The State v. Koupa

National Court
Wilson J.
17 June 1987

Criminal law – sentence – rape – multiple offenders – aggravating factors – use of a knife – extensive planning – abduction from a home.

Criminal law – sentence – rape and armed robbery – sentences to be cumulative or concurrent.

The defendant was one of a gang of nine men who violently broke and entered a home, committed armed robbery therein, and then abducted the female victim. The victim was raped many times, in two locations by several men. The defendant pleaded guilty to four charges including armed robbery and rape.

SENTENCE: The defendant was sentenced to six years' gaol on the charge of stealing with violence and twelve years' gaol on the charge of rape, the sentences to be served cumulatively.

(1) The starting point for consideration was eight years' gaol for multiple rape. *R.* v. *Billam* [1986] 1 W.L.R. 349; [1986] 1 All E.R. 985; 82 Cr. App. R. 347 (C.A.) and *The State* v. *Kaudik,* supra at p. 252 applied.

(2) There were extensive circumstances of aggravation. *R.* v. *Billam* applied:
   (a) a rifle and bush knives were used;
   (b) the offence was carefully planned;
   (c) the victim was abducted from her family home;
   (d) the victim suffered physical injury over and above the rape itself;
   (e) the victim suffered and will continue to suffer mental disturbance.

(3) The offender's age and his plea of guilty were mitigating circumstances, but of limited effect.

(4) The breaking and entering with violence, and the abduction-rape are separate categories, not a single transaction, and sentences on those two counts ought to be cumulative. *R.* v. *Hayward* (1982) 6 A Crim. R. 157 applied.

(5) The sentence on the first count, that of breaking and entering with violence was six years, to be served cumulatively with the sentence on the fourth count, that of rape, which was twelve years, for a cumulative sentence of eighteenyears. Sentences of four and eight years were also imposed to be served concurrently.

OBSERVATION: The instant case should be read together with *Aubuku* v. *The State,* supra at p. 183 and *The State* v. *Kaudik,* supra at p. 252.

P. Boyce and *S. Maunsell* for the State

E. Kariko for the accused

WILSON J.

Judgment:

The prisoner, Michael Amuna Koupa, has pleaded guilty to four counts contained in the indictment. The first count is a charge relating to events on 1 April 1986, at Hohola where the prison stole from the victims, Gary George Hallard and Christine Ruth Hallard, with actual violence property to the value of K10,630.00 and at the time, the prison was in company with some eight other person who were armed. The second count relates to the unlawful abduction of Christine Hallard against her will with intent to carnally know her. The third count is that, the prisoner on 1 April 1986, at Hohola was present and encouraged the rape of Christine Hallard by his co-offenders. The fourth count relates to the offence of rape committed by the prisoner against Christine Hallard.

The Facts

On the evening of Tuesday 1 April 1986, Gary and Christine Hallard were at their residence at the Garden Hills Estate Kaeme Street, Hohola. They resided in the upper flat of a duplex, the lower flat at the time being empty.

Both Gary and Christine had retired early for the night around 8.30 p.m. At around 10 p.m., both were awoken by the sound of voices and sounds of people climbing over the security fence at the back of the flat near the bedroom. Both could hear the sounds of their clothing being pulled off the washing line. At this stage, Gary Hallard got up and dressed and checked that the house was secure and all doors locked.

As things went quiet, Mr Hallard returned to bed. Around 10.30 p.m., both could hear the sounds of the security fence being cut outside the bedroom. Mr Hallard, on hearing this set off a small internal alarm. By this time, there was a number of people outside pushing objects through the windows. An order was given to turn off the alarm, which Mr Hallard did. Sounds could be heard of attempts to break open both the front and rear external doors of the flat. Mrs Hallard then hid herself in the cupboard in the bedroom and Mr Hallard locked the bedroom door and held the door.

Entry was then gained to the flat and then attempts were made to break into the bedroom. Mr Hallard held on to this door, but realizing that eventually they would gain entry, he opened the door and stepped out into the entrance whereupon he was immediately grabbed and pulled into the lounge area. There he observed some four or five persons, one of whom was armed with a rifle.

Mr Hallard after indicating where the key to his car was, was then hit on the back of the head and thrown to the ground, semi-conscious. His watch was removed and he was tied up.

The house was then at this stage ransacked and items of the property as listed in the schedule of property, were removed.

After a while, the house was quiet and Mr Hallard was able to look around and found no-one present. He heard the cars being driven away.

After managing to untie himself, Mr Hallard discovered his wife Christine was no longer in the house. He subsequently found the two security guards who had been on the premises were tied to trees outside the security fence where they had been

taken and tied up. Both security guards had been beaten, one receiving a knife wound to the head, and the other a cut above the eye; both required sutures. Both were also injured due to being tied very tightly to the trees.

Christine Hallard had been found in the cupboard during the ransacking of the house and pulled out and made to sit on the floor in the bedroom. Several men were in the bedroom and had pieces of cloth over their faces. One man approached her with a rifle and threatened her, demanding money.

During this time, property to the value of K10,630.00 was removed from the house.

Several of the men at this time touched Christine and tried to kiss her, which she resisted.

She was then told to go outside to the garage downstairs, walking past her husband lying on the floor in the lounge, tied up.

At this stage, Christine was put in one of their cars, a Honda, four men got in with her, one of these being the prisoner Michael Amuna Koupa.

Property removed from the flat had been loaded into their other car, a Suzuki, which carried the other men. Christine was then driven to the Hohola Demonstration School where both cars stopped and the men got out.

Christine was still in the Honda car when the man with the rifle approached her and after threatening to kill her, raped her. Christine was then raped by the other men, in all she was raped seven times. All were armed with bush knives. One of those present was Michael Amuna Koupa.

After this, a discussion took place and then the Suzuki left. The Honda vehicle with Christine in it was then driven to Erima Community School Basketball Grounds, where she was again raped by the three men with her; the prisoner, Michael Amuna Koupa was one of those to rape her. By this stage, the victim was screaming and was told that she would be killed if she did not remain quiet.

After this, the three men with Christine drove back towards Hohola, on the way there they were intercepted by the police vehicle and chased. Eventually, the vehicle was abandoned and the police then apprehended Michael Amuna Koupa as he tried to run away. During the course of his arrest, he was shot in the leg by the police. One of the other men, Raphael Haro, was shot dead. The other man escaped, but was later arrested.

The police found the prosecutrix in the back of the Honda, naked and in severe shock. Subsequent medical examination confirmed that sexual intercourse had occurred. Subsequently to this incident, the prosecutrix has suffered serious external and physical problems. She has been receiving psychiatric treatment since the incident.

The prisoner was taken to the hospital where he was treated. At the hospital, a search revealed in his clothing, the prosecutrix's wrist watch and necklace which had been taken from her.

On 4 April, the accused was released from the hospital, whereupon he made a confession to the police.

In this interview, he admitted that he attended a meeting on 1 April 1986, where the robbery was planned, he named those present and stated that they went to the house and waited at the back of the flat on the hill and then they cut the security fence, tied up the security guards and broke into the flat. He admits participating in the robbery and also the subsequent rape of the prosecutrix on two separate

occasions, after she had been abducted from her flat.

Observations

The victim was a twenty three-year-old woman who came to Papua New Guinea with her husband and at the time the offence was committed, she held the position of teacher and librarian at the Ela Beach Primary School. The circumstances outlined relating to the facts of this matter set out what could only be described as a litany of terror and violence committed by the offenders. It is hard to find words to describe the revulsion that the circumstances of this offence give rise to. This was a violent, well-planned and sustained activity by all the offenders. The prisoner played an active part in all aspects of the offence which took place over a number of hours on the day mentioned.

It is clear from reflecting on the facts in this case that the offenders used violence on everybody involved in this offence. Starting with the security guards, who were assaulted, wounded and tied up to the trees, going through to the husband of the victim of the rape who after giving the offenders what they had requested was struck on the head with the rifle butt and then tied up and left. His wife, the victim of the rape, was then forcibly abducted and carried on this journey of evil, which resulted in her being sexually assaulted in the most degrading and sustained manner. In respect of the prisoner now before me, he had been present when the victim was first raped and displayed absolutely no remorse or feeling for her by then at a subsequent place committing rape upon her. One can only touch on an understanding of the fear and pain and degradation that these events must have brought about in the mind and body of the victim of the rape and also the grave apprehension and concern to be felt by her husband who, when he was able to release himself from the binding of his hands and legs, was then faced with the fact that his wife had been abducted by these criminals.

The immensity of this offence can be seen by reflecting on the whole course of action carried out by the offenders and by the various acts of violence and sexual abuse involved. As I said, it is hard to describe the feelings that a reflection of these facts cause to well-up in the minds of ordinary and law abiding citizens. It is hard to imagine, without sinking into the depth of imagined degradations, an offence of a more serious nature.

It is unfortunately not uncommon for such actions to be equated with the behaviour of animals in such circumstances as this, but I find that description not appropriate as I know of no animal species that would treat its own type in such a foul and inherently degrading way.

As is indicated in the statement of the facts the victim of the rape has suffered ongoing physical problems as a result of the sexual assault and has also been receiving psychiatric treatment to try to remedy the long term mental impact of these events on her. One can only express the greatest sympathy and condolence for her and her husband as they were the unfortunate and innocent victims of such a foul crime.

It has often been said that the crime of rape is one which except in the most exceptional circumstances will require an immediate custodial sentence.

In a recent judgment in the matter of *The State* v. *Kaudik* supra at p. 252; [1987] P.N.G.L.R. 201, Amet J., sitting in Lae, delivered reasons for sentence in relation to a pack rape of a young girl by men acting together who abducted her from a vehicle

when she was being dropped home and took her to a place where they committed rape upon her. I have read his Honour's judgment, particularly as it relates to the applicability of the principles set out in the case of *R.* v. *Billam* [1986] 1 W.L.R. 349; [1986] 1 All E.R. 985; 82 Cr. App. R. 347 and I adopt with respect his Honour's concurrence with the principles set out in that judgment. Without going into the details which are adequately covered in his Honour's judgment, I concur with the principles set out in relation to the aggravation of rape sentences and the matters that should be taken into account. In particular, I consider it to be appropriate as a starting point for sentencing in respect of the matters involved in the pack rape of the female victim, that the starting point of my consideration should be eight years. This is on the basis that this was an offence which involved some eight men acting together who abducted the victim and held her captive and then carried out the offence.

The circumstances of aggravation in relation to this offence are as follows:

(1) A weapon, that is a rifle was used to frighten the victim and also all the offenders carried bush knives. On at least two occasions the victim was threatened that she would be killed.
(2) The offence had been carefully planned.
(3) The victim was abducted from her house following the commission of a serious robbery with violence.
(4) There is clear evidence of physical injury over and above the obvious physical pain and distress of the offence being carried out on her and also there is clear evidence of continuing mental disturbance and anguish caused by the fact of the offence.

In considering all of these matters, I consider that the sentence appropriate to the matters involving the rape offence move from the base-line, if it can be so described of eight years to a much higher level when the matters I have just set out are taken into account.

In relating to the other aspect of the offence, that is the robbery with actual violence, by the prisoner and the other offenders, this crime is also in my view, in the serious category of the examples of such offence. The house of the victims was set upon in almost military fashion that one would equate more with terrorist activity than the type one would equate with civilized domestic society. The attack on this house was sustained and violent. The guards were neutralized, assaulted and wounded and then tied up to trees. The offenders carried out a sustained attack on the house which eventually resulted in them gaining access. When inside, they ransacked the premises, they violently assaulted Mr Hallard who had courageously attempted to divert them to protect his wife and they abducted his wife and made their escape with the two vehicles belonging to the victims. These events in themselves would cause great fear and terror to the ordinary person and they indicate a level of commitment by offenders of quite staggering proportions. In my view, those events alone call for a substantial and stern punishment.

It is quite clear from the information contained in the depositions that the attack on this house was well planned prior to the events and it is clear that the offenders knew exactly what was required by them to attain their illegal objectives.

Concurrent or Cumulative Sentences

During the course of the submissions of counsel in respect of sentence I sought from both counsel, their views as to the applicability of concurrent or cumulative sentences in respect of the four charges.

Both counsel submitted that it would be appropriate to divide the offences into two instances. The first separate instance relates to the first count, that is the attack on the house and the subsequent robbery and the violence associated with those events.

The second instance relates to the second, third and fourth counts which can be categorized as those offences relating to the rape of the female victim.

Once having separated the offences into those two categories, it was submitted by the Acting Public Prosecutor that the penalty imposed in respect of the first count should be made cumulative to the penalty imposed on the other three counts. The penalty in respect of the three counts would appropriately be made concurrent as against each other. Such an approach was conceded to be correct by Mr Kariko on behalf of the prisoner.

I consider that counsel's view of the appropriate principles to be applied in respect of whether the sentences should be concurrent or cumulative is correct. I will proceed on the basis that the penalty to be imposed in respect of the first count would be made cumulative on the penalty to be imposed in respect of the second, third and fourth counts with the penalties in respect of those three counts being concurrent on each other. My reason for so doing, is that I consider that the two instances fall into separate categories and I adopt the principles applied in the case of *R.* v. *Hayward* (1982) 6 A. Crim. R. 157. Where there is an instance of break and enter or burglary followed by rape offences as set out in the facts of this case, I consider that such circumstances do not form a single transaction and accordingly the prisoner is to be punished effectively for both instances of offences.

Mitigation

In circumstances such as I have set out detailing the events involved in these offences, it is difficult to raise effective mitigation. In this case, there is no suggestion of any physical or mental impairment operating in respect of the prisoner and it comes before me on the basis that participation in these offences was brought about as Mr Kariko put it, solely as a result of being tempted to involve himself in this criminal activity.

The prisoner is nineteen years of age and has no previous offences. I have said before that while the age of a prisoner is a matter that will always attract the court's attention, there comes a time particularly where one is looking at offences of a serious, violent nature where the age of the offender has decreasing impact on the sentencer's attitude to the appropriate penalty. This is such a case.

In the prisoner's favour is the fact that he has pleaded guilty. Again, this is a principle of general recognition that a person should be entitled to a discount of penalty for pleading guilty and this is said to be particularly so when dealing with the offence of rape as one of the consequences of a guilty plea is that the victim is saved the embarrassment and pain of recounting publicly, crimes committed against her. While I am prepared to give some consideration to the plea of guilty in respect of fixing the penalty, I also indicate that this principle itself does tend to dissipate when one is involved in offences of such a serious and violent nature. Having said that, it is

some credit to the prisoner that he has had the courage to admit his guilt and by such admission I am prepared to concede that he has shown some remorse.

Apart from the two matters that I have mentioned, there is nothing in mitigation of any effective impact on the question of penalty.

The only other matter that I mention is the fact that when the prisoner was apprehended he was wounded in the leg by the police. This wound was of a superficial nature which required attention in hospital for some two days. It was not serious enough, however, to prevent the prisoner escaping from police detention one week later. In some circumstances it may be appropriate to consider the nature of injuries sustained by an accused person in his apprehension as providing some form of punishment for deterrence. In the present circumstances, however, it was not urged that I should take such a course, nor in the circumstances do I think such a course is appropriate.

One final matter I should mention is the fact that it has been indicated to me by both counsel that the prisoner will be called for the State in its prosecution of the other offenders. Due to this fact, I have been asked to accept the prisoner's plea and sentence him before he is called before another Judge who is at the time of passing this sentence, conducting the trial in respect of the other offenders. There is no doubt that this is the appropriate course to be taken where a co-accused is to be called as State's evidence. It should not be thought, however, by pleading guilty and presenting oneself for punishment before giving evidence that this acts as an encouragement to an accused or that the sentence to be imposed by the court should be affected by such knowledge. This is not to say that at some future time there may be a submission by the prosecution authorities to the executive branch of Government to consider exercising some leniency or mercy to a prisoner in those circumstances. Whether or not such a submission is made and what decision is made on it is not a matter which this Court can pre-empt, but I indicate to the prisoner that any consideration of his participation in the State's case against the other accused is a matter solely for the prosecuting authorities and the persons charged within the executive branch of Government with the administration of justice.

Sentence

In Mr Kariko's submissions in relation to penalty, he quite rightly conceded the very serious nature of the offences and in fairness to him was prepared to concede that such offences would require stern punishment. He quite rightly submitted to me that in determining penalty in this matter, I should consider the principle of totality. This means that having set the appropriate penalty for the offences. I should then look at the total impact of those sentences to make sure that they were appropriate to the circumstances of the offences. I adopt this approach.

Of the four offences to which the prisoner had pleaded guilty, Parliament has seen fit to prescribe a maximum penalty in respect of three matters, that is the first count, the third count and the fourth count of life imprisonment. In respect of the second count, the prisoner is liable for a maximum penalty of seven years.

Given the enormity of the crime which has been described in this judgment, I gave serious consideration to the appropriateness of a life sentence. The age of the accused and the fact that he pleaded guilty were the two matters which exercised my mind against this penalty.

The sentence which I will shortly read out is a severe penalty and in imposing it, I

have had in my mind, the consideration that the penalty should not be a crushing penalty. The adoption of that principle, that is that a penalty should not be a crushing penalty, does not preclude stern deterrent punishment where the offence warrants it. The penalty which I will impose will involve the prisoner in a substantial period in custody. However, if he serves his time well and earns appropriate remissions for good behaviour, he will still have a substantial part of his life to lead and the opportunity to do so in a lawful and peaceful manner. In imposing the punishment which I have decided on in this case, I have given very close consideration to the aspect of personal deterrence and punishment of the prisoner for his actual participation in these offences. I have also considered that the offences are of such a grave and serious nature that they call not only for individual deterrence, but general deterrence to let those in the community who may have a like mind be aware that the courts will deal with offences of this type in the sternest possible fashion. By this approach it is to be hoped that others will be deterred from contemplating the execution of similar offences.

I adopt the words of Amet J. in *The State* v. *Peter Kaudik* (supra, at p. 258):

> The sentence of this Court I believe should reflect the society's utter revulsion at this kind of violation of females, however old and of whatever race or nationality. They have the same right to be respected as do men, in their private persons.

In respect of the first count, the sentence I impose is six years in hard labour. In respect of the second count, the sentence I impose is four years in hard labour. In respect of the third count, the sentence I impose is twelve years in hard labour.

The penalty in respect of the first count, that is six years, is cumulative on the penalty imposed on the fourth count, that is twelve years, making a total sentence of eighteen years in hard labour. The sentences in respect of the second and third count are to be served concurrently with the penalty imposed on the fourth count.

Reported by: L.K.