IN THE COURT OF APPEAL OF BELIZE AD 2016

CRIMINAL APPEAL NO 17 OF 2011

FREDERICK CASIMIRO Appellant

v

THE QUEEN Respondent

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BEFORE

The Hon Mr Justice Awich	Justice of Appeal
The Hon Mr Justice Blackman	Justice of Appeal
The Hon Mr. Justice Ducille	Justice of Appeal

O. Salgado for the appellant.

S. Vidal SC, Director of Public Prosecutions, and S. Maharaj for the respondent.

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28 October 2014 and 4 November 2016.

AWICH JA

[1] Last Friday, 28 October 2016, when this appeal came up for hearing, the appellant withdrew his appeal against the conviction on all seven counts. He pursued the appeal against the single sentence imposed by the learned trial judge, Gonzalez J.

This Court having heard submissions of both counsel, immediately allowed the appeal against the sentence, and imposed the sentences herein below. We now give the reasons for the decision.

[2] The appellant was convicted in the Supreme Court on six counts of carnal knowledge of a girl below 14 years old, an offence under s. 47 (1) of the Criminal Code, Cap. 101, Laws of Belize, and one count of unnatural offence under s.53 of the Criminal Code. The girl was his own daughter. She was 8 years old on the occasion of the offence in January, 2007 charged in the first count, and 10 years old in March 2008, the period of the last offence. The appellant was 41 years old when he committed the first offence. There is no note in the scanty record, of any mitigating fact; it is difficult to imagine any. We assumed, however, that he was a first offender, a mitigating fact which pales away in the face of his odious conduct.

[3] Unbelievably, Gonzalez J, in sentencing the accused simply stated: "The prisoner is sentenced to 75 years." The learned judge did not state any explanation whatsoever. He did not mention ss.151, 161 or any other of the Indictable Procedure Act. The single sentence defies at least two basic rules of sentencing. The learned DPP, S. Vidal SC, wasted no time in informing the Court that, the respondent did not support the sentence.

[4] Sections 151 and 161 state as follows:

> **151. (1) Where a person does several acts against or in respect of one person or thing, each of which is a crime, but all of which are done in execution of the same design, and in the opinion of the court before which a person is tried form one continuous transaction, that person may be punished for all the acts as one crime, or for any one**

or several of those acts as one crime, and all the acts may be taken into consideration in awarding punishment, but he shall not be liable to separate punishments as for several crimes.

(2) If a person by one act assaults, harms or kills several persons, or in any manner causes injury to several persons or things, he shall be punishable only in respect of one of the persons so assaulted, harmed or killed, or of the persons or things to which injury is so caused, but in awarding punishment the court may take into consideration all the intended or probable consequences of the crime.

…

161. Where the court sentences any person to undergo a term of imprisonment for a crime, and that person is already undergoing, or has been at the same sitting of the court sentenced to undergo, imprisonment for another crime, the court may direct that the imprisonment shall commence at the expiration of the imprisonment which the person is then undergoing, or has been so previously sentenced to undergo, as aforesaid

[5] The marginal note to s. 161 sates: "**Cumulative sentences.**" It simply means that multiple sentences of imprisonment may be ordered to run consecutively, that is, one after another. The expression that imprisonment sentences "shall run consecutively" or "shall run concurrently", are commonly used by sentencing courts. The above two sections permit courts to order sentences of imprisonment to run cumulatively (consecutively) or concurrently. It is also my view that, ***s. 151 (1)*** permits the sentencing principle known as, "totality principle".

[6] The judge did not state whether the omnibus sentence of imprisonment for 75 (seventy-five) years was made up of consecutive or concurrent sentences, or a combination of some consecutive and concurrent sentences. Also, he did not mention that he applied the principle of totality. Although there is no obligation on the sentencer to state the reason for the sentence he imposed except where a legislation provides, it is desirable to state the reason or the basis on which the sentence has been determined, especially where the sentence is substantial, as in this case. So, however the single sentence of imprisonment for seventy-five years was computed, the appellant had no clue, and we had no clue.

[7] We reminded ourselves that sentencing is primarily a matter for the discretion of the trial judge or magistrate, an appellate court should generally not interfere with that discretion. For it to interfere there must be grounds such as: (1) the sentence is wrong according to the legislation or other principle of law applicable; (2) the trial judge acted on erroneous factual basis; and (3) the sentence is manifestly excessive.

[8] The first basic rule that the trial judge defied is that, a sentence must be imposed for each count on which an accused is convicted – see ***Re Hasting [1958] 1WL R372***. The only exception is when a judge acts in the circumstances stated in ***s. 151 of the Indictable Procedure Act***. Gonzales, J did not pass a sentence on each of the seven counts. That is an embarrassing error.

[9] The second basic rule that the judge defied is that, a judge may order that multiple sentences of imprisonment imposed on multiple counts shall run concurrently instead of consecutively – see ***s. 161 of the Act***. The purpose for such an order is to ensure that the effect of all the sentences is just and appropriate. The judge did not avert his mind to that. It was an error of law.

[10] Generally offences that have been committed as, or form part of the same transaction or incident are punished by separate sentences of imprisonment, if imprisonment is called for, but the terms of imprisonment are ordered to run concurrently. Where the offences are not part of the same transaction or incident, generally the terms of imprisonment are ordered to run consecutively, but the sentencing judge himself should review the aggregate to determine whether it is just and appropriate, taking all the offences as a whole, and the circumstances of the accused into consideration.

[11] The facts of the offences for which the appellant was convicted called for a sentence on each count; and an order that they were to run concurrently. The facts disclosed seven separate offences, and that the offences were a series of sexual offences against one person, his daughter, albeit on different dates. An order that multiple sentences run concurrently ensures that the overall effect of the multiple sentences is not excessive, and so keeps the sentences within a just range.

[12] For each of the first six counts of carnal knowledge we imposed a sentence of 12 (twelve) years imprisonment, to run concurrently. We did consider 14 years imprisonment, comparable to the sentences in a similar case, ***NLN v The Queen, Criminal Appeal Case No. 3 of 2012***. However, in view of our decision to impose a sentence of 7 (seven) years imprisonment on the seventh count, and to order it to run consecutively to the first six sentences, we settled on twelve years imprisonment on each of the first six counts. On the seventh count of unnatural offence, we sentenced the appellant to 7 (seven) years imprisonment, to run consecutively to the sentences on the first six counts of carnal knowledge.

[13] The appeal is dismissed except to the extent that, the single sentence of 75 years imprisonment imposed by the trial judge is quashed, and the sentences of this Court stated above are imposed.

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AWICH JA

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BLACKMAN JA

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DUCILLE JA