

R. v. Kangeana, 2003 NWTSC 40

S-1-CR-20020000101

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RODNEY JASON KANGEGANA



Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, in Yellowknife, in the Northwest Territories, on the 26th day of June, A.D. 2003.

APPEARANCES:

Ms. S. Smallwood: Counsel for the Crown

Mr. P. Fuglsang: Counsel for the Defence

Charge under s. 271 C.C.

**Ban on Publication of Complainant / Witness
Pursuant to Section 486 of the Criminal Code**

1 THE COURT: Rodney Jason Kangekana was found
2 guilty yesterday by a jury of sexual assault. A
3 conviction has been entered and I must now sentence
4 him.

5 For the most part, the factual situation is
6 straightforward. The complainant, who was at the time
7 the 15-year-old niece of Mr. Kangekana's common-law
8 partner, was drinking at the home of Mr. Kangekana and
9 her aunt. She was intoxicated to the extent that she
10 had to be helped upstairs. She passed out on a bed
11 and awoke to find Mr. Kangekana on top of her. Her
12 pants and panties, which she had been wearing when she
13 passed out, had been removed and were on the floor.
14 She testified that Mr. Kangekana was having sex with
15 her while she was passed out. She said he was holding
16 himself up with his hands on either side of her. She
17 said she did not know what part of his body was
18 touching her. In cross-examination, she said that she
19 could not feel his weight on her when he was on top of
20 her.

21 There was no medical or forensic evidence as she
22 did not follow through with the request of the police
23 that she go to the hospital.

24 Her testimony that Mr. Kangekana was having sex
25 with her when she was passed out was not clarified.
26 It was not clear whether she concluded that from what
27 she saw when she came to or woke up, or whether she

1 meant that he was actually having sex with her when
2 she came to. When I say having "sex", I mean sexual
3 intercourse.

4 Certainly, I agree with Crown counsel that on the
5 evidence of the complainant, Mr. Kangehana was
6 attempting to have sexual intercourse with her, but it
7 is simply not completely clear on her evidence whether
8 he did in fact have intercourse with her. Of course
9 it may be that the only reason he did not is because
10 when she came to, she threw him off her and he fell on
11 the floor.

12 So having considered it, and it may simply have
13 been the way she worded what she said, but, as I say,
14 it was never really clarified what she meant. So I
15 find myself in a situation where I cannot find beyond
16 a reasonable doubt that sexual intercourse took place.
17 Nevertheless, as I say, he was certainly attempting to
18 have sex with her while she was passed out, having
19 obviously, and I think it was the reasonable
20 conclusion, obviously the only conclusion on the
21 evidence, that he had taken off her pants and panties
22 and was on top of her.

23 Now the aggravating factors with respect to the
24 event. Obviously this was the teenage niece of
25 Mr. Kangehana's common-law partner. This young girl
26 was staying in their home as she had done in the past
27 when visiting Yellowknife. She was intoxicated to the

1 point where she had to be helped upstairs, and she
2 passed out. She was in an extremely vulnerable state.
3 Mr. Kangeana was in a position of trust. The
4 complainant was entitled to feel that she would be
5 safe and protected when staying in his home and not
6 subject to attack by him.

7 From having observed her on the witness stand and
8 heard her testimony, it is obvious that she, the
9 victim, has problems. She should not be drinking at
10 all at her age, but obviously she has a number of
11 other problems as well. But she is the child, and
12 Mr. Kangeana is the adult. The adults in her life,
13 including Mr. Kangeana, should be trying to help her
14 and not be making her problems worse.

15 Although there was no victim impact statement, I
16 have no doubt, based on testimony in other cases,
17 victim impact statements in other cases, and hearing
18 the results from victims of similar sexual assaults,
19 that this experience is not something that the victim
20 in this case is simply going to brush off. It is an
21 experience that will simply add to what seem to be
22 some significant problems that she has.

23 Having considered the factors of the offence, it
24 is clear there are no mitigating factors at all.

25 With respect to Mr. Kangeana and his personal
26 situation, I have been told that he is 32 years old,
27 he is from Tuktoyaktuk, he has a grade seven education

1 and has worked as a labourer and a carver.

2 He does have a criminal record which goes back to
3 1990, commencing in that year with a conviction for
4 assault with a weapon.

5 Since then, he has had a number of other
6 convictions for property and other offences. Most
7 significantly, he has related convictions for common
8 assault in 1994 for which he received a jail term of
9 three months consecutive to a five-month jail term for
10 a property offence, and he also has a conviction for
11 sexual assault in 1997 for which he received 30 months
12 in jail. I infer as a result that that must have been
13 a serious sexual assault.

14 Since then, he has been convicted of impaired
15 driving in the year 2000.

16 It is true that between November 2000 and
17 yesterday, he has no convictions, but that is not a
18 very lengthy period of time.

19 I do take into account from observing
20 Mr. Kangezana and noting his name, that he is an
21 aboriginal person, as I am required to take into
22 account under the *Criminal Code*. However, no systemic
23 factors have been identified as putting him in the
24 position he is in today. In any event, in my view
25 that is not a reason to treat Mr. Kangezana
26 differently. Obviously he is in a situation where he
27 has a prior conviction for sexual assault. From that

1 in particular, I have to be most concerned for the
2 protection of society. I have to be concerned that
3 Mr. Kangehana himself be deterred from ever committing
4 another offence of this nature. Also, I have to be
5 concerned that the sentence that he is given shows how
6 society denounces this type of behaviour, and
7 hopefully that the sentence that may deter others from
8 this behaviour.

9 The evidence in this case was a sad saga of
10 drinking day after day. It is really shocking that
11 people spend so much time, so much money, and waste
12 their lives getting drunk. It is shocking to hear of
13 the terrible things that happen when people get drunk,
14 such as the victim in this case, a young girl, being
15 sexually assaulted in her aunt's home by the aunt's
16 common-law partner. I have to say, unfortunately it
17 is almost as shocking that even if these people were
18 prepared to quit drinking, it does not seem that there
19 is much, if anything, in the way of help for them. I
20 cannot help but think of the closure of the Treatment
21 Centre that was the subject of a recent article in the
22 local newspaper.

23 The only bright spot in this whole sad story is
24 that the other two teenagers living in the home, the
25 victim's cousins who testified here, did not drink
26 that night. I hope that means that they do not drink
27 at all. They have probably seen what a mess other

1 people become, and what terrible things happen when
2 people are drinking the way people were drinking on
3 the evening in question.

4 I am sentencing Mr. Kangekana for sexual assault;
5 I am not sentencing him for his drinking. At least in
6 jail, he may be able, if he is willing, to get some
7 help to combat his abuse of alcohol. I have made the
8 remarks that I have just made simply because I hope
9 that some of those involved, including Mr. Kangekana,
10 will think about this. Day after day in court we hear
11 about people drinking much like what was happening in
12 this particular case, yet very few people seem to be
13 able to want to deal with their own problems and,
14 unfortunately, it does not seem that very much else is
15 happening to deal with the problem. It is not just up
16 to the government to put programs into place; people
17 are responsible for their own actions. Mr. Kangekana
18 is responsible for his actions whether he remembers
19 what he did or not.

20 Mr. Kangekana, you should keep that in mind. I
21 am assuming that at least some of your record is
22 related to your drinking, so you know what you do when
23 you drink. Do not come before the court in the future
24 and say, "I was drinking, I don't remember." The
25 obvious solution is do not drink and maybe you will
26 not do these things. I hope you will not do these
27 things.

1 Please stand.

2 In all the circumstances, taking into account
3 what I have said about the facts of the case, taking
4 into account all the other circumstances, in my view
5 this was still a very serious sexual assault, and the
6 sentence that I am imposing is four years in jail.

7 It is a primary designated offence. No
8 submission has been made as to why a DNA order ought
9 not otherwise be made, so there will be a DNA order.

10 If you have a draft order, Ms. Smallwood, you can
11 provide that to me now.

12 MS. SMALLWOOD: Yes, I do have a draft order. I
13 haven't shown it to Mr. Fuglsang. I don't know if you
14 want me to do that after court --

15 THE COURT: That's fine, you can look at it
16 after court then.

17 There will also be a firearm prohibition order in
18 the usual terms under section 109 as to firearms and
19 other items, for a period of time that commences today
20 and expires ten years from Mr. Kangekana's release
21 from imprisonment.

22 In the circumstances, the victim of crime
23 surcharge will be waived.

24 You may have a seat, Mr. Kangekana.

25 Is there anything else, counsel, that I need to
26 deal with?

27 MS. SMALLWOOD: Nothing, Your Honour.

1 MR. FUGLSANG: Nothing, Your Honour.
2 THE COURT: All right, that's fine. Thank
3 you.
4 What you can do is submit the DNA order then to
5 the clerk. Once you've had a chance to look it over
6 and assuming that your consent is endorsed on it as to
7 the terms of it, then I'll sign it.
8 Thank you very much, counsel.

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10
11 Certified to be a true and accurate
12 transcript, pursuant to Rule 723 and
13 724 of the Supreme Court Rules of Court

14 *AWright*
15 _____
16 Annette Wright, RPR, CSR(A)
17 Court Reporter
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