

R. v. Memogana, 2007 NWTSC 27

S-1-CR2006000029

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

LESLIE MEMOGANA

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Transcript of the Reasons for Judgment by The Honourable  
Justice J.E. Richard, at Yellowknife in the Northwest  
Territories, on March 9th A.D., 2007.

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APPEARANCES:

Ms. S. Tkatch:

Counsel for the Crown

Ms. K. Payne:

Counsel for the Accused

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Charge under s. 271 Criminal Code of Canada

Publication ban on the identity of the complainant  
pursuant to s. 486 of the Criminal Code

Official Court Reporters

1           THE COURT:                       In this case the accused is  
2           charged with sexually assaulting the complainant  
3           on June 18th, 2005 at his residence in Inuvik.  
4           The complainant testified that on that occasion,  
5           she went to the Mad Trapper bar in Inuvik around  
6           midnight to have a few beers. There she  
7           encountered the accused who was someone who she  
8           had been friends with for a couple of months, the  
9           two of them having worked at the same work site  
10          at one time.

11                 At the Mad Trapper bar, the accused invited  
12          the complainant to go to his residence for more  
13          beer and some marijuana, and the complainant  
14          accepted. At his residence, the accused invited  
15          the complainant to sit with him in his bedroom  
16          while they drank a beer. The complainant says  
17          that she was reluctant to do so but she did.

18                 When the complainant decided to leave, she  
19          says the accused would not let her leave, he  
20          prevented her from opening the bedroom door, and  
21          she says they struggled for some time by the door  
22          as she tried to leave and the accused kept the  
23          door closed and prevented her from leaving.

24                 The complainant testified that the accused  
25          then managed to get her onto the bed and started  
26          taking her clothes off. She says that in  
27          resisting him and trying to get him off of her,

1           that she must have bit the accused's wrists  
2           because she says that the accused got angry at  
3           her, called her a "fucking bitch", and slapped  
4           and punched her on the face. She says that the  
5           accused then sexually assaulted her and in the  
6           course of the attack he bit her breasts and also  
7           bit her in the crotch area and that she screamed  
8           because of the pain. She says the accused had  
9           forcible sexual intercourse with her and that the  
10          assault lasted 15 to 20 minutes. During the  
11          course of the assault, she says she was screaming  
12          and crying, that she was trying to get him off of  
13          her, fighting him off and scratching him.

14                 After the assault and after they were both  
15          dressed, she says she heard some people arriving  
16          at the accused's trailer and also that there was  
17          a knock on the bedroom door and the accused's  
18          roommate asked if things were okay. The  
19          complainant says that because of what happened  
20          and because of her condition, she did not want to  
21          speak to anyone there so she left, or "snuck out"  
22          as she said, by an outside door that was near the  
23          bedroom door. As she left, she noticed that  
24          among the people partying in the livingroom area  
25          was her cousin Loretta Elias.

26                 The complainant says she went back to the  
27          place in Inuvik where she was staying at the

1 time, at the apartment of a new boyfriend. She  
2 says she arrived there at 1:30 or 2 in the  
3 morning, that she decided not to wake her  
4 boyfriend but she let him sleep until the  
5 morning. She consumed part of a mickey of  
6 alcohol and at 7 or 8 a.m. she told her boyfriend  
7 what happened and then reported it to the police.

8 In her cross-examination, the complainant  
9 did not resile from any of her testimony  
10 regarding the sexual assault itself.

11 In the context of all of the evidence, I  
12 find the complainant's testimony to be credible  
13 on the essential aspect of this case; that is,  
14 that she was subjected to forcible rough sexual  
15 activity by the accused.

16 In weighing the believability or reliability  
17 of her evidence, I have no concern about the fact  
18 that she did not cry out when she realized that a  
19 number of people arrived there for a party, nor  
20 that she did not say anything to her cousin  
21 Loretta. There is no normal expected behaviour  
22 or reaction of someone who has just been sexually  
23 assaulted or at least there is no evidence to  
24 indicate that at this trial. In my view, and  
25 given the circumstances of the event, the  
26 complainant gave a reasonable, understandable  
27 response when asked why she did not complain to

1 or engage in conversation with these people who  
2 arrived at the accused's trailer at 1 o'clock in  
3 the morning.

4 Also, in weighing the believability or the  
5 reliability of her testimony, I am not troubled  
6 by the fact that she did at times use different  
7 terminology or words in describing the extent or  
8 level of her friendship with the accused prior to  
9 this incident.

10 I turn to the evidence of the accused. In  
11 its entirety, I find the testimony of the accused  
12 to be problematic.

13 In his evidence-in-chief, he related a  
14 narrative of a completely different evening spent  
15 with this complainant. He spoke of drinking beer  
16 at Frosty's Pub in Inuvik and then when he was in  
17 the course of taking a cab home from Frosty's  
18 Pub, he encountered the complainant and says that  
19 either she invited herself into his cab or he  
20 invited her to join him in the cab. He says they  
21 went to his trailer and there they had a couple  
22 of beers and a couple of joints of marijuana and  
23 they had consensual sex. When asked if he bit  
24 the complainant during sex, he answered "I don't  
25 recall".

26 On cross-examination, the accused had  
27 considerable difficulty explaining or expanding

1           upon the narrative which he had given in his  
2           testimony in-chief; his answers being "I don't  
3           know", "I don't recall", "I don't think so" to  
4           many questions which were quite straightforward.

5           When it was suggested to him that he may be  
6           confusing this evening following a visit to  
7           Frosty's Pub with another occasion when he met  
8           this complainant at Mad Trapper and when asked if  
9           it was possible he was confusing different  
10          occasions, his answer was "I don't know" and "I  
11          just don't recall".

12          When asked straightforward questions such as  
13          "did she try to push you off", "did she tell you  
14          to stop", "did she tell you no", "was she angry",  
15          "was she crying", his answer was either "I don't  
16          know" or "I don't remember" or "I don't think  
17          so".

18          Taking the evidence of the accused as a  
19          whole, my assessment is that he does not know  
20          what transpired between he and the complainant on  
21          June 18th, 2005 and that I cannot rely on any of  
22          his testimony at this trial. The quality of his  
23          evidence is not such as to be reliable. I do not  
24          find anything reliable in the evidence of the  
25          accused that raises any reasonable doubt about  
26          the commission by him of a sexual assault upon  
27          the complainant.

1           On the complainant's evidence, I am  
2           satisfied beyond a reasonable doubt that a sexual  
3           assault occurred as related by the complainant  
4           and accordingly I convict the accused of the  
5           charge in the Indictment.

6           Now, counsel, with respect to sentencing, I  
7           will hear from counsel but it would be my  
8           preference that we not at least conclude the  
9           sentencing hearing today but if we could find  
10          some time next week, the Court's Monday is  
11          already fully booked or overbooked.

12        THE ACCUSED:           My God, it's -- I can't  
13          believe this.

14        THE COURT:            As I believe Tuesday is. What  
15          about Wednesday or Thursday of next week?

16        MS. TKATCH:           I can speak to my schedule,  
17          Your Honour. I am tied up in a week-long  
18          preliminary inquiry downstairs that I can't pass  
19          on to somebody else. So my preference I guess in  
20          that respect would either to be subsequent to  
21          next week or if we could do submissions today and  
22          I would be content to have another Crown receive  
23          the decision on that if you require time on that.  
24          I can say that my submissions are going to be  
25          pretty short, there is not much to add with  
26          respect to the sentencing submissions on the  
27          Crown's side. I do appreciate that Ms. Payne has

1 more work to do. It is just that next week is  
2 not good for me personally and I won't have a  
3 whole lot of time to prepare another Crown to be  
4 in my stead.

5 THE COURT: Ms. Payne?

6 MS. PAYNE: Sir, I am available next week,  
7 the following week as well. I'm sorry, the 19th  
8 and 20th I will be out of town but for the  
9 balance of the week I am in Yellowknife.

10 THE COURT: Okay, just before I turn back  
11 to Ms. Tkatch, can you just confirm the next  
12 week, the 22nd in particular, the Thursday is;  
13 the 22nd in particular?

14 MS. PAYNE: Yes, sir, I am in town.

15 THE COURT: Is that okay with you, Ms.  
16 Tkatch?

17 MS. TKATCH: I am available.

18 THE COURT: All right then, we will set it  
19 for Thursday, March 22nd, at 10 a.m. for  
20 sentencing Mr. Memogana.

21 MS. TKATCH: Thank you, sir.

22 MS. PAYNE: Thank you, Your Honour.

23 THE COURT: Thank you, we will close  
24 Court.

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Certified to be a true and  
accurate transcript pursuant  
to Rules 723 and 724 of the  
Supreme Court Rules,

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Lois Hewitt, CSR(A), RPR, CRR  
Court Reporter