IC CR 85 071

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

CARL HENRY TAMAHOINA HANAK

Transcript of the Oral Sentencing Delivered by His Honour Judge R. M. Bourassa, sitting at Coppermine in the Northwest Territories, on Tuesday, October 29th, A.D., 1985.

APPEARANCES:

MR. J. LETELLIER Q.C.: Counsel for the Crown

MR. V. FOLDATS: Counsel for the Defence

THE COURT: Carl Henry Tamahoina Hanak is convicted of committing a sexual assault on a young girl, and in the commission of that sexual assault used a weapon.

This is, so far as the court is concerned, a sad occasion. Nothing good will particularly come from this. The injury, if I can call it that, sustained by the young girl can't be repaired by this court, and for the reasons that I will give in a moment, I don't know that much can be done with respect to the particular offender, or that what the court does do by way of penalty will prove to be particularly positive for the offender.

The accused formed the intention of committing a sexual assault, having intercourse with a young girl, and in accordance with that intention, as admitted by the Defence, went to the girl's house. She was asleep in her bedroom. He found a rifle. By that I don't mean he ferretted it out from somewhere. Apparently it was conveniently located. He picked up the rifle which was loaded although it was said it was on safety, and went in to her bedroom. He must have terrified that girl. He pointed the rifle at her. He told her he wanted to have intercourse with her. He didn't care if he went to jail; He didn't care if the police found out, and that if she didn't have intercourse with him he was going to shoot her. She cried. He put the rifle aside for a moment, and continued importuning her and then at one point picked up the rifle again, and again threatened her life.

At this point, the young girl was terrified enough that she took off her clothes and this accused had complete, active intercourse with her.

Someone apparently arrived and heard the victim whimpering and left to seek assistance, and in the interim, the accused again threatened to shoot this young girl. He again told her he wanted to have intercourse, and forced her to undress again, and attempted the act of intercourse.

At this point someone else arrived. The accused quickly got dressed, ejected the shell that was in the chamber, hid the rifle and ran off. Apparently the accused was virtually unknown to the victim.

The Crown attorney points out that this is punishable by a maximum of fourteen years imprisonment when a weapon is involved, and a maximum of ten years when there is no weapon.

In terms of imposing a sentence, the court can't just say fourteen years is the maximum and I am going to give him fourteen years. The court has to apply certain principles that have come from other similar cases but not necessarily so, and the court must apply those principles to the particular facts before it, and to the particular offender that is before the court. The fourteen years imprisonment as a maximum penalty is sometimes described as to be imposed only in the worst example of an assault with a weapon, although more recently that approach has been criticized.

Defence counsel has ably and in detail argued that certain matters should be taken into account by this court and to varying degrees I accept his argument. First of all, the accused pleaded guilty, and I do accept that in substantial mitigation. He has saved not only the girl the difficulties that perhaps she may feel in testifying at a preliminary inquiry and a trial, but he has also participated in the speedy administration of justice. That can be taken into account, and I do.

The accused has a criminal record going back to 1981. It consists of offences in virtually every year but one: offences of common assault, theft, wilful damage, breach of probation, loitering at night, break and enter, an assault causing bodily harm in 1982, unlawfully in a dwelling, and then after an interval of approximately a year and a half or two years, the accused was convicted twice of assault in May of 1985.

The existance of a previous record doesn't mean that I can punish this man more heavily. It simply means that he can't come before the court and say 'it is my first time. I am entitled to leniency.' There is no leniency available to him because of the existance of his record.

It is argued that reformation and rehabilitation should be taken into account. To a small degree I concur. But I don't believe that it can play a great role in my sentence. The accused, with all the disabilities that he labours under, has had, if I can use the phrase, the

opportunities in the past to benefit from rehabilitative sentences.

A sentencing history begins at a point where the court considers the offender most carefully. By that I mean that the court is concerned about the offender and does something with respect to the offender so that he does not offend again, and perhaps in the balance of things, the offender receives more attention and comes under more scrutiny than the community or the public at large, but I dare say that when a person continues on a course of criminal conduct over a lengthy period of time that the court's concern shifts to matters of the public's or the community's concern than that of the particular offender.

The court at some point has to be concerned and very concerned about protecting the public. I perceive my role in imposing a sentence today as reflecting one of the most important elements i.e. to try and protect the community. This man is out of control. The community has to be protected. Surely in 1985 a young girl can go to sleep in her house without worrying about a man appearing at the foot of her bed carrying a rifle demanding intercourse.

Surely one can say that Mr. Hanak has reached the point where he understands that that is wrong, that he has had the opportunity in the past to try and reform himself as much as can be done. I think the court has to protect the public or attempt to do so.

On the other hand, I agree with Defence counsel that we can't simply throw him in jail and throw away the key,

but with respect to reformation and rehabilitation of the accused, I am keeping in mind that I should not impose a sentence that will crush him. I believe when it comes to reformation and rehabilitation, given the particular problems this man faces that it should best be left to the administrative boards and tribunals that exist within the corrections and penitentiary systems that are specifically designed with that in mind, and I do so in accordance with the R. v. Levesque case of the Quebec Superior Court.

I am told by way of submissions, and I have no reports before me other than one report saying that he is fit to stand trial, that he is of a very low intellectual ability, that his intelligence quotient is described as being subnormal or borderline intelligence, that he has a personality disorder, and a measure of that springs from the abuse of intoxicants.

It is, as I said earlier, a sad situation. I am aware, of course, that the intelligence or intellectual abilities, if I can use that term, have been taken into account by courts in the past in imposing sentence, and I am thinking of R. vs. Inukshuk and R. vs. Aklak. In Inukshuk, of course, there was a very great amount of property damage done. In both those cases the offenders were of borderline intelligence, and in both cases they received what I would term as lenient sentences, but in those cases the court was dealing with younger offenders,

and offenders that had the support of very strong family or community groups, support that was proven to exist, a kind of support that was prepared to virtually take over the custody of the accused person and ensure that he would be taken care of and a niche found for him within the community.

That isn't the case here. I have an accused, it is said, of borderline or subnormal intelligence , but I can't say for sure. There is nothing before me to indicate that there is a group within the community, or in the community at large which is willing to take care of this man, willing to keep him out of trouble and willing to offer guidance and assistance.

I accept Mr. Foldat's argument that reference can be made to psychiatric reports without the necessity of producing the reports. However, I think it is far superior practice and far sounder if great emphasis is going to be placed on such reports that they be brought before the court in full report form rather than simply by way of submissions.

I have been referred to three cases of the Northwest Territories Supreme Court, R. vs. Beaulieu, Teemotee, and Robichaud, all decision of Mr. Justice Marshall. I think I can say quite simply that a case does not stand for anything else than what it decided in that particular instance. The courts can refer to other cases for principles involved in sentencing, and I suppose it may look at other

cases to see what has been done in similar circumstances. But because one particular court imposed a particular sentence, does not mean that this court is bound to impose an identical or similar sentence, not as I understand the law. Each case stands on its own.

It is argued that there was very little planning in this matter. I can accept that in this case that the planning was not as with Beaulieu where apparently the victim was blindfolded, one would assume to prevent recognition at a later time. However, the accused had the pre-existing intention of committing the sexual assault. He made up his mind that is what he was going to do. He didn't go there with a rifle, which would make the matter far worse, but that has to be qualified by the fact that he got into the house, and obviously came to the conclusion that it would be easier or quicker to carry out his sexual assault if he was armed, and he picked up a loaded rifle.

If she had struggled, that girl could have been killed. There is no question about that. One could perhaps sit here for the rest of the afternoon and imagine the terrible things that could have happened if one thing had happend this way or if one thing had happened that way. Apart from that I can only say that the potential for bodily harm or for death or for great injury to this girl, because of the presence of the weapon, was extreme, and Parliament has recognized that in providing for more severe sentences

when weapons are used.

I am asked by the Crown attorney to take judicial notice of the fact that there is a problem in Coppermine with respect to sexual assaults. I cannot do so. Taking judicial notice means recognizing open and notorious facts. I am aware that recently in the last year or so there have been more sexual assault cases come before the Territorial Court than ever before. I am aware particularly, for example, that in Coppermine virtually every offender that comes before the court was drunk at the time of committing his offence. I suppose from there I could be justified in saying that there is a problem with alcohol consumption in Coppermine, and I think I would be prepared to say that. But I do not believe that the law justifies or entitles me to subjectively come to the conclusion based on the few occasions that I have been in Coppermine, that there is a problem with respect to sexual assault in this community.

If the Crown seeks or desires that the court take local conditions into account, and particularly local conditions such as the rate of offences dealing with break and enters or sexual assaults, then I think it is incumbent upon the Crown to bring that forward by way of proper proof through statistics or some other method. I can't take judicial notice of any fact of crime rate in Coppermine dealing with sexual assaults.

I think deterrence is an important factor, but because of the mental disabilities of the accused, I don't know that specific deterrence can be hoped for. Given the situation that has been described to me, it would appear that he may very well be a continuing threat simply because of his mental make-up. As long as he is exposed to intoxicants, there is the problem of loss of, or lack of impulse control. I don't know what can be done about that. Perhaps there is a medical answer, but I doubt or I am not convinced that the answer is to be found in a term of imprisonment based on specific deterrence.

I think the court does have to have some concern with respect to general deterrence. Sometimes one is almost ashamed of the male sex. After hearing the nonstop litany from one community to another of men beating their women, beating wives, beating daughters, men raping and having sexual intercourse with women without their consent, expecting it almost as a right, treating women like they would treat a snowmobile or a piece of equipment, an attitude in some is reflected and it is an attitude that the courts will not tolerate. A woman is to be respected just as much as any other person. A woman has a right to say no. A woman has the right to the integrity of her own body. No man owns a woman and no man may use a woman as he sees fit when and as he feels like it, administering blows or having intercourse regardless of her view of the situation. That kind of attitude, reaching

an extreme here, has to be deterred. Women are important partners in life, and must be respected and acts like this, as they reflect upon male and female relationships, have to be deterred in clear terms.

I am concerned about this particular man. I am not optimistic about his future. I don't know what can be done for him. I will endorse the warrant of committal with a recommendation that counselling and/or medication be made available to him. I observe that he will be released from jail - There is no question about that - He will be coming back to Coppermine - There is no question about that - and accommodations are going to have to be made. He is going to have to do something, and the community may think of doing something. Some communities have banded together on a number of other cases I can think of, and have achieved great things for troubled individuals. Maybe this community can do something.

Stand up, please, Mr. Hanak. On this charge I sentence you to four years imprisonment.

(AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

Certified a correct transcript,

Laurie Ann Young

Laurie Ann Young
Court Reporter