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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 1st November 2018

Before:
LORD JUSTICE GROSS

MR JUSTICE MARTIN SPENCER

and

HIS HONOUR JUDGE KATZ QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

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Mr J P Hedgecoe appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Thursday 1st November 2018

LORD JUSTICE GROSS: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. By leave of the single judge the appellant appeals against a sentence of 22 years' imprisonment imposed by His Honour Judge Thompson in the Crown Court at Chester on 11th June 2018 after the appellant had been convicted by a jury of various sexual offences committed against two children and an adult (his daughter, his stepdaughter and his niece respectively).

2. This is a case to which the provisions of the Sexual Offences (Amendment Act) 1992 apply. No matter relating to the victims of these offences shall during their lifetime be included in any publication likely to lead members of the public to identify those persons as victims of these offences. This prohibition shall apply unless waived or lifted in accordance with section 3 of the 1992 Act.

The Facts

3. The offences of which the appellant was convicted spanned the period from about November 1978, when he was aged 24, until July 2008, when he was aged 53 – a period of almost 30 years, during which, for his own sexual gratification, he abused children with regard to whom he was in a position of trust.

4. The first victim was his stepdaughter, "JN", who thought of him as her father and trusted him. The appellant had sexually assaulted JN on a repeated basis between the ages of 6 and 13; and from when she was aged only 9 he raped her on at least seven occasions.

5. The abuse would occur at the family home which JN shared with the appellant, her mother and her siblings. The abuse initially took place during bath times. When bathing JN the appellant would touch her vagina whilst saying things like, "We need to keep you clean for when you get older and things can happen properly". The appellant would insert soap into JN's vagina, causing her pain. She was made to stand in the bath with her legs open while the appellant applied soap to her vagina under the guise of washing her. He would also make JN touch his genitals. He stopped only if her mother shouted up to them. This occurred every time JN was bathed by the appellant over a number of years.

6. When her mother left the house to go shopping, the appellant would get JN to sit on the sofa with him. He would use a cover to hide his guiding JN's hand to his genitals and making her masturbate him, often to ejaculation. He would give JN 50 pence and tell her that she was a "good girl". At that age, JN trusted the appellant and did not know that what he was doing was wrong. This was reinforced by the appellant who told JN that all fathers and daughters engaged in such behaviour and that it was "normal". The appellant would also abuse JN while her mother was in the house. He told her not to tell anyone.

7. JN recalls being sexually assaulted while they visited her aunt's address. The appellant took her into the toilet and indecently assaulted her over her clothing.

8. JN was first raped by the appellant at the age of 9. The appellant had been left to look after JN and her siblings while their mother was out. That JN awoke to find the appellant on top of her. He had pushed her nightie above her waist and penetrated her vagina with his penis,

causing her considerable pain. He told her that it was "all right" and that he was "not going to hurt [her]". This continued for around ten minutes. The appellant stopped when JN told him that she felt sick. She then went into the bathroom. She could not remember whether he ejaculated but did recall crying into her pillow afterwards. The appellant went on to rape JN a number of times, always in her bedroom and always causing her pain.

9. She recalled that the last rape occurred when she was aged 10. It took place in her bedroom while her 3 year old sister was also in the room. As the appellant raped her, JN told him to stop and said that she hated him. The appellant was apparently shocked by this response and told her that she was his daughter and that he loved her. She told him that he had hurt her and she hated him.

10. When JN was aged 13 her mother's relationship with the appellant ended. It was then that she discovered that he was not her biological father. When her mother asked her if the appellant had ever sexually abused her, she initially denied it because she had been told that her mother would no longer love her if she found out. After persistent questioning, JN eventually disclosed the abuse to her mother. She recalled that it was reported to the police and that she underwent a medical examination at the time, although she did not provide any formal account to the police herself.

11. The second victim was the appellant's natural daughter, "TB". He subjected her to sexual abuse between the ages of 11 and 16, between July 2003 and July 2008.

12. When she was growing up TB lived with her mother, the appellant and two brothers. TB recalled the first incident when she was aged 11 or 12. When TB asked the appellant for £10 to top up her mobile telephone, he told her that she could "do something" for him. He exposed his penis to her and put her hand on it. He then instructed her how to masturbate him. TB removed her top and her bra and the appellant looked at her chest while she masturbated him. After he ejaculated the appellant then gave TB the money that she had requested. He told her that what had happened was between them and that she should not tell anyone. At the time TB did not know that this was wrong and thought that all fathers behaved in a similar manner.

13. The second instance of abuse occurred in the appellant's bedroom. TB had asked for some pocket money. The appellant agreed to give her the money if she masturbated him again. She masturbated him until he ejaculated. She was then given her pocket money. This became a regular occurrence.

14. It was when she reached the age of 13 that TB realised that what was happening was wrong but she was unable to stop it. It was also around this time that the appellant began to touch her vagina. The first time he digitally penetrated TB's vagina, he told her that it felt nice. She replied that it did not, but the appellant continued regardless. He told her that she would enjoy it "in a minute". He then made TB masturbate him until ejaculation.

15. A feature of the appellant's abuse against TB was that he would ask her to take off her clothes while she masturbated him. This would happen once or twice a week. He would also offend against TB while others were nearby. The appellant would get her to perform sexual acts on him if she was grounded. If she complied, he would then let her out.

16. When TB was aged 14 or 15, the appellant asked her to wash his back while he showered. He then asked her if she had ever performed oral sex on her boyfriend. When she told him that she had not, the appellant asked: "Do you want me to show you?" He said that he needed "cheering up" and would give her some money. The appellant told her to open her mouth and

suck his penis "like a lollipop". When TB nearly vomited, he told her to use her hand instead.

17. From when she was 15, the appellant would regularly photograph TB naked and in sexualised poses. If she refused, the appellant would shout at her, prevent her from going out and threaten to make her life difficult.

18. Just before she turned 16, TB commenced a relationship with a young man. When she asked the appellant if she could see the young man in Manchester he agreed on condition that she gave him a "hand job" and allowed him to take pictures of her. If she did as he asked, he would take her to the station and give her some spending money. She did as requested, but she then stayed away from the family home for a month.

19. After she discovered that she was pregnant, TB returned to live with the appellant, accompanied by her boyfriend. While there she avoided the appellant and no further abuse took place. During Christmas 2009, TB had a verbal altercation with the appellant. When her boyfriend asked why she was upset she told him about the abuse. The couple left the property immediately and did not return. She later told her mother who disbelieved her and they stopped speaking as a consequence.

20. The final victim, "TW", was the appellant's niece. After moving to North Wales at the age of 12, her interaction with the appellant was limited to family funerals. Shortly before Christmas 2015 the appellant contacted her through Facebook and they made arrangements to meet. TW knew that the appellant was estranged from other members of the family, but she wanted to give him a chance, particularly as he provided a link to her deceased mother.

21. The appellant collected TW from a local supermarket car park in Anglesey and took her back to his address. While there they consumed alcohol. During their conversation TW disclosed the abuse which she had experienced at the hands of one of the appellant's brothers. The appellant said that he believed her and would support her. However, he then began to touch her legs and to ask her "Is it nice?" The appellant told TB that he used to do the same to her mother with whom he claimed to have had "a special relationship". TW's mother had previously talked about being abused but had never said who had been responsible.

22. By this time TW was very intoxicated. The appellant lay on the floor and she straddled him. The appellant was unable to maintain an erection and they did not have sexual intercourse. TW vomited and they slept in separate beds. The following day the appellant told TW that they had not done "anything wrong". She was angry about what had happened and when the appellant attempted to touch her again she told him that she was menstruating. This did not deter the appellant who continued to touch TW over the top of her sanitary pad. TW stayed with the appellant for three nights. Throughout that time the appellant continually attempted to instigate sexual contact between them.

23. When she returned home, TW received text messages from the appellant requesting that she visit him again. She did so a few weeks later. The first day the appellant attempted to engage in sexual activity with her, but she became very intoxicated and so he stopped. The following day he entered the bathroom while she was having a bath. He washed her back. TW described feeling trapped. They went into his bedroom and lay on his bed. TW said that she was still feeling the effects of the previous night's alcohol. She then suddenly realised that the appellant was engaging in sexual intercourse with her. The appellant stopped when TW asked him to but he continued to touch her. TW masturbated him to ejaculation. Throughout the appellant told TW that they had done nothing wrong. She left later that day and decided not to visit him again.

Victim Personal Statements

24. All of the three victims have suffered significantly as a result of the appellant's offending. So far as JN (his stepdaughter) is concerned, it has affected her relationships. She developed an obsessive-compulsive disorder about cleaning because she felt so dirty. For years she slept with a knife under her pillow. She is plagued by nightmares and bouts of depression. This has ruined her relationship with her own mother and she has suffered feelings of guilt about what the appellant went on to do to his own daughter.

25. TB has suffered from chronic anxiety and panic attacks, nightmares and depression. She began to self-harm as a child, cutting her wrists. She is now overprotective of her own son and she has had great difficulties in having a physical relationship with her partner. She, too, has entirely lost her relationship with her mother.

26. TW was already a very troubled and vulnerable person as a result of the sexual abuse committed against her by the appellant's brother. Her vulnerability was exploited by the appellant. She suffers from post-traumatic stress disorder, a borderline emotional personality disorder and, perhaps unsurprisingly, she suffers dreadful trust issues.

27. The effect of the appellant's offending against each of the victims has been aggravated by their need to attend court, to speak about matters which were highly embarrassing and personal for them, to relive the abuse they suffered, and to endure the indignity of cross-examination which suggested that they were liars and had colluded to concoct lies about the appellant. In fact, none of those challenges was well-founded. On the contrary, those three young women were telling the truth and their evidence has been endorsed by the verdicts returned by the jury.

The Sentences

28. By reference to the principle of totality, the learned judge adopted concurrent sentences for the different charges pertaining to each individual victim, but then made the overall sentence in relation to each victim consecutive to the sentences for the other victims.

29. In relation to JN, by far the most serious offence was count 8, the specimen count of rape when she was aged only 9 years, and for which the judge imposed a sentence of sixteen years under section 236A of the Criminal Justice Act 2003, comprising a custodial term of fifteen years and an extension period of one year. The other offences of indecent assault (counts 1 and 3) attracted concurrent terms of five years' imprisonment.

30. For the offences against TB (counts 11 to 17), the sentences totalled five years' imprisonment, which were ordered to run consecutively to the sentences imposed for the offences against JN. That made a total of 21 years' imprisonment.

31. Finally, in relation to the offences against TW, the jury convicted the appellant of penetrative sex with an adult relative (count 10), whereby he intentionally penetrated her vagina when she was over 18 years of age and when he knew that he was related to her, namely that she was his niece. For that, he received a further consecutive term of 12 months' imprisonment.

32. On behalf of the appellant, Mr Hedgecoe argues that the total sentence of 22 years' imprisonment was manifestly excessive. He submits that, even allowing for the serious nature of the appellant's offending, a total sentence of eighteen years' imprisonment would have been both appropriate and proportionate. He concedes that no single sentence in respect of any of the offences on the indictment can properly be criticised and that consecutive sentences in relation

to each complainant was appropriate; but he submits that the total sentence, viewed as a whole, was manifestly excessive.

33. We disagree. In our judgment, the total sentence of 22 years' imprisonment was well within the range of sentences which the sentencing judge could reasonably impose. We have no doubt, for example, in relation to count 15 (assault by penetration), whereby the appellant penetrated the vagina of his daughter, TB, with his finger when she was aged 13, without her consent – an offence for which we note the maximum sentence is life imprisonment – the sentence of five years' imprisonment would have been significantly longer had this offence stood alone. The sentence of five years' imprisonment could only have been imposed by reference to the principle of totality.

34. In his sentencing remarks the learned judge said this:

"I should also say that the sentences I am about to pass do not and cannot adequately reflect the effects on or suffering of the complainants in this case. I have already indicated that the complainants have each endured terrible turmoil in their lives as a result of your offending and the individual sentences on individual counts are in no way meant to reflect that suffering.

This was the systematic abuse of two children when you were in a position where you were trusted and responsible for their welfare. That was abused and exploited by you in a very determined way over a substantial period of time. Years later you groomed and then exploited your niece, already a victim of sexual abuse and someone who turned to you for support. The abuse I find in all cases involved a gross breach of trust ..."

We agree. We consider that the sentencing judge had full regard to the totality of the sentence by reference to the totality of the offending.

35. It is submitted by Mr Hedgecoe on behalf of the appellant that a total sentence of eighteen years' imprisonment would have been both appropriate and proportionate. Even if his submission were correct, which we do not necessarily accept, it would not follow that it would mean that a sentence of 22 years' imprisonment was manifestly excessive.

36. In our judgment, there is in all these cases a range of sentences within which the sentencing judge has an element of discretion. It is for this reason that the law requires the sentence to be not merely excessive, but manifestly excessive.

37. We do not consider that the sentence in this case was even excessive, let alone manifestly excessive.

38. For these reasons this appeal against sentence is dismissed.

39. We do, however, quash the victim surcharge order because not all of the offending was committed after 1st October 2012.

40. Mr Hedgecoe, we are very grateful to you for your submissions. We feel that you made every point that could be made on behalf of the appellant.

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