

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
(CRIMINAL DIVISION)**

Information No. 54/2/2013

BETWEEN:

REGINA

-v-

OSCAR INGRAHAM

Before: **The Hon. Madam Justice Indra H. Charles**

Appearances: Ms. Anishka Hanchell Counsel, Attorney General’s Chambers for
the Crown
Mr. Moses Reginald Bain for the Defendant

Hearing Date: 16th day of February 2016

JUDGMENT ON SENTENCING

[Criminal Law – Evidence and Procedure – Burglary – Armed Robbery- Rape – Serial Rapist - Aggravating factors outweigh mitigating features- Cardinal principles in sentencing – Appropriateness of sentences]

[1] **CHARLES J:** On 21 December 2015, the defendant, Oscar Ingraham was convicted by a unanimous jury of burglary, armed robbery and rape of the victim (“name withheld for anonymity”). He is before the court for sentencing.

The Facts

[2] The victim is a Polish national in her mid-forties. She has been residing in the Bahamas since 1995. She enjoyed the sanctity of her home in New Providence until the fateful morning of Friday, 28 October 2011. The night before, the victim, who lived alone, had secured her home and retired to bed. She turned off her lights but light from outside was shining into her room.

- [3] At about 4:30 in the morning, she was awakened by the presence of someone in her bedroom. She opened her eyes and saw a man standing next to her bed. She screamed and asked him what he was doing in her house. He hit her with an object on her head causing it to bleed and told her to shut up and if she did not, he had a gun and he would kill her. He told her that he was only there for money and he was not going to harm her.
- [4] The man then pulled her out of the bed and held her by the neck. She felt a cold object resting against her neck. He told her to get the money and she told him that her handbag was downstairs. The man took her downstairs but her bag was not there. He then brought her back upstairs to get her car keys and then back downstairs where he took her to her car to look for her bag. As she got to the door, she realized that the lock was broken.
- [5] The victim recounted that her bag was not in the car. The man then brought her back upstairs, all the time standing behind her so she could not see his face in full. She saw her bag on the ironing board. She gave him all the money but he wanted more. The man then told her to get on the bed and take off her robe. He still had the gun in his hand. She pleaded with him not to hurt her. In an attempt to dissuade him, she told him that she was "sick" and asked him to use a condom. He asked her for a condom which she did not have. Eventually he raped her.
- [6] While she could not positively identify the man, she said "*I saw enough. He was quite dark, his hair was braided up, he was about 5 feet 4 inches tall, slim built and he really had muscles.*" She said that he was using some sort of accent and he sounded like her Jamaican housekeeper. She felt that he was disguising his accent.
- [7] After the ordeal, the victim called a girlfriend. Shortly thereafter, the police arrived. The victim was taken to the hospital where she was examined and treated.

- [8] The police commenced their investigation. About nine months later, on Saturday 30 June 2012, around 12:00 a.m. Detective Corporal Akeem Wilson and Corporal Knowles left Central Detective Unit and proceeded to the Accident & Emergency Department at Princess Margaret Hospital. On arrival there, Constable 3295 Curtis, who was already there with the defendant, gave them certain information and left the defendant in their charge. Constable Curtis' shift had ended. Corporal Wilson observed Dr. Ricky Ricardo Davis ("Dr. Davis"), a male doctor, withdrew blood from the defendant. Corporal Wilson further testified that Dr. Davis placed the defendant's blood in two clear tubes and labeled them in the defendant's name. Then Dr. Davis placed the two clear tubes in a clear plastic bag and handed them over to him.
- [9] Dr. Davis testified that he was not at work on that day. Additionally, he testified that there were two other doctors with the last name, Davis who worked alongside him around that time but they are both female. It logically followed that if Dr. Davis was not at work on the day in question, he could not have withdrew blood from the defendant. Dr. Davis brought no documentary evidence to support his contention. He however stated that there was a note in the hospital system which showed that the defendant had been diagnosed with rhabdomyolysis for which blood had to be extracted. Again, he had no documentary evidence to support same.
- [10] The Prosecution's case against the defendant was based on DNA evidence. According to Ms. Shelley Johnson, an expert in Forensic DNA Analysis, a Y-STR profile was obtained from the epithelial fraction of the vaginal swab of the victim and the defendant could not be excluded as a contributor to that STR profile. In addition, all patrilineal male relatives of the defendant could not be excluded as contributors of the Y-STR profile obtained from the epithelial fraction of the vaginal swab.
- [11] The defendant maintained his innocence. His defence was that the vials of blood could not have come from him as no doctor testified to that effect and

he never had blood extracted from him at Princess Margaret Hospital. He also testified that he does not suffer from rhabdomyolysis. He asserted that this is a conspiracy by the police to connect him to the crimes.

- [12] It is against this backdrop that the defendant was unanimously convicted of the offences of burglary, armed robbery and rape. Mr. Bain who represented the defendant requested a Probation Officer Report but the defendant was adamant. He felt that it was a waste of time and asserted that he will not contribute to such report.

Plea in mitigation

- [13] Learned Defence Counsel Mr. Bain sought mercy and compassion of the court. He submitted that since the defendant, a fairly young man, is serving a lengthy sentence of twenty-eight years for rape, burglary and armed robbery, the court should be considerate and impose a sentence of not more than thirty months to run concurrently with the sentences that the defendant is currently serving. Learned Counsel was at pains to provide any authority to support his submission.

- [14] The defendant requested to speak and the court indulged. He opined that the police have conspired against him and he is innocent. He was unremorseful. He spoke about trying times at the Department of Correctional Services and often times, he harboured suicidal thoughts. It was a very moving speech. Needless to say, I am reminded of the famous quote of William Penn, '*Some Fruits of Solitude*', *The Harvard Classics 1909-14*, where he said:

"Justice is justly represented blind, because she sees no difference in the parties concerned. She has but one scale and weight, for rich and poor, great and small. Her sentence is not guided by the person, but the cause. The impartial judge, in judgment, knows nothing but the law."

Submissions by the Crown

[15] Learned Crown Counsel, Ms. Hanchell provided a generous amount of judicial authorities on sentencing for rape. These included authorities from this jurisdiction, the British Virgin Islands and the United Kingdom. The local authority relied upon is **Albert Alexander Whyley v Regina** SCCrApp & CAIS No.184 of 2012 where the Court of Appeal reduced a sentence of life imprisonment to a determinate sentence of thirty years for the unlawful sexual intercourse of a nine-year old girl. The English cases cited are **R. v. Keith Billam** [1986] 8 Cr. App. R. (S.) 48, **R. v. William Christopher Millberry et al** [2003] 2 Cr. App. R. (S.) 31 and **R. v. Puru** (1985) LRC [Crim] 817.

Aggravating factors outweigh the mitigating factors

[16] Ms. Hanchell listed the aggravating as well as the mitigating factors. The aggravating factors are:

- i. The defendant has two previous convictions for offences of a similar kind. He is currently serving a twenty-eight years sentence for rape, burglary and armed robbery which took effect on 7 November 2014;
- ii. The victim has suffered physically and emotionally from the attack and subsequent rape. The defendant broke into her home, robbed and raped her at gunpoint;
- iii. Lack of remorse;
- iv. Violence was used over and above the force necessary to commit the offences; and
- v. Prevalence of crimes of a sexual nature: see **Director of Public Prosecutions v Shaunlee Fahie** HCRAP 2008/003.

[17] The sole mitigating factor is that the defendant is still a young man. He is thirty-one years old having been born on 9 July 1984.

Analysis

Count 1 - Burglary

[18] Section 364 of the Penal Code, Chapter 84 states as follows:

“Whoever commits housebreaking by night in the case of a dwelling house is guilty of burglary, and shall be liable to imprisonment for twenty years.”

[19] The maximum sentence for burglary is twenty years imprisonment. In England, where the offence is committed in respect of a building or part of a building which is a dwelling, the sentence is fourteen years imprisonment. In respect of burglaries from dwelling houses, in **Brewster** [1998] 1 Cr. App. R. 210, Lord Bingham, CJ issued the following sentencing guidelines:

“Domestic burglary is, and always has been, regarded as a very serious offence. It may involve considerable loss to the victim. Even when it does not, the victim may lose possession of particular value to him or her....

The loss of material possessions is, however, only part (and often a minor part) of the reasons why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own home. That an intruder should break in or enter, for his own dishonest purposes, leaves the victim with a sense of violation and insecurity....Generally speaking, it is more frightening if the victim is in the house when the burglary takes place, and if the intrusion takes place at night...”(emphasis added)

[20] Taking all matters into account, a sentence of seven years imprisonment is appropriate in the circumstances.

Count 2 - Armed Robbery

[21] Section 339(2) of the Penal Code states as follows:

“Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for twenty years:

Provided that whoever commits robbery, being armed with any offensive instrument shall, where the offensive instrument is a firearm, be liable to imprisonment for life....

”

[22] In the Bahamas and the United Kingdom, the maximum penalty for armed robbery (when a firearm is involved) is life imprisonment. The guidelines cases in the UK for robbery are **R. v. Turner (B.J.)** [1975] 61 Cr. App. R. 67 at p. 91 (CA), **R v Daly** [1981] 3 Cr. App. R. (S) 340, CA, **R v Gould** 1983] 5 Cr. App. R. (S) 72, CA and more recently, **R v Adams and Harding** [2000] 2 Cr. App. R 274.

[23] In **Regina v Derek Stuart** Info. No. 155/7/2011, this court, after considering a plethora of judicial authorities from the UK as well as this jurisdiction, sentenced Mr. Stuart to a term of twelve years imprisonment for armed robbery. A firearm was used. On appeal, the Court of Appeal dismissed the appeal and affirmed the sentence: see **Derek Stuart v Regina** SCCr App & CAIS No. 68 of 2012 – judgment delivered on 23 March 2015.

[24] Taking all matters into consideration including the fact that the victim suffered physical injuries, I sentenced the defendant to 14 years imprisonment on this count.

Count 3 - Rape

[25] Section 6 (1) of the Sexual Offences and Domestic Violence Act, Chapter 99 provides that whoever commits rape is liable to life imprisonment.

[26] Undoubtedly, this is the gravest of the counts. Rape is an abomination. It is highly culpable, both in the moral sense and in its almost total contempt for the personal integrity and autonomy of the female. I reaffirm what I said in **Franklyn Huggins v The Queen** BVIHCR 2009/001 at paragraph 17:

“Short of homicide, rape is the ‘ultimate violation of self’¹. It is a violent crime because it normally involves force, or the threat of force or intimidation to overcome the will and the capacity of the victim to resist. Along with other forms of sexual assault, it belongs to that class of indignities against the person that cannot ever be fully righted and that diminishes all humanity.”

[27] In **Billam**, the English Court of Appeal, in laying down sentencing guidelines for rape cited a passage from the Criminal Law Revision Committee 15th Report on Sexual Offences, Command Paper 9213 of 1984, which they say, reflected accurately the views of the Court. It is as follows:

“Rape is generally regarded as the most grave of all the sexual offences...[It] involves a severe degree of emotional and psychological trauma; it may be described as a violation which in effect obliterates the personality of the victim. Its physical consequences equally are severe: the actual physical harm occasioned by the act of intercourse; associated violence or force and in some cases degradation; after the event, quite apart from the woman's continuing insecurity, the fear of venereal disease or pregnancy. We do not believe this latter fear should be underestimated because abortion would usually be available. This is not a choice open to all women and it is not a welcome consequence for any. Rape is also particularly unpleasant because it involves such intimate proximity between the offender and victim. We also attach importance to the point that the crime of rape involves abuse of an act which can be a fundamental means of expressing love for another; and to which as a society we attach considerable value.”

[28] In **Millberry**, Lord Lane CJ, referring to the general guidelines of sentencing for rape in **Roberts and Roberts** (1982) 4 Cr.App.R.(S) 8 had this to say:

“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 emphasise 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. 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.”

¹ Byron E. White.

[29] The maximum penalty for rape is life imprisonment. However, the law has invested a wide discretion in the court in sentencing to ensure that the punishment imposed reflects the justice of the case having regard to the particular facts of each case. In **R. v Puru** [supra], the court opined:

“In exercising their sentencing responsibilities, judges must balance various critical considerations. While society’s condemnation of rape is a paramount consideration, sentences should also seek to protect women, to deter future offences and to punish the offender justly with regard to his case and by reference to other cases.”

[30] Broadly speaking, there are three dimensions which a judge is obligated 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.

[31] I am also guided by the four classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation.

- (i) **Retribution** – in recognition that punishment is intended to reflect society’s and the legislature’s abhorrence of the offence and the offender;
- (ii) **Deterrence** – to deter potential offenders and the offender himself from recidivism;
- (iii) **Prevention** – aimed at preventing the offender through incarceration from offending against the law and thus protection of the society; and
- (iv) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a contributing member of society.

[32] Which of these factors will be predominant in determining an appropriate sentence will depend on the particular circumstances of each case.

[33] In the case at bar, it seems to me that deterrence and prevention are at the forefront when determining an appropriate sentence. That said, a significant aggravating factor is that the defendant was sentenced for similar offences of

burglary, armed robbery and rape before Bethell J. on 7 November 2014. At that sentencing hearing, the psychiatrist, Dr. Bodha, opined that the defendant may be classified as a serial rapist. I take judicial notice of that pronouncement. It seems to me that the defendant is a potential threat to society and a danger to women. It is therefore incumbent on the courts to send out strong messages that women ought to be protected from persons like the defendant.

- [34] In **Albert Alexander Whyley v Regina** SCCrApp & CAIS No.184 of 2012, the appellant was sentenced to life imprisonment for the unlawful sexual intercourse of a 9 year old girl. The Court of Appeal found that a determinate sentence was more appropriate. Allowing the appeal, the Court of Appeal substituted the sentence of 30 years. The learned President stated:

“We believe that we owe it to the children of The Bahamas to protect them from people who would prey on them and have sexual intercourse with them at the age of nine years. They deserve our protection and we believe the sentence of 30 years is appropriate.”

- [35] I adopt these judicious words and add that victims of rape must carry their memories with them for the rest of their lives. In a letter to the court, the victim wrote:

“Since this ordeal, I continue to live with the feelings of anxiety and dread. But my strength came, as I realized that this ordeal was not just about me but rather so that other women can feel safe from persons doing the very same thing that was done to me. I pray that I or any other woman would ever go through something like this.”

- [36] In my opinion, the victim does not seek revenge but justice and protection for all women in this country.

The sentences

- [37] Undoubtedly, the aggravating factors far outweigh the sole mitigating factor. Taken all factors into account, I hereby sentence you, Oscar Ingraham to 25

years imprisonment for rape, 14 years for armed robbery and 7 years for burglary. These sentences will run concurrently with each other from 17 December 2015. Fifteen (15) years of these sentences will run consecutively with any other sentence(s) that the defendant is now serving.

[38] I am of the considered opinion that a consecutive sentence (in part) is necessary to do justice to the case and also to send a strong message of deterrence against such behaviour. For completeness, I have considered the Court of Appeal decision of **Marco Oliver v Regina** SCCr App No. 18 of 2002 and kindred cases.

[39] In addition, during his incarceration, the defendant is to receive counselling in anger management on such terms and conditions as a clinical psychologist deems fit.

DATED this 1st day of March 2016

Indra H. Charles
Justice