

CR 03150

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

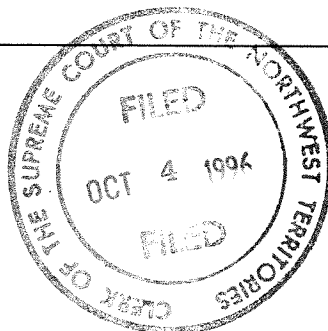
GORDON IHUMATAK

Transcript of the Oral Reasons for Sentence by The Honourable
Mr. Justice J.E. Richard at Kugluktuk in the Northwest
Territories, on Thursday, 26th September, A.D. 1996.

APPEARANCES:

Ms. B. Schmaltz:

Mr. V. Foldats:



Counsel for the Crown

Counsel for the Accused

Charge under s. 266 Criminal Code of Canada

1 THE COURT: Gordon Ihumatak is a 30-year-old man who
2 has been convicted by a jury in his home community of
3 assaulting his wife, Clara Avakana, in their home here
4 in Kugluktuk one evening last December.

5 The victim told the jury that late in the evening,
6 she and her husband got into an argument that escalated
7 into a shouting match and then into physical activity.

8 She said that while she was seated on an armchair,
9 the offender took a cushion and struck her with it a
10 number of times on the head and upper body, knocking
11 off her glasses in the process. She struggled to get
12 away from him and then he grabbed her and pulled her
13 forcibly into their bedroom where the fighting
14 continued.

15 She says that she ran out of the bedroom on two or
16 three occasions and attempted to use the phone to call
17 for help, to call the police, but each time her husband
18 prevented her from doing so.

19 She says at one point in the assault that he
20 grabbed her face roughly by the chin area and turned
21 her head "really hard", trying to twist her neck. She
22 was left with bruises and marks on her face and neck.

23 The victim at one point told their daughter, aged
24 eight, to go out of the house and get help from the
25 local social worker, which she did.

26 In his own testimony at trial, the offender denied
27 two of the assaults alleged and gave a different

1 version of the third one. In other words, he denied
2 the incident with the cushion, he denied the twisting
3 of the neck and gave a different version of the
4 dragging into the bedroom.

5 The jury returned a verdict of guilty. Of course
6 that finding is consistent with one, two, or three
7 separate assaults in the circumstances that I have
8 described.

9 The law is clear that, as sentencing Judge, I am
10 free to make my own determination of the relevant facts
11 which sustain the jury's verdict when that verdict is
12 ambiguous on its face as to the precise number of
13 assaults or type of assaults proven by the Crown.

14 Two Court decisions released last year, R. vs.
15 Braun from the Manitoba Court of Appeal and R. vs.
16 Tempelaar from the Supreme Court of Canada, confirm
17 this proposition.

18 I found the evidence of the victim to be credible,
19 and I am satisfied beyond any doubt that the assaults
20 occurred precisely as she described them to the jury.
21 I am confident that the jury was of the same view as
22 they obviously had no difficulty in believing her
23 testimony.

24 In any event, for purposes of this sentencing I
25 consider the three assaults as constituting one
26 continuous assault upon his wife, his victim.

27 I should note here that at the time of the assault

1 in December 1995, the victim was eight months'
2 pregnant. And also that the assault occurred in the
3 presence of their three young children. These are
4 aggravating circumstances.

5 The most aggravating factor, however, is
6 Mr. Ihumatak's, his prior record of violence against
7 his spouse.

8 On no less than six prior occasions, six prior
9 occasions, he has been convicted in court of assaulting
10 her. He has been fined, he has been placed on
11 probation, he has been sent to jail for seven days, he
12 has been sent to jail for 14 days, for one month, for
13 two months, and for three months. And yet he has
14 continued to assault her.

15 Whatever other considerations come into play today
16 in the Court's disposition on sentencing, the most
17 paramount consideration, in my view, is that the Court
18 must protect this woman, and I say this while at the
19 same time acknowledging that she has communicated to
20 the Court through counsel that she does not want her
21 husband to be sent away to jail.

22 There is not much that can be said today in a
23 positive way about Gordon Ihumatak and the predicament
24 that he finds himself in today.

25 In court today, he apologizes to his wife and to
26 his community. He says that he loves his kids and that
27 he is trying to change.

1 I regret that I am compelled to say that
2 Mr. Ihumatak's words today ring hollow.

3 I am not a psychologist or a psychiatrist but in
4 my respectful opinion, Mr. Ihumatak has some sort of
5 illness that blinds him to the reality of his
6 behaviour.

7 He has not, and it appears that he can not, take
8 responsibility for his violent behaviour towards his
9 wife. Now that may have resulted from his upbringing,
10 in a violent and dysfunctional home, but whatever the
11 cause, it is very clearly there.

12 I heard his words this morning when he spoke at
13 this sentencing hearing, but I also saw him and heard
14 his testimony two days ago before the jury. He clearly
15 did not and was not taking responsibility for his
16 behaviour towards his wife.

17 I fully recognize Mr. Ihumatak's legal and
18 constitutional right to plead not guilty, to choose
19 trial by jury, to have the Crown prove the charge
20 against him, to require his wife and daughter to
21 testify before the jury.

22 That is a different matter. Those are his legal
23 rights.

24 I am speaking now of his failure to acknowledge
25 responsibility, his inability to acknowledge
26 responsibility for his own acts as that failure relates
27 to whether he has learned anything from previous

1 convictions and incarcerations for spousal assault.

2 It is clear to me that he has learned nothing in
3 that regard and that is why I conclude that the
4 protection of his wife Clara Avakana must be utmost in
5 my mind in my determination of an appropriate sentence
6 today.

7 Had Mr. Ihumatak been prepared to acknowledge his
8 responsibility for his wrongful behaviour from the
9 outset, and I emphasize "from the outset", then in my
10 view this case of domestic violence should have been
11 referred to an out-of-court counseling service to
12 ascertain whether there could not be found a solution
13 for this family other than incarcerating him by court
14 order hundreds of miles away from his family, his young
15 family.

16 In my respectful view, this type of case should
17 not be brought before a jury in the Supreme Court
18 because of the delays that are attendant on that choice
19 of forum.

20 Instead, it should be dealt with in a more summary
21 fashion, at a much earlier date, so that the offender
22 might begin his rehabilitation at an earlier time and
23 so that the family members might begin to heal and
24 reconcile and put the matter behind them rather than
25 let it fester as an unresolved, outstanding,
26 troublesome issue between and among family members week
27 after week, month after month.

1 Having said that, however, we can not change what
2 has happened in fact in this case. Mr. Ihumatak did
3 not acknowledge responsibility for his assaultive
4 behaviour from the outset, so our society's very
5 legalistic machinery was put in full gear.

6 The Crown, in its wisdom, opted to take this
7 matter along the route of indictable offences.
8 Mr. Ihumatak responded by opting to be tried by a jury
9 of 12 community members. And today, nine months later,
10 he has their verdict.

11 They say that he has committed another crime of
12 violence, a crime against the laws of this community.
13 And now it is my sorry task to impose a punishment and
14 a sentence of incarceration upon him.

15 In my view, the people in our Northern communities
16 today are becoming more and more aware of the serious,
17 tragic problem of domestic violence. So in my sentence
18 today, I do not place any special emphasis on
19 denunciation as being a particularly dominant factor.

20 Individual deterrence is not a dominant factor
21 either as this man Gordon Ihumatak has not been
22 deterred by previous periods of incarceration.

23 The paramount consideration, to repeat myself, is
24 the protection of society, the protection of the
25 community, and very specifically in this case, the
26 protection of Clara Avakana.

27 A lengthy period of incarceration is required far

1 away from Clara Avakana and far away from the community
2 in which she lives. If the Court were to consider any
3 other disposition, it would be only a matter of time
4 before Ms. Avakana would be at risk of serious injury
5 at the hands of this offender.

6 Please stand now, Mr. Ihumatak. Stand up, sir.

7 Mr. Ihumatak, for this crime, the assault on Clara
8 Avakana on December 7th, 1995, it is the sentence of
9 this Court that you be imprisoned for a period of two
10 years less one day.

11 You may sit down.

12 **(AT WHICH TIME ORAL REASONS FOR SENTENCE CONCLUDED)**

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14 Certified Pursuant to Practice Direction
15 #20 dated December 28, 1987

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Lois Hewitt,
Court Reporter