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IN THE SUPREME COURT  
OF WESTERN AUSTRALIA

THE COURT OF CRIMINAL APPEAL

CORAM: LAVAN J., WICKHAM J., JONES J.

C.C.A. 66 of 1975

THE QUEEN

Appellant

-and-

THOMAS EDWARD HASKETT

Respondent

Heard: 18 March 1976

Delivered: 23rd April 1976

JUDGMENT:

LAVAN J.: In my opinion this appeal should be dismissed.  
I publish my reasons.

WICKHAM J.: I agree, and I publish an additional short comment.

JONES J.: I agree, and I agree with the reasons published by  
my brother the presiding judge, Mr. Justice Lavan.  
I do not wish to add anything to those reasons.

COURT OF CRIMINAL APPEAL

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Appellant

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Mr. M.J. Murray appeared for the appellant.

Mr. M.C. Lee appeared for the respondent.

AUTHORITIES:

Lawler - unreported decision of C.C.A. delivered 12/1/1976.  
Katercum (1972) 56 C.A.R. 298 at 299-300.  
Wise (1965) Tas. S.R. 196 at 199.  
Garlett - Unreported decision of C.C.A. delivered 30/5/75.  
House (1936) 55 C.L.R. 499 at 504-5.  
Aust. Coal & Shale Employees' Federation v. The Cwlth (1956) 94 CLR 621/<sup>627.</sup>  
Dole (1975) V.R. 754 at 760.  
Gibbs & Jones (1916) 19 W.A.L.R. 12.  
Reynolds (1924) 27 W.A.L.R. 5.  
Whittaker (1928) 41 C.L.R. 230  
Cuthbert (1967) 2 N.S.W.R. 329 at 330.  
Liekfett (1973) Qd. R. 355.  
Radich (1954) N.Z.L.R. 86 at 86-7.  
Williscroft (1975) V.R. 292 at 299.  
Kane (1974) V.R. 759  
Lyons (1974) 48 A.L.J.R. 297  
Gunnell (1966) 50 Cr.App.R. 242  
D.A. Thomas: Principles of Sentencing (1970) at 12, 46, 108, 109-110.  
Cransson 55 C.L.R. 509, 520  
Harris 90 C.L.R. 652, 655.  
Saunders 1973 Qd. Reports, 532, 537  
Sargent 1975 60 C.App.R. 1974  
1974 Criminal Law Review, 3 409. 1975 Criminal Law Review 468.  
R. v. Portolesi 1973 1 N.S.W.L.R. 105, 109  
R. v. Sloane 1973 1 N.S.W.L.R. 202, 209  
Browne v. Smith (1974) 4 A.L.R. 114, 122.

LAVAN J.:

On 2nd September 1975 the respondent appeared before the  
Circuit Sittings of the Criminal Court held at Bunbury charged on  
indictment with two offences.

To the first charge that on 28th July 1975 he unlawfully and  
indecently assaulted one Catherine Mary Jackson - he pleaded guilty.

To the second charge - that on the same day he committed rape  
upon one Rose Marie Gardiner - he pleaded not guilty, but after trial  
the jury on 3rd September 1975 found him guilty as charged.

After the verdict Wright J. who presided at the trial indicated his intention of seeking a pre-sentence report and remanded the respondent to Perth for sentence for both offences.

Wright J. died before passing sentence and on 10th November 1975 the respondent was brought up for sentence before Jackson C.J. who in respect of the offence of unlawful and indecent assault imposed a sentence of three years imprisonment and in respect of the offence of rape a sentence of seven years imprisonment. His Honour directed that the two sentences should be served concurrently and that the respondent should serve  $2\frac{1}{2}$  years imprisonment before becoming eligible for parole.

Against these sentences the Crown appeals pursuant to s.688(2) of the Criminal Code, asking that the sentences be quashed and that in substitution therefor this Court should pass sentences upon the respondent as it thinks fit.

The appeal is brought on the grounds that "the decision of the learned trial Judge in passing the sentences was wrong in that -

- (1) it failed to reflect in the circumstances of the case a due regard for the retributive and deterrent aspects of the sentencing process,
- (2) the sentence for the offence of rape was manifestly inadequate,
- (3) alternatively, the sentence for the offence of rape should have been directed to take effect on the expiration of the sentence for unlawful and indecent assault,
- (4) the minimum term of  $2\frac{1}{2}$  years imprisonment was manifestly inadequate. "

The respondent at the time of his arrest was 20 years of age and lived with his parents at Boyanup. He was the owner of an old model car and on the morning of 28th July he set out in the car for Bunbury. After he had travelled approximately 9 miles the radiator of the car commenced to boil and he stopped at the house of a

Mrs. Gardiner who was known to him, for the purpose of obtaining some water. After filling the radiator he talked to Mrs. Gardiner for a short time and then drove off in the direction of Bunbury. He had not travelled very far before the radiator again commenced to boil and again he called at a private house in an area known as Minninup Heights where the occupier, Mrs. Jackson permitted him to obtain some water. On leaving Mrs. Jackson's home he drove aimlessly around Bunbury for a time and when the radiator again commenced to boil he returned to Minninup Heights and ultimately to the house which he had previously visited. Mrs. Jackson was about to leave the house in her car and when the respondent again asked her for some water she got out of the car and returned to the house where she commenced to fill a container from the kitchen tap. The respondent who had followed her into the kitchen then produced a knife and pointing it at her told her that he wanted to make love to her. Mrs. Jackson pleaded with the respondent not to harm her as she had just been released from a mental home and that she feared that if he raped her she would probably suffer a relapse. She also informed him that she was menstruating at the time. The respondent demanded that he be allowed to verify her latter statement and when she undid her slacks the respondent touched the pad which she was wearing. Having done so he replaced the knife in its sheath and left the house. The respondent then filled the radiator of his car and drove off in the direction of Boyanup. On the way he stopped at the house of Mrs. Gardiner which he had visited earlier and again asked Mrs. Gardiner for more water for his car. In fact it was not in need of water and the respondent later admitted that his intention on that occasion was to gain entrance to the house by producing his knife



to frighten Mrs. Gardiner into having intercourse with him. When Mrs. Gardiner left the house in order to fill a bucket from a tap he followed her, produced the knife and grasping her by the arm ordered her to return to the house, which she did, followed by the respondent. According to the evidence she was clearly shocked and trembling and when she enquired of the respondent what he wanted he replied, "I want to make love to you". He thereupon menaced her with the knife and told her that he would use it if she did not co-operate with him. Mrs. Gardiner tried to dissuade the respondent from his intention but when this failed she went with him into the bedroom where on his instructions she removed her clothing. In spite of her efforts physically to restrain him he had intercourse with her. When interrogated by the police the respondent did not deny that he had intercourse with Mrs. Gardiner although then, as at his trial, he claimed that she was a consenting party.

From the antecedent police report which the Chief Justice had before him, emerged that the respondent was a youth of limited education who after leaving school at the age of 14 years at 1st Year High School level had worked for several employers in a labouring capacity. Two references from previous employers indicated that he was industrious and that his service with them was quite satisfactory. Although he had previously been in conflict with the law, his previous convictions were of a minor nature.

The reports of two psychiatrists were also placed before the Chief Justice. Dr. Csillag, the senior lecturer in psychiatry in the Department of Psychiatry at the Perth Medical Centre reported that he had examined the respondent on 21st April 1975. In his opinion the respondent is not in need of psychiatric treatment but suffers from

a personality disorder and mental retardation. He is in Dr. Csillag's opinion, "a shy withdrawn lonely person and subject to aggressive and impulsive behaviour. He shows no evidence of serious sexual deviation or personality disorder, which is often associated with rape. Therefore in his case the behaviour which he exhibited on 28th July 1975 appears to be the result of influences acting on him through association with groups where the code of ethics sanctions aggressive forceful sexual approach to females. "

The association mentioned by Dr. Csillag was referred to by Dr. Rollo, the psychiatrist superintendent of the Department of Corrections, who having interviewed the respondent at the request of the trial Judge reported that during several months prior to committing his offences the respondent had been associating with a "bikies" group and that on the Saturday prior to the offence the group had been discussing methods of rape. Dr. Rollo added: "These circumstances if correct raise the possibility that he had been encouraged to commit rape as the group knew of his difficulty in making girl friends and that he had never had intercourse. "

Reporting generally on the respondent, Dr. Rollo stated:

"He presented as a sensible, quietly-spoken young man, co-operative in answering questions and without indications of bravado or defiance. The account he gave of his school performance suggested he is a little below average intelligence and the impression gained during interview supports this.

He is somewhat unprepossessing in appearance and probably timid in nature, at least as far as making acceptable advances to girls is concerned. Apart from this he is essentially normal and there is no indication for psychiatric treatment of a specific kind. Counselling from a psychologist and later his parole officer may be useful. "

In sentencing the respondent the Chief Justice made reference to the gravity of the two offences, and mentioned as circumstances of aggravation that each of his victims was a young married woman, that the offence was committed in her own home and that the respondent had overcome her resistance by threatening her with a knife. On the other hand he alluded to the fact that in committing the first offence the respondent upon the woman's entreaty desisted from any further or more serious offence and that in the second case no injury by way of violence was done to her. He accepted that the respondent had some degree of mental retardation and a personality disorder which together and added to his fringe association with an undesirable group in Bunbury, went some way towards explaining his actions which were not only criminal but incredibly stupid because one of the women was already known to him and the other was able readily to identify him through his motor vehicle. While giving the respondent credit for his good record of employment, the Chief Justice pointed out that offences of this type against women would not be tolerated in the community. In passing sentence, his Honour said: "It is clear from all the reports that I have that you are in great need of psychological counselling and guidance. I have therefore decided to fix a relatively short minimum term in the hope that something constructive can be done for your rehabilitation and to ensure as far as possible that you will not similarly offend again".

Counsel for the appellant did not offer any criticism of the sentence of imprisonment imposed on the respondent in respect of his conviction for unlawful and indecent assault. He submitted however that for the crime of rape committed upon a woman in the privacy of her own home, a sentence of imprisonment for seven years was

inadequate at any time. In the present instance he claims that the Chief Justice in sentencing the respondent had failed to give sufficient weight to the fact that the two offences were so closely related in point of time that either the sentence for the crime of rape was totally inadequate or the penalties imposed for each offence should have been ordered to be served cumulatively upon each other. He submitted that in the circumstances a minimum term of  $2\frac{1}{2}$  years was manifestly inadequate.

The principles which should guide this Court on an appeal against a sentence whether such appeal is brought by the Crown or by the prisoner are well established, and have been recently considered by this Court in a number of (unreported) appeals, noticeably The Queen v. Lawler, The Queen v. Brunssen, and The Queen v. Tibbs. These principles are summarised in The King v. House (1936) 55 C.L.R. 499 at 504, and also in Australian Coal & Shale Employees Federation v. The Commonwealth (1956) 94 C.L.R. 621 at 627 where Kitto J. states: "There is a strong presumption in favour of the correctness of the decision appealed from and that that decision should be affirmed unless the Court of Appeal is satisfied that it is clearly wrong. A degree of satisfaction sufficient to overcome the strength of the presumption may exist where there has been an error which consists of acting upon a wrong principle or giving weight to extraneous or irrelevant matters or failing to give weight or sufficient weight to relevant considerations or making a mistake as to the facts".

If regard is had to the comments passed on sentencing the respondent, it is clear that his Honour was careful to give weight to all relevant considerations and neither applied a wrong principle



nor failed to give sufficient weight to the various factors of which the appellant now complains. It does not appear that the sentence imposed in respect of the charge of rape was inadequate even when considered in relation to the other offence. It is however apparent that his Honour was concerned for the future treatment and supervision of the respondent, and this concern was reflected in the fixing of a minimum term which in the opinion of this Court was appropriate to the personality and the needs of the respondent.

It follows that the appeal should be dismissed.

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B E T W E E N :

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-and-

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WICKHAM J.

I agree. I think this to be a case where it would have been better to work out separate sentences on the basis that the sentences were to be cumulative and to have declared them to be cumulative. Although part of a pattern of behaviour of the accused the offences were different offences committed upon different persons at different times and places.

Nevertheless it is not apparent to me that such an approach would have, or should have, resulted in an aggregate sentence substantially higher than the concurrent terms imposed or that any error emerges in the result or that the final sentence was manifestly inadequate.

As to the minimum term this was not a simple but was a complex case requiring a myriad of considerations and I have no reason at all for thinking that his Honour's very wide discretion in this respect in any way miscarried.