TC CR 86 007

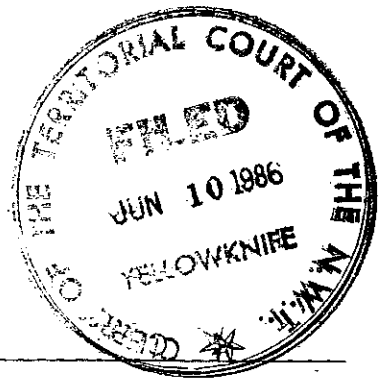
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

KAVAVOW PETAULASSIE
(KAVAVAOU PETAULASSIE)



Transcript of the Oral Reasons for Sentence delivered by His Honour Judge T. B. Davis, sitting at Frobisher Bay, in the Northwest Territories, on Tuesday, January 7th, A.D. 1986.

APPEARANCES:

MS. L. J. WALL	On behalf of the Crown
MR. J. BOVARD	On behalf of the Defence

THE COURT: The reason that I wanted to take a few minutes before passing sentence on the two cases before me today is to quickly review a recent decision of the Alberta Court of Appeal, which is also the Appeal Court for the Northwest Territories, recorded as Appeal Number 17265 and decided on the 11th day of February, 1985, under the name of The Queen vs. Sandercock. At that time, the Court in an effort to indicate that there should be avoidance of any disparity of sentencing generally had set out categories for the direct guidance of trial judges and had indicated that the sentencing courts are asked to acknowledge the starting points for the various categories, and then summarize the relevant factors affecting the case before passing sentence. In such procedure, the court believes that a uniform approach in sentencing can be accomplished. The Court, for the purposes of the cases before me today, indicate that the major sexual assault is one in which violence or threats of violence forced an adult victim to submit to sexual activity of a sort or intensity such that a reasonable person would know beforehand that the victim would suffer some sort of lasting psychological or emotional injury whether or not physical injury occurs. That category, as defined by the Court, includes not only what we have known in the past as rape, but also cases of attempted rape, fellatio, cunnilingus, and buggery, where foreseeable major harm should be expected to be realized as the result of the offence by the accused. The Court also indicates that a trial judge can assume that some psychological and emotional

harm will result, because assaults destroy the personal security that society tries to enforce; and it's only therefore on noteable psychological or emotional harm that the Crown must give additional evidence if it wishes the Court to take that into account.

The Appeal Court has said that the starting point for major sexual assaults would be a consideration of a three-year jail term, but that the trial judge should acknowledge such a starting point and express and reflect all relevant aggravating and mitigating factors that are taken into account in sentencing so that both Crown and defence counsel are fully aware of the approach being taken by the Court. Mitigating factors can include guilty pleas, which spares the victim from having to give evidence and removes--or may remove--some of the rights of the accused, as pointed out today by defence counsel. Some of the aggravating factors include confinement or kidnapping, repeated assaults, or acts of degradation, invasions of residences or private homes, use of weapons, or group participation. Other factors that the court can consider as mitigating factors include remorse and immaturity, and the Court also can consider the totality of the sentence or sentences being imposed. Therefore, the Appeal Court is confirming that the process to be dealt with by a trial court is still a balancing of the factors and relating those factors to the facts before the court so that an accused person is punished for the blameworthiness of his acts and not for the consequences of the crime itself.

Taking the proposals and directions filed by the Appeal Court into consideration, I feel that I can quickly review the facts relating to the two charges before the Court which had been agreed to by counsel so that convictions have been entered today. On May the 24th, 1985, at Cape Dorset in the Northwest Territories, the accused invited a fifteen-year-old girl to his house where there were others to listen to some music. She went to a bedroom and was listening to recorded music when approached by another person whom she had discouraged from advances. Later, the accused then attended at the same room and with force, and with some degree of struggling, after locking the door had commenced to have intercourse with the victim, at which time she was crying but was not observed by others in the house or those who had left the premises. The accused for a very short period of time had continued to have intercourse with her, but after observing that she was crying discontinued his acts at the time, left her, and she dressed and left the residence.

On October the 30th, 1985, while the accused was on an undertaking from the first offence, had entered a residence in the early morning at approximately 5:00 a.m. while the husband and the victim and a child were asleep, to be observed at the foot of the bed by the victim before the accused then left that room and went outside to another room within the house. Upon arousing her husband, the husband inquired from the accused what he wanted, since the accused had in his possession two rifles, and with threats and demands the accused

had the wife come out to the other room where he by using--or having available--one of the rifles and continuing to have it available and pointing it at times had forced her to have sex on the floor before he told her that he intended to use the rifles to kill himself, at which time he left the premises. There obviously was fear on behalf of the two persons who were in that house, and the accused therefore was guilty of the charge of committing a sexual assault, and in doing so forced sexual intercourse and threatened to use a weapon, contrary to Section 246.2 of the Criminal Code.

On the first offence, I think it can be acknowledged that there were some mitigating factors to the benefit of the accused in that when this fifteen-year-old girl, who had come as a guest to the residence where the offence had occurred, had cried substantially, the accused actually stopped forcing himself on her after only a relatively short period of time. That is to his benefit. It is also to his benefit that he was co-operative with the police and entered pleas of guilty to the charge after having disclosure made to his solicitor, and I am taking that into account for the purposes of mitigation on that charge today, noting also that he had only used enough force to accomplish at least his position with her until he realized that it was bothering her sufficiently that he discontinued his acts.

On the second offence, I have to acknowledge, however, that the accused had a previous record and had a previous offence of sexual assault for which he was convicted

and served two months when he appeared before the Court in August of 1984, and that he also had a previous conviction of possession of a dangerous weapon, for which he was sentenced to four months in jail in July of 1981.

Other factors, of course, that have been pointed out as aggravating are the confinement of people and the entering of private residences, and the use of weapons; and therefore, the balancing seems to be against the accused on the second offence, possibly in his favour to some extent on the first offence.

The Court of Appeal also indicates, however, that the sentencing judge of the trial court may take into account the totality of the effect of sentencing on the accused. Therefore, I feel that the range discussed by counsel today--being between a total of five and six years--is not substantially out of line as a total for the two charges before the Court because of the age of the accused, the other principles of sentencing that have been enunciated in many cases requiring that the Court take into account the age of the accused and other factors relating to him. The major purpose of sentencing is and will remain the protection of the public, it being required to deter offences only to the extent that punishment must be severe enough that the accused and others will know that they must not commit similar offences.

On that basis, I feel that it would be appropriate for me, taking into account what I have said and the directions of the Appeal Court as stated in the Sandercock case, to

impose two years in jail on the first offence--that is on Information 1621--and it would seem appropriate that I should consider in excess of three years on the second offence, since the accused has already served a couple of months in jail in what is classified as hard time, I feel it possible for me to give him the benefit that other cases have given to the hard time; and on that charge, therefore, on the second offence I think that I can keep it to a three years term in jail to run consecutively. Therefore, in this instance, my total sentence on the two charges today, taking into account the factors I have mentioned, will be a total of five years.

Do you understand all that, Mr. Petaulassie?

A. Yes.

MR. BOVARD: Thank you, Your Honour.

(AT WHICH TIME THIS MATTER WAS CONCLUDED.)

Certified a correct transcript

Edna Thiessen

Edna Thiessen, Court Reporter