

IN THE CROWN COURT IN NORTHERN IRELAND

OMAGH CROWN COURT
(sitting at Belfast)

THE QUEEN

-v-

GABINO MATILLA

HART J

[1] The defendant is before the court to be sentenced for his plea of guilty to the rape of LB on 12 August 2007.

[2] LB and the defendant were guests at the wedding of the defendant's employer's daughter on 12 August 2007. In the course of the post-wedding party the defendant spoke to LB, and asked her if she was interested in seeing his employer's swimming pool. The pool had been the source of some comment amongst some of the guests at the wedding and LB expressed an interest in seeing it. The defendant took her through the house and showed her the pool, but then proceeded to grasp her firmly by the arm and pull her against her will for some considerable distance.

[3] During this she struggled and at one stage fell on some gravel. She described how the defendant then hit her and punched her repeatedly in the face. He put his hand over her mouth, and she had difficulty breathing. The defendant then stopped hitting her and she got up. Instead of releasing her he then trailed her by her hair, saying that he was going to have intercourse with her. He trailed her into a nearby building, and up to what was plainly his room where he threw her on the bed.

[4] He then proceeded to sexually assault her, putting his fingers in her vagina and then, after several attempts, penetrating her with his penis. He then forced her to perform oral sex on him, before penetrating her again.

[5] Throughout her struggles she tried to persuade him to let her go and not to assault her. After the second rape she pleaded with him to let her go to the toilet. He allowed her to get up and showed her where the toilet was, but she tried to escape. He grabbed her again and threw her back into the room, but before that she felt a blow to her face, but was unsure whether the blow came from his hand or because her face struck the wall.

[6] After throwing her back into the room he made her perform oral sex on him again, and when she tried to stop he slapped her on the jaw with the back of his hand. He then let her go, and she recalls hearing him say, "I cannot believe I have done this again", although she could not be sure that he said "again".

[7] After the defendant let her go, LB made her way back to the wedding party and complained to a number of the guests that she had been raped and the police were called. It appears that the defendant attempted to escape in his employer's car but got stuck on the grass.

[8] A number of witnesses at the scene noted that she was upset, dishevelled and in an injured state, with signs of redness and bruising over her face and limbs.

[9] She was examined by Dr Cupples at 5.40 am that day. He described finding signs of redness and tenderness or abrasions on 23 separate locations spread across her head, scalp, face, both upper arms, both shoulders, her upper and lower back, on one of her calves, on her knees and right thigh. He detected signs of considerable bloodstaining to her face and lips. Subsequently there are references to her suffering from a swollen mandible, and LB says that she suffered a fractured nose that healed without any remedial treatment being necessary, but there is no medical evidence to confirm this.

[10] The report from Dr Roger Wilson states that she suffered an injury to her left finger in the form of a bony mallet injury, which required open reduction internal fixation. Surgery was carried out on 5 September 2007. When Dr Wilson reviewed her on 28 February 2008 he found that she still has restricted movement at the distal interphalangeal joint of her left ring finger. Her range of movements was from about 5 degrees to 25 degrees of flexion. He explained to her that her original injury was intra-articular and that she would most likely not regain full range of motion in that joint.

[11] I have also been provided with a psychiatric report on LB prepared by Dr Loughrey, a consultant psychiatrist, following an examination of her on 30 April 2008. He describes how she found it difficult to sleep at all in the aftermath of this attack and was troubled by nightmares once or twice a week. Even now, she has flashbacks if she hears reports of a similar incident, or if

she walks on gravel. She found it very difficult to sleep well after these events and has been attending one of her general practitioners every one to two weeks for counselling. She found it very difficult to stay in her house on her own with her children and avoided going out socially unless accompanied by a large number of other people about her that she knows. He described how her confidence and self esteem were exceptionally low and how she felt distant from friends, and finds it difficult to relax in social situations. Ultimately she accepted a prescription of Fluoxetine (an anti-depressant) and she was still on that medication.

[12] LB was due to take up an access course with a view to preparing for a nursing degree but, quite understandably, in the immediate aftermath of these events did not feel able to cope with the demands of such a course. She has however transferred to an A level course.

[13] Dr Loughrey diagnosed that she has suffered from disturbance of emotions/prolonged adjustment reaction, and he describes her psychological sequelae as "major". He also concludes that "it is clearly apparent that she has yet to deal with the psychological trauma and aftermath" and he considers it inevitable that at some stage in the future she will seek the services of Nexus.

[14] In Attorney General's Reference (No 3 of 2006) [2007] NIJB 246 the Court of Appeal reiterated that when sentencing offenders for the offence of rape judges in this jurisdiction should apply the starting points recommended by the Sentencing Advisory Panel in England in Wales in its 2002 guidelines. These provide that the initial starting point for a contested case should be a sentence of five years imprisonment, but that where a number of features are present the starting point should be eight years. One of these starting points is that there was more than one rape, and since there were two separate rapes this means that the starting point in the present case should be eight years imprisonment.

[15] In addition there are a number of other aggravating factors.

(1) LB was subjected to considerable violence over and above that which was necessary to commit the rapes, and this violence went on for a significant period of time.

(2) She was subjected to further degradation by being forced to perform acts of oral sex, and being subjected to digital penetration.

(3) Whilst it is to be hoped that eventually she will improve so far as her psychiatric condition is concerned, it is clear that she will be left with a permanent physical injury in the shape of the injury to her left little finger. The effect of the injuries upon her are therefore of particular seriousness.

[16] An important mitigating factor is his plea of guilty on arraignment. I have been informed that his intention to plead guilty was communicated to the prosecution prior to committal, and that as a result the matter was sent for trial more rapidly than otherwise would have been the case.

[17] It has been repeatedly stated that a plea of guilty at the earliest opportunity, particularly in sexual cases, enables the court to extend a degree of leniency to a defendant. Firstly because this is an expression of remorse on the part of the defendant, and secondly because, again particularly in sexual cases, it reassures the victim that it will not be necessary to give evidence. However, it has also been emphasised by the Court of Appeal that in order to benefit from the maximum discount appropriate to a particular charge the defendant must have admitted to his guilt at the earliest opportunity, and this means during interview, and that the greatest discount is reserved for those cases where a defendant admits his guilt at the outset. See Attorney General's Reference (No 1 of 2006) [2006] NIJB 424 at [19]. In the present case the defendant did not admit his guilt at interview but made a no comment response to each question put to him. Therefore, whilst the defendant is entitled to considerable credit for his early plea of guilty, he cannot receive the maximum credit allowed because he did not admit his guilt during interview.

[18] It is noteworthy that as late as 21 January 2008 LB believed that she would be required to give evidence in court, because on that date she made a statement expressing her desire to be screened by way of a special measures application. Clearly at some later stage the defendant's intention to plead guilty may have been communicated to her, but this is an illustration of the need for defendants who wish to admit their guilt to do so at the earliest possible opportunity. That enables the victim to have the maximum reassurance that he or she is not likely to have to undergo the unpleasant, and in many instances deeply upsetting, experience of having to give evidence about what happened to them, something about which almost all witnesses will be apprehensive prior to the proceedings.

[19] The defendant is now 21, and was 20 at the time. Despite the remark which he allegedly made in the immediate aftermath of this attack to which I have already referred, it appears that he has a clear record, and Mr Steer for the prosecution informed me that the police have ascertained that there is no record of any such episode. I have also been provided with a very large number of character references and testimonials from members of his family, extended family, friends and responsible people in Argentina who have known him in various capacities throughout his life. They speak very highly of him and express their disbelief at his actions. I accept that his actions on this night were out of character, and that his previous good character is a mitigating factor, but the gravity of his conduct was such that previous good

character cannot weigh heavily in his favour when sentencing for an offence such as this.

[20] I have also been provided with a psychiatric report upon the defendant by Dr Helen Harbinson, a consultant psychiatrist. She concludes that the defendant's remorse is genuine. The pre-sentence report describes him as

“..a contrite chastened individual who cooperated fully in the preparation of this report. In our contact with him he made no attempt to minimise the gravity of the present offences.

..He would suggest that his remand in detention has allowed him the opportunity to recognise the gravity of his involvement in the present offences and the extreme physical and emotional distress experienced by the victim. The defendant also indicated a deep sense of personal shame and revulsion regarding his sexual assault on the victim.”

I accept that his remorse is genuine, and that is a further mitigating factor.

[21] Dr Harbinson refers to the defendant's history of heavy drinking, and the excessive amount of alcohol he consumed on this occasion, and how this can give rise to pathological intoxication. That may be so, but loss of self control because of excessive drinking cannot excuse his behaviour in any way.

[22] Mr Gallagher QC for the defendant said that his client will find imprisonment more onerous because he has no relatives in this country to visit him, except for those periods when his brother returns to work in Northern Ireland in the summer months. That may be so, but I am not aware of any authoritative decision that states that a proper reason for reducing a sentence is because a foreign national, including one with no, or a limited command of, English, will find imprisonment in a foreign country more onerous. Given the substantial number of foreign prisoners in custody throughout the United Kingdom I would have expected the matter to have been considered at appellate level if there was such a principle, and I have not been referred to any such decision, nor have my own researches discovered one. Perhaps the nearest analogy is to be found in R v Kay (1980) 2 Cr. App. R. (S.) 284 where the Court of Appeal considered the situation of an offender with no previous convictions who found prison life a very harsh experience, and had seen a psychiatrist and been prescribed medication. Tudor Evans J stated

“It seems to this Court that how a man reacts to prison life is not a matter which should affect the principle of the sentence. When sentencing a man the court is concerned with the character of his crime and with his individual circumstances as revealed in his criminal background, if any.”

It is the case that exceptional hardship or other personal factors may lead the court to reduce the sentence as an act of mercy, but I do not consider that such a course would be justified in this case in the absence of evidence of exceptional hardship. In some circumstances prisoners may apply to be transferred to their country of origin to serve part of their sentence there, but that is a matter for Parliament and the executive and not the courts.

[23] Taking into account all of the mitigating and aggravating features of the case I am satisfied that had it not been for the defendant’s plea of guilty the appropriate sentence would have been one of 12 years imprisonment. Taking into account his plea of guilty and the other mitigating factors I sentence him to nine years imprisonment.

[24] As the defendant has expressed a wish to return to Argentina upon his release I do not consider that a custody probation order is appropriate in this case, nor that he be placed on licence under Article 26 of the Criminal Justice (NI) Order 1996. He will of course be subject to the requirements of the Sexual Offences Order for life.

[25] The defendant is an Argentinean national who came here to work and the prosecution have reminded the court of its power under Section 3(6) of the Immigration Act 1971 to recommend that the accused be deported upon the completion of his sentence. I have been referred to R v. Nazari & Others [1980] 1 WLR 1366 and R v. Carmona [2006] EWCA Crim 508. The defendant’s stated wish to return to Argentina does not relieve the court of its obligation to consider whether a recommendation should be made for his deportation. This was a very serious crime and I am satisfied that his continued presence in this country after his release is detrimental to the public interest and I recommend that he be deported upon his release.