

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S203 OF THE CRIMINAL PROCEDURE ACT 2011**

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2017-090-001898  
[2018] NZDC 3878**

**THE QUEEN**

v

**[SEVAK GUHA]**

Hearing: 28 February 2018  
Appearances: K Lawson-Bradshaw for the Crown  
N Manning for the Defendant  
Judgment: 28 February 2018

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**NOTES OF JUDGE E M THOMAS ON SENTENCING**

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**A. Sentenced to 3 ½ years' imprisonment.**

**B. Publication of name, address, occupation or identifying particulars of complainant prohibited by s203 of the Criminal Procedure Act 2011**

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## REASONS

### The offending

[1] Mr [Guha], [the victim] was your stepdaughter for many years. She looked to you as a father. She placed her trust in you, as children do. You enjoyed that trust. You and her mother acted as parents would towards her for most of her life. Over two separate incidents when she was 14 though, you destroyed all of that.

[2] The first incident was on [date deleted]. You went to her home. The two of you went to a park first but then you took her back to the house. Her mother was [details deleted] and the two of you were the only ones there. You guided the conversation towards sexual matters. You kissed [the victim]'s neck and her chest. You touched and sucked on her breasts. You rubbed your penis against her genitalia through her clothing. [The victim] understandably was extremely distressed and terrified. She screamed. She tried to free herself. You held her. Finally you thought better of it. You released her and you left. You thought about it a bit more. You phoned her. You told her not to tell anyone.

[3] [The victim] was in an extremely difficult situation. She tried to convince herself that this was a one-off isolated incident. That you had never done this before. She did not want to overanalyse this too much. That hopefully it would never happen again. One thing she knew was that she could not break apart the relationship that you and her mother had built up over many years. So she reacted as many children did in that situation. She said nothing. That would have been possibly bearable if you had not done it again.

[4] On [date deleted], you did do it again. This time you came a little better prepared. You took alcohol, vodka. You gave it to [the victim]. You gave her several glasses. Understandably, she became drunk. You waited until that point before guiding the conversation again towards sexual matters. You pushed her back on to the couch. You kissed her neck and chest. You sucked on her breasts again. She resisted. You did not care. You removed her tights against her resistance. You held her hands so that she could not use them to stop you, to resist you.

[5] Once you had done that, you moved to her genitalia. You inserted a finger or fingers inside. When she screamed, you covered her mouth with your hand. You kept going. You rubbed your penis up against her genitalia through her clothing. You then rubbed your exposed penis against her pubic area.

[6] You were found guilty at trial and convicted of five charges of sexual conduct with a young person and one charge of sexual violation by unlawful sexual connection.

### **Starting point**

[7] The sexual violation charge is the most serious. This relates to you putting your finger or fingers inside her. That is the charge that I deal with first.

[8] It was planned and premeditated, this second incident. There is no running from that. The evidence at trial leads to that being the only reasonably possible conclusion. You encountered resistance the first time. You knew it was not going to be as easy as you thought so the second time you came far better prepared with alcohol and a strategy. There was a high degree of planning and premeditation. It was cynical.

[9] This was an enormous breach of trust. It is not usually the extent of the touching that causes all the harm, it is the depth of the betrayal. The effects upon [the victim] are going to be significant. They will last in all likelihood in one form or another her whole life. She will have to find a way, as victims in her position do, to manage what this has done to her. In all likelihood, she will struggle to trust anybody. She will expect danger at every turn. She will expect even the closest people to her to think only of themselves, to take from her what they want, when they want it. That is a very lonely place for her to be.

[10] She was obviously extremely vulnerable because of the power imbalance. Because of her age. There is very little that anyone in her position could do when the two of you are the only people inside her house. When the person doing the things to her is the person she considered to be effectively her father, the one person in the world who was supposed to protect her from anything bad happening. If this was her father figure doing this to her, who was she supposed to go to for help? You were the person she was supposed to go to for help.

[11] These elements of breach of trust, vulnerability, and the effects of the offending do count as aggravating features. I take care however not to double count them. They all overlap to a certain degree. They are in their own way part and parcel of each other. So I do not treat them as separate aggravating features but rather as one broad but very significant one.

[12] The Court of Appeal in a case called *R v AM*<sup>1</sup> has looked at the appropriate sentences for sexual violation of this kind. You fall into the area that is covered by the upper end of the first band and the lower end of the second band described in that case. Both counsel have referred to that case, to other cases cited within that decision and to other authorities in arguing what the appropriate starting point should be. In truth, there is a wide variation and there is a wide variation because each case depends so significantly on its own facts. It is not as simple as comparing one case to another. I have to assess the circumstances here and the circumstances here are different from any other case. Looking at those circumstances and putting them up against those other cases, and against what the Court of Appeal said in *R v AM*, I take a starting point of four years' imprisonment.

[13] I do not increase that starting point to reflect the other offending for two reasons. The first is that I need to apply the totality principle. We do not just add one sentence to another and keep going. That would result in a sentence that is too high and not fair to you. What I need to do is stand back and look at everything all together and come up with a fairer figure.

[14] The main reason however is because, in reality, I have already considered those. A large measure of the planning and premeditation for example that I have considered as an aggravating feature came from the earlier offending and its failure to progress to the point that you wished it to progress to. And the offending that occurred during the second incident was effectively a precursor to the sexual violation. In those circumstances then, I do not increase the starting point of four years any higher.

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<sup>1</sup> *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750 (CA).

## **Discounts**

[15] You seek a discount for previous good character. You do not come to Court as a first offender. You cannot claim to be a first offender. On the other hand, the previous convictions that you have are minor when compared to this offending and not relevant to this offending. There is plenty of authority that says if you have got any previous convictions you get no discount for previous good character. There are some authorities that say perhaps there is room for some.

[16] Given the seriousness of this charge and the relative minor nature of your previous convictions, I am prepared to give you a discount for good character. It would not be the same discount as someone would get who had no previous convictions.

[17] You obviously get no discount for remorse. That is significant, when it comes to whether there should be any discount for rehabilitative prospects. In one sense, your counsel says there are good rehabilitative prospects because you have a life waiting for you. But that is not the rehabilitation we are talking about here. Rehabilitative prospects relate to rehabilitation from the offending that you have committed. You still do not accept that you did any of this. You still do not acknowledge what you have done. While you fail to acknowledge and accept what you have done, your rehabilitative prospects in terms of this offending have to be described as pretty low. You might be able to rebuild your life but that is different. What we are talking about is rehabilitation from the very poor decision-making and the lack of any insight and empathy that drove these two terrible incidents.

## **Result**

[18] On the sexual violation charge, I sentence you to three and a half years' imprisonment. On the remaining charges, to 12 months' imprisonment, on each.

[19] All sentences are concurrent. That means your effective sentence is three and a half years.

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Judge EM Thomas  
District Court Judge

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In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.