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No. 2018/03995/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 6th February 2019

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(The Lord Burnett of Maldon)

MRS JUSTICE CHEEMA-GRUBB

and

MR JUSTICE MARTIN SPENCER

R E G I N A

- v -

ADRIAN HART

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Miss C Maddocks appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Wednesday 6th February 2019

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

MR JUSTICE MARTIN SPENCER:

1. The appellant appeals with the leave of the single judge against a sentence imposed by Her Honour Judge Williams in the Crown Court at Maidstone on 10th August 2018, when he received an extended sentence of fifteen years, comprising a custodial term of twelve years and an extended licence period of three years for a series of sexual offences, including indecent assault and rape, committed principally in 2000 and 2001.

2. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. No matter relating to the victim of these offences shall during her lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of these offences. This prohibition shall apply unless waived or lifted in accordance with section 3 of the Act.

3. The victim in this matter was born in late 1986. The appellant was born on 20th June 1967 and was, therefore, almost 29 years older than her. In 2000, when she was 13 years old, he befriended her as she was walking to school with friends. He persuaded her to truant from school and to spend the day with him.

4. Over a period of time he groomed her, got to know her and bought her gifts and alcohol. This developed into sexual abuse with digital penetration. That was the subject of counts 1 and 2 of the indictment, which alleged indecent assault.

5. Count 3 of the indictment, which alleged rape, occurred in September 2000. The victim was still only 13 years old when the appellant had sexual intercourse with her for the first time in his car, having plied her with alcohol. Thereafter, he had sexual intercourse with her on many occasions. Those occasions are represented by counts 4 and 5 of the indictment, which also alleged rape.

6. In December 2000, by which time the victim had just turned 14 years of age, she became pregnant by the appellant. She was very unwell during the pregnancy and in February 2001 she miscarried.

7. Thereafter, the relationship deteriorated and ended in May 2001. But there were thereafter further episodes of sexual intercourse, again amounting to rape by reason of the victim's age, represented by counts 6 and 7 of the indictment.

8. The offending finally came to an end after the appellant had been involved in a car accident and the complainant had begun a new relationship.

9. Although in later years the appellant tried to renew contact with the victim by phoning her or sending her text messages, it was when he tried to get in touch with her through Facebook that she was prompted to report the abuse.

10. The appellant was arrested and interviewed. He admitted that he had been in what he called a "relationship" with the complainant. He said that he loved her, that they had got on well and had dated for seven to eight months. He accepted that they had had sexual intercourse

regularly and that this was wrong. He said, "These things happen". He described the sexual intercourse as consensual. Although he admitted that he had given the complainant alcohol, he said that she was never so drunk as to be unable to consent.

11. The appellant pleaded guilty pursuant to a written basis of plea as follows:

> "I accept there was an element of grooming given the nature of our relationship and her age. However, I believed us to be in a genuine relationship for part of the indicted time period.
>
> I deny using alcohol to intoxicate the complainant, but there were occasions when I was aware that she had been drinking.
>
> I believed that the complainant was older than she was until a few months into the relationship."

12. The complainant has been profoundly affected by the appellant's offending conduct. She has suffered from anxiety and depression, post-traumatic stress disorder and other mental health difficulties. She struggled with day-to-day life and she had alcohol problems. She had difficulties in her relationships and with her family. She has been in rehabilitation for alcohol problems and has sought help with her mental health difficulties. Unsurprisingly, she has had difficulties in trusting people. Her very moving Personal Impact Statement indicates that she blames herself and felt damaged.

13. The appellant has no previous convictions. He was of previous good character and had always worked. Furthermore, there was no evidence of any similar or other offending since the relationship ended in the summer of 2001 – that is over the seventeen year period prior to the appellant's arrest.

14. The author of the pre-sentence report, applying risk assessment tools, reported that the risk of re-offending was vanishingly small, but considered that those results were unrealistic in the circumstances of these offences. The author drew attention to the following factors which, in her opinion, should be taken into account in assessing the risk from the appellant: his age; the fact that he is now single; that he has no previous pattern of offending behaviour; that the offences were committed against a vulnerable adolescent; that the offences were committed over a period of about six months; that there is no violent offending recorded; and the fact that he has not appeared before the courts in the last 34 years. She assessed his risk of re-offending as being a medium risk of harm to persons under the age of 16 years due to his offending behaviour having occurred within "a domestic family setting". She said that he poses a low risk of harm to the public.

15. When sentencing the appellant, the learned judge said:

> "… you have expressed no true remorse in my judgment and no insight into your crimes. You have sought to justify and minimise your behaviour to the probation officer and to the court. You delude yourself that this was a romantic relationship when she was the child and you were the adult.
>
> … I take into account the … detailed pre-sentence report before me but it is my decision as to … what level of risk you pose. And, on all the evidence before me, I conclude that you do pose a

> significant risk of causing serious harm to children and young people by the commission of further specified offences and that in those circumstances it is necessary to pass an extended sentence of imprisonment in your case."

The learned judge then used count 3 (representing the first occasion of sexual intercourse and rape) as the count upon which to base the totality of the criminality and, after giving 20 per cent credit for the guilty pleas, imposed a fifteen year extended sentence, comprising a custodial term of twelve years and an extended licence of three years. For the other counts of rape, the sentence was a determinate sentence of twelve years' imprisonment on each count, to run concurrently; and for the two offences of indecent assault, the sentence was four years' imprisonment, also to be served concurrently. Thus, the total sentence was that imposed under count 3.

16. The single basis of this appeal is that the learned judge was wrong to find that the appellant was dangerous for the purposes of the Criminal Justice Act 2003 and to impose an extended sentence.

17. Miss Maddocks, who has represented the appellant on this appeal, argues that there was no sufficient basis upon which the learned judge could have found the appellant to be dangerous within the meaning of the statute. She draws to our attention the fact that the offences took place some twenty years ago; that there has been no re-offending since; and that the learned judge's conclusion that the appellant had shown no remorse or insight into his crimes is inconsistent with his pleas of guilty and with the terms of the pre-sentence report. The relationship between the appellant and his victim has not been repeated, and she argues that there is nothing to suggest that his behaviour was anything other than specific to that particular victim at that particular time. She disputes the suggestion that he would be a risk in a domestic setting. She points out that he has enjoyed the support of his family, including his daughters, throughout the proceedings in the court below.

18. In considering this matter, we refer to the decision of this court in *R v Lang* [2006] 2 Cr App R(S), where it was said that "significant risk" for the purposes of the 2003 Act means a risk that is "noteworthy of considerable amount or importance". We also refer to the previous decision of this court in *R v Xhelollari* [2007] EWCA Crim 2052, where the appellant had raped his victim after enticing her to his flat before they were due to go to a restaurant together to discuss how he could help her find a job. The court referred to the pre-sentence report in that case and said:

> "24. ... The risk assessment of the report was based entirely upon the perceived vulnerability of the victim and the unwillingness of the appellant to acknowledge guilt. ... The imposition of [an indeterminate] sentence in this case seems to us to lead to a conclusion that such sentences would always be passed on a first conviction for rape where, as is always the case, there must have been some psychological harm to the victim and where the offender refuses to admit guilt. That, in our judgment, is an inadequate basis on which to impose an indeterminate sentence on a necessary hypothesis that there is a significant risk of serious harm from future offending. Such a conclusion must be founded upon evidence rather than speculation or mere apprehension of some risk of future harm. ..."

19. In our judgment, much of what was said by this court in *Xhelollari* is mirrored in the present case. We consider that there was an insufficient basis for the learned judge to make a finding of dangerousness in this case. Of particular significance is that there was no pattern of offending involving different and separate victims. There has been no repetition in the 20 odd years since, and the objective tools for assessment of risk place the appellant in a very low category. Even if the probation officer was correct in her assessment that the assessment tools gave an unrealistically low risk of offending, she still only assesses the appellant as posing a medium risk of harm to persons under the age of 16 within a domestic family setting. This does not seem to us to justify a finding of "significant risk" to members of the public of serious harm which is required for the learned judge to have made her finding of seriousness.

20. In our judgment, there was no proper evidential basis upon which the learned judge could elevate the risk to a significant one in the circumstances of this case. In our judgment, the finding of dangerousness was unwarranted and should be overturned.

21. In the circumstances, the appeal will be allowed. The sentence under count 3 will be quashed and a concurrent sentence of twelve years' imprisonment will be imposed for count 3 in substitution, with the result that the sentence to be served by the appellant will be a determinate sentence of twelve years' imprisonment.
