

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM BLACKFRIARS CROWN COURT
Mr Recorder Solley
T2010 1063

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2019

Before:

LORD JUSTICE SIMON
MRS JUSTICE LAMBERT

and

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

Between :

Regina

Respondent

and

Richard Carroll

Appellant

Ms Lucie Wibberley (instructed by Powell, Spencer and partners) for the appellant
Mr Paul Jarvis for the prosecution.

Hearing date: 25 July 2019

APPROVED JUDGMENT

Lord Justice Simon:

Background

1. This is the application of Richard Carroll ('the applicant') for leave to appeal against conviction and to rely in support of that application on fresh evidence which was not available at trial. There is also an application for an extension of time in which to seek leave to appeal. That is because the appeal relates to the applicant's conviction in the Crown Court sitting at Blackfriars on 13 May 2011.
2. The conviction was in relation to a single charge of racially aggravated harassment, contrary to s.32(1)(a) of the Crime and Disorder Act 1998, following a short trial that took place over two days before Recorder Solley QC and a jury.
3. In summary, the complainant (Jennifer Rahman) and the applicant were neighbours living in flats owned by the Innisfree Housing Association in Medley Road in Camden. The local authority, the London Borough of Camden, had allocated a disabled parking bay on Medley Road to the Rahman family; and it is common ground that the applicant thought that there was a better deserving case for the allocation: namely, an elderly couple who lived nearby.
4. The prosecution case was that there had been three incidents of threats in July 2010 and that on each occasion the word 'Paki' or 'Pakis' had been used by the applicant.
5. The defence case was that the incidents relied on had not occurred. They had been invented by Jennifer Rahman. The applicant admitted speaking to Ms

Rahman about the use of the parking bay on 1 July; but had neither been abusive nor used racist language. He said the two other incidents described by her had not taken place.

6. The indictment charged the applicant with pursuit of a course of conduct which amounted to the harassment of Ms Rahman between 30 June and 15 July 2010, which he knew or ought to have known amounted to harassment and at the time of pursuing the course of conduct demonstrated towards her hostility based on her membership or presumed membership of a particular racial group (Pakistani), or that he had been wholly or partly motivated to do so by hostility towards members of a particular racial group. Three incidents were particularised in the Particulars of Offence.
7. If the jury were sure that he had used those words in the circumstances alleged, clearly the offence would be made out.

The trial and summing up

8. The only material witnesses were Ms Rahman and the applicant, although a police officer gave evidence (of the interview) as did the applicant's wife.
9. In the course of the summing-up, the Recorder directed the jury that the prosecution would have to make them sure that the words alleged or like words were spoken on at least two occasions in order to show a course of conduct, and reminded them that the issue in the case was whether the applicant had spoken the words at all: 'the defence is that it did not happen at all.'

10. Before summarising the evidence, the Recorder introduced two preliminary topics.
11. His first direction was about how the jury should approach the absence of witnesses. According to Ms Rahman, her husband had been present during the first incident on 1 July. However, he was medically unfit to attend trial and did not give evidence. The Recorder rightly directed the Jury not to speculate.
12. The second topic was the introduction of the applicant's bad character: a serious drink problem at about the time of the incident and a caution for possession of cocaine in 2009. The Recorder appears to have allowed this evidence to be introduced because when giving evidence the applicant's wife (in the Recorder's words) 'said all the warm and wonderful things about her husband'. It is unclear from the summing-up on what basis the evidence was introduced. It was either admitted under s.101(1)(f) and s.105 of the 2003 Act, to correct a false impression created by Mrs Carroll's evidence; or it was admitted under s.101(1)(g) and s.106 of the Act, on the basis that the defendant had made an attack on Ms Rahman's character by calling her a liar. The direction suggested both, and the confusion was not clarified by the Recorder inviting the Jury to take into account the fuller picture of the applicant's character and 'put it in the melting point.'
13. Ms Rahman gave evidence of the three incidents in which she described the applicant abusing her. On the first occasion (1 July), she said her husband was present and the applicant stood shouting at her about the parking space, threatening to damage her car and using the word 'Paki.' She had rung the police following this incident. On the second occasion (9 July), she was

walking nearby after a meeting with the local authority housing officer when the applicant and his daughter walked past, he said, 'Go home, Paki' and raised two fingers. On the third occasion (14 July), she was walking with her children and he called her a 'fucking Paki' and showed his fingers. She added that his daughter had asked him about that.

14. The Recorder also summarised the applicant's evidence. He had accepted that on 1 July, he had complained about the Rahmans' use of the parking space because he felt that there was an elderly couple who should have had the use of it. 'Nothing racist was said. It was just about the parking bay. I was outside having a cigarette.' His evidence was that on 9 July, he was at his daughter's primary school and therefore could not have come across Ms Rahman in the street. He denied either seeing or meeting Ms Rahman on 14 July.
15. For present purposes, four points may be noted. First, the prosecution case against the applicant rested on the evidence of Ms Rahman and not Mr Rahman. Her credibility was in issue in the trial but his was not. Second, the events took place nine years ago in July 2010. Third, there has been no suggestion of failures on the part of the prosecution to comply with its duties of disclosure. Fourth, subject to the admission of the evidence of bad character, a point which Ms Wibberley developed in the course of her oral submissions, there has been no suggestion that there were errors in the summing-up or that events took place in the course of the trial that are capable of rendering his conviction unsafe.

The grounds of appeal and the application to adduce fresh evidence

16. The applications are focussed on the discovery of new material since the trial, which is said to point to the propensity of Ms Rahman to make untrue allegations.
17. Before turning to this material, it is convenient to set out the terms of s.23(2) of the Criminal Appeal Act 1968:

The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to -

 - (a) whether the evidence appears to the Court to be capable of belief;
 - (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal;
 - (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and
 - (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings.
18. The issues that arise on the present applications are those identified in subsections (a) and (b).
19. The evidence relied on in support of the applications fall into four broad categories, some of which overlap: the oral evidence of Mr Araya Sengal; statements from other witnesses whose evidence was agreed to be read; Crime Reporting Information Systems reports on various incidents; and a Child and Family Assessment Report.
20. Before turning to this evidence, we should indicate our overall approach to the fresh evidence.

21. First, assertions of a propensity to be untruthful outside the trial process need to be approached with caution. At one end of the scale there may be cogent evidence which is relevant to the likelihood of a witness being untruthful: for example, a confession to lying or a conviction for perjury. At the other end of the scale there may be evidence which amounts to no more than suspicion, rumour and unproven assertions.
22. Second, evidence of what occurred long after the relevant trial will be of less assistance than evidence which is historically close to the trial. In the present case there was a wide-ranging application for disclosure of Crime Reports which the court confined to those made before 31 December 2014. However, even this covered a period of up to 3½ years after the trial.
23. Third, although no general rules apply, relevant oral evidence which can be tested by cross-examination is likely to carry particular weight. In the present case, the court was assisted by Mr Araya Sengal's willingness to give evidence on which he was cross-examined. In contrast, some of the 'fresh evidence' consisted of what a witness was told by someone else.
24. Fourth, in the present case, we were not assisted by evidence which might have been relevant to a propensity of Mr Rahman to make false allegations. Although he was said to have been present on the first occasion relied on by the prosecution (1 July 2010), he did not give evidence and his propensity for truth or otherwise is not an issue. Nor were we assisted by general assertions directed to the Rahman family.
25. Fifth, although we have set out the evidence relied on by the applicant, we have not heard evidence from Ms Rahman due to the nature of the application.

It may be, and we make that assumption, that she would deny that she has a tendency to make false allegations, and that she would say that she has simply been caught up in what has become a dense thicket of accusation and counter-accusation.

Fresh evidence

Mr Araya Sengal

26. As noted above, Mr Sengal gave oral evidence in support of the application. He is a microbiologist. Although he had a tendency to argue his point of view, he was an impressive witness overall. He had plainly been deeply affected by an allegation of serious offending which he believed had come from the Rahmans with whom there had been an ongoing dispute for a number of years.

- The anonymous allegations against Mr Sengal

27. Mr Sengal lived in close proximity to the Rahman family with his wife and two children, with a front door that opened close to that of the Rahmans'. He moved there in January 2008 into what was then a new building. The landlord of the two flats became the Innisfree Housing Association ('IHA'). At some point someone made an anonymous referral to the NSPCC. He presumed at the time that it was Mr Rahman. The investigation that followed looked into the complaints and found them to be entirely untrue.
28. The author of the report on the complaint spoke to the Housing Services Team Leader at IHA on 3 March 2016, stating that the Rahmans 'complain about everything'. They started to complain in 2008 when IHA took over the running of the flats and inherited the tenants that were living in them. Initially

the complaints were to do with property related issues, but more recently the complaints had been about other tenants.

29. The social worker concluded, without speaking to the Rahmans, that the referral made to the NSPCC was malicious, and the IHA Team Leader described it as being ‘likely’ to have been malicious. The neighbour was described as being threatening towards the Sengal family because they were thought to have formed an alliance with other residents of the block ‘ganging up’ against the Rahmans. In conclusion it was found that there was no evidence to support taking the matter further. Although in his oral evidence Mr Sengal said that he thought that the origin of the false complaint about him came from Ms Rahman, this remains unclear.
30. In our view, this evidence, directed as it was either to an anonymous informant or to either of the Rahmans does not advance the application. However, we record that the allegations were found to be baseless and malicious, and that the fact that they were made continues to cause distress to Mr Sengal.

- The other evidence of Mr Sengal

31. Mr Sengal was arrested in February 2015 following a complaint made by Mr Rahman that he had been assaulted and racially abused by him. No further action was taken by the police in relation either to Mr Rahman’s complaint against Mr Sengal or to Mr Sengal’s complaint that Mr Rahman had perverted the course of justice by making up this allegation.
32. In his prepared statement to the police in relation to this matter Mr Sengal referred to a number of allegations that Ms Rahman had made against him, which he denied, and in respect of which no further action was taken by the

authorities. Both in that prepared statement, and in his witness statements made in support of the present application, Mr Sengal referred to a conversation he had with the interim Housing Director, Diane Nestor, on 19 December 2014, in which Ms Nestor told him that Ms Rahman had made 15 complaints. Mr Sengal characterised those as a ‘long history of malicious complaints.’ It is unclear who those complaints were against and whether the words in quotations came from Ms Nestor or Mr Sengal himself.

33. In his witness statements, adopted in his oral evidence, Mr Sengal made a number of further allegations against Ms Rahman.
- i) In November 2014, she deliberately barged into him in the driveway leading from the flats as she came towards him. She then cried out, as if she had been herself assaulted. This incident appears to have occurred on 13 November 2014. Mr Sengal says he called the police who eventually came to speak to him about it. It will be necessary to consider this allegation in more detail below in the context of Crime Report 13 (see below).
 - ii) On 9 April 2015, Ms Rahman called the police to say that a black man had threatened her in her garden with a gun. It turned out it was only Mr Sengal’s children who had been playing in their back garden with water pistols.
 - iii) ‘Two years ago’ Ms Rahman made a complaint that Mr Sengal had kicked her door and called her a terrorist. As a result of this, she installed CCTV cameras at her address. She made a subsequent

complaint to the police about Mr Sengal. He speculated that she has undue influence in the housing association.

34. Mr Jarvis submitted that although it is clear that the relationship between the Rahman and the Sengal family had turned sour, the relationship was comparatively amicable until at least the autumn of 2012: over two years after the matters that gave rise to the applicant's conviction.
35. However, Mr Sengal also described how in 2010 Ms Rahman had asked him to be a witness in the case against the applicant and say that he was a racist. He refused and she ignored him after that. He said that his impression was that she wanted him to lie for her.
36. Mr Sengal also stated that he and the other tenants declined to sign a good behaviour agreement with the housing association because 'we have done nothing wrong, simply [Ms Rahman] is causing all of the trouble'. That assertion is at odds with the conclusion of the Assessment Report which was that at least some of the 'trouble' was caused by Mr Sengal and others making 'tit for tat' complaints against the Rahmans.

Depti Malhi

37. Ms Malhi works for the applicant's solicitors. Her witness statement is dated 3 April 2019. She said that she had spoken to Samira Abdulrahman two days earlier.
38. Ms Abdulrahman explained that 'malicious racial allegations by the Rahmans against her, her son (who is a youth) and her neighbours had been going on for the last 10 years'. She described a number of occasions, seemingly in 2019,

when the Rahmans alleged that she, Ms Abdulrahman, had been racially abusive towards them. Ms Abdulrahman denied those allegations. She said she did not want to create problems and had resolved to stay away from the Rahmans in future. She refused to provide Ms Malhi with a witness statement.

39. Ms Malhi also spoke to Christina Yamson, who provided a witness statement (see below). Ms Yamson confirmed that she had never been a target of any malicious allegations from the Rahmans, although she was able to provide Ms Malhi with ‘a wealth of information as regards other tenants and the accusations made against them by the Rahmans.’

Christina Yamson

40. Ms Yamson made a witness statement on 2 April 2019. She appears to be a neighbour of the Rahmans. Her ‘first problem’ with them was in April 2013. In 2014, her daughter was playing outside when Ms Rahman swore at her and put her finger up. It is not clear if Ms Yamson saw this incident or whether her daughter reported it to her. Ms Yamson believed Ms Rahman would make a complaint to the police about the incident, so she asked for mediation, which Ms Rahman refused. On another occasion in 2014 or 2015 Ms Yamson’s daughter was playing outside with a water pistol and Ms Rahman reported to the police that a black man had a gun. The police turned up in large numbers, but no action was taken. This incident is similar to the one described by Mr Sengal (see [33(ii)] above).
41. Innisfree Housing Association organised a meeting on 16 November 2016 to try and resolve tension on the estate. At the meeting Ms Rahman made a string

of accusations against Ms Yamson and Ms Yamson argued back. As a result of her behaviour Ms Yamson was issued with a warning letter.

42. Ms Yamson expresses her belief that there is a ‘vast history of false complaints made by the Rahmans since 2008 against various tenants’. However, as we have noted, the Assessment Report indicates that the complaints against the other tenants came later than that. Ms Yamson believes that the Rahmans know the police, insinuating that they are able to influence the authorities. She says that she is terrified of the Rahmans, although she does not claim that the Rahmans have ever made a complaint about her personally.

Doris Appleton

43. Mrs Appleton is an elderly lady who made a witness statement on 21 June 2018. She used to live opposite the applicant. She says that at some unspecified point in time, Ms Rahman alleged that Mrs Appleton had called her a ‘Paki’, and had abused her when Ms Rahman was getting out of a car. According to an unnamed police officer who spoke to Mrs Appleton, Ms Rahman’s allegation related to an incident that had taken place years ago. Mrs Appleton denies any such allegation. She believes that Mr and Ms Rahman must have seen her talking to the applicant and his wife. An elderly neighbour was also present during that conversation and he told Mrs Appleton that a similar complaint of racial abuse had been made against him.

The Crime Reports

44. The police disclosed thirteen Crime Reports in compliance with an order of this Court. Although we have considered the Crime Reports and bear in mind Ms Wibberley’s submission that it is the accumulation of information which is

significant, it is only necessary to refer to two of them. Nevertheless, as Mr Jarvis pointed out, there are no relevant Crime Reports in either 2012 or 2013.

45. Crime Report 12 concerns an incident in January 2014 in which Ms Rahman alleged that one of the teachers at her son's school grabbed her son by his wrist, although the report records that Ms Rahman did not regard it as a 'huge issue' and did not think that the teacher had behaved inappropriately. The allegation appears to have been made by the Rahmans' son and there was some support for the allegation in the bruising that was found on his little finger and wrist. The complaint generated a 31-page Crime Report, culminating in a decision to take no action. It plainly does not reveal, as was contended on the applicant's behalf, an 'unambiguously untrue' allegation by Ms Rahman.
46. Mr Jarvis acknowledged that the contents of Crime Report 13 are potentially relevant. On 16 November 2014, Mr Sengal is recorded as reporting an incident on 13 November 2014 in which he said that Ms Rahman had elbowed him as he was walking up the driveway from the block of flats in which they both live. He is reported as not wanting to 'substantiate' the allegation. He just wanted the police to be aware of it. This is the incident about which Mr Sengal gave evidence (see [33(i)] above). His oral evidence was that he did want to proceed with an assault case against Ms Rahman.
47. Mr Sengal asked the police to check the CCTV cameras that Ms Rahman had installed inside her address to see if the incident was shown. There is then a note from PC Craig to this effect:

Prior to this alleged incident I had a joint meeting with Innisfree Housing Association and both parties involved to resolve their petty issues. All parties involved have been warned by the police and Innisfree Housing Association of their ongoing behaviour and the amount of time being taken up to deal with them.

48. PC Craig described Ms Rahman as the suspect and Mr Sengal as the victim.

The officer viewed the CCTV footage several times and formed the view that, 'it was blatantly obvious no assault had occurred' because there was clear distance between Ms Rahman and Mr Sengal. This appears to refute Mr Sengal's account that Ms Rahman had struck him; but PC Craig also noted that Ms Rahman had her arms in the air in a theatrical fashion when it was clear that no contact had been made. The officer advised her to avoid Mr Sengal. He reported the incident to IHA, who said they would take action against her. It is unclear what, if any, action was taken. It is not clear from Crime Report 13 that Ms Rahman made any criminal complaint against Mr Sengal. It seems that he was the complainant in relation to this incident and that his complaint was regarded as unfounded, since the CCTV footage appeared to show no physical contact between them.

49. In his evidence before us, Mr Sengal insisted that Ms Rahman had struck him a blow as she passed; and suggested that the police officer cannot have seen the relevant recording to the extent that the incident was recorded.

50. In our view, this evidence suggests that the only conclusion that can be drawn is that no conclusion can properly be drawn.

Conclusion on the fresh evidence

51. Drawing the threads of the fresh evidence together, we have reached the following conclusions.

52. First, many of the incidents described in the witness statements that were served in support of the application do not distinguish between allegations directed at Mr Rahman and allegations directed at Ms Rahman. It is difficult to see how allegations of false complaints by her husband can logically give rise to doubts about Ms Rahman's credibility.
53. Second, there has been no admission by Ms Rahman that she has fabricated any allegation against her neighbours. Nor has there been any finding by a court or other tribunal to that effect. The closest there is to an admission is her apparent acceptance that no contact was made by Mr Sengal in the driveway incident, and the description of her own reaction by PC Craig as 'theatrical'.
54. Third, the nearest that there is to a finding is, on one view, the contents of the Assessment Report. The allegations to the NSPCC against Mr Sengal was found to be malicious. However, there was no finding that Ms Rahman was responsible for the allegations and the conclusion of the authors of the Assessment Report cannot be regarded as necessarily correct or admissible as against her. The report had the desirable consequence of absolving Mr Sengal; but it has no significant impact on the applications with which we are concerned.
55. Fourth, most if not all of the incidents complained of by witnesses seem to have taken place several years after the events of July 2010 which led to the applicant's conviction. The evidence of Mr Sengal indicates that his family's difficulties with the Rahman family began in or around 2012; and the first complaint to the police that involved the Sengals and the Rahmans was not until 2014, and it was made by Mr Sengal.

56. Fifth, although the Rahman family are accused of making false complaints against their neighbours, it appears that their neighbours are not averse to making complaints about them. As we have already noted, the conclusion of the Assessment Report was that allegations had become ‘tit for tat’, with most (but by no means all) emanating from the Rahmans. Crime Report 8 is an example of a complaint being made by Mr Sengal against Ms Rahman (apparently on behalf of his daughter), which the police did not proceed with.
57. Sixth, many of the incidents described in the witness statements amount to hearsay or multiple hearsay; and are unspecific as to the time that an incident is said to have taken place and how the witness became aware of it.
58. Finally, the submission in support of which the fresh evidence is deployed is that Ms Rahman had a propensity to make complaints that were untrue. In our view, the fresh evidence might raise a suspicion that this is so, but no more than that. However, and in any event, the fresh evidence would be of Ms Rahman’s reprehensible behaviour which does not have to do with the facts of the offence alleged to have been committed by the applicant. This is because the incidents took place some years later. It follows that evidence of these incidents would only be admissible at any trial if they are admissible by reason of one of the gateways in section 100 of the 2003 Act. Since the evidence consists of presently unproved allegations against Ms Rahman, any application to admit would undoubtedly generate satellite litigation at any trial. This case is in marked contrast to the case of *R v. Brewster and Cromwell* [2010] 2 Cr App R. 20 relied on by the applicant, where the fact that was sought to be

admitted was stark: the complainant's conviction for, among other offences, manslaughter.

59. The evidence relied on by the applicant is not of 'substantial probative value'. It might have had such value if the evidence related to allegations made by Ms Rahman that were close to the time of the incidents complained of in 2010 or the trial in 2011, and which were demonstrably false. However, the evidence which it is sought to rely on do not have these characteristics. They would have to be proved by evidence both as to the fact of complaint and to the known falsity. This is not a course that would appeal to any trial court, see for example *R v. Simmons (Darren)* [2018] EWCA Crim 2534 at [71]:

In any event, one would need to know far more about the allegations and when the complaints were made and in what circumstances. This may well have involved far too great a journey down the path of satellite litigation.

60. Applying the test in s.23(2) of the 1968 Act, we have concluded that much of the fresh evidence which is relied on is not capable of belief in the sense that it is not proof of what it is relied on for; and that the totality of the fresh evidence would not be such as to afford any proper ground for allowing the appeal, or bring into question the safety of the conviction.
61. Accordingly, we refuse leave to adduce the evidence and dismiss the application.
62. We have reached this conclusion without needing to consider Mr Jarvis's further argument that to allow the application in this type of case would open the floodgates to post-conviction challenges on the basis of the discovery of post-conviction conduct by a prosecution witness.

Postscript

63. This case illustrates some of the difficulties created in areas where neighbours have fallen out and accusation and counter-accusations are levelled. Sometimes these can be ignored, but often they cannot. The disclosures in this case have revealed a small part of what has plainly been a wholly regrettable waste of police and community resources in which neighbours repeatedly made accusations against each other. Valuable time and resources were spent investigating these claims and documenting the results, very often without any significant conclusions. This type of grievance can often be sorted out with good sense and good will. Where it cannot there is a danger of escalation. It is not for this court to suggest solutions to problems which are plainly not confined to this area of London; but sooner or later robust responses may be required to deal with what may become anti-social behaviour.