



COURT MARTIAL

Citation: *R. v. Bankasingh*, 2021 CM 5009

Date: 20210208

Docket: 202043

Standing Court Martial

Asticou Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Acting Sub-Lieutenant T.O. Bankasingh, Offender

Before: Commander C.J. Deschênes, M.J.

Restriction on publication: Pursuant to section 179 of the *National Defence Act*, the Court directs that any information obtained in relation to this trial by Standing Court Martial that could identify anyone described in these proceedings as a victim or complainant shall not be published in any document or broadcast or transmitted in any way.

This order does not apply in respect of the disclosure of information in the course of the administration of justice, when it is not the purpose of the disclosure to make the information known in the community.

REASON FOR SENTENCE

(Orally)

Introduction

[1] Acting Sub-Lieutenant Bankasingh pleaded guilty to the charge under section 93 of the *National Defence Act (NDA)*, an offence of “behaved in a disgraceful manner”, in that on or about 27 July 2007, he touched the genitals of S.C. without her consent while

at Connaught Range in Ottawa. The prosecution presented no evidence on the sexual assault charge. Consequently, the Court acquitted the offender of that charge. Having accepted and recorded the guilty plea on the second charge, the Court must now determine and impose a fair and fit sentence. In order to assist the Court in determining the appropriate punishment, both counsel are recommending jointly that this Court impose a punishment of imprisonment of sixty days, to be served in the Canadian Forces Service Prison and Detention Barracks (CFSPDB) in Edmonton, Alberta.

Circumstances of the offence

[2] The offender formally admitted as true the circumstances surrounding the commission of the infraction as described in the statement of circumstances. These circumstances were described as follows:

“Statement of Circumstances

(Queen’s Regulations and Orders for the Canadian Forces, art. 112.51(3))

1. At the material time, the offender, A/SLT (then Bombadier) Bankasingh, was a member of the Reserve Force, Canadian Armed Forces, employed with the 7th Toronto Regiment of the Royal Canadian Artillery located in Toronto, Ontario.
2. In July of 2007, the offender was employed on Class B reserve service as a course instructor for a Basic Military Qualifications (BMQ) course at Connaught Range and Primary Training Centre in Ottawa, Ontario.
3. In July 2007, S.C. was a Private on another BMQ serial run by other course staff. S.C. knew the offender only in a cursory manner, and had no personal relationship with him.
4. There was a course party on the evening of 27 July 2007. S.C. consumed what she thought was a non-alcoholic beverage but quickly became extremely exhausted, dizzy, and light-headed. She left the party and laid on her cot in the modular tent assigned to her course.
5. The offender followed the S.C. into the tent. He sat on the edge of her cot, unbuttoned her shirt, unclasped her bra, and pulled her pants partially down. The offender fondled her breasts, buttocks and vagina under her clothing. S.C. was crying during the assault but was unable to speak or resist. She was 17 at the time.
6. The incident was interrupted when another course candidate entered the tent and confronted the offender at which point the offender got up and left.

7. A/SLT Bankasingh did not have the consent of S.C. for his acts.
8. As a result of the incident, her trust in the CAF as an institution was irrevocably harmed and she was unable to continue her training. She was returned to her unit days after, upon informing the staff that a family emergency had arisen. By December 2008 she had been declared Non Effective Strength, and she released in February 2010.”

Issues

[3] The Court must now determine whether the joint submission complies with the legal requirements as set out in the Supreme Court of Canada decision, *R. v. Anthony-Cook*, 2016 SCC 43.

Positions of the parties

Prosecution

[4] The prosecution contends that the main objectives applicable to this case are general deterrence and denunciation, objectives that oftentimes call for more severe punishments. He explains that the position of trust occupied by the offender at the time of the offence, the age of the victim, her vulnerability at the time of the offence and the nature of the touching were aggravating factors he considered.

[5] The circumstances that were considered when agreeing on an appropriate punishment and which mitigates the sentence included the guilty plea, the continuous strong performance of Acting Sub-Lieutenant Bankasingh and his unblemished career. Referring the Court to courts martial case law, such as *R v Déry*, 2013 CM 3025; *R. v. Cadieux*, 2019 CM 2019; *R v Adams*, 2012 CM 2002; and *R. v. Leading Seaman C.M. Ritchie*, 1997 CM 39, the prosecutor explains that there is a wide range of punishments for this type of offence, going from a fine to incarceration. He thus recommends that the offender be incarcerated at the CFSPDB which, according to the exhibits provided as evidence, demonstrate that this location is more suitable in the context of the pandemic, notably because he would be allowed to continue receiving the mental health services he requires. The prosecution finally contends that the proposed punishment meets the public interest test, in light of the circumstances surrounding the commission of the offence, and of the offender’s situation.

Defence

[6] In generally being supportive of the prosecution’s perspective, defence counsel asks the Court to keep in mind that this offender is at a low risk of reoffending. In the context of this joint submission, she clarifies that the offender was not the direct instructor of the victim and that there is no evidence of his knowledge of the victim’s vulnerability at the time the offence was committed. Counsel also contends that the

nature of the touching is part of the offence, therefore this aspect is not, in its own right, an aggravating factor. In mitigation, in addition to the prosecution's submissions in this regard, counsel for the defence added that Acting Sub-Lieutenant Bankasingh is a first-time offender. He was also younger at the time of the infraction, which took place years ago. He is attending therapy sessions. He is remorseful. There is evidence that the offender is of good character; he wants to continue to serve his country.

[7] In support of the joint submission, and in respect of the parity principle, defence counsel refers the Court to *Ritchie* as a case that she contends is strongly related, where the offender was sentenced to sixty days' imprisonment after a contested trial.

[8] Further, defence counsel contends that the mandate of CFSPDB, which is to rehabilitate inmates via a routine based on accountability, observance to direction, and attention to detail, makes a compelling case in allowing Acting Sub-Lieutenant Bankasingh to serve his sentence at this facility. The offender would also be allowed during this time to continue getting mental health support on site. Additionally, in the context of the current pandemic, the protection of inmates is better achieved at this location. In light of all these considerations and after collaborative discussions with the prosecutor, defence counsel submits that the joint submission meets the public interest test and should be accepted and imposed by this Court.

Evidence

[9] The Court examined and considered the Statement of Circumstances, the content of which was agreed to by the defence, as well as the documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) and provided by the prosecution, in accordance with article 112.51 of the QR&O. The prosecution also provided a nine-page affidavit dated 3 February 2021 from Major Winfield, Commandant of the CFSPDB with a four-page document explaining the protocols and procedures applicable to inmates in the context of COVID-19. The prosecution confirms that the victim was offered an opportunity to prepare a statement but declined to do so. The defence introduced an Agreed Statement of Facts with three reference letters from former peers and a superior of the offender, a letter and attached CV from a clinical and forensic psychologist and the offender's apology letter dated 25 January 2021. Acting Sub-Lieutenant Bankasingh made a statement in court, where he recognized his wrongdoing and accepted responsibility for his actions. This statement was also considered by the Court.

Analysis

[10] When determining a sentence, the Court must be mindful of the fundamental purposes of sentencing, which are to promote the operational effectiveness of the Canadian Armed Forces (CAF) by contributing to the maintenance of discipline, efficiency and morale; and to contribute to respect for the law and the maintenance of a just, peaceful and safe society. These fundamental purposes shall be achieved by imposing just sanctions that have one or more of the objectives listed at section 203.1 of

the *NDA*. Additionally, the Court shall be guided by the fundamental principle of sentencing: “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender” found at section 203.2 of the *NDA*.

[11] When both the prosecution and defence counsel agree on an appropriate sentence to recommend, commonly referred to as a joint submission, it is implied that these statutory sentencing principles were considered by both parties during the plea negotiation. However, although counsel have in-depth knowledge of the circumstances of the offence and defence counsel is privy to the offender’s personal situation, it is up to the court to determine whether they have considered all relevant factors by applying the test that I will explain shortly.

[12] Joint submissions provide many benefits to the accused, the participants, the unit and the military justice system as a whole. They assist in limiting the resources normally required to support a trial by court martial. A guilty plea offers accused persons an opportunity to take responsibility for their actions and tend to show that they are indeed remorseful. It also prevents the victims from suffering the stress and pain of having to relive the events when they testify in court. Furthermore, it assists in efficiently resolving cases that may present evidentiary issues at trial. The Supreme Court of Canada in *Anthony-Cook*, in recognizing these many benefits, has established the public interest test for trial judges dealing with a joint submission. It entails that joint submissions should not be departed from by trial judges. However, if the joint submission would cause an informed and reasonable public to lose confidence in the institution of the courts or would be contrary to the public interest, only then should the sentencing judge follow certain steps before considering rejecting the recommendation. This means that I have limited sentencing discretion in this case.

[13] This Court must therefore examine the joint submission and determine if it is contrary to the public interest or whether it would cause an informed and reasonable person or public to lose confidence in the institution of the courts. If it meets these criteria, the Court has to accept the joint submission even if it may be considered too harsh or too lenient.

Imprisonment

[14] In the case at bar, counsel recommends that this Court impose a punishment of imprisonment for sixty days. In this regard, section 140 of the *NDA* provides:

140. Every person who, on conviction of a service offence, is liable to imprisonment for life, other than as a minimum punishment, or for a term of years or other term may be sentenced to imprisonment for a shorter term.

[15] Note A of the governing regulations with regard to imprisonment (article 104.04 of the QR&O) specifies that:

Although specialized treatment and counselling programmes to deal with drug and alcohol dependencies and similar health problems will be made available to a person

-serving a term of imprisonment, a member serving a sentence that includes imprisonment will in most cases be considered unfit for further military service. As a result, service prisoners and service convicts will ordinarily not be subjected to the same regime of training that service detainees undergo. In certain cases, exceptions may be made for service prisoners serving a short term of imprisonment provided that it has either been decided to retain the member or no decision to release the member has been made but the circumstances suggest that retention in the Canadian Forces is likely. A punishment of imprisonment will be considered to be of short duration where the term does not exceed 90 days.

[16] In other words, although a punishment of imprisonment sends a strong message that the offender subject to it should be released from the CAF, in some cases retention may be appropriate. The duration of the imprisonment, amongst other factors, could dictate whether the member is fit for further service.

Aggravating factors

[17] The circumstances of the commission of the offence are appalling. The offender was in a position of trust and authority when he committed the offence. He took advantage of the situation in abusing a subordinate who was in an extremely vulnerable situation, being incapacitated by an intoxicant she did not choose to consume. She was also a minor at the time. Also troubling is that the behaviour stops only when a third party intervened.

[18] The Court was not provided details as to how the victim became intoxicated to the point of being incapacitated after consuming non-alcoholic beverages, and why the offender decided to follow her to her tent. Therefore, the Court cannot draw a conclusion that Acting Sub-Lieutenant Bankasingh may have been involved in some way in rendering the victim incapacitated in order to take advantage of her, or that he knew she was especially vulnerable at that time. These questions will undoubtedly remain unanswered.

Mitigating factors

[19] Having considered the aggravating factors of the case, the Court must now consider the offender's situation, including how he dealt with the accusations against him. I accept counsel's submissions regarding mitigating circumstances and, therefore, took the following factors into consideration:

- (a) Acting Sub-Lieutenant Bankasingh is a first offender;
- (b) He accepted responsibility for his actions by pleading guilty before this Court, dispensing with the need for a longer and costlier trial and, most importantly, with the need to have the victim testify in court and having to provide intimate details of the event;
- (c) His apology seems sincere; the offender came before the Court knowing that incarceration awaited him and accepted his fate;

- (d) His therapist indicated that the risks to reoffend are very low; and
- (e) His performance and unblemished career were also considered.

[20] I accept counsel's view that general deterrence and denunciation are important objectives in this case.

The offender's situation

[21] Acting Sub-Lieutenant Bankasingh is 34 years old. He joined the CAF on 21 October 2004 as a private. He spent fifteen years as a Non-Commissioned Member (NCM) where he reached the rank of master warrant officer before commissioning on 7 February 2020. He is the recipient of military decoration and medals. He has sought out counselling and therapy in order to understand the reason for his actions, not only to prevent reoffending, but in the hopes of helping others.

Parity

[22] The Court further considered the cases submitted by counsel, and found that the proposed sentence meets the parity principle.

Place of incarceration

[23] Lastly, after careful consideration of the governing regulations and of the *R. v. Caicedo*, 2015 CM 4020, and in light of my decision on sentencing in *R. c. Lévesque*, 2020 CM 5014, I accept counsel's submissions in the present circumstances that the Court has the authority to determine whether the offender should be incarcerated at the CFSPDB. In the context of the pandemic, it is appropriate that the offender be incarcerated in these facilities for the relatively short duration of his sentence. The evidence demonstrates that the CFSPDB offers sufficient safeguards to ensure that exposure to COVID-19 is greatly reduced for the offender, while allowing him to pursue his therapy.

Conclusion

[24] In conclusion, the Court reviewed the documentary evidence introduced as exhibits and considered counsel's submissions. It is apparent that counsel carefully assessed the specific circumstances of the case when they agreed on this joint submission. They also identified and considered the relevant aggravating and mitigating factors surrounding the commission of the offence and properly addressed the applicable principles and objectives of sentencing in this case. I am, therefore, satisfied that all documents introduced as exhibits provided this Court with a clear and complete picture of both the offence and the offender and I accept counsel's position that the need for general deterrence and denunciation are met with the joint recommendation today. The offender accepted responsibility for his actions. The joint recommendation gives

him a chance to move on. Although it is not up to this Court to determine whether the offender should be retained in the CAF, the regulations allow the organization to retain him, should it choose to do so, having regard to the relatively short duration of his incarceration amongst other factors to consider.

[25] In the context of the current pandemic, it is appropriate that the offender be incarcerated in the CFSPDB in Edmonton, which offers sufficient safeguards to ensure that exposure to COVID-19 is greatly limited for the offender, and which offers the offender to pursue his therapy. Consequently, I find that the joint submission is in the public interest and would not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[26] **FINDS** Acting Sub-Lieutenant Bankasingh not guilty of the first charge under section 130 of the *NDA*, sexual assault, contrary to section 271 of the *Criminal Code*;

[27] **FINDS** Acting Sub-Lieutenant Bankasingh guilty of the second charge under section 93 of the *NDA*, behaved in a disgraceful manner;

[28] **SENTENCES** Acting Sub-Lieutenant Bankasingh to sixty days' imprisonment to be served at the CFSPDB in Edmonton.

Counsel:

The Director of Military Prosecutions as represented by Major M. Reede and Captain D. G. Moffat

Major F. Ferguson, Defence Counsel Services, Counsel for Acting Sub-Lieutenant T.O. Bankasingh