

CANADA / JUDGMENT

R. v. Jacob

2025 BCSC 688

COURT

Supreme Court of British Columbia

DECIDED

24 March 2025

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2025 BCSC 688 R. v. Jacob

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jacob,

2025 BCSC 688

Date: 20250324

Docket: 182069

Registry: Victoria

Rex

v.

Ajesh Jacob

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Before: The Honourable Madam Justice Murray

Oral Reasons for Sentence

Counsel for the Crown:

L. Phipps

C. Ussery

Counsel for the Accused:

J. Watt

Place and Date of Hearing:

Victoria, B.C.

February 27-28, 2025

Place and Date of Judgment:

Victoria, B.C.

March 24, 2025

Introduction

- [1] On December 13, 2024, after a trial, I found Mr. Jacob guilty of 5 counts of sexual assault. The circumstances of the offences are detailed in my reasons for judgment indexed at 2024 BCSC 2359.
- [2] All of the assaults occurred between mid-May 2019 and mid-March 2021, while Mr. Jacob was working as a massage practitioner at Big Feet in Victoria. The complainants were his clients. Specifically (and put very briefly), I found that Mr. Jacob committed the following assaults while performing massages on five complainants.

Count 1- L.K.- May 17, 2019

- [3] On May 17, 2019 while massaging L.K., Mr. Jacob told her that she had a womanly body. He then, contrary to protocol, asked L.K. to turn over onto her back. While she was doing so, Mr. Jacob held the sheet up and looked at her naked body. Once she was on her back, Mr. Jacob did not cover L.K.'s breasts with the sheet, leaving them exposed. He then massaged L.K.'s breasts coming very close to her nipples but not touching them. Shocked, L.K. made an excuse that she had to leave. Mr. Jacob came out to the reception while she was paying and asked L.K. for her phone number, saying that he would like to ask her out.

Count 5- N.A.- February 25, 2020

- [4] On February 25, 2020, while massaging N.A., Mr. Jacob asked her to turn onto her back. Once she was on her back, Mr. Jacob left N.A.'s breasts exposed and massaged both and played with her nipples. He then touched her crotch. N.A. described it first as a "grab" then as a "graze." N.A. "freaked out," said "no," and pushed Mr. Jacob off of her. Mr. Jacob apologized and asked N.A. if she was going to be mad at him. She told him not to worry about it. Mr. Jacob left the room. N.A. got dressed and went to the front desk to pay. While she was paying, Mr. Jacob came out of the back and gave her his business card.

Count 6- J.B.- early March 2020

- [5] In early March 2020, Mr. Jacob massaged J.B. close to her labia. He then asked her to turn onto her back. Once J.B. was on her back, Mr. Jacob pulled the sheet down exposing the top of her breasts. He then massaged the top $\frac{3}{4}$ of her breasts with force "squeezing them like you would a stress ball." His fingers were on her areolae. J.B. cried out in pain. Mr. Jacob asked J.B. if she would like him to massage her breasts. She said "no" and pulled the sheet tightly around herself. J.B.'s breasts were bruised as a result of this massage.

Count 10- J.L.- February 9, 2021

- [6] On February 9, 2021, Mr. Jacob massaged J.L.'s buttocks close to her vulva for what she described as "a lot of time." He told her that she was beautiful and asked if she was single. Mr. Jacob asked J.L. to flip onto her back and began massaging her breasts by moving his hands in a cupping motion up and down the side and bottom. After the massage, Mr. Jacob asked J.L. for her contact information and a hug. Later that night, he messaged J.L. on Facebook telling her that it was nice to meet her. A few days later he sent her a text wishing her a Happy Valentine's Day.

Count 11- C.H. March 17, 2021

- [7] On March 17, 2021, during a massage, Mr. Jacob asked C.H. to flip over onto her back. He held the sheet up while she did so. C.H. saw Mr. Jacob looking at her body. She was only wearing underwear. He then started to massage her arms which were by her side and manipulated her hand to brush against his penis. He then massaged her inner thighs using his fingertips to look at her tattoos which cover her legs up to her groin. C.H. was planning to tell the receptionist what happened but Mr. Jacob came out to the reception area when she was paying and stood close to her. As a result, she did not say anything; she just paid and left.

Positions of Crown and Defence

- [8] Crown submits that a total sentence of two years less one day, plus probation for three years, is appropriate. Defence takes the position that a Conditional Sentence Order of 18 months plus probation is a fit sentence.

Principles of Sentencing

- [9] The fundamental purpose of sentencing is set out in s. 718 of the Criminal Code, R.S.C., 1985, c. C-46.

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- [10] Of the list that follows, the paramount considerations on this sentencing are deterrence, both general and specific, and denunciation.
- [11] The duty of a sentencing judge is to fashion a just and appropriate punishment that is proportionate to the culpability of the offender. In doing so, I must consider the aggravating and mitigating factors.

Analysis

- [12] I will start with the aggravating circumstances. There are many.
- [13] First, Mr. Jacob was in a position of trust to the complainants. All of the complainants trusted Mr. Jacob to provide them with a therapeutic massage. They followed his direction. When they started to feel uncomfortable about what he was doing, they told themselves that they must be mistaken. Virtually, all of them tipped Mr. Jacob when they left. They questioned themselves and felt shame for his shameful actions.
- [14] Second, Mr. Jacob exploited the complainants when they were in a vulnerable position. All were naked or mostly naked in a small room alone with him. The door was closed. All of the complainants described "freezing" when he was touching them inappropriately and feeling fearful.
- [15] Third, in all cases Mr. Jacob stood out at the front reception desk when the complainants were paying, causing them further fear and deterring them from telling the receptionist what had happened.
- [16] Fourth, the number of offences. Mr. Jacob committed five sexual assaults over almost three years - from between May 17, 2019 to March 17, 2021.
- [17] Fifth, I find that the assaults were not opportunistic; they were planned and deliberate. Of note, in early 2020 both N.A. and J.B. told Mr. Jacob that his touching was inappropriate. That did not stop him from continuing to sexually assault others.
- [18] Finally, while Mr. Jacob's sexual assaults are at the less intrusive end of the scale, they had a significant impact on each and every complainant. The impact was clear when they testified. The complainants universally felt embarrassed, disgusted, and ashamed - as if there was something they did to cause this to happen to them. There was not.
- [19] Three victim impact statements were filed on sentencing. J.B. wrote that Mr. Jacob's sexual assault left her feeling disgusted, unsafe, unsure of her own judgment, confused, and "the kind of dirty that is hard to wash off." As a result of the assault, J.B. reports that she has suffered from anxiety/ depression, insomnia, a "messed up sense" of self, and very mistrustful of men.
- [20] J.L. wrote that she has been impacted emotionally. She is unable to trust male massage practitioners and men in general. She no longer feels safe.

- [21] C.H. wrote that Mr. Jacob's actions have caused past traumas to resurface. She now struggles with constant anxiety. Her sense of safety has been destroyed. She is haunted by her inability to speak up or protect herself when Mr. Jacob sexually assaulted her. The impact of the assault has affected every facet of her life including her close relationships.
- [22] By way of mitigating factors, at 38 years of age, Mr. Jacob is relatively young. He has no criminal record. He is well educated and hardworking. He has continuously been employed at a variety of jobs since moving to Victoria. He has abided by bail conditions for three years with no issue. He has strong support in the community. He filed 12 letters of support from upstanding members of the community. The references variously describe Mr. Jacob as hard-working, productive, and courteous; a person that wants to help others.
- [23] One factor that does not, in my view, fall into the category of mitigating is deportation. Mr. Jacob will be deported to India if he receives a sentence of incarceration of six months or more. While Defence counsel has put before me cases that say that a sentence can be reduced to take into account deportation, he properly concedes that that is inapplicable in this case as a sentence of less than six months is not within the appropriate range. I agree. Accordingly, deportation is not a consideration on this sentencing.
- [24] I have considered the cases put before me by counsel. While they provide guidance as to a range of sentences, each case turns on its own unique facts. Having regard to the circumstances and the case law, I am satisfied that the appropriate sentence is a cumulative jail sentence of 2 years less a day plus probation for 3 years to follow. The sentences on each count are as follows:

Count 1: 6 months

Count 5: 6months

Count 6: 5 months

Count 10: 5 months

Count 11: 2 months - 1 day

All of the sentences are to be served consecutively.

- [25] In my view, this sentence sends a strong message to Mr. Jacob and other like-minded individuals that sexual assault will not be condoned. Additionally, it will protect the public by placing Mr. Jacob under supervision for the maximum allowable time.
- [26] The question now becomes whether allowing Mr. Jacob to serve this jail sentence in the community under a conditional sentence order would be consistent with the principles of sentencing. After a careful consideration of the facts and the law, I have concluded that it is not. Mr. Jacob's moral culpability is high. The circumstances are aggravated by the factors listed above, including the number of offences and the fact that they involve a serious breach of trust. As recently stated by our Court of Appeal in *R. v. Maslehati*, 2024 BCCA 207

at para. 113, a conditional sentence order will generally not be a fit sentence without a factual finding of diminished blameworthiness or compelling mitigation. No such diminishing factor is present in this case. I find that a conditional sentence order is not an appropriate sentence.

Conclusion

[27] Stand up please Mr. Jacob. I sentence you to a period of incarceration of 2 years less one day plus three years probation to follow. The terms of the probation are as follows:

- a) Report to a probation officer upon your release from jail and thereafter as and when directed;
- b) Keep your probation officer informed of your current residential address and employment and not change either before advising your probation officer;
- c) You are to have no contact directly or indirectly with any of the complainants. That includes texting or messaging them through social media or sending them messages through other people;
- d) You are not to work as a masseuse or in any capacity in which you are alone with females;
- e) You are to participate in and successfully complete counselling as directed by your probation officer including but not limited to sex offender treatment programs.

[28] In addition, I make the following ancillary orders:

- a) Pursuant to s. 109, you are prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, firearm arm, ammunition, prohibited ammunition and explosive substance for a period of 10 years;
- b) Pursuant to s. 487.051 you must provide the number of samples of bodily substances reasonably required for the purpose of forensic DNA analysis. These samples will be taken from you in custody;
- c) Pursuant to s. 490.012, you must comply with the provisions of the Sex Offender Information Registration Act (SOIRA) for 20 years.

[29] Finally, I order that you must pay a Victim Fine Surcharge of \$200 per count. The total amount of \$1000 must be paid within 9 months of your release from custody.

"The Honourable Madam Justice Murray"

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Prepared on 28 October 2026 · Esheria