



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **Case No: GCR0002/2024**
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8 **R**

9
10 **V.**
11

12 **RAHUL MANHUKUMAR**
13
14

15 **Appearances: Mr. Ben Brown, Crown Counsel, Office of the Director of Public Prosecutions**
16 **for the Prosecution**

17
18 **Mr. John Furniss for the Defence**
19

20
21 **Before: The Hon. Justice Cheryll Richards KC**
22

23 **Submissions Heard: 6th December 2024**
24

25 **Sentence Judgment: 9th December 2024**
26
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29 *Criminal Law – Sentencing, Indecent Assault, section 132 (1) of the Penal Code (2022 Revision),*
30 *Application of the Cayman Islands Sentencing Guidelines, Breach of Trust.*
31



SENTENCE JUDGMENT

PREAMBLE

1. Pursuant to s.31 of the *Criminal Procedure Code* (2021 Revision), this judgment has been anonymised to protect the identity of the victim. It is ordered that there be no reporting which would lead to the identification of the victim in this case.

INTRODUCTION

2. The defendant was convicted after trial in the Summary Court of a single charge of Indecent Assault contrary to s.132 (1) of the *Penal Code* (2022 Revision). The particulars are that he on the 6th day of November 2023 at the Ritz Carlton Hotel, West Bay Road, Grand Cayman, Cayman Islands indecently assaulted [X]. The maximum sentence is 10 years imprisonment.
3. Following trial and submissions from Counsel, on the 14th October 2024 the Magistrate committed the case to the Grand Court for sentencing. This is done pursuant to s.7 of the *Criminal Procedure Code* (2021 Revision), the Magistrate being of the opinion that a custodial sentence for a term longer than the Summary Court has power to impose is necessary to protect the public from the defendant.

THE FACTS

4. The facts may be summarised from the Magistrate's Summary of Verdict and Evidence.
5. The defendant was employed to the Ritz Carlton Hotel as a massage therapist. He is an Indian national who came to the Cayman Islands as a work permit holder.
6. The victim is a foreign national, a [...] professional who was a regular visitor to the Island and to the hotel. The victim traveled here on the 5th November 2023 for a work conference, bringing with her, her eleven year old son so that they could have a holiday together. On the 6th November 2023, she arranged for a massage. The defendant was assigned to assist her. When

1 the massage began, she was nude, wrapped in a sheet and wearing an eye mask in a darkened
2 room.

3
4 7. The defendant initially massaged her right and left leg in the usual way. He then pushed his
5 hand under the sheet and inserted his fingers between her vaginal labia without her consent.
6 The victim told him immediately to stop and that the massage was over. He attempted to
7 apologise to her and asked her not to make a deal of this. While she was attempting to leave
8 the room and area, the defendant followed her in a manner which made her feel uncomfortable.
9 She told him on two occasions to stop following her.

10
11 8. The victim testified at trial that: -

12
13 “It’s still very upsetting, and it’s still very distressing. As I mentioned, I’ve been coming
14 here for years. I felt safe, and it really undermined my sense of safety, it really made me
15 feel very vulnerable in a way that I had never felt before. I feel like there was such a
16 violation. I think that in that position, it requires an assumed and implied trust that someone
17 is not going to harm you. And I just didn’t feel like I had that sense anymore. It’s impacted
18 travelling. I’ve enjoyed travelling. I actually was going to come back here in January of 24
19 for a trip which I canceled and did not return until now, obviously for this. The thoughts of
20 that moment are fairly intrusive, because it’s a terrible thing to have happened. It’s also
21 impacted my ability to do things that I do for self-care and wellness. I’m a [...], and most
22 of my work is in front of me and so I tend to have a lot of tension in my neck and shoulders
23 and my upper back, and so massage especially here and other places is the way I relieve
24 that tension and have a chance to refresh and be able to serve the [...] that I serve. And that
25 is something that I just don’t feel comfortable with knowing what could happen.”¹



¹ Page 20 of the Notes of Evidence



1 9. The victim made an immediate report to two people that she saw, to the management of the
2 hotel and to the police. The defendant was arrested and interviewed under caution. He denied
3 the offence. He denied it at trial and to the Probation Officer after conviction.

4
5 10. The Magistrate found that the assault resulted in psychological harm to the victim.

6
7 **VICTIM IMPACT REPORT**

8
9 11. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact Report
10 dated 3rd October 2024, (“VIR”). Attached to this is a victim impact statement dated 20th
11 September 2024. This was read out in full by Counsel for the Prosecution during this sentence
12 hearing. The victim states that after the incident she missed the conference opening and the
13 opportunity to earn credit for continuing education which is required for her license. She did
14 not leave her hotel room for two days. Her family cared for her son. She details the impact
15 upon her and that she will need to seek counselling in an attempt to recover. She states in part
16 that: -

17
18 “...I was recommended a Sports Performance massage to address muscle tension and was
19 reassured that I would be well cared for. I had no reason to feel otherwise until the moment
20 my therapist, Rahul M., placed his hand under the draping sheet and placed his hand on my
21 genitals with his fingers between my labia and moving down to the introitus of my vagina.
22 I immediately recoiled from the shock of being molested during the massage. I became
23 immediately terrified of what would happen next. Here I was naked, under a sheet with an
24 eye mask on in a dimly lit room with a man with bad intentions. The eye mask now seemed
25 like a blindfold, shielding my vision from my assailant. I felt extreme fear that I would be
26 raped. I mustered up the courage to assert myself and yell to the assailant to stop and get
27 out only to have him lean over me blindfolded whispering not to make a deal of this. I
28 could feel every muscle in my body tense from fear and again demanded that he leave. He
29 didn't immediately exit the room, and I felt trapped like I could not escape fast enough from
30 this dark room until he exited. There was only one way out. After I heard the door open
31 and close, I scrambled to get dressed and burst out of the room only to find him standing
32 just outside the door. I felt intimidated and rushed past him to the main lounge area where

1 I realised that I was alone. There was not another soul in the lounge, no patrons and not
2 even the usual spa attendant, which compounded my fear. He pursued me to the elevator
3 then followed me when I hurried to the stairs. I again mustered up the confidence to try to
4 use my voice to tell him to stop and not to follow me to discourage him from following me
5 or pursuing me any further. I rushed down the stairs hoping I wouldn't slip and fall in the
6 spa slippers.

7 ...



9
10 Since the time of the assault, I have suffered considerable emotional, physical and
11 psychological trauma as a result of the assault. I have struggled with muscle tension,
12 feelings of extreme vulnerability, inability to trust and inability to resume the activities like
13 massage or spa treatments that I previously used for self-care, wellness and stress
14 reduction. I could have never imagined that I would become a sexual assault victim at a
15 luxury hotel spa at which I was a repeat guest. Massages require an implied trust and
16 presumption of safety to be undressed in a dark room with a stranger. Now that decision
17 feels like the worst decision I could have ever made. In the moment, I felt like I could have
18 been raped or worse. I forcefully told him to stop but didn't want to provoke the assailant
19 to panic so I could escape. Since that time, I've struggled with musculoskeletal tension and
20 the loss of massages as a therapeutic treatment due to my fear of being assaulted. Now
21 being in a room and dressed in the dark with a stranger seems like one of the most
22 dangerous activities a woman can embark on. I have avoided travel. I previously felt like
23 I chose safe spaces and avoided compromising situations by choosing the establishments I
24 frequent with great care and with a reputation of the highest standards and service
25 experience. I thought that I could get over this with a passage of time, however what I
26 experienced that day has stuck with me vividly. I'm a [...] that will require professional
27 help to move past this incident. I have frequented the Ritz Carlton spa Grand Cayman on
28 multiple prior occasions and couldn't fathom the incident that occurred to me. This has
29 impacted my ability to feel safety while travelling and pursue the activities for self-care
30 and relaxation that previously brought me comfort and joy. Now, I have a lack of trust in
31 establishments of even the highest reputation. This will clearly take the services of a
32 professional and I will incur the costs of counselling for an indeterminate amount of time

1 in an attempt to recover, restore my sense of safety and heal the emotional and
2 psychological trauma...”

- 3
4 12. The Probation Officer concludes that the victim has been sexually, emotionally and socially
5 impacted by the actions of the defendant.
6

7 **ANTECEDENT HISTORY**

- 8
9 13. The defendant has no previous convictions recorded against him in the Cayman Islands or in
10 his home country.
11

12 **SOCIAL INQUIRY REPORT**

- 13
14 14. The DCR has provided a Social Inquiry Report (“SIR”) dated 20th September 2024 in respect
15 of the defendant. The Court has read the report in its entirety and takes into account everything
16 said therein in favour of the defendant.
17

- 18 15. The defendant is twenty-eight years old. He is single with no children but does provide financial
19 support to his elderly parents and sister who is in university.
20

- 21 16. There are no reports of incidents or trauma during his childhood. By his account he grew up in
22 a loving and supportive household surrounded by an extended family. He completed high
23 school and tertiary education at the age of twenty-one. He obtained qualifications in massage
24 therapy. He worked for six years in this field prior to his employment in the Cayman Islands.
25

- 26 17. His employment was terminated on the 20th November 2023 following the incident and no
27 further work permits have been granted to him. Thus, he has been unemployed for a year
28 dependent on the support of his maternal uncle who also works on the Island as a massage
29 therapist.
30



1 18. Under the heading Attitude Towards the Offence, the Probation Officer states that the defendant
2 expressed no victim empathy. The defendant's overall risk of re-offending was assessed as low.
3 He had one criminogenic factor in the High category. This is pro-criminal attitude/orientation.
4 This is said to be because it is anticipated that he will struggle to identify with interventions to
5 address offending as he does not accept guilt. His rehabilitation process is likely to be
6 challenging.

7
8 **THE SUBMISSIONS**
9

10 19. Counsel for the prosecution submitted that under the *Cayman Islands Sentencing Guidelines*
11 this offending is at the level of Category 2 Harm because of the touching of naked genitalia. It
12 is submitted that it is at the level of Culpability A because of the abuse of the position of trust.
13 Counsel said that the defendant was alone with an undressed victim in the course of his
14 employment and abused that trust. An offence of Culpability A, Category 2 Harm has a starting
15 point of 6 years with a range of sentence of 5 to 9 years. Counsel submitted that there are two
16 aggravating factors, the location of the incident and the fact that the defendant pursued the
17 victim and attempted to try to dissuade her from reporting the matter.

18
19 20. Defence Counsel submitted that this is a single incident of touching. Counsel said that it is
20 accepted that there was a breach of trust but the circumstances of the incident ought not
21 thereafter to be considered as aggravating factors. Counsel said that he cannot dispute that the
22 culpability is at level 2 due to the touching of naked genitalia. Counsel asked the Court to
23 contrast this case with the case of *R v Jemal Abdullah Khan*². The defendant in that case was
24 a chiropractor who had groomed his clients. There were multiple incidents with patients over
25 a period of time and the offending was much more serious than in the instant case. Counsel
26 said that while Mr. Khan pleaded guilty, which is different from the present case, he received a
27 sentence of 2 years imprisonment.



² [2016] CIGC J1117-1

1 21. In mitigation in the instant case Counsel submitted that this defendant has no previous
2 convictions. He is of good character. This is his first ever problem or incident in dealing with
3 over two hundred clients, male and female. He has been waiting a year for the case to be
4 resolved. He has been on curfew and has been compliant. There have been no complaints as to
5 his conduct over the period. His father is in his eighties and is not well. The defendant has been
6 unemployed and unable to financially support his family.

7
8 22. Counsel asks the Court to consider that the *Cayman Islands Sentencing Guidelines* suggest
9 higher range of sentences than the *United Kingdom Sentencing Council Guidelines*. Counsel
10 said that while it is accepted that both suggest terms of imprisonment, the Court is asked to
11 consider not imposing a sentence of immediate custody in this case.

12
13 **THE SENTENCE**

14
15 23. It is accepted that under the *Cayman Islands Sentencing Guidelines* this is an offence of
16 Category 2 Harm because of the touching of naked genitalia. It is culpability A because of the
17 abuse of trust. The Court considers that the offending is serious such that the custody threshold
18 is firmly passed.

19
20 24. The starting point is 6 years custody.

21
22 25. The submissions of defence Counsel are accepted as to the location of the offence not being
23 treated as a separate aggravating factor.

24
25 26. The breach of trust is the fact of the defendant's employment as a massage therapist. The
26 employment because of its nature takes place in a darkened room with clients in a vulnerable
27 position. The location is not treated as a separate aggravating factor.



- 1 27. The defendant did take steps to prevent the witness from reporting the incident by word and by
2 conduct. Following her could only have been meant to be intimidating.
3
- 4 28. While this is an aggravating factor, in the Court's view the starting point is adequate to deal
5 with the entirety of the conduct. No additional sentence is imposed because of this factor.
6
- 7 29. In mitigation, the Court takes into account everything that has been written and said in the
8 defendant's favour.
9
- 10 30. The defendant has no previous convictions and is of good character. His personal circumstances
11 include the financial care of his elderly parents and sister. He is no longer able to support them.
12 He is at low risk of reoffending and has had the stress of waiting for this case to be completed
13 for over a year. All these taken together serve to reduce the sentence by 12 months to one of 60
14 months imprisonment.
15
- 16 31. The Court has given consideration to whether the proposed sentence is proportionate to the
17 offending. This was an egregious breach of trust which took place in a hotel environment. The
18 touching was not casual or fleeting. The traumatic effect upon the victim persists. The
19 conclusion is that the proposed sentence is proportionate to the offending.
20
- 21 32. While the defendant bears no burden and is entitled to put the prosecution to proof, it does
22 mean that there are no further discounts which can be afforded to him either for remorse or for
23 a guilty plea.
24
- 25 33. The Court has no record of any curfew being imposed on the defendant such that there would
26 be any further discounts.
27
- 28 34. The sentence is therefore 60 months imprisonment with time served.
29
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1 **SEXUAL HARM PREVENTION ORDER**

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3 35. There is no objection to a Sexual Harm Prevention Order in respect of behaviour towards the
4 victim and work as a massage therapist while in the Cayman Islands. The Court considers that
5 such an order is necessary for the protection of women. An Order is made for a period of five
6 years following the defendant's release from Prison.

7

8 **Dated this the 9th day of December 2024**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written over a light blue horizontal line.

9

10 **The Hon. Justice Cheryll Richards KC**
11 **Judge of the Grand Court**