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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LEEDS

HHJ KHOKAR T20207771

CASE NOS 20240534/B4, 202400537/B4 & 202401326/B4

NCN: [2025] EWCA Crim 145

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 31 January 2025

Before:

LADY JUSTICE WHIPPLE DBE
MR JUSTICE MURRAY
HIS HONOUR JUDGE LEONARD KC
(Sitting as a Judge of the CACD)

REX
V
MOHAMMED HANIF
MOHAMMED NAZAM NASSER
AMIR ALI

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MR M HARDING appeared on behalf of the Applicant HANIF
MR N CARTMELL appeared on behalf of the Applicant ALI
The case of NASSER was heard as a NON-COUNSEL APPLICATION

J U D G M E N T

LADY JUSTICE WHIPPLE:

Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. The three applicants Hanif, Nasser and Ali were convicted of rape following a trial at Leeds Crown Court before is Honour Judge Phillips KC. On 26 April 2024 they were sentenced by the same judge as follows: Hanif was sentenced to nine years and six months' imprisonment, Nasser was sentenced to seven years and six months' imprisonment and Ali was sentenced to eight years' imprisonment. The usual ancillary orders were made as to which no issue now arises. Each applicant now applies to renew their application for leave to appeal against conviction following refusal by the single judge.

Facts

3. The applicants were tried in one of a series of connected trials involving allegations of sexual exploitation and rape against two women, C1 and C2, when they were teenagers and in C2's case continuing to early adulthood, whilst C1 and C2 were living in the Dewsbury and Wakefield areas.

4. The first allegations in time were made by C1 and concerned a period between 2002 and 2004 when she was aged 13 to 14 years old. Against a background of abuse by other men she alleged being sexually abused by Hanif whom she identified by the name "Biggy T".
5. C2, who was a year younger than C1, made allegations against seven defendants including Nasser and Ali. In her case the offending fell into two different time periods, the first when she was aged 13 to 14 years old and the second when she was aged 18 to 19 years old, continuing into her twenties. Some of the defendants who abused her as a child also went on to abuse her as an adult.
6. The details of the allegations are set out in the Criminal Appeal Office summary and there is no need for us to repeat those details here.
7. The applicants all denied the allegations against them. Hanif argued that this was a case of mistaken identity or malicious complaint. Nasser and Ali denied any involvement in the case.
8. The jury disbelieved their defence accounts. Each of these applicants now suggests that their conviction is unsafe.

Hanif

9. Hanif is represented pro bono before this court by Mr Harding, who also represented him at trial. The Crown have submitted a Respondent's Notice. We are grateful for the

helpful submissions we have received.

10. Hanif argues that the judge failed to deal fairly and properly with a jury note and submits that the jury should have been discharged as a consequence of that note.

11. Hanif was the first defendant on the indictment and the first to give evidence, which he started giving on 11 December 2023. On the morning of 12 December 2023 the judge received a note from a juror. The note read:

"At 09.55 I came through security. I witnessed Biggi T & the security officer who searched myself with the baton have contact and greet each other. I am concerned Biggi T saw me so would rather this now dealt confidential. Security guard was Asian, tall build with discolouring to his face. *I'm not sure if anything was passed between hands."

12. The judge called the prosecution into chambers to discuss the note. He directed the police to investigate the matter which involved them examining CCTV of the security entrance at court. The CCTV footage did not show any interaction between the two men. The police were satisfied that nothing untoward had occurred and that any greetings or words uttered were innocent, and they reported that to the judge.

13. The judge called all parties into court. He informed them of the note. He invited submissions. He indicated his view that the jury should be told that nothing untoward had occurred and the trial should continue. The parties were invited to review the footage for themselves if they wished to do so.

14. In the course of that hearing Hanif's counsel, Mr Harding, made an application to discharge the jury. Alternatively he asked the judge to put further questions to the juror. The judge ruled against Mr Harding, declining to question the juror and refusing the application to discharge.
15. The judge then called the jury into court, thanked the juror for the note, said that nothing untoward had happened and invited the jury to put the matter out of their minds so that the trial could continue.
16. We are unable to accept that a fair-minded and informed observer would conclude there was a real possibility of bias revealed by this note. The note raised a concern, simply that, and not a suspicion that something improper had occurred; that concern was investigated and found to have been unsubstantiated. The judge's direction to the jury that there was nothing untoward and that they should put the matters out of their minds was an appropriate and sufficient response. The police investigation addressed the concern raised by the juror, who had stated in the note that they were not sure if anything had passed between hands. In light of the investigation, the judge was able to reassure the juror that nothing had passed between hands.
17. We do not consider it arguable that the judge should have undertaken further enquiries of this juror or taken further or different steps before deciding what to do. The juror had said he had discussed the note with other members of the jury and the judge was right to conclude that there was no reason to isolate him or further question him. Further, the juror had said in the note that he was "not sure" if something had passed, thus it was for

the judge to find out if it had or it had not and that was the purpose of the police investigation.

18. This was not a jury irregularity. This was a juror appropriately following the judge's earlier instructions to notify him if there were any concerns. We are satisfied that the questions proposed by Mr Harding were not appropriate and the judge was right to reject the proposition that they be put to this jury.

19. This episode was handled well by the judge, and in accordance with the Criminal Procedure Rules, the Practice Direction and relevant case law, noting R v Ali [2019] EWCA Crim 1527. The judge referred to those sources in terms in the course of the *ex parte* hearing.

20. We agree with the single judge and we refuse the renewed application for leave by Hanif. We have no reason to doubt the safety of his conviction.

Nasser

21. Nasser is unrepresented before us. He relies on grounds submitted by his previous counsel and seeks to renew his application for leave to appeal against conviction for rape on count 25 on the indictment, arguing that that conviction is inconsistent with his acquittals on counts 18 and 19.

22. The prosecution have submitted a Respondent's Notice opposing Nasser's application.

23. Counts 18 and 19 related to a period when C2 was aged 13 or 14. They were counts of oral and vaginal rape, following an allegation made by C2 in her ABE interview. The acquittals on those counts can be explained by the jury not being sure of Nasser's identity on those occasions. C2 had herself described this as a short incident when she had been drinking. She identified her abuser on that occasion as "Naz", which was a name associated with a later period in her life.

24. Count 25 by contrast was an allegation of a single count of rape of C2 at a different stage in her life when she was 18 years old. She provided a photograph to the police of her abuser in relation to count 25 and she named Nasser in notes that were given to the police in relation to that count. The issue for count 25 therefore was not so much identification, as whether the incident had taken place at all.

25. In our judgment, there is no inconsistency, even arguably, between the conviction on count 25 (indicating that the jury were sure of C2's account on count 25) and the acquittals on counts 18 and 19 (indicating that the jury could not be sure). To the contrary, the different outcomes indicate a careful examination of the evidence by the jury and a careful examination of the defence cases in relation to each of those counts.

26. We agree with the reasons given by the single judge. We refuse this renewed application for leave by Nasser. We have no reason to doubt the safety of his conviction.

Ali

27. Mr Ali is represented pro bono by his trial counsel, Nick Cartmel. The Crown have

submitted a Respondent's Notice. We are grateful for the helpful submissions received.

28. Ali argues that the conviction on count 27 is inconsistent with his acquittal on count 26, that he did not give evidence or call witnesses in relation to count 27 which he would have done if he had been tried alone, that the identification evidence was insufficient to convict on count 27, that there should have been separate trials and that there was a risk of prejudice and bias.

29. We are not persuaded that there is merit in any of these grounds. Counts 26 and 27 did not stand or fall together. The evidence in relation to each was different and the jury was directed to consider each separately. Count 26 was an allegation of rape when C2 was an adult, living at an address where multiple rapes were alleged to have occurred. At that time C2 was drinking heavily and using drugs. Her evidence about that occasion was that Ali had the intention of having sex with her but had passed out "before he actually got there". There was therefore some ambiguity on her account about whether penetration had taken place. That ambiguity could explain the jury's verdict. By contrast, count 27 was an allegation of rape when C2 was an adult, at an address on Pilgrim Avenue which she said she had only visited once, her evidence being that Ali was the only person to rape her there and that she was not in drink at that time and that the rape was forceful. Ali had admitted knowing C2 by this time (in his police interview) so that inconsistencies in C2's description of him might well have been considered insignificant by the jury. Ali denied presence but chose not to give evidence at trial. That was of course a matter for him on advice.

30. To the extent that he now complains he was in some way inhibited in conducting his

defence at trial, we note that there was no application to sever his trial from the others and no issue of unfairness raised at the time. The fact that his brother was at one stage involved provides little support for his argument that the trials should have been separated, particularly in circumstances where his brother absconded and ceased playing any active part in the trial. That Ali might have faced vigorous or challenging cross-examination either by his brother's counsel or by the prosecution, or that Ali might have found himself the subject of a cut throat defence, does not provide a reason to conclude that the trial was in some way unfair or the conviction unsafe.

31. We are not persuaded of any unfairness towards or prejudice against Ali in relation to the juror note, which we have already dealt with, or in any other respect.

32. In agreement with the single judge we refuse leave. We have no reason to doubt the safety of his conviction.

Loss of time

33. We turn to consider whether or not we should make a loss of time order for some or all of these applicants. As the court observed in R v Gray and Others [2014] EWCA Crim 2372:

"... the only means the court has of discouraging unmeritorious applications which waste precious time and resources is by using the powers given to us by Parliament in the Criminal Appeal Act 1968 and the Prosecution of Offences Act 1985."

34. The single judge gave full reasons as to why he was refusing leave to appeal in the cases of all three applicants. In Hanif's case the judge ticked the box for consideration of loss

of time. However, we are persuaded by Mr Harding that Hanif should not be penalised for renewing and we gather that Hanif did so following counsel's advice. Given that this was merely a renewal of grounds that had already been considered, on balance we accept that explanation and make no loss of time order in Hanif's case.

35. We have considered Nasser and Ali's cases too. In neither of those cases did the single judge tick the box for consideration of loss of time but of course a loss of time order remains open to the court. However, the grounds advanced on renewal seem to us to be largely repeats of the grounds that were put before the single judge. This case is not like other cases where a series of new and hopeless grounds are put before this court on renewal for the first time, which can serve to waste a great deal of court time. We make no loss of time order in the cases of Nasser and Ali.

Conclusion

36. We refuse these applications.

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

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