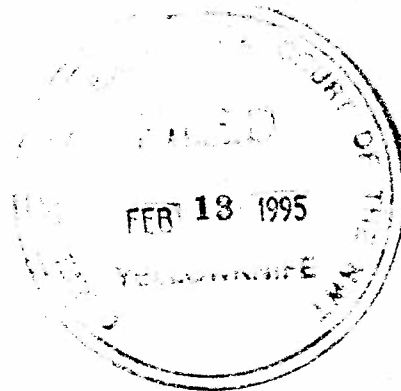
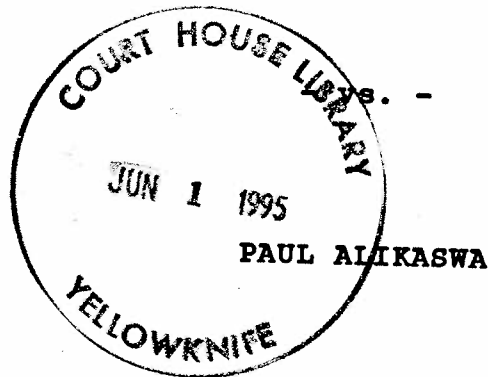


TC CR 95 013
ORIGINAL

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



Transcript of the Sentencing Hearing before The Honourable Judge R. M. Bourassa, at Arviat in the Northwest Territories, on Friday, January 27th A.D., 1995.

APPEARANCES:

MS. M. NIGHTINGALE:

Counsel for the Crown

MR. D. BLAIS:

Counsel for the Accused

(CHARGE UNDER s. 271 (x2) CRIMINAL CODE OF CANADA)

1 THE CLERK: Paul Alikaswa.

2 MR. BLAIS: Yes, Your Honour, this matter is set
3 for sentencing. There is a pre-sentence report.

4 THE COURT: Yes, I confirm that I have read the
5 pre-sentence report. Go ahead, Ms. Nightingale.

6 MS. NIGHTINGALE: Thank you, Your Honour.

7 On March 28, 1994, at about 4 p.m., the nursing
8 staff advised R.C.M.P. in Arviat that Susan Anowtalik
9 was in her office and wished to inform of a sexual
10 assault. She was visually upset and crying when she
11 met with police and she spoke about an incident that
12 occurred over a two week period when she was
13 babysitting at a another residence in this community.
14 The victim was unsure of the date, but it was in the
15 month of February 1993.

16 At that time, Paul Alikaswa, the accused, would
17 visit the residence on a regular basis to visit with
18 the children that the victim was taking care of. He
19 would often stay until the early hours of the morning.

20 One night, the victim had gone to bed as usual
21 with her three children, who are aged six, four, and
22 two. She was laying on the outside of the bed
23 listening to the CB and her children were asleep on
24 the inside towards the wall.

25 At about 2 a.m., she heard the door to her room
26 open slowly. She turned her head and saw the accused.
27 He quietly went to the bedside, then he placed his

1 hand under the blanket, under her pajamas and down
2 inside of her panties from behind. He then proceeded
3 to place his finger inside of her vagina and then
4 moved his hand about her back and then again down to
5 her vagina. The victim was scared. She did not know
6 what to do so she moved a little and the accused
7 removed his hand and left the room quietly and shortly
8 after that, left the home.

9 Those are the facts alleged in the first instance.

10 MR. BLAIS: That's acknowledged, Your Honour.

11 MS. NIGHTINGALE: In the first week of February 1994,
12 the first victim's sister was at home one evening
13 watching movies on T.V. with the accused and her
14 brother Gabriel. They were watching two movies and
15 she fell asleep on the couch.

16 She woke up at about 3:30 in the morning, feeling
17 a hand rubbing between her legs outside of her pajamas
18 and sweatpants. When she awoke, she opened her eyes a
19 little bit and found the accused to be doing this to
20 her. She moved her body and the accused removed his
21 hand from her body. She then pretended that she had
22 just woken up and spoke to the accused. She saw that
23 her brother was no longer there. About five minutes
24 later, her father came in and asked the accused to
25 leave which he did.

26 A second incident occurred in the middle of
27 February 1994. She was asleep in her bed under a

1 blanket wearing her pajamas and underwear. At
2 approximately two in the morning, she woke to feel
3 somebody rubbing her between her legs inside of her
4 underwear. She looked and found the accused laying on
5 the bed beside her pretending to be asleep. He was
6 wearing his clothes. She demanded that the accused
7 leave her house and he did so without saying anything
8 to her. She said that when she went to bed earlier,
9 the accused was not in the house and that all of her
10 family members were in bed at the time of this
11 incident.

12 Sometime in February 1994, a third incident
13 occurred. She had gone to bed at her home at about 2
14 a.m. She was laying under a blanket and she awoken to
15 find that somebody was rubbing his hand between her
16 legs inside of her underwear and continued to rub and
17 squeezed her breast. She opened her eyes and found
18 the accused beside her on the bed. He immediately
19 stood up and grabbed his parka. She told him to leave
20 and he did. She said that when she went to bed, her
21 brother was out and the rest of the family was in bed.
22 The accused had not been in her home.

23 The accused sexually assaulted this victim a
24 fourth and fifth time in February 1994. On that date,
25 she was asleep in her bedroom. The rest of her family
26 was asleep as well. She woke up at about 3:30 in the
27 morning, feeling a hand inside of her underwear and

1 rubbing between her legs and as well as rubbing her
2 breast. She awoke to find the accused laying in bed
3 beside her. She was wearing only her pajamas and her
4 underwear. The accused was wearing all of his clothes
5 but his hat, jacket, and windpants were laying on the
6 floor. She demanded that he leave and he did so. She
7 went back to bed.

8 About half an hour later, she woke a second time
9 to find the accused again laying beside her in bed. He
10 was whispering in her ear, saying "I want to lick you"
11 as he was rubbing her between her legs inside of her
12 underwear. She again demanded that he leave the
13 house. This time she walked him to the door as he was
14 getting dressed. She returned to her bedroom and
15 watched through her bedroom window to see that he did
16 leave. She then closed her bedroom door.

17 She told police about these incidents in early
18 March 1994.

19 A sixth and seventh incident occurred near the
20 beginning of May 1994. Again, she was asleep in her
21 bed. The rest of her family was asleep as well. She
22 was wearing her pajamas and underwear and at
23 approximately 3:30 a.m., she woke to find someone
24 rubbing her between her legs and her underwear. She
25 found the accused in her room laying in her bed beside
26 her and she immediately demanded that he leave. He
27 did so and she returned to bed. She thought that he

1 had left the residence but sometime later, she woke
2 again to find the accused rubbing her between her legs
3 inside of her underwear. She immediately demanded
4 that he leave and he did so.

5 Those are the facts alleged.

6 MR. BLAIS: That's acknowledged, Your Honour.

7 THE COURT: On sentence?

8 MS. NIGHTINGALE: There is a criminal record, Your
9 Honour.

10 MR. BLAIS: It's acknowledged, Your Honour.

11 THE COURT: Exhibit 1.

12 [EXHIBIT NO. 1: CRIMINAL RECORD OF THE ACCUSED]

13 MS. NIGHTINGALE: As Your Honour will see, he has two
14 convictions. One is for assault in February 1994
15 where he received a suspended sentence and six months
16 probation. The second is a sexual assault, again in
17 February 1994, where he got two months in jail. Now
18 he is before the Court again regarding eight incidents
19 of sexual assault against two women.

20 This man has a problem. A trend has developed
21 from the facts in that he befriended these women, he
22 was welcomed in their homes, he then abused that
23 friendship and trust by coming into their homes,
24 usually uninvited in the middle of the night, and took
25 from them.

26 He took their sense of safety, their control of
27 their bodies, and their right to protection in their

1 own home.

2 I would invite the Court to consider these acts as
3 constituting in their totality a major sexual assault.

4 I base this submission primarily on the Alberta
5 Court of Appeal decision in Sandercock where that
6 Court states at page 270,

7 The key, then, to a major sexual
8 assault is the evident blameworthiness
9 of the offender, which was described by
10 Laycraft J. A. (as he then was) in
11 F. vs. R. (1992) 20 Alberta Law Reports
12 (2d) 1990, Court of Appeal as "contemptuous
13 disregard for the feelings and personal
14 integrity of the victim".

15 In describing what constitutes a major assault,
16 Justice Kerans mentioned several acts which could be
17 included. That was the old offence of rape, attempted
18 rape, acts of oral sex, and buggery.

19 In an October 1994 judgment of the Alberta Court
20 of Appeal, that of R. vs. Berard, B-E-R-A-R-D, which
21 is an unreported decision, Chief Justice Fraser for
22 the Court upheld a lower Court finding that a major
23 sexual assault had occurred when the accused dragged
24 an already unconscious woman into some bushes,
25 straddled her, removed her bra, unzipped her pants,
26 and had one hand on the victim's breast.

27 This was based on the Court's view that the attack
in those circumstances qualified as a contemptuous
disregard for the feelings and personal integrity of
the victim and would reasonably give rise to the

1 psychological harm to the victim once she found out
2 what happened.

3 In the facts before this Court, I would submit to
4 you that the accused has demonstrated such a
5 contemptuous disregard to the victims' feelings and
6 their personal integrity.

7 For Susan, this was being assaulted while she
8 slept and having the accused's finger pushed inside
9 her. For her sister, the accused's repeated assaults,
10 seven of them in all, all of which occurred while she
11 slept in her home, establishes the accused's disregard
12 for her wishes and integrity.

13 There is also evidence of psychological harm that
14 these women have experienced.

15 Susan spoke of her experience being a nightmare
16 and that it is still that way. She speaks of feeling --
17 or having felt free for 27 years and then after she
18 was sexually assaulted, this changed. She feels
19 scared, she has cried alot. She worries for the
20 safety of her children. She doesn't know why he
21 touched her or why it happened to her. She also said
22 that she's very sensitive to noises at night when she
23 said "my ears are unplugged now" and that she sleeps
24 lightly. For the year that she kept the secret inside
25 of her, she felt all alone with no place to go.

26 When she found out that the accused was assaulting
27 her sister, she became very angry that he had hurt

1 both of them. She wishes now that she could start
2 over again like nothing had happened but she knows
3 that she can't. She has already decided that she
4 wants to work with teenagers and other women to talk
5 about sexual abuse; that others in similar situations
6 will not have to feel alone with their pain.

7 For Susan's sister, she spoke of hating her life
8 because of what the accused did to her.

9 When considering the factors that make this case
10 more or less serious, it would be necessary to
11 recognize the accused's guilty plea. It should be
12 noted however that this was only after the matter was
13 ready for a preliminary inquiry on two previous
14 occasions.

15 On both dates, the victims had prepared themselves
16 to testify and while they were ultimately spared the
17 embarrassment and difficulty of talking in Court, they
18 still suffered considerable stress preparing
19 themselves waiting and worrying.

20 It is important to note as well that the
21 preliminary inquiry did not happen on the second date
22 because the accused himself failed to appear.

23 While the majority of these offences occurred
24 before the accused went to Baffin Correctional Center
25 for another sexual assault, two did occur following
26 his release while he was on probation.

27 This suggests that he does not respect Court

1 orders and that he will not stop assaulting women. He
2 is then a danger to the public.

3 This is further supported by statements in the
4 pre-sentence report that was prepared which states
5 that the accused does not seem to fully understand the
6 impact of his actions on the victims or others.

7 Instead, he says at page 3, or he is reported at page
8 3, that he did not think that the ladies would tell.

9 Otherwise, the pre-sentence report tends to show
10 that the accused is a pretty nice guy. This is
11 exactly what Susan and her sister thought of him
12 before he did these things to them.

13 In the Sandercock decision, Justice Kerans states,
14 again at page 270,

15 Many believe that gratification of
16 sexual desire by almost any means is not
17 normal but healthy. This attitude
18 unsurprisingly has led to some confusion
19 and the belief by some that the society
20 also permits the use of others as
21 objects for sexual gratification. It
22 does not, and denunciatory sentences are
23 needed to enforce the point.

24 While this statement may not adequately reflect
25 the situation or beliefs of all people in the North,
26 it is still the case that society generally does not
27 permit the use of others as objects for sexual
28 gratification, and this is certainly true of the
29 younger generation in this community.

30 In considering what sentence should be imposed, I
31 would like to draw the following aggravating factors

1 to the Court's attention.

2 For one of the victims, it happened in her home.
3 For the other, it was in the presence of her three
4 sleeping children. The Court is dealing with eight
5 sexual assaults involving two victims. The accused
6 has a criminal record, and he was on probation for
7 sexual assault when two of the assaults occurred. The
8 victims were asleep at the time. In one, there was
9 digital penetration. In the other, there was seven
10 assaults in a short period of time. The accused has
11 obvious disregard for both victims' wishes. He had
12 been a friend of theirs and he abused the friendship
13 and the trust that they had in him. To commit the
14 assaults, he usually entered the home when not invited
15 to. And that while both victims suffered no physical
16 injuries, they have experienced psychological harm.

17 We would ask that a jail sentence be imposed as
18 deterrence and denunciation are the paramount
19 principles. This man has to be stopped and he must be
20 shown how unacceptable his actions are. The
21 protection of the public demands this.

22 Those are my submissions.

23 THE COURT: Mr. Blais?

24 MR. BLAIS: Thank you, Your Honour. I might start
25 off by saying that the Crown has not presented,
26 certainly any disclosure, of psychological harm.
27 Certainly, Mr. Alikaswa acknowledges that his conduct

1 was very upsetting to these women. As the Crown
2 itself indicated, these matters, while acknowledged as
3 very serious, are still not quite yet to the point
4 described of those four types of sexual assault as
5 being a major sexual assault however certainly again,
6 in saying that, we are not suggesting that these are
7 minor incidents and again acknowledge that they are
8 still quite serious.

9 Lastly, perhaps it's only my record keeping, but
10 my record keeping is that this matter was set for
11 preliminary inquiry only on November 25th and the
12 Crown, I might say, was advised prior to the week of
13 Court circuit that a guilty plea would be entered, and
14 I don't see how they would then prepare the Crown
15 witnesses to testify. And again, I may be mistaken in
16 my belief that the August 12th Court appearance was
17 only set for plea and that's the occasion where Mr.
18 Alikaswa was apparently out on a boat somewhere
19 performing his job and did not make it to Court.

20 That being as it is, Mr. Alikaswa recognizes this
21 is a very serious situation he has placed himself in.
22 He really does not have an explanation or any excuses
23 to offer for this type of conduct and certainly he
24 recognizes that he was well aware that this type of
25 conduct could bring sanctions to him. Unfortunately,
26 it appears that an otherwise -- a person of otherwise
27 reputable character has a problem in one area, which

1 he doesn't particularly understand yet.

2 The conversations with at least one responsible
3 man in Arviat indicates a belief that this conduct may
4 stem from the fact, because of his slight build, he is
5 not seen to be a physically attractive man in the
6 community and therefore has not been able to, despite
7 being older than the average age for coupling up, has
8 not been able to find a permanent relationship.

9 Obviously, this type of conduct though doesn't
10 help. In fact, only hurts him in this area and again
11 it's not by way of an excuse. It is simply one
12 explanation suggested by another man in this
13 community.

14 The pre-sentence report gives the Court many
15 details of positive aspects of Mr. Alikaswa's life and
16 the Court has heard certainly information about this
17 negative aspect.

18 In mitigation, he has entered guilty pleas and has
19 taken responsibility for his conduct.

20 I have no further submissions.

21 THE COURT: It's difficult to understand what's
22 going on in the accused's mind. It appears from the
23 pre-sentence report that he doesn't understand it
24 either. I suppose it's ridiculous in a way to have to
25 say it, but in sense it has to be said: There can only
26 be sexual activity between two people if they both
27 agree. A man can have sex with a woman if she agrees.

1 If a man is attracted to a woman, he is going to have
2 to find some other way of expressing it other than
3 crawling in bed with her in the middle of the night.
4 Women and men can enjoy sex equally if they agree.
5 There has to be consent. There has to be agreement.
6 You can't just slide into bed some night with a woman
7 and express a desire by grabbing at her. That's not
8 fair to the woman. Apart from not being fair to the
9 woman, it is against the law. Women, as pointed out
10 by the Crown attorney, like anyone else, like men, are
11 entitled to personal integrity, to be secure, and not
12 to be involved in activities that they don't consent
13 to. At the very least, ask. If you get a "no", then
14 that's the end of it.

15 But Mr. Alikaswa doesn't ask. He sneaks into a
16 person's bedroom while she is asleep and it doesn't
17 matter if children are beside her, or what's
18 happening, and violates her personal integrity in a
19 sexual way. I can fully understand the reaction of
20 the victims.

21 The accused of course is not charged with break
22 and enter and commit sexual assault, but a number of
23 the sexual assaults involved an unlawful entry which
24 is an aggravating feature.

25 When people go to bed at night and close their
26 doors, they are entitled to the security that that
27 offers. A closed door is a closed door. It means

1 that you are not welcome unless you announce, knock,
2 or get invited in.

3 In my view, the circumstances of the sexual
4 assaults are highly aggravating. I find as well the
5 persistence with respect to one of the victims to be
6 aggravating. She kept telling him to leave, she kept
7 telling him to go away; he would go away and he would
8 come back, whether a few days later or a few minutes
9 later. He wouldn't leave her alone, in her own house,
10 in her own bed, knowing that she didn't want anything
11 to do with him. That, to me, is the most aggravating
12 aspect.

13 Another aggravating aspect is that this man went
14 to jail for a sexual assault. He received a sentence
15 of two months. I am sure that while he didn't serve
16 two months, a short jail sentence didn't do a thing to
17 him in terms of making him understand what his
18 responsibilities are with respect to sexual activity.
19 No sooner was he out of jail then he was back again
20 assaulting this one victim.

21 Mr. Alikaswa is not a stupid man but he doesn't
22 seem to be able to learn from that short term of
23 imprisonment. It didn't teach him anything.

24 I am taking into account that he has pleaded
25 guilty. The Crown argues that it is a qualified plea
26 of guilty. I disagree. He has pleaded guilty. There
27 was no preliminary inquiry. It hasn't been dragged

1 out. I take that in substantial mitigation.

2 Some Courts have indicated that up to one third of
3 what would otherwise be an appropriate sentence should
4 be struck to reflect the timely guilty plea. I think
5 it appropriate that it be done and it's important that
6 the people understand that it is done.

7 People that come to Court that acknowledge that
8 they have done wrong and accept the sentence of the
9 Court will be treated more leniently than those that
10 fight and cry and squabble and go all the way to a
11 trial to be found guilty. I intend to do that in this
12 case.

13 I am not going to enter into a debate as to
14 whether this is a major or minor or intermediate
15 sexual assault. The facts speak for themselves. The
16 continued assault on the one victim is the most
17 aggravating aspect of it.

18 Stand up please, Mr. Alikaswa.

19 Is there anything that you want to say before I
20 impose sentence?

21 THE ACCUSED: What?

22 THE COURT: Is there anything that you want to say
23 before I sentence you?

24 THE ACCUSED: No.

25 THE COURT: On the charge of sexual assault on
26 Sarah Aksadjuak, there will be a term of imprisonment
27 of 20 months. On the charge of sexual assault on

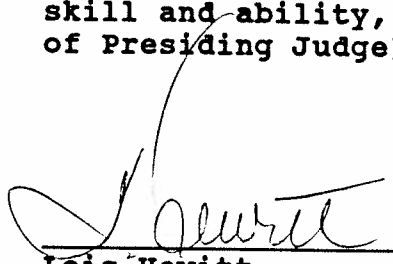
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Susan Anowtalik, a term of imprisonment of eight months consecutive.

MR. BLAIS: Thank you, Your Honour

(AT WHICH TIME THIS SENTENCING HEARING CONCLUDED)

Certified correct to the best of my skill and ability, (Subject to Review of Presiding Judge)



Lois Hewitt,
Court Reporter