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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 14th November 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE WARBY

and

HER HONOUR JUDGE MUNRO QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

JOHN ANTHONY BROADHURST

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Mr S Vullo QC and Mr A McGee appeared on behalf of the Applicant

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J U D G M E N T
(Approved)

Thursday 14th November 2019

LORD JUSTICE HOLROYDE:

1. This is a renewed application for leave to appeal against a sentence of three years and eight months' imprisonment for an offence of manslaughter by gross negligence.

2. The applicant (now aged 41) had for a number of months been in a loving relationship with Natalie Connolly, who was aged 26 at the date of her death. They lived happily together with his son and her daughter. It appears that Miss Connolly derived sexual satisfaction from being beaten quite hard. On occasions, the couple engaged in sexual activity which included her being beaten by the applicant.

3. We summarise the facts of the offence as briefly as we can, but it is not possible to avoid mentioning some of the distressing detail.

4. On Saturday 17th December 2016, the couple drank steadily throughout the day and into the evening. After going out for a meal they returned to their home and continued to drink. They also took cocaine. Both were intoxicated, but Miss Connolly much more so than the applicant. They engaged in sexual activity in an area near the foot of the stairs. At Miss Connolly's request, the applicant hit her on the bottom and the lower back with his hand and then with a boot. He later told the police that he had stopped when he saw a bruise developing. He also struck her breasts with his hand.

5. After this beating, he said, he had at Miss Connolly's request inserted into her vagina a spray bottle containing carpet cleaner. This was a large item with a protruding plastic trigger mechanism. It became lodged in her vagina and the applicant was unable to remove it. He went upstairs to fetch some lubricant. He said that when he returned, he found that Miss Connolly had drunkenly fallen or stumbled and had injured her head. He saw that she was bleeding from the nose and that there was blood on a door and on the balustrade. He described Miss Connolly as having slurred speech and talking "gobbledygook" because she was very drunk. He then applied lubricant to his hand, inserted his hand into her vagina and managed to extract the bottle, but broke parts of the trigger mechanism as he did so. He saw that she was bleeding from her vagina. He did not, however, call an ambulance or seek assistance. He did not even cover her with a blanket. Instead, he left her, almost naked, lying on her back at the foot of the stairs and went to bed.

6. At about 9.23 the following morning, the applicant telephoned the emergency services. He said that he had just woken up and that Miss Connolly was dead. He unsuccessfully attempted CPR until a paramedic arrived and confirmed that Miss Connolly was dead.

7. Post-mortem investigation showed that the level of alcohol in Miss Connolly's blood was almost five times the legal limit for driving. In addition, there was cocaine in her blood. A very experienced defence expert witness said that he had never seen such high levels of alcohol and cocaine together.

8. There was in the case a substantial body of expert evidence. The medical cause of death, for which the prosecution contended, was a combination of the alcohol level and the physical injuries and resultant blood loss. The physical injuries included bruising to the head, a blow-out fracture to the left eye socket, and internal bleeding and tissue haemorrhaging on the bottom and lower back. The insertion and/or the removal of the spray bottle had caused lacerations of the vagina which resulted in arterial and venous haemorrhage.

9. The applicant was initially charged with murder and causing grievous bodily harm with intent. He stood trial on those charges. Over a period of about three weeks the jury heard the prosecution evidence and also the defence expert evidence, which was called back-to-back with prosecution expert witnesses.

10. At the conclusion of the prosecution case, the defence prepared to make a submission of no case to answer. The prosecution, however, then indicated a willingness to accept a guilty plea to gross negligence manslaughter. The applicant pleaded guilty to that offence, the particulars of which were that, in breach of the duty of care which he owed to Miss Connolly as his partner, the applicant "left her unsupervised at the foot of the stairs, without contacting the emergency services, in circumstances where there was a risk of death as a result of her condition which would have been obvious to a reasonable and prudent person". That breach of duty amounted to gross negligence, and the negligence was a cause of Miss Connolly's death.

11. The jury, by direction, returned not guilty verdicts on the two counts which they had been trying, and the prosecution offered no evidence on a charge of assault by penetration, which had not been before the jury. The prosecution made clear that, in contrast to the way in which they had presented their case thus far, they no longer alleged that any of Miss Connolly's injuries were inflicted unlawfully.

12. The judge, Julian Knowles J, was fully aware of all the details of the evidence, having presided over the trial. He had evidence in the form of Victim Personal Statements from Miss Connolly's family which made clear their pain and suffering. We, too, have read those statements. On any view, this offence has not only ended one life but has blighted many others.

13. Detailed submissions were made as to the application of the Sentencing Council's definitive guideline for sentencing in cases of gross negligence manslaughter. The prosecution submitted that the case fell into category B on the basis that "the offence was particularly serious because the [applicant] showed a blatant disregard for a very high risk of death resulting from the negligent conduct". They submitted, however, that the judge should not find that the case also fell into category B on the basis that "the negligent conduct was in the context of other serious criminality".

14. The defence submitted that the case fell into category D and that the category B factor on which the prosecution relied was not made out. They argued that the verdicts which had been entered were only consistent with the applicant having committed no unlawful act, and that he had engaged in no criminality beyond the admitted offence of gross negligence manslaughter. That offence, it was submitted, consisted of a failure by the applicant over a period of only a few minutes, when he was heavily intoxicated, to appreciate Miss Connolly's condition and call for an ambulance.

15. In his detailed and careful sentencing remarks, the judge accepted that some of Miss Connolly's injuries may have been caused as she drunkenly stumbled around. He also accepted that, notwithstanding her intoxication, Miss Connolly had consented both to being beaten and to having the spray bottle inserted into her vagina. He found, however, that the applicant had caused most of the injuries to Miss Connolly's breasts, bottom and lower back which, in the light of the medical evidence, he found to be actual bodily harm of quite a serious type.

16. On the authority of the decisions in *R v Brown* [1994] 1 AC 212 and *R v BM* [2019] QB 1, the judge held, rejecting defence submissions to the contrary, that Miss Connolly could not in law consent to that injury. He found, accordingly, that the applicant's failure to call for assistance was negligence which took place in the context of other criminality. Miss Connolly's

need for help arose in part because the applicant had unlawfully injured her.

17. The judge went on to say (at page 8B of the sentencing remarks):

> "Even if I am wrong about that and these injuries were not unlawfully inflicted, beating her in the way that you did, in the condition that she was in, so as to cause injury, lawful or not, is not something which I can properly leave out of account in determining the proper sentence. To do so would, it seems to me, ignore a cogent factor."

18. So far as the inserting of the spray bottle into the vagina was concerned, the judge accepted, on the basis of *R v Slingsby* [1995] Crim LR 570, that it was not an unlawful act. It was, however, grossly irresponsible conduct by the applicant and carried a high degree of risk. The judge added that when the applicant removed the bottle, breaking it and inflicting further injury as he did so, he saw that Miss Connolly was bleeding from her vagina and it must have been apparent that he had injured her internally. He said:

> "… yet you left her and went to bed. Your plea is an admission that you left that badly injured young woman to die in the saddest and most avoidable of circumstances."

19. The judge accepted that the applicant's decision to go to bed was one taken in an intoxicated state. But he rejected the assertion that the applicant had left Miss Connolly at the foot of the stairs because he thought it was "just another heavy night" and that she had been in a similar condition previously, without any problem.

20. The judge went on to say that Miss Connolly's state of intoxication added to her vulnerability and so increased the grossness of the applicant's negligence in failing to call for assistance. The judge pointed out that there was no prospect that Miss Connolly would herself summon the necessary assistance.

21. The judge reminded himself that the guideline states that in assessing culpability, the court should avoid an overly mechanistic application of the listed factors, particularly in cases to which they do not readily apply. In relation to the two specific points which had been discussed, he concluded, first, that the negligence had been in the context of the applicant having caused actual bodily harm of a serious type, but "was not quite the type of serious offending contemplated in category B". Secondly, he concluded that the applicant had shown blatant disregard for a very drunk and injured woman whose need for medical treatment was obvious, but may not have appreciated that, without treatment, she was at a very high risk of dying. His overall conclusion (set out at page 10H to 11B of the sentencing remarks) was as follows:

> "Category C of the guidelines applies to those cases where the offender's culpability falls between the factors as described in the high category, category B, and the lower category, category D. In my judgment, that is the situation here. Your case is not clearly within category B, but I do not accept the submission that this is a category D case. You were very significantly responsible

> for causing or permitting Natalie to get into the position whereby she needed medical help which you failed to summon in circumstances where her need for help was obvious.
>
> The features of this case that I have identified and the two criteria I have discussed, to which I have had measured regard, mean that your case is properly placed towards the upper end of category C."

22. Category C has a starting point of four years' custody and a range from three to seven years. In the circumstances which we have summarised, the judge moved upwards from the starting point to a sentence of five years and six months. He identified the aggravating factor of the applicant's intoxication, though warned himself against double counting in this regard. He treated the applicant, for sentencing purposes, as a man without previous convictions, and he took into account his general good character. He also took into account a number of matters of personal mitigation which had been advanced, including the applicant's remorse, his love for Miss Connolly, his plans for their future together, and his role as carer for his son. The judge treated the aggravating and mitigating factors as balancing each other out, gave full credit for the guilty plea, and so arrived at the sentence of three years and eight months' imprisonment.

23. In their written and oral submissions, which have been presented with great care, thoroughness and skill, Mr Vullo QC and Mr McGee argue that the sentence was manifestly excessive in length. In summary, they submit that the judge should have placed the case into category D, there being no reason to place it into any higher category. They further submit that, in placing the case at the upper end of category C, the judge started in the wrong category and then increased the starting point by wrongly taking into account the two culpability factors to which we have referred. In this regard, they repeat their submission that any finding of unlawful acts was inconsistent with the verdicts of the jury. They submit that the judge was wrong to apply the decisions in *Brown* and *BM* to the circumstances of this case. In this regard, they rely on *R v Wilson* [1997] QB 47. They go on to argue that, even if the judge was entitled to make a finding that the applicant had unlawfully assaulted Miss Connolly, causing her actual bodily harm, that was not "serious criminality" in the context of the category B factor. Given the entirely consensual nature of the activity, the beating of Miss Connolly should have been left out of account altogether; but the judge wrongly used that as a further reason for placing the case high in the category C range. The judge was also wrong to rely on "blatant disregard" in categorising the case as he did, when the specific category B factor in which that phrase appears had not been made out.

24. Counsel further submit that the judge failed to give due weight to the personal mitigation and wrongly treated the fact that the applicant was himself intoxicated as balancing out all of the matters of personal mitigation.

25. We have reflected on these submissions. Like the judge, we remind ourselves that the culpability factors in the guideline are not to be applied in an overly mechanistic manner. The offence of gross negligence manslaughter can be committed in a wide range of circumstances. The guideline requires that the sentencer must "reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence". Where a case does not fall squarely within a particular category, adjustment from the starting point for that category may be required before adjustment for aggravating or mitigating features.

26. The judge rightly concluded that the case did not come within category B. He was not then bound to ignore the two factors which had come close to placing the case into that category, and to drop to category D. The guideline states that a factor indicating medium culpability is that "the offender's culpability falls between the factors as described in high and lower".

27. As to the first of the two factors which have been the subject of particular submissions, the applicant had not acted negligently in the context of other serious criminality. But it was relevant that his actions had contributed to Miss Connolly being in the injured condition which made it necessary for the applicant, in the proper performance of his duty of care, to summon medical assistance. It was, in our judgment, also relevant that, at least to some extent, the applicant had done so by unlawful conduct. In this regard, we are not persuaded that there is any basis on which the judge's application of the principle in *Brown* and *BM* can be challenged. It is not, however, necessary for us to decide that point because, in any event, we have no doubt that the judge, in assessing culpability, was entitled to take into account the important fact that the need for medical assistance arose in part because the applicant had himself caused serious injury to Miss Connolly, whether he did so lawfully or unlawfully. We agree with the observation of the judge that to ignore that fact would be to ignore an important feature of the case.

28. As to the second of the two factors, the applicant had not shown a blatant disregard for a very high risk of death, but he had shown a blatant disregard for Miss Connolly's obvious injuries and for the obvious need to summon medical assistance. We are quite unable to accept the proposition, which seems to us to have underlain many of the applicant's submissions, that the judge should have sentenced on the basis that the applicant's gross negligence was of brief duration, partly excused by his own intoxication, and to be assessed on a basis which ignored his own role in Miss Connolly's serious injuries and incapacitated state.

29. At step 2 of the sentencing process, the judge was entitled, and in our view correct, to treat the applicant's intoxication with alcohol and cocaine as a serious aggravating factor. He took into account the personal mitigation. We accept that he might have given greater weight than he did to that mitigation. However, the judge had heard all the evidence over a period of about three weeks, and he was in the best position to assess such matters.

30. In refusing leave to appeal on the papers, the single judge expressed the view that the judge's reasoning cannot be faulted, and concluded that the sentence was not arguably manifestly excessive.

31. Having considered the matter afresh, and notwithstanding our gratitude for the submissions of counsel, we, too, are satisfied that there is no arguable basis on which the sentence could be said to be manifestly excessive.

32. This renewed application is accordingly refused.
