

CHAPTER 154

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CHAPTER 154

SEXUAL OFFENCES

An Act to revise and reform the law relating to sexual crimes. 1992-3.

[13th February, 1992] Commence-
ment.

1. This Act may be cited as the *Sexual Offences Act*. Short title.

2. In this Act Interpretation.
"spouse" means a lawful husband or wife as the case may be.

PART I

Sexual Offences

3. (1) Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the intercourse or is reckless as to whether the other person consents to the intercourse is guilty of the offence of rape and is liable on conviction on indictment to imprisonment for life. Rape.

(2) For the purposes of subsection (1), no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) the personation of the spouse of the complainant;
- (d) false and fraudulent representations as to the nature of the act;
- (e) the use of the accused's position of authority over the complainant; or

(f) intimidation of any kind.

(3) Notwithstanding section 21, a person under the age of 14 is deemed incapable of committing the offence of rape.

(4) A husband commits the offence of rape where he has sexual intercourse with his wife without her consent by force or fear where there is in existence in relation to them

(a) a decreæ nisi of divorce;

Cap. 214.

(b) a separation order within the meaning of section 2 of the *Family Law Act*;

(c) a separation agreement; or

(d) an order for the husband not to molest his wife or have sexual intercourse with her.

(5) A husband who commits the offence of rape is liable on conviction on indictment to imprisonment for life.

(6) For the purposes of this section "rape" includes the introduction, to any extent, in circumstances where the introduction of the penis of a person into the vagina of another would be rape,

(a) of the penis of a person into the anus or mouth of another person; or

(b) an object, not being part of the human body, manipulated by a person into the vagina or anus of another.

Sexual
intercourse
with person
under 14.

4. (1) Where a person has sexual intercourse with another who is not the other's spouse and who is under the age of 14, that person is guilty of an offence whether the other person consented to the intercourse and whether at the time of the intercourse the person believed the other to be over 14 years of age, and is liable on conviction on indictment to imprisonment for life.

Cap. 218A.

(2) Where a marriage is void under Part II of the *Marriage Act*, the husband of the marriage is not guilty of an offence under this section because he has sexual intercourse with the wife, if at the time of the

commission of the alleged offence, he believed her to be his wife and had reasonable cause for the belief.

5. (1) Where a person has sexual intercourse with another with the other's consent and that other person has attained the age of 14 but has not yet attained the age of 16 that person is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of 10 years.

Sexual
intercourse
with person
between 14
and 16.

(2) A person is not guilty of an offence under subsection (1)

- (a) if that person honestly believed that the other person was 16 years of age or more and has reasonable cause for the belief; and
- (b) if that person is not more than 24 years of age and has not been previously charged with the same or a similar offence.

6. (1) A person commits the offence of incest who, knowing that another person is by blood relationship, his or her parent, child, brother, sister, grandparent, grandchild, uncle, niece, aunt or nephew, as the case may be, has sexual intercourse with that person.

Incest.

(2) It is immaterial that the sexual intercourse referred to under subsection (1) occurred with the consent of the other person.

(3) A person who commits the offence of incest is liable on conviction on indictment to imprisonment

- (a) if committed by an adult with a person under 14 years of age, for life;
- (b) if committed by an adult with a person 14 years of age or more, for 10 years;
- (c) if committed between minors 14 years of age or more, for 2 years.

(4) A person is not guilty of an offence under this section if that person committed the offence under duress, fear or intimidation of any kind.

(5) In this section, any expression importing a relationship between

2 persons shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock, and "brother" includes half-brother and "sister" includes half-sister.

Sexual
intercourse
with step-
child, etc.

7. (1) An adult who has sexual intercourse with a minor who is the adult's adopted child, step-child, foster child, ward or dependant in the adult's custody is guilty of an offence.

(2) An adult who commits an offence under this section is liable on conviction to imprisonment

(a) if committed with a minor under 14 years of age, for life;

(b) if committed with a minor 14 years of age or more, for 10 years.

(3) An adult shall not be guilty of an offence under this section if the minor is the spouse of the adult.

Sexual
intercourse
with
mentally
subnormal
person.

8. (1) Where a person under circumstances that do not amount to rape has sexual intercourse with another who is an idiot, imbecile or mentally subnormal and who is not the person's spouse, that person is guilty of an offence and is liable on conviction on indictment to imprisonment for a term of 10 years.

(2) It is a defence for that person to prove that he did not know and had no reason to believe that the other person was an idiot, imbecile or mentally subnormal.

(3) In this section "mentally subnormal" means a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.

(4) No proceedings for an offence under this section shall be instituted except by or with the consent of the Director of Public Prosecutions who shall have regard *inter alia* as to whether or not any abuse in relation to the mentally subnormal person has been committed.

Buggery.

9. Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

10. (1) A person who commits bestiality is guilty of an offence and is liable on conviction to imprisonment for 10 years. Bestiality.

(2) A person who by the use of force or drugs, causes another to commit bestiality is guilty of an offence and is liable on conviction on indictment to imprisonment for life.

(3) In this section “bestiality” means sexual intercourse *per anum* or *per vaginam* by a male or female person with an animal.

11. (1) A person who indecently assaults another is guilty of an offence and is liable on conviction on indictment to imprisonment for 5 years. Indecent assault.

(2) A person under the age of 16 years cannot in law give any consent which would prevent an act being an assault for the purposes of this section.

(3) In this section “indecent assault” means an assault accompanied by words or circumstances indicating an indecent intention.

12. (1) A person who commits an act of serious indecency on or towards another or incites another to commit that act with the person or with another person is guilty of an offence and, if committed on or towards a person 16 years of age or more or if the person incited is of 16 years of age or more, is liable on conviction to imprisonment for a term of 10 years. Serious indecency.

(2) A person who commits an act of serious indecency with or towards a child under the age of 16 or incites the child under that age to such an act with him or another, is guilty of an offence and is liable on conviction to imprisonment for a term of 15 years.

(3) An act of “serious indecency” is an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.

13. A person who Procuration.

(a) procures a minor under 16 years of age to have sexual intercourse with any person either in Barbados or elsewhere; or

- (b) procures another for prostitution, whether or not the person procured is already a prostitute, either in Barbados or elsewhere; or
- (c) procures another to become an inmate of a brothel or to frequent a brothel, whether the person procured is already an inmate of a brothel in Barbados or elsewhere,

is guilty of an offence and is liable on conviction on indictment to imprisonment for 15 years.

Procuring
defilement
of a person.

14. A person who

- (a) by threats or intimidation procures another to have sexual intercourse with any person either in Barbados or elsewhere; or
- (b) by deception procures another to have sexual intercourse with any person either in Barbados or elsewhere; or
- (c) applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to have sexual intercourse with that person,

is guilty of an offence and is liable on conviction on indictment to imprisonment for 15 years.

Detention of
a person.

15. (1) A person who detains another against that other's will

- (a) in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
- (b) in any brothel,

is guilty of an offence and is liable on conviction on indictment to imprisonment for 15 years.

(2) A magistrate who is satisfied upon oath that there is reasonable ground for believing that a person is unlawfully detained in any place for immoral purposes, may issue a warrant authorising any constable to enter, if need be by force and search any place specified in the warrant.

(3) A constable referred to under subsection (2) may remove any person in circumstances mentioned in that section and apprehend the person suspected of the unlawful detention.

(4) A constable referred to under subsection (2) shall cause the person apprehended under subsection (3) to be brought before the magistrate and proceedings shall be taken for punishing that person according to law.

16. A person who unlawfully takes away or causes to be taken away or detains another person against the will of that other person with intent Abduction.

- (a) to marry or to have sexual intercourse with the other person; or
- (b) to cause the person to marry or to have sexual intercourse with any other person,

is guilty of an offence and is liable on conviction to imprisonment for 10 years.

17. (1) A person who

- (a) being the owner, occupier or manager of premises; or
- (b) having control of premises or assisting in the management or control of premises,

Householder,
etc.,
permitting
defilement of
a minor
under 16
years of age.

induces or knowingly suffers a minor under 16 years of age to resort to or to be in or upon the premises for the purpose of having sexual intercourse with any person is guilty of an offence and

- (c) where the minor is under 14 years, is liable on conviction on indictment to imprisonment for life; and
- (d) where the minor is 14 years or over but under 16 years is liable on conviction on indictment to a term of 10 years.

(2) It is a defence for a person charged under this section to prove that he did not know or had no reason to believe or suspect that the minor was under the age of 16 years.

(3) A person shall not be charged for an offence under this section if the minor is the spouse of that person.

Suppression
of brothels.

18. A person who

- (a) keeps or manages or acts or assists in the management of a brothel; or
- (b) being the tenant, lessee, occupier or person in charge of any premises, knowingly permits the premises or any part thereof to be used as a brothel or for the purposes of prostitution; or
- (c) being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the same or any part thereof with the knowledge that the premises or some part thereof are or is to be used as a brothel, or is wilfully a party to the continued use of the premises or any part thereof as a brothel,

is guilty of an offence and is liable on summary conviction to imprisonment for a term of 5 years or to a fine of \$5 000 or to both.

Person
living on
earnings of
prostitution.

19. (1) A person who

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any place solicits for immoral purposes,

is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 5 years or to both.

(2) If it appears to a magistrate by complaint on oath, that there is reason to suspect that any premises is used for purposes of prostitution and that any person residing in or frequenting the premises is living wholly or in part on the earnings of prostitution, the magistrate may issue a warrant authorising any constable to enter, if need be by force, and search the premises and to arrest that person.

(3) Where a person is proved to

- (a) live with or to be habitually in the company of a prostitute; or

- (b) is proved to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that the person is aiding, abetting or compelling the prostitution with any other person or generally, that person shall be deemed to be knowingly living on the earnings of prostitution unless the person proves the contrary.

20. A person who for purposes of gain, exercises control, direction or influence over the movements of a prostitute in a way which shows that the person is aiding, abetting or compelling the prostitution is guilty of an offence and is liable on conviction to imprisonment for 5 years. Person aiding prostitution.

21. A person under the age of 12 years is deemed incapable of committing an offence under this Act. Age.

22. Where at the trial of any offence under this Act, it is proved to the satisfaction of the Court that the defilement of a minor has been caused, encouraged or favoured by the minor's father, mother, guardian or any other person who has lawful care or charge of the minor, the Court may divest such person of all authority over the minor and appoint any other suitable person willing to take charge of the minor to be the guardian until the minor becomes an adult; and the Court shall have power to vary from time to time or rescind such order. Divestment of authority.

PART II

Evidence

23. Where in any proceedings for an offence under this Act it is necessary to prove sexual intercourse, it shall not be necessary to prove the completion of the intercourse by the emission of seed but the intercourse shall be deemed complete upon proof of penetration only. Sexual intercourse.

24. (1) Where at a trial for an offence under this Act the jury has to consider whether a person believed that another was consenting to sexual intercourse or to any other sexual act, the judge shall direct the jury that the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with Consent.

any other relevant matters, in considering whether that person so believed.

(2) For the purposes of section 3, a person who does not offer actual physical resistance to sexual intercourse, shall not, by reason of that fact alone, be regarded as consenting to the sexual intercourse.

Spouse,
parent,
guardian a
compellable
witness.

25. (1) The spouse of a person charged with an offence under this Act may be called as a witness either for the prosecution or the defence and without the consent of the person charged; and if so called, notwithstanding any other law to the contrary, is a compellable witness.

(2) The parent or guardian of a minor in respect of whom an offence has been committed may be called as a witness for the prosecution or the defence without the consent of the person charged; and if so called, notwithstanding any other law to the contrary, is a compellable witness.

Sexual
experience.

26. (1) In proceedings in respect of an offence under this Act evidence which discloses or implies that the complainant has or may have had sexual experience or a lack of sexual experience or has or may have taken part or not taken part in any sexual activity is inadmissible except

(a) where it is evidence

- (i) of sexual experience or sexual activity or a lack of sexual experience or sexual activity taken part in or not taken part in by the complainant at or about the time of the commission of the alleged sexual offence, and
- (ii) of events which are alleged to form part of a connected set of circumstances in which the alleged sexual offence was committed;

(b) where it is evidence relating to the sexual activity of the complainant with the accused where the sexual activity is reasonably contemporaneous with the date of the alleged crime;

(c) where

- (i) the accused person is alleged to have had sexual intercourse with the complainant and the accused person does not concede the sexual intercourse so alleged; and
 - (ii) it is evidence relevant to whether the presence of semen, pregnancy, disease or injury is attributable to the sexual intercourse alleged to have been had by the accused person;
- (d) where it is evidence given by the complainant in cross-examination by or on behalf of the accused person, being evidence given in answer to a question which may be asked,

and it is material to a fact in issue in the case and its inflammatory or prejudicial nature does not outweigh its probative value.

27. After the hearing referred to in section 33 and where the Judge agrees to admit the evidence to which section 26 refers he shall, before the evidence is given, record or cause to be recorded in writing the nature and scope of the evidence that is so admissible and the reasons for that decision. Record.

28. Subject to section 31, where an accused is charged with an offence under this Act, no corroboration is required for a conviction but the Judge shall warn the jury that it may be unsafe to find the accused guilty in the absence of corroboration. Corroboration.

29. Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the Judge shall Recent complaint.

- (a) give a warning to the jury to the effect that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and

- (b) inform the jury that there may be good reasons why a victim of a sexual assault may hesitate in making or may refrain from making a complaint about the assault.

Hearing in
camera.

30. (1) Where on a trial on indictment of an accused for an offence under this Act the complainant is a minor, the court shall hear the evidence of the minor *in camera*.

(2) Where on a trial on indictment of an accused for an offence under this Act the complainant is of full age the court may, subject to this section, give leave for the evidence of the complainant to be heard *in camera*.

(3) The court shall not give leave for the purpose of subsection (2) unless, at least 7 days before the commencement of the trial, notice is given to the accused in writing that an application has been made for the complainant's evidence to be heard *in camera*.

(4) For the purposes of subsections (2) and (3), in considering whether to give leave the court may take into account,

- (a) the likelihood that publicity of such evidence would prejudice the interests of justice, decency or public morality, or
- (b) the effect that the giving of such evidence in open court is likely to have on the complainant's state of mind.

Oath by a
minor.

31. (1) Where upon the hearing of a complaint under this Act a minor in respect of whom the offence is alleged to have been committed or any other minor of tender years who is tendered as a witness does not in the opinion of the court understand the nature of an oath, the evidence of the minor may be received though not given upon oath, if, in the opinion of the court

- (a) the minor is possessed of sufficient intelligence to justify the reception of the evidence; and
- (b) the minor understands the duty of speaking the truth.

(2) No person shall be liable to be convicted of an offence under this section unless the testimony admitted by virtue of subsection (1) in

respect of a minor of 16 years or under and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused.

(3) Any witness whose evidence has been admitted under subsection (1) shall be liable to be convicted on indictment and punished for perjury in all respects as if the witness had been sworn.

PART III

Procedure

32. No evidence is admissible under section 26 unless

Notice.

(a) reasonable notice in writing has been given to the prosecution by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and

(b) a copy of the notice has been filed with the clerk of the Court.

33. No evidence is admissible under section 26 unless the Court, after holding a hearing in which the jury and the members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the evidence is admissible and that the requirements of section 32 are met.

Hearing.

34. The notice given under section 32 and the evidence taken, the information given or the representations made at a hearing referred to in section 33 shall not be published in any newspaper or broadcast.

Publication prohibited.

35. (1) After a person is accused of an offence under this Act, no matter likely to lead members of the public to identify a person as the complainant in relation to that accusation shall either be published in Barbados in a written publication available to the public or be broadcast in Barbados except where, on the application of the complainant or the accused, the Court directs that the effect of the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to remove the restriction in respect of the applicant.

Anonymity of complainant.

(2) A person who publishes or broadcasts any matter contrary to subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 5 years or to both.

(3) Subsection (2) refers to

(a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and publisher of the newspaper or periodical;

(b) in the case of any other publication, the person who publishes it; and

(c) in the case of a broadcast, a body corporate, which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(4) In subsection (1)

"accused" means

(a) a person named in an information laid alleging that that person has committed the offence;

(b) a person who appears before a Court charged with the offence;

"complainant" includes in relation to a person accused of an offence under this Act, the person against whom the offence is alleged to have been committed.

Alternative
verdict.

36. (1) If, upon the trial of any indictment for the offence of rape under section 3 the jury is satisfied that the accused is guilty of a lesser offence under this Act, but is not satisfied that the accused person is guilty of the offence charged in the indictment or of an attempt to commit the same, then and in every such case the jury may acquit the accused of that offence and find him guilty of a lesser offence under this Act; and the accused is liable to be punished in the same manner as if he had been convicted upon an indictment for the lesser offence or for the offence of indecent assault.

(2) If upon the trial of any indictment for incest by a person, the jury is satisfied that the accused is guilty of an offence under section 3 or 8 or of an indecent assault but is not satisfied that the accused is guilty of the charge of incest or of an attempt to commit the same then and in every such case the jury may find him guilty of an offence under section 3 or 8 or of indecent assault as the case may be.

37. Where any person is convicted on indictment of an offence specified in section 3, 4, 5, 7, 8, 12, 14, 15, or 18, the court may, in addition to the punishment awarded by the section, direct that the person, if a male, be whipped.