



R. v PAUL EDWARD FORD
FALKLAND ISLANDS SUPREME COURT SC/CRIM/03/16

SENTENCE

1. Paul Edward Ford you have been found guilty by a jury after a contested trial on one count of vaginal rape of the complainant, one count of assault by penetration of the vagina of the complainant with a light bulb, and one count of attempted assault by penetration that being an attempt to insert a light bulb into her anus. You were found not guilty on one count of sexual assault and two further counts of assault by penetration.
- 1.1 The circumstances of your offending are as follow. You had been in a relationship with the victim who was aged 50 at the time of the offending.
- 1.2 You had been in a relationship with the complainant from Christmas 2014 at a time when you were still with your wife, but the complainant had called it a day with you a year later, and at the time of your offending on 24th February 2016 your relationship was one of friendship which you abused by your sustained offending on the night in question.
- 1.3 The complainant, as you knew, has a number of mental health and physical difficulties, and as such was a vulnerable person. She described your relationship with her as a complicated relationship. You had said you had finished with your wife but you were still living in the same house as your wife because of the kids, though the complainant's evidence at trial was that she did not believe that you had finished with your wife, although your wife and children were not present at your home on the night in question.
- 1.4 You and the complainant had agreed to stay friends and she said that if you ever needed anyone to talk to just to give her a ring. From text messages passing between you on that night it appears that you remained on affectionate terms.
- 1.5 So it came to pass that on the night of 23rd February 2016 you asked the complainant to come over in a text message and you then phoned her using another person's phone to explain that you had had, in your words, a "shit day" and that you wanted someone to talk to. The complainant's evidence was that she thought that she was being nice to go and see you which she did. At the time the complainant was in an "open friendship" with a male which was, from time to time, an intimate one. Just after 1am on the 24th February she texted this man to tell him that she was "going over to see Paul because we [are] still friend[s]".

- 1.6 It is possible that you initially had in mind that there might have been the possibility of some form of sexual activity taking place between you, but as the jury have found, what was later to take place was anything but consensual, and involved you vaginally raping the complainant and humiliating her by vaginally penetrating her with a light bulb, and attempting to penetrate her anus with a light bulb. On any view what occurred was a gross and severe abuse of your position as the victim's friend.
- 1.7 Your offending was of such a ferocity, and so frightened was the complainant, that at the end of her ordeal she fled from your house by running out into the night with her clothing ripped by you, leaving her buttocks and groin exposed. She texted her male friend at about 02.50hrs in the morning, "Hi Honey I am so sore" and "when asked what happened" she texted "He ripped my leggings". The complainant was found huddled at the side of the Bypass road. She was in a state of physical pain and on medical examination was found to have bruising to her arms and her genital areas were tender to the touch.
- 1.8 The complainant was subjected to an extended ordeal by you at your house. You were upstairs with the complainant in your living room. It appears that you were being confrontational about the fact that she had a new partner. That ordeal began when a time came when she said she wanted to go so that she could get up in the morning and you grabbed her and blocked her way.
- 1.9 She described it in this way, "I said look Paul...I want to go home, I'm not stopping you he said you can go, I said well move out of my way, he says no, you can finish me off first, then I'll let you go, I said no I am not, and I refused, so in the end he managed to pick me up carried me into his room, threw me on the bed".
- 1.10 In the first instance the complainant fought back but at some point she just gave in to you because of your strength, and because, as she said in evidence she "just thought well, if you try and cooperate" it would be easier. It was anything but consensual sex as the jury found. The complainant described her ordeal in detail to the Court, and said in the course of her ABE interview in relation to your conduct that "he rammed his cock into me hard and it hurt so much". Whilst there is no evidence that you ejaculated, you did not use any contraceptive protection either.
- 1.11 After the rape there was a lull in events and at one stage the complainant went to the toilet. She still did not feel that she could leave. After the initial rape by you there was further violence by you and you wrestled with the complainant and in consequence you both ended up on the floor beside the bed and she was unable to escape from you. I am satisfied that it was during this attack that you ripped the complainant's knickers and her leggings. As is reflected in the jury finding you guilty of attempted sexual assault by penetration you tried to put a lightbulb in her anus, but did not succeed, whilst you succeeded in sexually assaulting her by penetration by inserting the metallic end of another light bulb into her vagina. Whilst there was some debate whether it was a screw or bayonet cap light bulb, either way there was a risk of injury and the bulb breaking. These were humiliating and degrading acts going beyond the degradation and humiliation that forms part of sexual offending. They carried

with them the risk of significant internal injury to the complainant in the event of the light bulb breaking, and I have no doubt that what you did would have raised the level of fear and anxiety for your victim.

- 1.12 When the complainant finally fled out of your house, in the middle of the night and with her leggings torn and her buttocks and groin exposed, her evidence to the jury was that you called after her that, “[you] had five copies” which would have carried to your victim the impression that you had filmed the degrading assaults that you had performed upon her, which could only have caused further alarm and distress to your victim, albeit that no evidence of any recording was found. I am satisfied that you said these words to her, which is entirely consistent with other matters that I am satisfied you said to her and which showed that you had a motivation to punish your victim, such as she had “wrecked [your life] so you were going to wreck hers”. Whilst she was by this stage outside, and responded to you in robust terms, I consider your words and their effect formed part of the overall incident.
- 1.13 The assault by penetration and attempted assault by penetration formed part of a sustained, violent, and demeaning attack by you. Your use of violence resulted in her suffering, not only bruising on her arms, but also back pain in circumstances where you knew that she was someone who already suffered with back pain.
- 1.14 This was a prolonged course of sexual violence that left the complainant very distraught and anxious and with apparent pain in her lower back and pubic region as recorded in the Agreed Facts that were before the jury. When attending hospital she was given a sedative and pain medication.
- 1.15 The complainant gave evidence about her feelings of helplessness and that you made clear that your motivation was to punish her. Her evidence was that in the course of the rape, you made comments such as the fact that she had “wrecked [your] life” so you were “wrecking hers”.
- 1.16 I have had regard to the victim personal impact statement in which the complainant sets out her ongoing concerns about the incident and the ongoing impact on her mental and physical health. She talks about her shame and feelings of disgrace in a small community. She refers to her low mood and her ongoing back problems, which she feels have been exacerbated by your behaviour. All that she says, in my view, is entirely consistent with her having been the subject of the prolonged attack perpetrated by you during which she has been humiliated and degraded by you, with the result that she has suffered psychological harm. The effects of your offending may well be felt by the complainant for the rest of her life.
- 1.17 You are a 41 year old man who is not of good character, and aside from other convictions (which include old convictions for violence of assault occasioning actual bodily harm) you have a previous conviction for rape, and that previous conviction for rape, albeit many years ago, is a serious aggravating factor in this case. In 1995 you were convicted of raping your former partner. At the time you were drunk.

- 1.18 Like the present rape, that rape involved elements of violence and your previous partner's statement referred to you penetrating her roughly, and her saying that you were hurting her, and that she asked you to stop which you did, so there was violence in each case albeit your violence upon the complainant appears to have been greater. In the context of your rape of your previous partner, on that occasion you made comments to her that included, "You broke my heart, so I'm going to break yours too. I'm going to make your life hell" and "You've hurt my head too and I want to get you back." Like the social worker Becky Roberts who prepared the Pre-Sentence Report for this sentencing hearing, I consider that there are parallels in your offending – you appear to have an inability to cope with rejection by a female with whom you have previously been sexually intimate with, and you have used sex to obtain power over your victims and to humiliate them through non-consensual sexual intercourse. I also agree with her assessment that you pose a high risk of harm to adult women with whom you enter into a sexual relationship.
- 1.19 The Sentencing Council's Sexual Offences Definitive Guidelines are regarded as of persuasive authority in the Falkland Islands but are in no way binding. I have had regard to them but what matters is what sentence is the appropriate sentence overall to reflect the seriousness of your offending on the Falkland Islands. I have also taken into account that in England and Wales release is after having served one half of the sentence, whereas here release is after serving two thirds, although here on release prisoners are not subject to the same supervision on licence.
- 1.20 In terms of the Sexual Offences Guidelines, and the categorisation of the harm, all three categories refer to the category 2 factors. Category 3 is indicated when no category 2 or 1 factors apply. Category 1 "is where the extreme nature of one or more category 2 factors, or the extreme impact caused by a combination of category 2 factors may elevate to category 1."
- 1.21 In the present case I consider that a large number of category 2 factors are present. The complainant was particularly vulnerable due to her personal circumstances and the mental and physical difficulties she had, and was a vulnerable victim she was subject to a sustained incident which involved prolonged detention, she was subject to additional degradation and humiliation in the form of the aggravating assaults that accompanied the rape, and it is clear that she suffered both physical and psychological harm, though whether the psychological effects will be severe cannot be ascertained with certainty at this time, and when viewed together with the aggravating assaults that accompanied the rape she was also subject to additional degradation and humiliation.
- 1.22 The presence of so many of the category 2 factors on any view places matters at the very top end of category 2, and on the basis, as I consider is appropriate, that the assaults are treated as aggravating features of the rape, then the extreme nature of the assault by penetration by an object that could have caused serious injury, and associated degradation and humiliation caused to the victim, coupled with the prolonged detention and sustained nature of the incident places the harm within category 1.

- 1.23 Turning to the question of culpability, the prosecution submits that the rape of the complainant, and the associated and degrading assault, and attempted assault that formed part of the overall incident, amount to a clear abuse of trust. They submit that whilst you were no longer in a sexual relationship with the complainant, she went to your house as a friend, and based on that friendship the complainant would have thought that she could safely go to your house. It is said that you breached the trust that she placed in you and abused that trust by raping her and proceeding to carry out the humiliating assaults upon her. In addition whilst there is no evidence that you did film her, you clearly did intend her to believe that you had. I consider there is some force in what the prosecution submits when considering your overall culpability outwith the specific factors identified in the guidelines. However in terms of the factors identified in the guidelines, your relationship was not one where you were in a position of responsibility to the complainant, and as such I have concluded you're your culpability does not clearly fall within Band A in guideline terms. Nevertheless in terms of your culpability I do consider that you did abuse the trust the complainant no doubt placed in you as a friend.
- 1.24 In England and Wales under the Sexual Offences Definitive Guidelines, the starting point for a category 1 harm, culpability B is 12 years with a range of 10 to 15 years.
- 1.25 There are aggravating factors in the present case which result in an upward adjustment from any starting point, most importantly your previous conviction for rape, the very same offence for which you have been found guilty, and in relation to which there are at least some factual parallels, and also the timing of the offence in that it took place late at night (notwithstanding that the complainant initially arrived at your house at night as a friend). Whilst there was evidence that you had been drinking, I do not consider that the evidence suffices to conclude that you were under the influence of alcohol. I will come on to consider the mitigation offered on your behalf, such as it is, but I do not consider that any of the listed mitigating features apply. Indeed you have shown no remorse for your offending and you are a mature man who might be expected to, have, but have not, reformed your character after your previous rape conviction.
- 1.26 The assault by penetration, and attempted assault by penetration are significant serious offences in their own right. Indeed I regard them as particularly serious examples, of assault and attempted assault by penetration given the nature of the object used and the potential for serious harm.
- 1.27 In relation to these offences I have been referred by the prosecution to the case of *R v AT* 2013 EWCA Crim 686 where the defendant pleaded to an assault by penetration and sexual assault. The co-defendant pleaded to sexual assault. After a New Year's Eve party, the victim was taken to, or persuaded to go to, the co-defendant's flat. She was stripped naked, had her breasts bitten and fondled, and made to lie with her legs in the air. The co-defendant handed the defendant a small truncheon and he inserted it into the victim's vagina, to a depth of around 6 inches. This happened at least once. The victim managed to escape. The defendant had over 100 convictions on 43 occasions. In 1994, he had sexually assaulted a woman with others. The Judge found the motive was

domination and humiliation. The defendant was sentenced to consecutive sentences of 5 years (the assault) and 9 years (the penetration). The use of the truncheon added greatly to the criminality of the incident. The offences called for a very severe sentence. 14 years was not manifestly excessive. Whilst this case does not have the aggravating feature of a co- defendant, you have a relevant previous conviction for rape and I consider the item used, a light bulb, was a very dangerous item, and had the potential to cause even greater harm to your victim than a truncheon.

- 1.28 Turning to the Sexual Offences Definitive Guidelines on Assault by Penetration, and the question of harm, then once again a number of Category 2 factors are present. The complainant was particularly vulnerable due to her personal circumstances and the mental and physical difficulties she had, and was a vulnerable victim, she was subject to a sustained incident which involved prolonged detention, she was subject to additional degradation and humiliation in the form of the assault by penetration and attempted assault by penetration and the objects that were used, and it is clear that she suffered both physical and psychological harm. On any view these offences, even if they were to be viewed in isolation, are at the top end of category 2.
- 1.29 For the same reasons as I have addressed in relation to the offence of rape I consider your overall offending falls within Category 1. In terms of culpability, and with regard to the Guidelines, no express factor there identified is in point, but there are the factors identified by the prosecution which in my view increase your overall culpability.
- 1.30 In England and Wales the starting point for a category 1 harm, culpability B is 12 years, with a range of 10 to 15 years custody.
- 1.31 The same aggravating features apply as with your conviction for rape, and once again, none of the stated mitigating factors apply to your offending.
- 1.32 I have considered whether, by reason of the fact that the assault by penetration and attempted assault by penetration are serious offences in their own right, and the fact that the rape and these further offences are, to an extent, distinct chapters in the events of that night, albeit all part of one overall prolonged incident it would be appropriate to impose consecutive sentences for the rape and for the assaults.
- 1.33 However, on balance, having regard to the entirety of the events that occurred on the evening in question and the totality of your offending, I consider that the appropriate course is for me to pass concurrent sentences, and to sentence you based on your overall offending, with the assault by penetration and attempted assault by penetration being aggravating features of your overall offending.
- 1.34 In this context, if one were to apply the Sexual Offences Definitive Guideline in England and Wales to such an overall incident, the precise grading of harm and culpability would need to reflect the overall offending.

- 1.35 I consider that having regard to the totality of the offending and the extreme nature of the degrading and humiliating assaults that accompanied the rape and the prolonged detention and sustained nature of the incident as a whole, this is a category 1 case, and on balance a culpability B case although there are matters that show increased culpability I accordingly sentence you having regard to the rape guidelines for category 1 harm and category B culpability with a starting point of 12 years and a range of 10 to 15 years, but only as part of considering what is the appropriate overall sentence for your offending, and having regard to totality.
- 1.36 It is important to bear in mind that the categories are designed to identify the extent of the harm and culpability in relation to a particular offence, they are not straight-jackets to be applied rigidly and without regard to the precise factual circumstances and offending, still less in the Falkland Islands where they are only persuasive in reach.
- 1.37 Aside from the Sentencing Council Guidelines, which apply in England and Wales but are only persuasive in the Falkland Islands, an important factor in my view in sentencing for sexual offences in the Falkland Islands, as I have expressed previously in matters coming before the Supreme Court, is that sexual assaults upon adults in the Falkland Islands are thankfully rare, and there is an important deterrent element in sentencing for sexual offences on the Falkland Islands. Sexual offences are not as prevalent here as in some other jurisdictions. Those who commit serious sexual offences, such as the present, in the Falkland Islands should appreciate that they are likely to face lengthy custodial sentences.
- 1.38 I have had full regard to the comprehensive and insightful pre-sentence report that has been prepared by the probation officer, which concludes with the recommendation that she is unable to recommend anything other than a substantial custodial sentence.
- 1.39 I have also had regard to the mitigation offered on your behalf by your counsel, such as it is. It is common ground that you have shown no remorse, nor have you shown any empathy for your victim. There is little, if anything that Ms Lindop has been able to offer by way of mitigation. You are a man aged 41 who has always lived on the Falkland Islands. You were estranged from your wife at the time of the offending, but are now going through a divorce. You have two children a daughter and a son, and your son has health issues which require frequent visits to the UK with his mother for treatment. You are still in contact with your estranged wife, and your children visit you in prison, though inevitably the number of visits are restricted.
- 1.40 The fact is that you have shown no empathy for your victim the complainant or any remorse for your offending, and you have taken no responsibility for your offending. You have never been able to account for the injuries suffered by the complainant, and I consider that you are in denial about your offending. You subjected the complainant to a prolonged ordeal that involved her rape, degradation and humiliation in circumstances where there were numerous aggravating features, not least your previous conviction for rape.

- 1.41 In my opinion your offending is so serious that neither a fine alone nor a community sentence can be justified for it.
- 1.42 I am therefore going to pass a sentence of imprisonment. This will be shortest which in my opinion matches the seriousness of your offences, and takes into account the mitigating factors in your case.
- 1.43 On count 1, the count of rape, the sentence I pass is one of 9 years and 9 months imprisonment. Time spent on remand before trial and after conviction will count towards this sentence.
- 1.44 On each of counts 4 and 5, the counts of attempted assault by penetration and assault by penetration the sentence I pass is one of 9 years and 9 months imprisonment concurrent to each other and to that in relation to count 1.
- 1.45 You will also be subject to a notification requirement for life.
- 1.46 In imposing the sentences I have, I have considered it appropriate to reduce your sentence to take into account that you will serve two-thirds, rather than half, of your sentence in prison, absent which I would have sentenced you to 13 years imprisonment.
- 1.47 I would only add that in the relatively near future the Falkland Islands are likely to adopt their own Sentencing Guidelines for Sexual Offences which will address the appropriate range of sentences specific to the circumstances of the Falkland Islands. They will be of no relevance to you, but are likely to be of assistance in sentencing in respect future sexual offences committed in the Falkland Islands.

Simon Bryan QC

Chief Justice of the Falkland Islands

6 April 2017