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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT

NEWCASTLE UPON TYNE

HIS HONOUR JUDGE GITTINS T20207428

CASE NO 202303288/B3

NCN [2024] EWCA Crim 1640

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday, 27 November 2024

Before:

LORD JUSTICE DINGEMANS  
MRS JUSTICE MAY DBE  
THE RECORDER OF BRISTOL  
HIS HONOUR JUDGE BLAIR KC  
(Sitting as a Judge of the CACD)

REX  
V  
MAJID RAFIZADEH

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MR H NOON appeared on behalf of the Applicant

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**J U D G M E N T**

MRS JUSTICE MAY:

1. On 23 May 2022 in the Crown Court at Newcastle upon Tyne, the applicant was convicted by a majority of three counts of rape and one count of sexual assault. On 4 August 2022 he was sentenced to a total of 24 years' imprisonment. He now seeks to renew an application for an extension of time (451 days) and for leave to appeal his conviction following refusal by the single judge.
2. Until very recently the applicant was representing himself on this appeal. Very recently he has instructed new solicitors and counsel. We are grateful to Mr Hoon for his assistance this morning. Mr Hoon made it clear that he was not seeking an adjournment for the purposes of reconsidering or amending the current grounds but appeared only to represent the applicant on this renewal based on the current grounds.
3. Reporting restrictions  
The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. No matter relating to the complainant shall, during their lifetime, be included in any publication if it is likely to lead members of the public to identify them as the victim of these offences. This prohibition applies unless waived or lifted by this Court. We shall refer to the complainant as "C1".
4. The facts of the offending  
The details of the offences and of the evidence at trial are set out in the Court of Appeal Office note. It is not necessary to repeat them all here. In short, the case concerned allegations of regular, repeated vaginal and oral rape and sexual assault committed by the applicant against C1 when C1 was aged between 12 and 13 until she was 17. The applicant was at the time in a relationship with C1's older sister with whom C1 was then living. C1 gave an account in interview of the applicant having abused her whenever her sister was out of the house leaving her alone with the applicant.
5. The applicant's case, set out in his defence statement and given in evidence at trial, was that C1 was a difficult child whose mother had struggled to cope with her which is why she came to live with her sister. He was rarely alone with her, no sexual activity had ever occurred between them, he treated her like a daughter. The issue for the jury at trial was whether they believed C1's account.
6. Grounds of appeal

The applicant's grounds of appeal which he prepared himself may be summarised as follows:

1. There were eye witnesses who could testify C1's account was all lies.
2. There are many witnesses who can prove that C1 did not live with the applicant and his partner at the material time but that she came and went. C1 gave inconsistent accounts of when she lived with them.
3. C1 gave inconsistent accounts of locations and timings of when certain events took place.
4. There are witnesses who can prove that C1 asked the applicant for help and that he looked after her when she was high on cannabis.
5. C1 gave evidence which was inconsistent with that of her brother and father's statements. She told her brother that she did not get pregnant as the rapes had happened when she was on her period; she told the police that the sex happened twice a week. C1 also changed her story of how old she was when the alleged rapes occurred.
6. C1 lied, the jury was prejudiced because of the applicant's nationality, the applicant returned voluntarily from Iran to attend his trial and to clear his name, and finally his strictness with C1 may have given her a motive to lie about him. Lastly, the applicant's sexual health records, which he told his barrister about at the time, would have proved that he could not have "do the things she said in that amount of time". Also if there had been sexual contact between the applicant and C1 she would have contracted a sexually transmitted disease.
7. Because of the implicit criticism of trial counsel contained in the last of these grounds, the applicant was asked to provide the usual waiver of privilege which he did. We have seen a note from trial counsel in response. We have also seen and considered the full Respondent's Notice responding to the above grounds.
8. Today, Mr Hoon has emphasised the following. He says that there were witnesses which should have been called and that the applicant's representatives mishandled the case by failing to call them.
9. Decision

The delay in submitting this appeal of well over a year is very considerable. Nevertheless

had there been any merit in the applicant's grounds and as, until very recently, he was representing himself, we would have considered granting the lengthy extension required. However, like the single judge we can see no merit in the points which the applicant has raised. Grounds 1 and 2 concern evidence which it is said various witnesses could give. But if there were witnesses with relevant evidence to give, then they should have been called to give that evidence at trial. The complaint that trial counsel and solicitors failed to call such witnesses is not at all evident from the grounds which the applicant has formulated. If this had been made clear no doubt trial counsel would have appreciated and answered that criticism. In any event, as appears from the Respondent's Notice, C1's sister and another member of the household were called to give evidence casting doubt on C1's veracity generally and that other witnesses were suggested or required. Further, it is apparent from the summing-up that the applicant was well represented at trial, his counsel having made a number of telling points on credibility for the jury's consideration.

10. Grounds 3, 5 and 6 raise inconsistencies in C1's evidence, asserting that she lied and that the jury were prejudiced. It is often the case that, particularly where allegations are of some age, as here, a counsel will differ and inconsistencies will occur. It is always a matter for the jury to sift through and weigh up all the evidence to decide where the truth lies. All of the matters raised in these grounds were for the jury to consider at trial. There is nothing whatsoever to suggest that the jury was prejudiced as the applicant has suggested.
11. As to ground 4, the prosecution have indicated in the Respondent's Notice that this was fully dealt with in evidence at trial. What the jury made of the cannabis incident was for them to consider.
12. Dealing finally with ground 7, as appears from trial counsel's full note, full instructions were taken from the applicant concerning matters relating to his sexual health. He had mentioned an issue with erectile dysfunction. In accordance with those instructions the solicitors contacted the applicant's GP, but the GP notes had nothing about erectile dysfunction or any other sexual health issues. The applicant made no reference to a New Croft Sexual Health Clinic at that time.
13. As we have indicated, the matters raised by the applicant in his grounds concern matters which either could have been raised at trial or which were raised and which the jury

considered in arriving at its decision to convict. As the single judge rightly pointed out, an appeal is not an opportunity for a rerun of the evidence of issues canvassed at trial. On an appeal the court is concerned only with whether some irregularity or error has occurred of sufficient weight and importance as to render the jury's decision unsafe. We are entirely satisfied that there is nothing in the applicant's grounds which could render his convictions even arguably unsafe. There would be no point in allowing the long extension of time required to permit him to pursue those grounds. Accordingly, the extension of time is refused, as is leave to appeal.

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

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