PETER ROKO -v- REGINAM

In the High Court of Solomon Islands
(Ward C.J)
Criminal Case No. 36 of 1990
Hearing: 12 December 1990
Judgment: 12 December 1990

A. Radclyffe for Appellant

DPP for Respondent

The appellant pleaded guilty to four offences of incest with his daughter and asked for 5 similar offences to be taken into consideration. The offences all occurred in June, July and December of 1989. He was sentenced to three years imprisonment on each count. Counts 2, 3 and 4 were to be concurrent with each other but consecutive to count 1 making a total of 6 years.

He appealed against that sentence on the following grounds:

1. The sentences for Counts 1 & 2 should have been concurrent and not consecutive.

2. The learned Magistrate was wrong to consider the age difference between the accused and his daughter an aggravating factor.

3. Insufficient credit was given for the guilty plea and other mitigating factors.

I allowed the appeal, substituted a total of 5 years imprisonment and said I would give my reasons later. I now do so.

The facts were that the daughter is the youngest of 6 children and was born in 1973. The appellant started having sexual intercourse with her in mid-1989 and repeated it a number of times. The victim was, therefore, sixteen at the time he started and was a virgin. In May 1990 she gave birth to a girl as a result of the incest. In sentencing, the learned Chief Magistrate gave credit for the plea of guilty and the appellant's previous good character and continued: "Nevertheless, this is a serious case of incest. While I accept that there may have been genuine affection between the accused and the victim there is a very large disparity in their ages and the offence is substantially aggravated by the victim's pregnancy. She is only 16 and both her and the child will bear the stigma of this incestuous relationship for the rest of their lives. In sentencing I have regard to the principles set out by the U.K. Court of Appeal in A-G's Reference No. 1 of 1989 (1989) CLR 923. I feel however that

notwithstanding the accused's age a substantial prison sentence is justified to mark the gravity of the offences and the revulsion with which right thinking people regard this offence."

I accept entirely that summary of the sentencing considerations.

The learned Chief Magistrate refers to Attorney General's Reference (No 1 of 1989) and clearly had regard to the terms of that judgment. It is set out fully in (1989) 1 WLR 1117 and gives clear and helpful guidelines on the correct approach to sentencing in such cases both in the reference itself (@ p 1118) and in the judgment of Lord Lane CJ @ 1122. Mr. Radclyffe for the appellant urges further that the actual sentences there suggested are also appropriate here as guidelines but I am afraid I cannot agree.

Attitudes to sexual morality, the sanctity of marriage and the family have changed dramatically in the United Kingdom and many other more developed countries and these changes have accompanied a decline in religious belief. The result is that offences such as incest are regarded as less serious now than they were previously. Equally, the larger and more impersonal urban communities in such countries mean such crimes are soon forgotten.

The situation here is different. Knowledge of the offence will be widespread in the community in which the girl lives and memories will be long. The abhorence felt to such an offence is strong and will, as the learned magistrate said, be a stigma she and her child will bear for the rest of their lives. Thus sentences considerably higher than those suggested in the Attorney General's Reference are appropriate here.

Section 156(1) of the Penal Code imposes two scales of sentence for incest. Where the female is thirteen years or older, the maximum sentence is 7 years but, when she is less than thirteen years old, it is life imprisonment.

In this case, the girl was 16 years old and so the maximum sentence available was one of 7 years imprisonment. The offence was repeated a number of times and was severely aggravated by the fact the girl became pregnant as a result. However, when the court sentences for such offences, it must bear in mind the maximum sentence available for more serious cases and must also allow for such mitigating factors as the plea of guilty and the attitude of the father when detected.

Whilst this case was serious, it clearly felt well short of the most serious offence in this category.

As such, I feel the sentence of 6 years imprisonment within a total scale of 7 years was clearly excessive. I feel an appropriate sentence was one of five years and I allow the

appeal to that extent. I quash the sentence on count 1 and substitute a sentence of two years imprisonment. This is still consecutive to the remaining counts and thus gives the total of 5 years imprisonment.

F.G.R. WARD
Chief Justice