IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

FREDERICK GEORGE CHARTERS

HUTTON LCJ

This is an application for leave to appeal by Frederick George Charters who appeared before His Honour Judge Russell QC at Armagh Crown Court on 23rd May 1989 where he was charged on the first count of the indictment with incest of his daughter when she was under the age of 14 years and on the second count he was charged with incest of his daughter when she was over the age of 14 years. On the third and fourth counts he was charged with indecent assault on his daughter and on the fifth count he was charged with gross indecency with his daughter.

On arraignment the applicant pleaded not guilty and after the jury had been sworn and Crown counsel had opened the case the applicant was re-arraigned on the application of his counsel and he pleaded guilty to the 2 counts of incest and the trial judge discharged the jury from returning verdicts in respect of Counts 3, 4 and 5.

On the first count under section 1 of the Punishment of Incest Act 1908 the maximum sentence for incest of a girl under the age of 14 years is imprisonment for life and under that section the maximum sentence for incest of a girl over the age of 14 years' is 7 years'. On the first count the learned trial judge sentenced the applicant to 9 years imprisonment and on the second count he sentenced him to 7 years imprisonment. Both sentences to run concurrently.

The facts of the case were these. At the time of his conviction the applicant was aged 45 years and lived in Portadown. He had been unemployed for a number of years. He had been married and there were 3 children of the family, the elder daughter, the son, and the younger daughter. The applicant's wife had left him about the year 1978 when the elder daughter was aged about 10 years old. The applicant and his 3 children continued to live in the family home and the elder daughter took over the responsibility of looking after the family and doing the cooking and cleaning. When the elder daughter was aged just over 11 the applicant began to watch pornographic films in his bedroom and he asked the elder daughter to watch them with him. About this time the applicant began to have sexual intercourse with his elder

daughter and until the daughter was aged about 18 the applicant had very frequent sexual intercourse with her, intercourse taking place 2 and 3 times a week. The applicant always used a contraceptive sheath. When the daughter had become 13 on some occasions the applicant asked her to masturbate him, and on the first occasion showed her how to do this. On one occasion the applicant made the daughter commit fellatio. On occasions when the daughter was aged between 13 years and 16 years the applicant inserted objects into her vagina for his sexual gratification.

In her statement to the police the daughter said:

"From I was 11 years old until I was 16 years old I didn't think that what dad did was wrong. I thought that it was normal for fathers and daughters to have sex with each other. When I was 16 years old I saw a programme on television about sexual abuse and it was then I knew what was happening to me was very wrong. After this programme, the next time dad made an approach to me, by groping my breast, I said, `No', and for this I was punched on the face and beat about. I never refused him sex again and regular sex took place for the next 2 years."

The applicant stopped having sexual intercourse with the elder daughter when she was about 18 years old. No clear reason appeared as to why the applicant ceased having sexual intercourse with his daughter at this time, although it may be that it was because he had formed a relationship with a woman whom he had known in earlier years.

The applicant had a record consisting of a number of convictions for larceny, disorderly behaviour, common assault, house breaking, criminal deception, criminal damage and motoring offences.

There was no suggestion by the Crown that the applicant had committed incest on or had carried out any sexual assaults on his younger daughter.

There was no evidence that the elder daughter had suffered psychological damage as a result of the incest committed against her, and it appears that she has a steady relationship with a boyfriend, and receives support and help from his mother. The offences committed by the applicant came to light when the elder daughter was aged 21 years' and when the applicant and her boyfriend had a dispute about a motorcycle, and it appears that in consequence of this row the elder daughter revealed for the first time the incest which had been practised by her father.

When he was first interviewed by the police the applicant denied the daughter's allegations that he had committed incest and told the police that her allegations were all lies.

Subsequent to the conviction of the applicant on 23rd May 1989 the Court of Appeal in England, presided over by Lord Lane CJ, on an application by the Attorney

General in respect of a sentence which he considered unduly lenient, in a judgment as yet reported only in The Times, stated broad guidelines for the appropriate level of sentences for various categories of the crime of incest. We respectfully consider that this judgment is a most valuable contribution to the law on the appropriate levels on sentence for this crime, and we wish to adopt it as containing guidelines which should also be applied in future by Crown Courts in Northern Ireland when sentencing and by this court when hearing appeals against sentence.

In the course of the judgment Lord Lane stated that if the girl was not far short of her 13th birthday and there were no particularly adverse or favourable features on a not guilty plea, a term of about 6 years on the authorities would seem to be appropriate.

On this application Mr Harvey QC for the applicant submitted that in the light of the guidelines stated by Lord Lane the sentences imposed by the learned trial judge, and particularly the sentence of 9 years', were manifestly excessive. Mr Harvey laid stress on the point that the daughter appeared to have suffered no psychological damage, and he also relied on the point that a social worker who had given evidence at the trial expressed the opinion that, notwithstanding what had happened, the daughter still had a degree of affection for her father and had also been able to establish an independent style of life. Mr Harvey also relied on the point that the applicant had pleaded guilty, although he recognised that the plea of guilty was very late in the day and it was only entered after the Crown case had begun when it had become apparent to the applicant that his daughter was prepared to give evidence against him. Mr Harvey also made the point that the incest had only come to light after the applicant had had a row with his daughter's boyfriend, and he submitted that the learned trial judge had clearly intended to impose deterrent sentences and that on the particular facts of this case deterrent sentences were not appropriate.

We reject the submission that a sentence in a case of this nature should not be a deterrent sentence. The object of the sentence in a case of this kind must be to endeavour to deter other men from acting in this way. The Court must also mark its disapproval and the disapproval of the community for this sort of behaviour. We are in respectful agreement with that part of the judgment of Lord Lane which states;

"The Wolfenden Committee report in 1957 (Homosexual Offences and Prostitution Cmnd 247) expressed in an admirably terse and clear form the functions of the criminal law in the field of sexual offences:

'To preserve public order and decency, to protect the citizen from what is offensive and injurious and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced or in state of special physical, official or economic dependence.'"

In order to consider the other points advanced on behalf of the applicant it is relevant to set out certain other passages of the judgment of the English Court of Appeal:

"**Girl aged over 16**

Generally speaking a range from 3 years' imprisonment down to a nominal penalty would be appropriate depending in particular on the one hand on one where force was used and the degree of harm, if any, to the girl, and on the other the desirability where it existed of keeping family disruption to a minimum.

The older the girl the greater the possibility that she might have been willing or even the instigating party to the liaison, a factor which would be reflected in the sentence. In other words, the lower the degree of corruption, the lower the penalty.

Girl aged from 13 to 16

A sentence between about 5 years' and 3 years' seemed on the authorities to be appropriate. Much the same principles would apply as in the case of the girl over 16, though the likelihood of corruption increased in inverse proportion to the age of the girl.

Nearly all the cases in this and other categories had involved pleas of guilty and the sentences in this category seemed to range between about 2 and 4 years', credit having been given for the plea.

Girl aged under 13

It was here that the widest range of sentences was likely to be found. If one could properly describe any case of incest as the `ordinary' type of case, it would be one where the sexual relationship between husband and wife had broken down; the father had probably resorted to excessive drinking and the eldest daughter was gradually, by way of familiarities, indecent acts and suggestions made the object of the father's frustrated sexual inclinations.

If the girl was not far short of her 13th birthday and there were no particularly adverse or favourable features on a not guilty plea, a term of about 6 years' on the authorities would seem to be appropriate.

It scarcely needed to be stated that the younger the girl when the sexual approach was started, the more likely it would be that the girl's will was overborne and accordingly the more serious would be the crime.

Aggravating factors

Other aggravating factors, whatever the age of the girl might be, were inter alia:

1 If there was evidence that the girl had suffered physically or psychologically from the incest.

2 If the incest had continued at frequent intervals over a long period of time.

3 If the girl had been threatened or treated violently by or was terrified of the father.

4 If the incest had been accompanied by perversions abhorrent to the girl, for example, buggery or fellatio.

5 If the girl had become pregnant by reason of the father failing to take contraceptive measures.

6 If the defendant had committed similar offences against more than one girl.

Mitigating features

Possible mitigating features were, inter alia:

1 A plea of guilty. It was seldom that such a plea was not entered, and it should be met by an appropriate discount, depending on the usual considerations, that is, how promptly the defendant confessed and his degree of contrition and so on.

2 If it seemed that there had been a genuine affection on the defendant's part rather than the intention to use the girl simply as an outlet for his sexual inclinations.

3 Where the girl had previous sexual experience.

4 Where the girl had made deliberate attempts at seduction.

5 Where, as very occasionally was the case, a shorter term of imprisonment for the father might be of benefit to the victim and the family."

In the present case there was only one mitigating factor in the list of factors set out by Lord Lane which was that the applicant had pleaded guilty. But he had pleaded guilty only on re-arraignment after the trial had commenced, and the court was entitled to infer that he had pleaded guilty not out of remorse, but because he realised that his daughter was prepared to give evidence against him. Therefore

whilst he was entitled to some credit for this, the discount to be given to him was limited.

On the other hand there were a number of serious aggravating features which were:

(1) The fact that the incest had continued at frequent intervals over a long period of time.

(2) The fact that it clearly emerged from the statement of the daughter that she agreed to masturbate her father because she was too frightened to say no and because he punched her and beat her when at the age of 16 she refused for the first time to permit her father to sexually interfere with her.

(3) The fact that the applicant had practised the perversions in relation to the daughter which we have referred to above.

Therefore we consider that this was a very bad case where, if the guidelines laid down by the English Court of Appeal had been available to the learned trial judge, he would have been fully entitled to impose a sentence on the first count considerably in excess of 6 years', which was the sentence in fact imposed by the English Court of Appeal in the case before them where there had been a plea of guilty.

The sentence of 9 years' was a sharp sentence, but in the light of the guidelines which we consider should be followed we do not consider that the sentence of 9 years' was either manifestly excessive or wrong in principle. Therefore the court will not interfere with that sentence.

On the second count which charged incest when the girl was aged over 14 years, the maximum sentence provided by the statute was 7 years'. The applicant did plead guilty, although very late in the day, and therefore we consider that it was erroneous to impose the maximum sentence and we reduce that sentence of 7 years to 5 years.

Therefore the court grants leave to appeal and treats the hearing of the application as the hearing of the appeal. The court affirms the sentence of 9 years' on the first count but reduces the sentence of 7 years' on the second count to 5 years'.

We think it desirable to observe that in its judgment the English Court of Appeal referred to the guidelines it was laying down as "a broad guide" and to observe further that it was doing so in a case in which it upheld an application by the Attorney General that the sentence was unduly lenient. We consider that the fact that a Crown Court imposes a sentence somewhat in excess of the sentence substituted by the Court of Appeal in England or by this Court in a similar type of case on an application by the Attorney General that a sentence was unduly lenient

does not necessarily mean that the sentence imposed by the Crown Court must automatically be regarded as manifestly excessive.