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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202201876/B5
[2023] EWCA Crim 1428

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 10 October 2023

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(LORD JUSTICE HOLROYDE)

MRS JUSTICE McGOWAN DBE

MRS JUSTICE STEYN DBE

REX

v

DANIEL ADJEI

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MS S HARRIS appeared on behalf of the Appellant.
MR D ATKINSON KC appeared on behalf of the Crown.

J U D G M E N T
(Approved)

1. THE VICE-PRESIDENT: The appellant is an Italian national, who has been resident in this country since 2018, and currently holds pre-settled status until August 2024.
In December 2020 he was charged with a number of offences relating to sexual acts which he had committed in Italy between 2007 and 2010, against a young girl who was also an Italian citizen. In June 2021, in the Crown Court at Cambridge, he pleaded guilty to four offences contrary to section 25 of the Sexual Offences Act 2003. He was subsequently sentenced to a term of imprisonment.
2. With the leave of the single judge, he now appeals against his convictions, on the sole ground that the effect of Italian law of limitation was to deprive the courts of this country of jurisdiction over his offending.
3. We shall refer to the victim of the offences as “C”. She is entitled to the life-long protection of the provisions of the Sexual Offences (Amendment) Act 1992.
Accordingly, during her lifetime, no matter may be included in any publication if it is likely to lead members of the public to identify her as the victim of sexual offences.
4. We need say very little about the offences. They were committed when C was aged 13 to 16 and the appellant was aged in his 40s. They involved repeated acts by the appellant of digitally penetrating C’s vagina and causing her to masturbate his penis.
5. It is common ground between the parties, and we agree, that the appellant’s conduct constituted criminal offences, both under Italian law and, if committed in this country, under section 25 of the 2003 Act. As to the jurisdiction of the Courts of England and Wales over the acts committed in Italy, the prosecution was brought in reliance on section 72(3) of the 2003 Act. At the time when the appellant was charged, section 72 was in the following terms:

“If—

(a) a United Kingdom national does an act in a country outside the United Kingdom, and

(b) the act, if done in England and Wales ..., would constitute a sexual offence to which this applies
the United Kingdom national is guilty in England and Wales of that sexual offence.

(2) If—

(a) a United Kingdom resident does an act in a country outside the United Kingdom

(b) the act constitutes an offence under the law in force in that country, and

(c) the act, if done in England and Wales ..., would constitute a sexual offence to which this section applies
the United Kingdom resident is guilty in England and Wales of that sexual offence.

(3) If—

(a) a person does an act in a country outside the United Kingdom at a time when the person was not a United Kingdom national or a United Kingdom resident

(b) the act constituted an offence under the law in force in that country

(c) the act, if done in England and Wales ..., would have constituted a sexual offence to which this section applies, and

(d) the person meets the residence or nationality condition at the relevant time

proceedings may be brought against the person in England and Wales for that sexual offence as if the person had done the act there.

(4) The person meets the residence or nationality condition at the relevant time if the person is a United Kingdom national or a United Kingdom resident at the time when the proceedings are brought.

(5) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of

subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice—

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met

(b) showing the grounds for that opinion, and

(c) requiring the prosecution to prove that it is met.

(7) But the court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (6).

(8) In the Crown Court the question whether the condition is met is to be decided by the judge alone.

(9) In this section—

'country' includes territory;

'United Kingdom national' means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 is a British subject; or

(c) a British protected person within the meaning of that Act;

'United Kingdom resident' means an individual who is resident in the United Kingdom.

(10) Schedule 2 lists the sexual offences to which this section applies."

6. At the time of the proceedings in the Crown Court, no notice pursuant to section 72(6) was served by the appellant's then representatives. The challenge to the jurisdiction of that court was first raised in a ground of appeal for which the single judge granted an extension of time. The issue having been raised, the respondent sought expert evidence on it and now seeks to rely as fresh evidence on a report, dated 3 October 2022, by Professor Gatta, Professor of Criminal Law at the University of Milan. The contents of that report are agreed by both parties. We have no doubt that it meets the criteria of

section 23 of the Criminal Appeal Act 1968, and we admit it as fresh evidence.

7. Professor Gatta confirms that the conduct admitted by the appellant constituted offences under Article 609 of the Italian Penal Code. He also explains that, in the circumstances of this case and having regard to the maximum penalty applicable, the time limit for a prosecution in Italy elapses 10 years after each of the offences, and therefore before the date when the appellant was charged in this country. Accordingly, at the time when the appellant was charged in this country, his admitted conduct could not have been the subject of a prosecution in Italy, because any prosecution was by then time-barred. In the terms of Article 157 of the Italian Penal Code, as they have been translated, “the running out of a limitation period extinguishes an offence”.
8. For the appellant, Ms Harris submits that the circumstances of the present case are not specifically catered for by section 72 of the 2003 Act and that the convictions are unsafe. She suggests that the absence of any express reference is an omission by Parliament, whether deliberate or inadvertent, and that it accordingly falls to the court to interpret Parliament’s intention. She submits that a restricted interpretation is necessary of a provision which has penal consequences for the appellant. She concedes that the criminality of the original act remains but emphasises that liability to prosecution in Italy ended some years ago. She accordingly invites this court to conclude that the convictions are unsafe.
9. Mr Atkinson KC, for the respondent, contends to the contrary. He submits that in considering section 72(3), the focus of sub-paragraphs (b) and (c) is on the time when the relevant act was committed, whereas sub-paragraph (d) and subsection (4) are concerned with a later time. He argues that there was no omission from the drafting of section 72. The simple explanation, he suggests, is that questions of foreign laws of limitation are

simply irrelevant. The courts of England and Wales, he submits, are not required to embark upon the analysis of the precise effect of the foreign law of limitation under consideration in a particular case.

10. We are grateful to both counsel for their very helpful and focused submissions.
11. We think it instructive first, to consider section 72 as a whole and then to focus on subsection (3). Subsection (1) concerns an offender who is a UK national at the time when he does the relevant act in another country. In relation to the offences to which the section applies, namely, those listed in schedule 2 to the Act, the courts of England and Wales have jurisdiction over such an offender by virtue of his nationality at the time when he commits the Act, whether or not his conduct would be an offence in the foreign country concerned. Subsection (2) concerns an offender who is a UK resident at the time when he does the relevant act in another country. Provided the act constitutes an offence under the law in force in the country concerned, the courts of England and Wales have jurisdiction over such an offender by virtue of his status as a United Kingdom resident at the time when he commits the act. Subsection (3) concerns an offender who was neither a UK national nor a United Kingdom resident at the time when he did an act which constituted an offence under the law in force in the country concerned. The courts of England of Wales have jurisdiction over such an offender by virtue of the fact that he meets the residence or nationality condition at the time when the criminal proceedings are brought against him in this country, even though they did not have jurisdiction over him at the time when he committed the act. Each of the three subsections is therefore concerned with the criminality of the offender's conduct at the time when he commits the act.
12. Against that background, the correct interpretation of the statutory provision is, in our

view, entirely clear. Subsection (3) requires that the act was an offence under the law of the country concerned at the time when the relevant act was committed; that it would, at that time, have constituted an offence to which section 72 applies; and that the offender meets the residence or nationality condition at the time when the proceedings are brought in this country. It does not also require that, at the time when the proceedings are brought in this country, the offender could still be prosecuted in the foreign country concerned.

The focus is on whether the act was a crime under the law of the other country at the time when it was committed, whether or not a prosecution in that other country has subsequently been barred by the elapse of a limitation period. Provided the requirements of the subsection are met, the operation of a time bar in the other country concerned does not deprive the courts of England and Wales of jurisdiction over acts which were a crime under the law of that other country at the time when they were committed.

13. Having reached that clear conclusion as a matter of statutory interpretation, it is unnecessary for us to consider the boundaries of the discretion accorded to the court by section 72(7).
14. We would add, finally, that the minor amendments recently made to section 72 by the Domestic Abuse Act 2021 do not affect the issue in this case. Those amendments had not been made at the time when the appellant was charged; but even if they had been, they would not have altered our decision as to the correct interpretation of subsection (3).
15. This appeal accordingly fails and is dismissed.

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