

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:



HER MAJESTY THE QUEEN

- v. -

TIMOTHY APPOTAK



REASONS FOR JUDGMENT OF HIS HONOUR JUDGE T.B. DAVIS

THE COURT: Thank you.

Timothy Appotak, who is now 57 or 58 years of age, admits that in July, 1989, after a number of people had been at a drinking party at his residence, most left except for the victim, Paulette Kilgok, his 25-year-old niece, and invalid wife.

The accused -- or I am sorry, the victim was awakened by the accused when she was passed out on a chair in the kitchen, and he dragged her into the bedroom.

He struck her a number of times, and forced her to have sexual intercourse. When she was resisting by fighting back and kicking and crying, the victim ended up with a bloody nose and swollen lips.

He fondled her buttocks for a period of time before she was able to get dressed and leave the residence, and report the assault to the police.

Both the accused and the victim had been drinking heavily at the party that had taken place.

The use of violence and force in this way however still

1 causes this to be a major sexual assault. The superior courts
2 have directed that trial judges recognize that major sexual
3 assaults should ordinarily bring prison terms of approximately
4 three years as a starting point. Any excessive force or violence
5 would ordinarily increase that term beyond three years in gaol.

6 The good record of the accused in the past might act to
7 decrease the period of time in gaol.

8 The accused only has one breathalyser conviction as a
9 criminal record, and it is recognized that he is very remorseful
10 or sorry that his had occurred.

11 It is also noted that he had not planned this sexual
12 assault, for he is a person who normally lives a quiet lifestyle,
13 and ordinarily helps other persons in his family.

14 He traps and hunts and fishes, and earns some money in the
15 summer time by carving.

16 I feel somewhat bound by the superior courts and the
17 decision to acknowledge the -- and the decision to acknowledge the
18 directions in the Sandercock case in the Alberta Court of Appeal.
19 The accused speaks only Inuktitut, and a period of time in
20 penitentiary would be excessively hard on him.

21 MR. RODYCH: Your Honour, if I may interject at this
22 point. I cannot anticipate what you are going to say. I am just
23 left with the impression that it may not be known that the
24 Yellowknife Correctional Centre is designated --

25 THE COURT: A Federal facility. I am aware of that.

26 MR. RODYCH: Thank you.

27 THE COURT: I appreciate the fact that Crown counsel

1 was concerned, because by indicating that serving time in a
2 southern penitentiary would be more difficult on the accused than
3 otherwise, there was the likelihood that the Court could be
4 considering only serving time in the Correctional Centre in
5 Yellowknife, which means that the period of time would be less
6 than two years. But because there is an agreement between Federal
7 and the Territorial Government that people would be adversely
8 affected in serving the time in a southern correctional institute,
9 therefore can serve their time in a northern facility.

10 Under the circumstances, I am going to make recommendation
11 that the time that the accused must serve in gaol be considered to
12 be served in Yellowknife.

13 Because of the age of the accused and the fact that he has
14 only one other offence on his record, I am going to impose the
15 minimum term recommended for major sexual assaults.

16 Is there anything that the accused wishes to say at this
17 time?

18 THE INTERPRETER: He says he is really concerned, you know,
19 about -- he knows he have drinking problem, but he is really
20 concerned about his father and mother, because they are old
21 people, and that's a long period of time.

22 THE COURT: Yes, thank you.

23 The accused has helped with his parents and their needs
24 for some period of time, and it will be of course, a loss to them
25 to have him out of the community, and I recognize that.

26 On the sentence of the Court then, the period of gaol will
27 be for three years.

1 The other recommendation will be that if the accused
2 wishes to participate in alcohol counselling, that it be made
3 available to him.

4 That is all. Thank you.

5 No surcharge.

6 MR. RODYCH: Your Honour, the Section 100 sub --

7 THE COURT: Yes, I am sorry.

8 It is necessary for me as well to restrict the accused
9 from having possession of any firearms, ammunition, or explosive
10 substances for a period of five years.

11 Does he have any firearms?

12 MR. FUGLSANG: Yes.

13 THE COURT: All right, he will have to dispose of them
14 within a period of two months.

15 That is everything for the accused then, thank you.

16 _____
17 PROCEEDINGS CONCLUDED

18 _____
19 Delivered orally in Territorial Court, Coopermine, Northwest
20 Territories, on the 11th day of May, A.D. 1990

21 M. Rodych, Esq.

22 For the Crown

23 P. Fuglsang, Esq.

24 For the Accused

25 S. Rosadiuk, C.S.R.(A)

26 Official Court Reporter