IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202303932/A1

[2024] EWCA Crim 427

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 16 April 2024

Before:

LORD JUSTICE WARBY
MR JUSTICE SAINI
HER HONOUR JUDGE KARU
THE RECORDER OF SOUTHWARK
(Sitting as a Judge of the CACD)

REX
V
CHRISTOPHER PEARCE

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MR K AL'HASSAN appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

1. The anonymity provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. The effect of those provisions is that the victim of the sexual offences to which we will refer is entitled to lifelong anonymity. Nothing relating to her must be included in any publication if it is likely to lead members of the public to identify her as the victim of the offences. We have anonymised the judgment accordingly.
2. On 20 October 2023 Christopher Pearce, aged 31, was convicted of one count of rape contrary to section 1(1) of the Sexual Offences Act 2003 and one offence of sexual assault contrary to section 3 of that Act. On the same day he was sentenced by the trial judge, His Honour Judge David Dixon, to 14 years' imprisonment for the rape and three years' imprisonment concurrent for the sexual assault. He now appeals against sentence with the leave of the single judge.

The Facts

3. The appellant had been in a relationship with the complainant for some months between April and August 2021. Although this had ended they continued to be good friends and they often stayed overnight together.
4. On 8 November 2021 the appellant and the complainant met at a public house. When they left they went to stay at the home of the appellant's parents where he lived. The complainant's sister also ended up there that night having had an argument with her partner. At the house the appellant, the complainant and the complainant's sister all drank alcohol. They then all went to the same bed to go to sleep. They all had their clothes on.
5. Whilst the complainant was asleep the appellant removed her lower clothing and her tampon, inserted his penis into the complainant's vagina and ejaculated inside her. That was the count of rape. He also penetrated the complainant's vagina or her anus or both

with a wine bottle. That was the sexual assault.

6. When the complainant woke up she felt sore and thought she had been violated. She asked the appellant. He denied any wrongdoing. He did so again when she asked him later on that morning what had happened. There were text exchanges between the complainant and the appellant in which he was adamant that he had done nothing and she was adamant that she was being lied to.
7. The complainant later went to a rape clinic where injuries to her vagina and anus were confirmed, along with the presence of the appellant's semen. The complainant did not initially report the offending to the police but when the appellant continued to deny that he had done anything wrong she did so.
8. The appellant was arrested and interviewed. He denied again that any wrongdoing had taken place. Re-interviewed after expert evidence had been obtained he answered "no comment" to questions asked by the police.

Sentencing

9. Before the judge following the appellant's conviction were a victim personal statement from the complainant, which was read out to the court, a Police National Computer record showing that the appellant had no previous convictions and a written character reference. There was no pre-sentence report. It was not suggested at the time of sentencing that one should be obtained. We are satisfied that the case was and can be dealt with justly without the need for such a report.
10. In his sentencing remarks the judge first summarised the facts of the offending, and then outlined the impact on the complainant as described in her victim personal statement. He mentioned her account, that a year after the event she had been on the point of throwing herself off a bridge because of what the appellant had done, and that she had endured

nightmares and flashbacks and needed constant medication. He said that the impact on her had been terrible as it was for most women subjected to rape, but in the judge's view it was worse for her.

11. Addressing the sentencing guidelines, the judge held that the impact on the complainant amounted to severe psychological harm. The insertion of the bottle was additional degradation or humiliation and the victim was particularly vulnerable as she was both intoxicated and asleep. In combination, said the judge, those three Category 2 factors were enough to "boost the case" from harm Category 2 to harm Category 1.
12. As to culpability, the judge concluded after very careful thought that there was not an abuse of trust within the meaning of the guideline, which normally - for these purposes - relates to relatives or teachers or other people with caring responsibilities. He said however that the close friendship brought the case "incredibly close" to falling within that category. The case was thus in Category 1B with a starting point of 12 years' imprisonment and a range of 10 to 15 years.
13. The aggravating factors identified by the judge were ejaculation, the presence of the sister and what he described as the "bravado or masochistic desire" of the appellant to carry out what he did with the sister a matter of metres or less away. The mitigation consisted of the lack of previous convictions and "elements of good character" but the judge pointed out that the guidelines make clear that those factors carry little weight with an offence as serious as this.
14. Taking the rape as the lead offence to reflect the overall criminality, the judge identified the appropriate sentence as the one of 14 years which we have mentioned with three years concurrent for the sexual assault.

Grounds

15. The appeal is mounted on the grounds that the total sentence of 14 years imprisonment was manifestly excessive for essentially two reasons.

16. First, it is said that the judge miscategorised the case. In his written grounds Mr Al'Hassan submitted that the judge had treated the case as within guideline Category 1A and was wrong to do so. Counsel argued, as he had at the time of sentence, that this was a Category 2B case at its highest. He conceded that the case was in Category 2 because there was severe psychological harm, albeit there was no medical evidence. But he contended that no other Category 2 factors were present. As for culpability, it was not a case of abuse of trust and none of the other culpability A factors was present.

17. In his oral submissions today, now having the benefit of the transcript, Mr Al'Hassan has correctly recognised that in fact the judge applied the guideline for a Category 1B offence. He has however maintained the submission that the judge was wrong to treat the case as falling within harm Category 1.

18. The second ground of appeal is that the judge gave excessive weight to the victim impact statement and the aggravating features of the case and insufficient weight to the appellant's good character and the absence of premeditation.

19. Mr Al'Hassan has briefly developed these points in his oral submissions today.

Discussion

20. We have given these arguments careful thought.

21. The sentencing council guideline states in relation to harm Category 1 that:

> "The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors **may** elevate to category 1."

It is therefore open to a sentencing judge to conclude, for instance, that an extreme case

of severe psychological or physical harm requires of itself an upward adjustment to the highest category. In this case the judge made that adjustment on the basis of three factors: the psychological harm, the additional degradation and the complainant's vulnerability.

22. We are not persuaded that this approach was unjustified.

23. The judge properly identified the complainant as “extremely vulnerable” due to being asleep and intoxicated. We see no basis for questioning his conclusion that there was additional degradation here. The facts spoke for themselves and the judge had presided over the trial at which the complainant gave evidence by ABE interview and live cross-examination.

24. As for the degree of harm, the complainant's victim personal statement was a detailed and vivid account prepared the day before the appellant's conviction and sentencing, which was nearly two years after the offending. The statement went well beyond the matters briefly summarised in the judge's sentencing remarks. It referred to physical injuries and described their impact. It disclosed a history of anxiety and depression made considerably worse by the experience of being raped and assaulted in the way we have described. The statement gave a graphic description of the complainant's preparations for suicide which she said was prevented only by a friend talking her down. The judge was clearly entitled to conclude that the impact on the complainant was, in the way he put it, not just terrible but worse.

25. In these circumstances the judge was entitled to apply the guideline for an offence in Category 1B. He thus had to take the category starting point of 12 years and adjust upwards or downwards as appropriate to reflect the facts of the case and the aggravating and mitigating features.

26. We do not accept that he was wrong to make an upward adjustment. In our opinion a substantial upward adjustment was merited.

27. The judge was right to say that this was not a case of abuse of trust for guideline purposes but he was not required to ignore the facts of the case. The appellant took advantage of a physical closeness that resulted from his status as a trusted friend and ex-partner of the complainant. Ejaculation and the presence of others are specified in the guideline as aggravating features. These matters comfortably outweigh the absence of previous convictions and the character reference. The lack of convictions is specifically designated in the guideline as a matter which "will not normally justify a reduction". The character reference took the form of a letter from someone who had come to know the appellant through the local golf club and had employed him in a building company many years earlier. It could not bear any real weight.

28. Further, having quite properly decided to impose a sentence for the rape which reflected the overall criminality, the judge inevitably had to make an upward adjustment in the lead sentence to reflect the sentence for the sexual assault. The sentence of three years for that separate offence is not criticised.

29. In all these circumstances we do not consider that the overall upward adjustment of two years from the category starting point for the rape offence was too great nor do we think the resulting overall sentence was manifestly excessive.

30. The appeal is therefore dismissed.

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

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