing policy, relate to actions and the mental component of the crime. Consequently, circumstances escalating or diminishing the extent, intensity or complexion of the *actus reus* or *mens*

rea of an offence go to influence sentence. It is possible to isolate and generalize circumstances affecting the extent, intensity and complexion of the mental element of a crime: planning, sophistication, collaboration with others, drunkenness, provocation, recklessness, preparedness and the list is not exhaustive. Circumstances affecting the extent, intensity and complexion of the prohibited act depend on the crime. A sentencing court, because sentencing is discretionary, must, from evidence during trial or received in mitigation, balance circumstances affecting the actus reus or mens rea of the offence.

4. Besides circumstances around the offence, the sentencing court should regard the defendant's circumstances generally, before, during the crime, in the course of investigation, and during trial. The just sentence not only fits the crime, it fits the offender. A sentence should mirror the defendant's antecedents, age and, where many are involved, the degree of participation in the crime. The defendant's actions in the course of crime showing remorse, helpfulness, disregard or highhandedness go to sentence. Equally a sentencing court must recognize cooperation during investigation or trial.

5. While the criminal law is publicly enforced, the victim of and the effect of the crime on the direct or indirect victim of the crime are pertinent considerations. The actual circumstances for victims will depend, I suppose, on the nature of the crime. For example for offences against the

person in sexual offences, the victim's age is important. An illustration of circumstances on indirect victims is the effect of theft by a servant on the morale of other employees, apart from the employer.

6. Sentencing remains a discretionary power, exercisable by the court and involves the 'deliberation of the appropriate sentence' (**Marengo v R** (Criminal Appeal SCA 29/2018) [2019] SCCA 28, 45). Finding an 'appropriate sentence' or a 'just punishment' falls somewhere between striking a balance on key procedural ideals namely – rule making which ensures consistency and predictability. Secondly, sentencing requires the judge to exercise discretion, which promotes flexibility and efficiency in the administration of justice. A balance of these two ends promotes consistency in sentencing at the same time as ensuring that judges are flexible to adjust sentences when there is a need. In **Julie v The Republic** CN 33/2015 (Appeal from the Magistrates Court Decision 524/2014) [2016] SCSC 552, para 6, the sentencing approach adopted rightly underscores the above perspective.

7. In the aforementioned case, the Supreme Court approved the sentencing approach of the lower court, which departed from the mandatory minimum sentences. The trial court had taken the circumstances of the convict into consideration and reduced the mandatory sentences to achieve an appropriate sentence. **Julie** rightly followed the seminal case of **Poonoo v Attorney-General** (SCA 38 of 2010) [2011] SCCA 30 (09

December 2011). Therefore, while the rule existed on mandatory sentencing, introducing flexibility enabled the Court to strike the right balance.

8. The Court is conscious of the particular and lasting trauma the victims have suffered and will continue to suffer. One must bear in mind that this young lady will have to live with the stigma of being the victim of sexual abuse for the rest of her life. Especially in a small community like Belize City, where everybody knows everybody, this young lady will be always seen as the victim of sexual assault. As a result some people may treat her with pity, the others with disrespect, but, either way they will always be reminded of what has happened to her. The Defendant's actions scarred the victim for life, some of these scars can be physical, but emotional scarring has long lasting consequences which impacts the individuals, their family and the community.

9. To deter offenders and likely offenders, the court must also mete a severe punishment to the offenders. This is considering that given an opportunity, there is nothing to show that the offender would not repeat his earlier actions. A severe sentence also ensures that the offender is kept away from the victims and likely victims, to prevent him from repeating his heinous actions.

10. Finally, the criminal law is publicly enforced primarily to prevent crime and protect society by ensuring public order. The objectives of

punishment range from retribution, deterrence, rehabilitation to isolation. In practice, these considerations inform sentencing courts although helping less in determining the sentence in a particular case.

The accused's personal circumstances

11. I take into account that you testified in mitigation of the sentence to be imposed. You testified that you are now 37 years old, but that at the time of the commission of the offence you were 34 years old. You were gainfully employed as an employee of a construction company. You were thus a useful member of the society and as such contributed to the economic growth of the country. I take into account that you are a first-time offender.

12. As mentioned earlier in this judgment you described your actions as 'that you knew that what you were doing was wrong'. You mentioned during your statement from the dock that you regret what happened. I am not satisfied with that by saying that you showed real remorse. I gain the impression that you failed to appreciate the psychological damage and lasting trauma you have inflicted on your victim. I therefore reject your explanation in this regard as it does not demonstrate genuine contrition and remorse.

13. That concludes your personal circumstances. The court shall take into account all those aforementioned factors in your favour in assessing an

appropriate sentence. I proceed to consider how the interest of society should be factored into the sentence to be imposed.

The interests of society

14. As regards the interests of society, the courts are inundated with mounting number of cases involving rape. Society is pleading with the courts to impose stiffer sentences in order to deter would-be offenders. Sexual assault cases not only leave the victims permanently traumatized but also the family members of the victims as well as the family members of the perpetrators. I am sure that your family is deeply disappointed with what you have done. You will be separated from them for some time. They will grow without a family member around them.

15. It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands. Naturally, [however,] righteous anger should not becloud judgment.

16. The interests of the community in appropriate sentencing lies primarily in the need to, and to attain appropriate satisfaction of its yearning that

people should be punished according to their "just deserts" (retribution);[1] and, that society should be (or at least feel as if they are being) protected against crime, which is attained through the prevention of crime and the deterrence of criminals by administering punishment to those convicted of crime.[2]

17. However, excessive devotion by a judicial officer to furtherance of the cause of deterrence may so obscure other relevant considerations as to result in very severe punishment of a particular offender which is grossly disproportionate to his deserts.

18. The sentence must mark the disapproval of our society of such conduct by adult persons. Where the court decides to impose a deterrent sentence, the value of the subject-matter of the charge, and the good record of the accused become irrelevant. Thus, in **R. v. Goldsmith and Oakey** [1964] Crim. L.R. 729, C.A. where two police officers appealed against their sentences of four years' imprisonment each for conspiracy to pervert the course of justice, the court said: "When however one is giving deterrent sentences, and this was a deterrent sentence, it does not seem to the Court that it is proper to take into consideration the individual circumstances, whether it be record or of service." **(See D. A. Thomas, Sentencing-The**

[1] S v Van Vuuren 1992 (1) SASV 127 (A) at 132h-i: "Ek aanvaar dat vergelding nog een van die onmisbare boustene is vir die regverdiging van straf. ... Waar ons howev klem daarop lê dat straf geïndividualiseer moet word, ... meen ek dat straf, as vergelding, nie moet uitbly nie." See also S v Jordaan 1992 (2) SACR 489 (A) at 506e.

[2] S v Seegers 1970 (2) SA 506 (AD) at 511; and, more specifically, S v Chapman supra loc cit (n43).

Basic Principles [1967] Crim. L.R. 503 at p. 512.**)** In a footnote to the Goldsmith case D. A. Thomas said in [1967] Crim. L.R. 503 at p. 512*:*

> **"For a further illustration, see Rata, Lane and Comer, March 20,1967, where three men in their thirties appealed against sentences of eight years' imprisonment for armed robbery: the court referred to the principle laid down in Curbishley and others, supra, that 'in this type of case where deterrent sentences are being considered there is no real ground for distinction between individual accused on the grounds of age, record or their private domestic circumstances."**

19. In **R. v. Machin [1961] Crim. L.R**. 844, C.C.A. the appeal court upheld a sentence of six years' imprisonment for rape. It was reported that:

> **"Lord Parker C.J., giving judgment, said that the appellant was a young man of 21 years of age with virtually a clear record. However, single women must be protected against disgraceful assaults of this kind, which were all too prevalent in this country today. "**See page 495.
>
> **"In R. v. Smith (No. 5) [1963] Crim. L.R. 526, C.C.A. the appellant, employed as checker at a railway goods depot, pleaded guilty to two counts of receiving goods worth £24 that had been stolen in transit. He had no previous convictions, and had had 41 years service on railways.**
>
> **He also had a good army record. In the view of the appeal court since the appellant was in a position of trust and the theft of goods in transit was prevalent, it therefore found nothing wrong in principle with the sentence of fifteen months' imprisonment."**

20. In **R. v. Gosling** [1964] Crim. L.R. 483, C.C.A. the appellant, aged 35, was a market porter who had stolen property worth £10 from a market trader. He had no previous convictions, and was therefore a first offender. The appeal court, nevertheless, held that a deterrent sentence of

twelve months' imprisonment was proper despite his previous good character.

21. Adherents of the utilitarian theories also believe that with punishment should come the possibility of first showing the individual the error in his or her ways and bringing about a positive change in the life of such individual so that a criminal lifestyle would be forsworn in favour of a more decent one. Such changeover also requires rehabilitating the individual. The concept of rehabilitation involves providing assistance to enable an offender to adopt a lifestyle which is different from the old unproductive and criminal one. This need to rehabilitate is premised upon the fact that whatever efforts at reform are made would come to naught if the reasons for the adoption of a criminal lifestyle are not tackled. Efforts are thus made to fill the period of incarceration with work schedules so as to invest the offenders with employable skills. Thus, during periods of imprisonment, there is the insistence on the learning of trades, etc. so that people who took up a life of crime because they had nothing to do could be helped to lead an honest life. This would in turn improve the number of law-abiding citizens and conversely decrease the number of criminal elements.

22. Have severe, harsh, deterrent and long prison sentences been successful in reducing the crimes in respect of which the minimum sentences have been raised to higher levels and thereby prevent other like-minded

persons from committing such crimes? I do not think so. One only has to read daily newspapers and observe that, defilement, robbery and narcotics cases are common. What this means is that, stiff, severe, harsh and long prison sentences by themselves, have not succeeded in reducing the prevalence of crime in the society.

23. As a country, there is the urgent need for a very matured and holistic revision of our criminal justice regime. This should undoubtedly include the various punishment regimes and legislations. Otherwise, in the near future, the prisons will all be full of young and able-bodied men and women all wasting their productive life in prison. This will be disastrous for the country.

24. In other words, the more repugnant a crime is in the eyes of society, the more public indignation (outrage) is elicited and the greater the punishment should ideally be. Courts seized with sentencing a specific offender should however never allow that the outrage of society becomes the only test stone upon which a sentence is based.

25. Although rape is defined as an unlawful and intentional act of sexual penetration of one person by another, without consent, it must be buttressed that the victim does not experience rape as being sexual at all. The requirement of sexual penetration is a legal requirement which relates to the biological element of sexual intercourse. For many victims and survivors of rape, they "do not experience rape as a sexual encounter

but as a frightening, life-threatening attack"[3] and "as a moment of immense powerlessness and degradation."[4]

26. One therefore finds that quite often, in public opinion, a specific offender has been sentenced too leniently. One should, however, always bear in mind that the seriousness of the offence and public indignation is only one of the factors to be taken into account and that the other factors should never be lost sight of. As Holmes JA once stated,[5] "[j]ustice must be done, but mercy, and not a sledgehammer, is its concomitant." The following well known and oft cited dictum by MT Steyn J in **S v J** [6] is also quite apposite.

27. The Courts are under a duty to send a clear message to the accused, to other potential adults who engage in unlawful sexual intercourse.

28. Women's rights are very highly regarded by the Constitution of Belize; and, where their rights have been compromised in such a way as in this case, the commitment of the state (including the judiciary, especially the criminal courts) to uphold and protect their rights is a fact that has to be reflected in the sentence imposed on someone convicted of seriously breaching such rights. Rape (and indecent assault) of women (and children), is in our law regarded as so serious that direct imprisonment is

[3] Hall "Rape: The Politics of Definition" **(1988) 105 SALJ 67** at 73.
[4] Modiri above n 39 at 145.
[5] In S v Harrison 1970 (3) SA 684 (A).
[6] Supra (n27).

imposed as the norm, even on first offenders, unless special mitigating circumstances dictate otherwise.

29. When passing a sentence the court must look at the objective to be achieved. Whether deterrence, public protection or reformation is the objective, courts must first of all have regard to the nature and circumstances of the offence, the offender, the victim and the public interest. In simple terms, courts look at the aggravating and the mitigating factors of the offence as well of the offender. The sentencing court must therefore weigh the two and come to an informed conclusion as to the type of sentence to impose.

30. In determining the length of sentence, the factors which the trial judge is entitled to consider are:

(1) the intrinsic seriousness of the offence
(2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime;
(3) the premeditation with which the criminal plan was executed;
(4) the prevalence of the crime within the particular locality where the offence took place; or in the country generally;
(5) the sudden increase in the incidence of the particular crime*;* and
(6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed.

31. The greater the sense of unease a court feels about the imposition of a prescribed sentence, the greater its anxiety will be that it may be perpetrating an injustice. Once a court reaches the point where unease has hardened into a conviction that an injustice will be done, that can only be because it is satisfied that the circumstances of the particular case render the prescribed sentence unjust or, as some might prefer to put it, disproportionate to the crime, the criminal and the legitimate needs of society. If that is the result of a consideration of the circumstances the court is entitled to characterise them as substantial and compelling and such as to justify the imposition of a lesser sentence.

32. While speaking of injustice, it is necessary to add that the imposition of the prescribed sentences need not amount to a shocking injustice before a departure is justified. That it would be an injustice is enough. One does not calibrate injustices in a court of law and take note only of those which are shocking.

33. Various Commonwealth Sentencing Guidelines outlines factors that may justify imposition of a sentence of life imprisonment. These include; (a) degree of injury or harm; (b) the part of the victim's body where harm or injury was occasioned; (c) repeated injury or harm to the victim; (d) degree of intention to cause death or culpable negligence; (e) use and nature of the weapon; (f) the role of the offender in a group or gang or mob involved in the commission of the offence; (g) whether the offence

was motivated by an intention to cause bodily harm; (h) whether the offence is a result of culpable negligence to discharge a duty tending to the preservation of life; or (i) any other factor as the court may consider relevant. Only one aggravating factor so prescribed would justify the imposition of a sentence of life imprisonment, is applicable to this case. i.e. he held a gun to the baby in order to continue the defiling of the victim.

34. A sentence of life imprisonment may as well be justified by extreme gravity or brutality of the crime committed, or where the prospects of the offender reforming are negligible, or where the court assesses the risk posed by the offender and decides that he or she will probably re-offend and be a danger to the public for some unforeseeable time, hence the offender poses a continued threat to society such that incapacitation is necessary (see **R v. Secretary of State for the Home Department, ex parte Hindley** [2001] 1 AC 410*).* There are cases where the crimes are so wicked that even if the offender is detained until he or she dies it will not exhaust the requirements of retribution and deterrence. It is sometimes impossible to say when that danger will subside, and therefore an indeterminate sentence is required (see **R v. Edward John Wilkinson and Others** (1983) 5 Cr App R (S) 105 at 109*).* However, since proportionality is the cardinal principle underlying sentencing practice, I

still consider the sentence of life imprisonment to be appropriate in this case.

35. What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure.

36. The complainant also testified that apart from her and her family six other persons entered Mr. Sarkis Abou Nehra's house. Two persons came out with three guns from Mr. Abou Nehra's bedroom, one of the person sat on a seat pointing towards them with two of the guns. After that one of the persons came up to her and while holding a gun to her, he told her to go upstairs. She obeyed because he threatened to kill her one-year-old if she refused.

37. The complainant further testified that when they got upstairs, they went into the left room. When they went inside, he locked the door. This person told her to lay the baby on the bed, but the baby started to cry. She picked her up and then put her to lay back down. This person got the gun and pointed it to her one-year-old. He told her that he was going to kill her one-year-old if she did not have sex with him. This person forced her to take down her underwear, after she took it down, he forced her to lie down, open her legs and then he forced her to have sex with him. He

put his penis in her vagina then he started to move up and down, which lasted for about 15 minutes then he took his penis out of her vagina and came on her stomach.

38. The seriousness of this offence is aggravated by the aforementioned factors stated in the evidence by his own allocutus, and though he is a first offender, not remorseful and at the age of 37 years has some prospects of reform. He also has family responsibilities. The severity of the sentence he deserves has been tempered by those mitigating factors and is not reduced from the period of life imprisonment, proposed after taking into account the aggravating factors, now to a term of imprisonment for life.

39. I propose that the following order be made:

    1. The accused is sentenced to imprisonment for life.

    2. The accused is to serve 25 years before eligible for parole.

    3. The accused's sentence commences as of today's date.

Dated the 28th day of July, 2022

RICARDO O. SANDCROFT

Justice of the Supreme Court