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Neutral citation No. [2023] EWCA Crim 934

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301665/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 18 July 2023

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE BUTCHER
MRS JUSTICE CUTTS DBE

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX
V
ALIN-VASILE IERCOSAN

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MISS S PRZYBYLSKA appeared on behalf of the Attorney General
MR W ROSE and MR A ARIF appeared on behalf of the Offender

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an application by His Majesty's Attorney General for leave to refer a sentence of rape to this court on the basis that the Attorney General considers the sentence to be unduly lenient.
2. The rape occurred on 27 January 2023 in Bridgwater, Somerset. The victim of the offending is entitled to the benefit of lifelong anonymity, pursuant to the provisions of the Sexual Offences (Amendment) Act 1992.
3. The respondent is Mr Alin-Vasile Iercosan. He is a Romanian national and he is now aged 28 years. He was, before this offence was committed, of previous good character and was married and had a young daughter. His family had remained in Romania when he was working on a construction site in the United Kingdom.
4. He pleaded guilty on 10 March 2023 and was entitled to 25 per cent credit for his plea. A pre-sentence report was obtained and Mr Iercosan was sentenced on 21 April 2023 in the Crown Court at Taunton. He was sentenced to seven years and one month's imprisonment and an extended licence period of three years.
5. The submissions on behalf of the Attorney General are that the judge should have characterised this as a Culpability A case, that the judge had either misread or been misinformed about the guidelines and in any event the judge should have taken a 1A starting point of 15 years before discounts for mitigation and plea.
6. On behalf of the respondent, Mr Iercosan, it is accepted that this should have been a Culpability A case but there had been no mis-reading of the relevant guidelines, the judge had been entitled to take the approach that he did, and he had had the benefit of hearing all of the evidence opened before him and hearing the victim personal statements.

The factual circumstances

7. On the evening of 27 January 2023 the victim went out in Bridgwater Town Centre with friends. They went to a number of bars and ended the evening in a nightclub. By the time that the victim left at about 4 am she was alone because her friends had left earlier. She tried to call home where she lived with her parents and siblings to see if somebody would be able to pick her up but there was no answer to the call and so she made her way towards a taxi rank. The offender Mr Iercosan began to follow her and we have seen stills from the CCTV footage showing him behind her, looking about. He followed her for about 10 minutes. The victim quickened her pace but he matched it and he in the event grabbed her and forced her into an alleyway away from the CCTV cameras and raped her. In that time he had forced the victim to the ground. She had tried to sit up but he pushed her back to the ground, causing a blow to the back of the head.
8. After Mr Iercosan had run off, the victim found her way to a nearby taxi rank and asked a taxi driver for help. He called the police and when the police arrived she told them that she recognised Mr Iercosan from her work. She did not know his name and had not had any significant interaction with him before. The victim was obliged to wait until 3 pm that afternoon before a doctor could examine her and take swabs, which was particularly traumatic. Mr Iercosan was identified from semen matching his DNA profile, as well as from the CCTV footage.
9. The CCTV footage showed him leaving his accommodation for a construction site at 8.50 pm on 27 January 2023. He did not go to a bar or restaurant but moved around the town centre. The prosecution case was that he was searching the streets for a woman to rape and between the hours of 9.30 pm and 4.20 am (when he found the victim) he was shown on CCTV walking around the town centre approaching five different women. The

footage showed him using his phone, which later phone analysis showed was the offender calling himself, in an attempt to appear unthreatening.

10. Mr Iercosan returned to his accommodation at 5.15 am and spoke with his roommate who did not notice anything unusual about his behaviour.
11. After the offence, Mr Iercosan returned to Romania to see his wife and child and he was arrested on his return to the United Kingdom. He was interviewed under caution and made no comment. In a second interview he gave a prepared statement in which he asserted that he had not had intercourse with anyone without their consent and he would not be scientifically linked to the victim. As already indicated, samples obtained from the victim showed that semen was present which contained DNA matching that of the offender.

The sentence

12. The victim had suffered minor physical injuries from the attack, a scratch to her shoulder and chest, bruising under her arm and on elbows and scuff and bruising to her knees. There was a victim personal statement showing that the victim had suffered from Post-Traumatic Stress Disorder, had required treatment for depression and had regressed in type to becoming a frightened teenager. There was a victim personal statement from the victim's mother about the effect on the victim and the family's own guilt at not answering the telephone when it was called.
13. There was a pre-sentence report in which Mr Iercosan reported that he was drunk and could not remember the offence. There was no evidence of drunkenness on the CCTV footage of him walking around Bridgwater and no evidence from his roommate that he had been drunk when he had returned.
14. The case was presented to the judge below. It seems that matters started to go wrong

when counsel then acting for the prosecution referred to the guidelines and having referred to Category A, said that the Crown was somewhat neutral on that culpability category, then referred only to Categories 1B and 2B offending and then mixed up some references to the guideline.

15. When sentencing, the judge said that Mr Iercosan had approached five women that he had followed, walked with or interfaced with. The judge said: "Looking at that behaviour it is apparent that you were building up to and planning the rape that you ultimately committed."
16. The judge also recorded that Mr Iercosan had followed the victim for 10 minutes at around 4.30 am in the morning and chased her when she had speeded up. The judge said that the offence was planned and considered.
17. The judge referred to numerous Category 2 factors, namely the vulnerability of the victim because she was drunk and she was alone in Bridgwater at 4.30 in the morning, what he considered to be the use of violence beyond that inherent in the offence, the additional degradation and humiliation of a rape down an alleyway, and the severe psychological harm. The judge also noted aggravating factors which were ejaculation, the targeting of a vulnerable victim and the location of an offence in an alleyway - although the judge said he took care to avoid double-counting with the Category 2 factors already identified.
18. The judge found the offending had been planned. He found that the offence fell on the cusp of Categories 1 and 2 and that the starting point, taking into account the aggravating factors, was 10 years' imprisonment. It seems that the judge must have taken the starting points between categories 1B and 2B and did not expressly address Culpability A or B in the sentencing remarks.
19. The judge then reduced that starting point to nine-and-a-half years to reflect personal

mitigation and then he applied, as he had to, the 25 per cent credit for the guilty plea, reducing the sentence to one of seven years and one month. The judge found that Mr Iercosan was dangerous, saying that this was cold, calculated, planned and considered and yet came wholly out of the blue without any discernible warning signs: "Your unpredictability and dangerousness is undermined by the fact that hours later you were on a plane to Romania to join your wife and your daughter."

20. The judge said that the risk posed by Mr Iercosan made it necessary to impose an extended sentence, comprising a custodial term of seven years one month and an extension period of three years, making an extended sentence of 10 years and one month in total. He imposed a restraining order prohibiting contact with the victim for an indefinite period.

The offence-specific guideline

21. An offence causes Category 2 harm for rape where there is among other matters severe psychological harm, abduction, prolonged detention or a sustained incident, or a victim who is particularly vulnerable due to personal circumstances. The extreme impact caused by a combination of Category 2 factors may elevate an offence to Category 1. An offence involving Category A culpability where there is, among other matters, a significant degree of planning. There is Category B culpability where no Category A factors are present.
22. The starting point on the guidelines for a category 1A offence is 15 years with a range of 13 to 19 years; for a 1B offence the starting point is 12 years with a range of 10 to 15 years; for 2A the starting point is 10 years with a range of nine to 13 years; and 2B the starting point is eight years with a range of seven to nine years.

The appropriate sentence

23. We turn to address the submissions that were made before us. So far as culpability is concerned, it is common ground that the judge should have found that this was a culpability A matter. That does not depend on common ground alone because we are sure that there was a significant degree of planning. That is apparent from the fact that Mr Iercosan set out at 8.50 pm that evening and over the course of the evening approached or followed five women, all of whom left without injury. He made phone calls to himself to make himself look less threatening on the streets and as far as the victim was concerned he had followed her for 10 minutes, he checked his surroundings and he forced her into an alleyway when he caught her. In those circumstances we find that this was a culpability A offence.
24. The judge found that the offence fell on the cusp of Categories 1 and 2 owing to the combination of features. It is apparent that in doing so the judge followed what had been submitted to him on behalf of the prosecution below but in our judgment if one looks at the extreme impact of the Category 2 matters this is a matter that falls into Category 1. If we adopt a Category 1A starting point of 15 years and we take into account the aggravating factors that have not been sufficiently reflected in those findings of the starting point, there would be an increase from the 15-year starting point before a reduction for the personal mitigation, which the judge had set at six months but in our judgment still requires to remain proportionate to all the matters.
25. Doing the best we can, we consider that the judge should have imposed a sentence of 14 years six months before allowing for the discount of 25 per cent for the guilty plea. On our calculations, rounding down a bit to take account of partial months, that would yield a sentence of 10 years 10 months before there is added an extension period, for the

reasons given by the judge, of three years. In all those circumstances, we grant permission for this Reference and we allow the Reference to the extent of increasing the custodial period of the extended sentence from seven years and one month to 10 years and 10 months, before adding the extension period of three years.

26. We should conclude by thanking counsel on both sides very much for all of their assistance.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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