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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 164



Case No: 2022/01758/B3

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 3rd February 2023

B e f o r e :

LORD JUSTICE COULSON

MRS JUSTICE CUTTS DBE

HER HONOUR JUDGE MUNRO KC

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

MUHAMMED JAN

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Non Counsel Application

J U D G M E N T



Friday 3rd February 2023

LORD JUSTICE COULSON:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. The applicant is now aged 26. On 9th December 2020, following a trial in the Crown Court at Derby before His Honour Judge Bennett and a jury, he was convicted of a number of serious sexual offences, including two counts of rape. He was sentenced to an extended sentence of 18 years, pursuant to section 279 of the Sentencing Act 2020, comprising a custodial term of 14 years and an extended licence period of four years.

3. The applicant renews his application for leave to appeal against conviction, following refusal by the single judge. He also renews his application for an extension of time of approximately one year and four months in order to make that application.

4. The applicant's offending arose out of four separate attacks on four different sex workers in the Arboretum Park area of Derby. We summarise the evidence against him in a little detail because, in our view, it amounted to an overwhelming case.

5. Complainant 1 was approached by a man on a bicycle in the Park. She was grabbed forcefully and pinned down. The man got his hand underneath her clothes. His finger penetrated her anus. She felt his penis between her legs, but he did not manage to penetrate

her before he ejaculated over her leg. He mounted his bike and rode away. Swabs were taken from complainant 1's right leg and found to be a match for a full DNA profile of the applicant. Complainant 1 subsequently attended an identification parade and positively identified the applicant as her assailant. In relation to complainant 1, the applicant was convicted of count 1, assault by penetration, and count 2, attempted rape.

6. Complainant 2 was taken into the grounds of a house near Arboretum Park by a man where he started to manhandle her. She was raped, both vaginally and orally. She told him to stop, but he did not do so. At one point he told her, "If you don't stay still, I'm going to fucking punch you". Afterwards, the man walked away, pushing his bike. The complainant described the man as looking "a bit Asian". She, too, identified the applicant at an identification parade. In relation to complainant 2, the applicant was convicted of two counts of rape (counts 3 and 4). It was count 4 which was taken as the lead offence, for which the extended sentence was imposed.

7. Complainant 3 was approached in the Park by a man on a bike. He subsequently grabbed her and put her arms behind her back. She felt him rubbing what she believed to be his penis against her waist, saying, "Come on, come on". She was scared and screamed. At that point he released her right arm and said, "I'm going to fucking punch you". He punched her on the side of the head. She ran away. She later described the attacker as Asian. She did not pick out the applicant at an identification parade. In relation to complainant 3, the applicant was convicted on count 5 (sexual assault).

8. Complainant 4 was grabbed from behind in the park by a man who ground his hips into her bottom. She reached for her phone to dial 999, but he snatched it from her. When he returned the phone, she could see a wet patch on his trousers. She described the man as having a tanned skin, "similar to that of an Italian or an Iraqi". She identified the applicant as

her assailant at an identification parade. In relation to complainant 4, the applicant was convicted of count 6 (sexual assault).

9. In short, three out of four complainants positively identified the applicant in identification procedures. There was a DNA analysis which matched his full profile. There was CCTV evidence and body-worn footage from a police constable. Furthermore, there were the similarities in the attacks, including the fact that the assailant rode a bike, usually grabbed his victim from behind, and said to two of the complainants when they resisted, "I'm going to fucking punch you".

10. The applicant was subsequently arrested and interviewed. In the first three interviews he denied any involvement. But in the fourth interview he admitted giving a girl £20 and said that, when he asked for £15 back, she ran away. He said that he grabbed her and she started to scream. He could not recall if he ejaculated. In that interview, he was then asked about complainant 2 and what she had said. The applicant then replied: "Okay, I'm a criminal. I'm being driven crazy. I don't remember having done all the crimes, but maybe one or two". When at this fourth interview he was asked why he had committed these offences, the applicant responded: "Just human. People make mistakes. I've done these crimes. I've done them. I can't deny them now. So whatever they want to do with them, they can. I'm now a criminal".

11. In his fifth and final interview, the applicant again admitted the offence against complainant 1. He admitted grabbing her by force, taking out "my thingy" and ejaculating. In respect of complainant 1's anal penetration allegation, he said: "My hand may have gone there, but I can't remember as I was using force and it finished".

12. Despite these admissions, the applicant fought his trial. All four complainants were

cross-examined. It was suggested that they had colluded together and that, in respect of complainant 1, sexual contact had been consensual. Sexual contact was denied in relation to complainants 2, 3 and 4. The applicant gave evidence consistent with that case. He admitted that he made the admissions in interview but said that they were lies caused by his being confused, under pressure, tired, depressed and misguided by his solicitor.

13. In refusing the application for leave to appeal, the single judge made the following observations:

"In broad terms you seek to appeal your conviction on the basis that there was insufficient evidence to convict you. In particular, that there had been collusion between the complainant witnesses, that the identification evidence was insufficient for a jury to be sure that you had been correctly identified and because one of the complainants had a hostility towards you.

Although one of the complainants [complainant 3] did not identify you from the ID parade, the other three complainants all picked you out at an ID exercise. There was also description evidence which helped identify you and some similar features to each incident that suggested each attack had been done by the same person – such as the bicycle which strengthened the prosecution case. There was the DNA evidence of your semen on the clothes of one of the complainants. There were also the problems with what you said to the police when you were interviewed by them, which you later said were lies.

In the summing up the judge carefully explained to the jury to consider if there had been any collusion between any of the witnesses and how it would affect the reliability of the ID evidence. He also reminded the jury of the risk of identification evidence and for the jury to really think about its reliability before convicting you. He addressed all the points you make in your grounds of appeal so that the jury could consider the points in your favour that had been made by your barrister.

Having read the entire summing up by the judge and looked at the evidence against you, it is not reasonably arguable that your conviction was unsafe."

14. We respectfully agree with that assessment. The particular points made in the grounds of appeal, such as collusion and alleged false statements, were raised at the trial and all were the

subject of careful directions to the jury by the judge. They cannot give rise to any sustainable grounds of appeal.

15. The applicant's grounds of appeal also appear to include oblique complaints about his previous legal advisers. We have considered those, but in our view there is nothing in them. First, the applicant said that he was advised by his solicitor to plead guilty. In the light of the overwhelming evidence against him, such advice, if it was given, would have been entirely unsurprising. But since the applicant did not plead guilty, it is impossible to see what follows from this complaint in any event. Although the applicant refers more generally to "poor advice", he does not say what that advice was, despite being asked, and does not indicate why or how that advice was poor, and why or how it calls into question the safety of his convictions.

16. The applicant has also said that "There is plenty of evidence to prove [his] innocence". He has again been asked to identify what that evidence might be, but he has not responded to that request. We cannot, therefore, give any weight or credibility to that generalised assertion. There is no explanation of why this evidence was not adduced at the trial.

17. In his representations as to why the court should not make a loss of time order, the applicant indicated that he later found out, from a different lawyer, that he should have been advised "to go no comment in interview". Of course, we do not know what advice he was actually given. But, again, given the overwhelming nature of the evidence against him, which plainly called for some sort of answer in interview, repeating "No comment" in answer to every question would, in our view, have been a risky stance for the applicant to have adopted.

18. Finally, the applicant complains about the justice system not being fair and feeling

"racially targeted". Again, there is no evidence of any kind to support those general assertions.

19. For these reasons, we have no hesitation in refusing this renewed application for leave to appeal against conviction. In our judgment, the applicant's convictions for these serious sexual offences are entirely safe. In consequence, there is no purpose in us considering in detail the application to extend time. However, we should say that, on the papers before us, there is nothing to suggest that there was any reasonable excuse for the delay of one year and four months. Accordingly, the application for an extension of time is also refused.

20. For the reasons that we have given, we consider that these renewed applications are hopeless and should never have been made. We are therefore of the view that this should be marked by the making of a loss of time order. We therefore make a loss of time order in this case of 28 days.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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