



THE COURT OF APPEAL

[188/2016]

Birmingham J.

Mahon J.

Edwards J.

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

V

B.V.

APPELLANT

JUDGMENT of the Court delivered on the 5th day of February 2018 by

Mr. Justice Birmingham

1. This is an appeal against severity of sentence. The sentence under appeal being one of 12 years imprisonment that was imposed in the Central Criminal Court on 11th July 2016 in respect of a charge of rape.
2. The sentence followed upon a conviction by a jury after a fully contested trial. This Court has already delivered a judgment dealing with an appeal against conviction. The background to the case is set out there in some detail and that exercise will not be repeated now. Suffice at this stage to recall that the accused was convicted of one count of rape; one count of s. 4 rape, oral rape, and 27 counts of sexual assault in relation to his stepdaughter. The offending occurred between 1994 and 2000. The complainant was aged approximately 10 to 16 years at the time of offending.
3. At the sentence hearing, the Court heard a very powerful victim impact report which had been prepared by the complainant. From it, it is absolutely clear that the impact on the victim here was very grave and long-lasting.
4. The judge took time to consider his approach to sentence and then, on the resumed sentence hearing, imposed the sentence that is now appealed after delivering detailed sentencing remarks. At the earlier sentence hearing, he had engaged actively with counsel for the accused, probing the relevance of issues such as delay and lapse of time to the sentencing process. In the course of the sentencing remarks, the judge explained that he was going to approach sentencing by focusing on the rape offence which he saw as the culmination of a campaign of abuse. He pointed out that the abuse which culminated in the rape was progressive and frequent.
5. The judge said that if one was to exclude the very rare cases where life sentences are imposed on one side and the very rare cases where suspended sentences have been imposed, on the other, that other offences then fell readily into a lower, medium and high band scale. The lower end of the scale is up to 7 years; medium at 8 to 15 years and above 15 as being for the highest and most grave offences.
6. The judge commented that in the present case, there was a high degree of culpability. There was intention conduct and great harm caused. The reference to intentional conduct is particularly relevant to the rape offence which was planned in order to coincide with a visit by the mother of the complainant to China. The judge referred to the age difference between the parties and the fact that the offences were committed by a person in a position of trust, a stepparent. He indicated that the offending was to be placed at the highest point of the medium scale or at the lowest end of the highest scale. He said he would resolve any doubt that he had in the matter in favour of the accused by placing it at the highest point of the mid-scale.
7. The judge then went on to assess the notional sentence at 14 years and then turned to look at the question of mitigation. In that regard, he pointed out that there had not been a plea of guilty or any expression of remorse and there had been no effort at rehabilitation. He accepted, though, that Mr. BV had previously been of good behaviour and had subsequently been of good behaviour. He felt that the passage of time was a relevant consideration, commenting that some limited consideration and some allowance should be given to the fact that Mr. BV was answering for his conduct at some remove in time from when the offending occurred. The judge then reduced the notional or starting sentence of 14 years to 12 years and imposed a concurrent sentence of 8 years on the s. 4 oral rape and two and a half years on each of the sexual assault counts.
8. In terms of the background and personal circumstances of the appellant, Mr. BV was 66 years at the time of sentencing. He was originally from England. He met his wife, the mother of the complainant, there and they then moved to Ireland. He had a background in painting and decorating and was a member of a successful folk group.
9. This Court is unequivocally of the view that these were very serious offences indeed. Factors that go to the seriousness on the rape case are that it was a culmination of a long campaign of abuse; that the harm caused was very grave; the damage to the victim was really serious indeed and the fact that offending was by a stepparent, someone occupying a position of trust adds a particular dimension, as does the fact that the offending occurred for the most part in the family home which should be a place of safety.
10. These were clearly offences that required to be met with a significant sentence and they were. While acknowledging that the offences were serious, counsel for the appellant says that the starting sentence of 14 years was just too high. He says that that

level of sentence is more usually found in cases where multiple rape offences have occurred and/or in cases where there are multiple victims. Counsel for the DPP, while stressing the seriousness of the offending here, acknowledges that the sentence was a severe one and one that falls at the upper end of the available scale.

11. The Court does feel that the starting sentence is somewhat out of line with sentences in comparable cases. Given that the offending ceased after the act of rape and that the most serious offending was not repeated, the Court feels that a starting sentence of 12 years rather than 14 years would have been more appropriate. The Court is satisfied that the limited factors that were available by way of mitigation were fully reflected by the trial judge in the reduction of two years from the starting point. This Court will deal with that aspect in the same way, reducing its starting point of 12 years by two years to 10 years.

12. In summary, the Court will set aside the sentence that was imposed in the Central Criminal Court and substitute a sentence of 10 years imprisonment to date from the same day as the sentence in the Court below.