

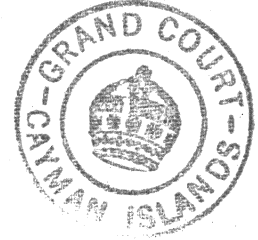
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3

4 INDICTMENT NO: 0083/2013  
5

6  
7 THE QUEEN

8  
9 V

10  
11 MANOLO DELA PENA VALLO  
12



13  
14 **Appearances:**

**Ms. Candia James for the Crown**

15  
16 **Ms. Fiona Robertson of Samson & McGrath**  
17 **for the Defendant**  
18

19 **Before:**

**Hon. Mr. Justice Malcolm Swift (Actg.)**

20 **Submissions heard:**

**22<sup>nd</sup> July 2015**  
21

22 **SENTENCE RULING**  
23

24 1. Section 31 of the Criminal Procedure Code (2013 Revision) deals with the

25 "Anonymity of complainants in rape etc. cases and states:

26 "31. (1) After a person is accused of a rape [or similar] offence, no matter  
27 likely to lead members of the public to identify a woman as the woman against  
28 whom the offence is alleged to have been committed shall be published in a  
29 written publication available to the public or be broadcast, except as  
30 authorised by a direction of the court."  
31

32 Accordingly, this Judgment is distributed with the strict understanding that, in any  
33 report of it, the anonymity of the Complainant, who is also the victim, must be  
34 strictly preserved, that is, the victim may not be identified by name or location or by  
35 her family members.



1           2.     The Defendant, 41 years of age, has been convicted unanimously by the jury of  
2                    raping a woman who was 23 years of age at the time. She had come to the Cayman  
3                    Islands from the Philippines to work. The Defendant knew her family and took on  
4                    the role of her mentor - purporting to guide her as she obtained work and gained  
5                    experience in her new job where he was also employed as a colleague.

6           3.     It is my clear view that the Defendant had another objective in mind. He gradually  
7                    began to display affection for the Complainant, sought out her company socially,  
8                    began calling her his wife and repeatedly told her he loved her. He embarked on a  
9                    persistent course of trying to ingratiate himself into her affections. In that, he  
10                  failed. He made her feel uncomfortable and she gave the Defendant no  
11                  encouragement whatsoever. She gave the Defendant no indication at all that his  
12                  approaches were reciprocated.

13          4.     Clearly the Defendant had been waiting for his opportunity to have sexual  
14                  intercourse with the Complainant, whether she wanted to or not. His chance came  
15                  on the 27<sup>th</sup> July 2013 when both of them were alone together at their place of work  
16                  at the end of the working day. Using his superior strength, the Defendant pinned  
17                  the Complainant down on the floor and forced her into sexual intercourse with him  
18                  despite her valiant attempts to stop him. The Defendant ejaculated inside her.

19  
20          5.     The Defendant then stopped the Complainant from making an immediate report to  
21                  anyone by insisting on taking her home and then beginning a campaign of text  
22                  messaging and telephone calls designed to prevent her from reporting the rape by  
23                  trying to embarrass her and to pressurize her by attempting to instill in her feelings  
24                  of shame and disgrace.

1 6. The phone evidence also suggests strongly that the Defendant persuaded other  
2 members of his family to attempt to stop her from reporting him to the Police.

3  
4 7. The effect on this young woman is clear from the texts themselves. She was  
5 initially suicidal, or at the very least self-harming, and cut herself. Her first  
6 message, in answer to the Defendant's first attempt to deter her from reporting him,  
7 was to say

8  
9 *"You just destroyed my life. It's better that you kill me than that you treated me*  
10 *like this"*.

11  
12 8. The Complainant clearly believed and still believes that the Defendant had  
13 deflowered her, ruining her future and destroying her aim to lead the normal life of  
14 a young woman anxious to have normal relationships. The Complainant feels, with  
15 complete justification, that the Defendant has taken those ambitions away from her.

16  
17 9. The Defendant has no previous convictions. I have read, and I take into account,  
18 the various character references provided to me.

19  
20 10. The Defendant pleaded not guilty and his defence involved the allegation that the  
21 Complainant was in fact his girlfriend, that they both were in a sexual relationship  
22 together and that she had fabricated the allegation of rape because she was jealous  
23 of the Defendant's alleged contact with a girlfriend of his back home in the  
24 Philippines. That defence merely adds to the abuse the Complainant suffered at the  
25 hands of the Defendant and removes any mitigation which might otherwise be  
26 justified by a guilty plea or by previous good character.



1 11. In the *UK Home Office Command Paper "Protecting the Public"* published in  
2 November 2002, dealing in part with so-called 'date rape', the following appears:

3  
4 *"Our view is that rape is rape and cannot be divided ... into more or less*  
5 *serious offences. It can be just as traumatic to be raped by someone you know*  
6 *and trust who has chosen you as his victim as by a stranger who sexually*  
7 *assaults the first man or woman who passes by. It is up to the courts to take all*  
8 *particular circumstances of a case into account before determining the*  
9 *appropriate penalty".*  
10

11 That statement represents with accuracy and poignancy the grave effect of this rape  
12 on this victim in this case.

13  
14 12. I have considered the guideline decision of the CICA in *Dilbert v R.; Samuels v R.*  
15 *2010*<sup>1</sup> from which it is clear that I should pay heed to the aggravating and  
16 mitigating factors (if any) as set out in the well-known UK authorities including in  
17 particular *R v Millberry*<sup>2</sup> but I should not be guided by UK levels of sentencing in  
18 respect of the offence of rape. Instead my starting point should be the *Chief*  
19 *Justice's Statement on Tariffs and Guidelines for Sentencing* which sets higher  
20 sentences for rape in these islands for the reasons clearly explained in *Millberry*  
21 (*supra*).



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<sup>1</sup> (1) CILR 10

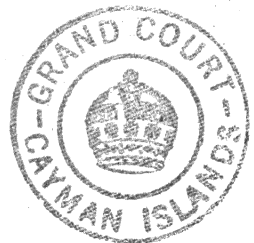
<sup>2</sup> 2003 1 Cr App R 25

1 13. I apply the Chief Justice's Tariff. The Tariff set for the Cayman Islands is 10 to 12  
2 years. I can see no reason to exceed that Tariff as there are in my judgment no  
3 serious aggravating factors other than those inherent in the offence of rape itself  
4 which invariably causes trauma to the victim and instills feelings of worthlessness,  
5 despair at any prospect of happiness in the future and self-blame – all of which are  
6 summarized aptly in this case by the victim's expression that the Defendant  
7 destroyed her life.

8  
9 14. Just as there are no aggravating factors, equally there are no mitigating factors  
10 either. I am urged to reduce the sentence on account of the Defendant's good  
11 character, lack of convictions, and the time spent awaiting trial on bail with strict  
12 conditions. I am also invited to find that the Defendant was remorseful in his text  
13 messages after the rape.

14  
15 15. On the contrary, I do not find those messages to be evidence of remorse. In my  
16 clear view they were no more than attempts by the Defendant to save his own skin.  
17 The Defendant threw away any mitigation when he pleaded not guilty and chose to  
18 subject his victim to re-live, again, her ordeal and humiliation in examination in  
19 chief and particularly in cross-examination – where she was accused, not of  
20 consenting to intercourse on this occasion, but of being a liar who had made up the  
21 whole allegation out of spite. In my view the Defendant's behaviour after the rape  
22 and the conduct of his defence counteract any mitigation inherent in his previous  
23 good character.

24



1           16.       Nevertheless, I place this offence at the lower end of the Tariff and see no reason to  
2                       depart from a sentence of 10 years' imprisonment. That is the sentence.

3  
4  
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6       **Dated this the 22<sup>nd</sup> day of July 2015**

7

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9  
10  
11           *Swift J.*



11       **Honourable Mr. Justice Malcolm Swift (Actg.)**  
12       **Judge of the Grand Court**