



## THE COURT OF APPEAL

**Birmingham J.  
Sheehan J.  
Mahon J.**

**Appeal No.: 48/2014**

**Between**

**The People at the Suit of the Director of Public Prosecutions**

**Respondent**

**- and -**

**C. M.**

**Appellant**

### **Judgment of the Court delivered on the 4th day of March 2016 by Mr. Justice Mahon**

1. The appellant was convicted at the Central Criminal Court on 11th November 2013 of fifteen counts of Sexual Assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990, and four counts of Defilement of a Child under the age of fifteen contrary to s. 2 of the Criminal Law (Sexual Offences) Act 2006, having pleaded guilty to all counts on that date.

2. The appellant was sentenced on 10th February 2014 to twelve years' imprisonment on the four Defilement counts, and nine years imprisonment on the Sexual Assault counts, such sentences to be concurrent and to date from 9th July 2013. The final three years of the twelve year sentences were suspended on conditions, for a period of three years from the date of release from prison. The appellant was also directed to have no contact with his victim in perpetuity, and he was also directed to undergo post release supervision in accordance with s. 29 of the Sex Offenders Act 2001 for a period of eighteen months from his date of release. The appellant was also certified as a sex offender.

3. This appeal is against sentence.

### **Background facts**

4. The complainant was born on 8th July 1999, and is now aged sixteen years. The offences were committed when she was aged between ten and thirteen years old, and covered the period 1st January 2010 to 15th March 2010, being approximately three years.

5. The appellant, who is originally from the Philippines, was the complainant's mother's partner, and that relationship came to an end when the matters which are the subject matter of these proceedings came to light. The complainant's mother discovered a diary containing sexual content where upon she confronted her daughter. She learned that there were instances of sexual assault involving being kissed and touched by the appellant. Vaginal intercourse commenced when the complainant was about twelve years old. The complainant also stated that the appellant touched her breasts both outside and inside her clothing as he did her vagina. The assaults usually took place in the complainant's mother's bedroom, but also in the victim's bedroom and on a living room couch. They usually occurred when the complainant's mother was out of the house at work. The complainant described the incidents of vaginal intercourse in considerable detail. She also told of instances of oral sex, also described in detail. The complainant was warned by the appellant not to tell anyone of the assaults, otherwise both she and he would get into trouble.

### **Grounds of appeal**

6. The appellant contends that the learned sentencing judge failed to give adequate weight to the mitigating factors in relation to the offence, particularly the report from the psychologist which emphasised the appellant's low risk of re-offending.

7. The appellant also maintains that the learned sentencing judge failed to structure the sentence so as to facilitate his undergoing therapy.

8. The appellant maintains that the learned sentencing judge failed to attach sufficient weight to other mitigating factors including the plea of guilty, and the substantial and fulsome admissions made by him. The appellant had no previous convictions and had always indicated his willingness to undergo therapy. He fully co-operated with the gardaí.

9. The appellant also contended that the learned sentencing judge placed the offending at too high a level on the scale of gravity in all the circumstances, and that a nine year term as a starting point in respect of the defilement counts was appropriate, rather than a twelve year term.

### **The appellant's personal circumstances**

10. The appellant is thirty eight years old and is from the Philippines. He has lived in Ireland since December 2001, working as a sushi chef in restaurants in Dublin. He has no previous convictions, either in the Philippines or in Ireland.

11. The appellant's relationship with the complainant's mother broke down as a consequence of the events relating to these offences. His earlier marriage in the Philippines had dissolved prior to the commission of these offences.

12. The appellant had a normal upbringing in the Philippines. He had a happy childhood and a good education. He trained as a chef before coming to Ireland, and was employed at the time of his arrest for these offences.

13. The appellant has three teenage children in the Philippines, and has a seven year old son with the complainant's mother. Prior to his arrest he financially supported his children and estranged wife in the Philippines.

### **The sentencing judgment**

14. In passing sentence, the learned sentencing judge did so on the basis of what he described as the *inherent gravity* of the

offences, the breach of trust involved, the age of the victim, the disparity in the ages between the victim and the appellant, and the extent of time over which the offences occurred. He referred to the appellant's lack of previous convictions, his good work history, the pleas of guilty at an early opportunity and the fact that the appellant, as a foreigner, would find serving a term of imprisonment in this country more difficult.

15. The learned sentencing judge appears to have approached the sentencing of the appellant on the basis that the defilement charges merited an imprisonment term of twelve years, while the Sexual Assault offences merited nine year sentences. He suspended the final three years of the twelve year sentence on the basis, it is assumed, of the various mitigating factors present in the case. He did not provide for any discount in relation to the sexual assault prison sentences of nine years.

16. The psychological report dated 10th January, 2014 prepared by Ms. Sakali and Dr. de Volder concluded that the appellant acknowledged his wrongdoing and was willing to engage in therapy arising there from. It concluded that he was at a low risk of future sexual offending, and indeed, was at the lowest level of risk measurable using particular measurement criteria. Overall, the report is very positive.

17. Reports from the prison in which the appellant is serving his prison sentence are also very positive. He is a trustee prisoner and has completed a number of courses in prison. He is currently on a waiting list for the Better Lives Programme.

18. Counsel for the respondent concedes that the sentences imposed on the appellant were not lenient. However, he emphasised the fact that the learned sentencing judge had adjourned sentencing for one week indicating that the sentences were considered carefully, and that an appropriate discount was given for the mitigating factors as represented by the decision to suspend the final three years of the twelve year terms.

19. Undoubtedly the learned sentencing judge took account of a number of mitigating factors, as he specifically referred to them in the course of his sentencing judgment. He referred to the appellant's plea of guilty, his lack of previous convictions, his good work history and the fact that, as a foreigner, he would find a significant period of imprisonment in this country difficult because of language and cultural differences, and the fact that most of his relatives live abroad. Of concern to this court however is the omission of any reference to the issue of rehabilitation and the low risk of re-offending as emphasised in the psychological report, a report which was made available to the learned sentencing judge one week before sentencing.

20. Sentences of twelve years, or indeed longer sentences, in cases involving the serious sexual abuse of young children are not uncommon in this jurisdiction. On that basis, the sentences in this case cannot be said to be particularly harsh. The courts quite rightly deal severely with adults who sexually abuse defenceless children. In this case, the instances of sexual abuse were serious, in that they occurred over a period of two to three years and involved a very substantial breach of trust.

21. The court is however satisfied that insufficient weight was attached to the issue of rehabilitation and indeed the likelihood of rehabilitation coupled with the very low risk of re-offending. To this limited extent the court has identified an error of principle in the sentences imposed, particularly the twelve year sentences. In place of the sentences imposed in the court below, the court will impose ten year sentences in respect of the defilement offences, and seven and a half year sentences in respect of the sexual assault offences. The final two and a half years of the ten year sentences will be suspended on similar conditions to those imposed in the lower court. This will result in an effective seven and a half year term of imprisonment.

22. The period in respect of which the suspended element of the sentence will apply will be two years. Additionally, it is a condition of the suspended element of the sentence that the appellant may apply for enrolment in a sex offenders programme while in prison, and participate in any such programme made available to him.