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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

The Law Courts  
50 West Bar  
Sheffield  
South Yorkshire  
S3 8PH

Wednesday 6<sup>th</sup> March 2019

B e f o r e:

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

MR JUSTICE GOSS

and

MR JUSTICE LAVENDER

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**REGINA**

- v -

**KHALID ZAMAN**  
**TAUKEER BUTT**  
**HEDAR ALI**  
**HAIDER ALI**  
**TAHIR MAHMOOD**  
**MOHAMMED RAMZAN**

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**JUDGMENT**  
(Approved)

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**A P P E A R A N C E S:**

**Mr Khan** appeared on behalf of the Appellant Khalid Zaman

**Mr T Z Khan QC** appeared on behalf of the Applicant Taukeer Butt

**Mr S Uttley** appeared on behalf of the Appellant Hedar Ali

**Miss F Hussain** appeared on behalf of the Appellant Haider Ali

**Miss F Hussain** appeared on behalf of the Applicant Tahir Mahmood

**Mr A Nadim** appeared on behalf of the Appellant Mohammed Ramzan

**Mr R Wright QC** appeared on behalf of the Crown

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Wednesday 6<sup>th</sup> March 2019

**THE LORD CHIEF JUSTICE:**

1. There are before us six applicants/appellants who were found guilty in two of a series of trials in the Crown Court at Leeds concerning the serious sexual abuse of vulnerable underage girls. Khalid Zaman, Haider Ali, Hedar Ali and Mohammed Ramzan were convicted on 26<sup>th</sup> May 2016 before His Honour Judge Marson and were sentenced by him on the following day. Taukeer Butt and Tahir Mahmood were convicted in an earlier trial on 28<sup>th</sup> April 2016 before the same judge and were sentenced by him on 29<sup>th</sup> April 2016.

2. At the time of the offending Zaman was aged 36; Ramzan 33; Haider Ali, 38; Hedar Ali, 39; Butt, 28; and Mahmood, 42.

3. Zaman and Ramzan both renew their applications for leave to appeal against conviction following refusal by the single judge. They also appeal against sentence with limited leave from the single judge. Both Haider Ali and Hedar Ali also appeal against sentence with limited leave of the single judge.

4. The common ground of appeal against sentence on which each relies is that the judge, whilst correct to place their culpability at the highest level for the purposes of the relevant definitive guideline, erred in placing the harm suffered by their victim at the highest level. The essence of the argument is that, whilst each readily accepts that the girl in question suffered very severe psychological harm as a result of the cumulative abuse she sustained at the hands of many men, their individual contributions to that was necessarily limited and so should have been reflected in the offending being located in a less serious category.

5. Ramzan has leave to rely upon a discrete point. It is that the judge mistakenly thought, at

least until corrected, that at the time of the relevant offending Ramzan was on licence following his conviction for serious drug offences. In fact, he was sentenced for those offences in March 2012 and was not on licence at the time of the relevant offending. Ramzan suggests that the judge did not put that mistaken aggravating feature from his mind.

6. Hedar Ali has leave to pursue an additional argument, namely that the judge placed some of his offending into the wrong category in the relevant guideline.

7. Butt's application for leave to appeal against sentence has been referred to the full court by the Registrar. He relies on personal mitigation in support of his application.

8. Mahmood renews his application for an extension of time (fourteen months) in which to apply for leave to appeal against sentence, following refusal by the single judge. He relies on the general argument that the sentence was manifestly excessive and that the judge failed properly to take account of the principle of totality.

9. The judge had presided over the trials and was deeply familiar with all aspects of the conduct of each of the applicants/appellants, and also with the impact of their offending upon the principal victim.

#### **The Applications by Butts and Mahmood for Leave to Appeal against Sentence**

10. The common feature between the two trials was that they each involved the serious sexual abuse and exploitation of "A", a girl born in 1995. The global offending covered the period between 2009 and 2011.

11. The provisions of the Sexual Offences (Amendment) Act 1992 apply to the offences with

which this judgment is concerned. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as the victim of the offence. That statutory protection prevents "A" from being identified, as it does a second victim "B", whom we shall mention in due course.

12. Prosecutions were brought against a total of 24 men in a series of trials. The trial involving Butt and Mahmood had eleven co-defendants, although not all had a connection with each other. Butt was convicted on four counts of sexual activity with a child, contrary to section 9(1) of the Sexual Offences Act 2003 (counts 5, 6, 7 and 8). He was sentenced to ten years' imprisonment, concurrent on each count. Mahmood was convicted on two counts of sexual activity with a child (counts 12 and 14). He was sentenced to ten years' imprisonment, concurrent on each of those counts. One of those counts was a specimen count which represented sexual activity on three or four occasions. The child concerned in each of the incidents was A.

13. Mahmood was also convicted of sexual assault, contrary to section 3 of the 2003 Act (count 15). The child concerned was "B". He was sentenced to twelve months' imprisonment, to run consecutively to the sentences for sexual activity with A. Accordingly, his total sentence was one of eleven years' imprisonment.

14. A had a very troubled childhood. In her early years her mother was desperately ill with a progressive, fatal condition from which she died when A was only 13 years old. During the period of her mother's decline, A was left to fend for herself a good deal, along with an elder sibling. After the death of her mother, A's father quickly moved out of the family home and out of the lives of his children when he went to live with a new partner. The result was that A and her sister were effectively abandoned. They quickly found themselves in difficulties. They

were picked upon by older men and used for sexual purposes.

15. The local authority became involved and in due course A found herself in care. Unfortunately, her experiences there were not happy ones and the local authority and foster carers were unable to protect her from the attentions of predatory older men.

16. The events relating to A, with which these two applicants were involved, occurred in Halifax. As we have indicated, Butt had sexual intercourse with her on four separate occasions. He was aged 26 at the time of the offending and she was aged 14 or 15.

17. Mahmood's offending occurred in June and July 2011, when A was in temporary foster care. She continually went missing. Mahmood, who was 41 years of age at the time of the offending, had sexual intercourse with her during that period.

18. The offence relating to B occurred when Mahmood was in a car. He touched her, rubbed her leg and squeezed her breasts over her clothing. Mahmood had no previous convictions.

19. In sentencing the applicants, the judge noted that he had observed A over a number of hours when he had watched her Achieving Best Evidence interviews and also recordings of her cross-examination. He had seen reports dealing with A. His conclusion was that she had been sexually abused in the grossest possible way and by very many men. In his sentencing remarks he recorded that A and her sister had been forced to fend for themselves following their mother's death. It was during that period that A began to drink, to take drugs and to fall victim to sexual exploitation. She was, as the judge noted, a deeply damaged child. He considered that the fact she was damaged was obvious to all who dealt with her. The judge rejected any suggestion that any of the defendants involved would not have appreciated her particular vulnerability. He

noted the profound damage that she had suffered cumulatively, and that she continues to suffer from chronic post-traumatic stress disorder. She has had to move away from her home area. In reality, it is difficult to imagine a child being more damaged by the sexual abuse to which A was exposed. The judge said that the applicants share the responsibility for the damage done to her. He recorded that it was accepted on behalf of both applicants that the offending fell within category 1A for the purposes of the relevant guideline. That was because of the contribution made to the severe psychological harm suffered by A, her particular vulnerability, the fact that the sexual activity involved penetration of the vagina and also ejaculation. He also noted the impact of her being forced to move away.

20. The judge did not consider that the offending was planned in a significant way, albeit that it was repetitive; but it was at least opportunistic. By that he meant that it was well known that this young girl was available for abuse. In short, the judge concluded that A's availability became common currency amongst a wide group of men who took advantage of her. It was obvious that when she was engaged in sexual activity with the applicants, she was under the influence of alcohol and drugs, although the judge accepted that neither plied her with them. He noted the very significant disparity in ages between A and the two applicants. That was a significant aggravating feature.

21. In Butt's case, the judge had regard to all of the mitigation, of which Mr Khan QC has reminded us this morning, which included that his wife was then about to have a baby and that he had a seriously disabled child from a previous marriage.

22. The judge noted that Mahmood's conviction on one of the counts was a sample count relating to three or four incidents of sexual intercourse, together with the other count relating to a single event. He regarded the sexual assault of which Mahmood had been convicted as falling

within category 2B for the purposes of the guideline. He considered Mahmood's behaviour as involving an element of persistence, as well as an element of grooming. His mitigation included the fact that he provided financial support for his elderly parents who lived in Pakistan.

23. The definitive guideline provides that a single category 1A offence of sexual activity with a child attracts a starting point of five years' custody, with a category range of four to ten years' custody. The maximum sentence available is fourteen years' custody.

24. On behalf of Butt, Mr Khan submits that he is younger than the other offenders in the cases before us; that the family mitigation, to which we have referred, should have weighed more heavily with the judge than it did; that the offending was followed by five years out of trouble; that various features which might have made the offending worse, for example a significant degree of planning or abuse of trust, were absent; and that Butt has no previous convictions.

25. On behalf of Mahmood, Miss Hussain submits that the judge should not have moved to the top of the range when sentencing for sexual activity with a child and that the consecutive sentence of twelve months' imprisonment for the sexual assault was manifestly excessive, given its nature.

26. In refusing Mahmood's application for leave to appeal against sentence, the single judge said this:

"Presuming in your favour that count 12 reflected three offences, the ultimate question is whether it is arguable that a total sentence after trial of eleven years' imprisonment for all five offences was manifestly excessive.

Your offending was not opportunistic, rather there was an element of persistence to it. You first met the victim when she



was aged around 14. It was rightly conceded by counsel then appearing on your behalf that all four sexual activity offences in counts 12 and 14 (all of which took place over a period of time, when the victim was aged 15) fell into Category 1A of the relevant guideline. As to harm, they all involved penile penetration of the vagina. As to culpability, they all involved the victim being specifically targeted because of her particular vulnerability, which was obvious, and because her availability had become known and (in your case) there was a very significant age disparity of around 23 years. There were additional aggravating factors in relation to each of the offences as well – the very severe psychological harm that the victim suffered and for which you shared part of the blame, together with the fact that she had to move away from her home and family on a permanent basis, the fact that the sex was unprotected, and that you ejaculated. Count 14 also involved an element of grooming and of assisting the victim to leave her foster parents' address for the night, and then having sex with her. The victim in count 15 was also a vulnerable teenager who had left school.

You got into the back of a car where she was sitting, touched her leg and squeezed her breasts over her clothing. Given the victim's continuing vulnerability, the offence was correctly identified as being within Category 2B.

Your mitigation consisted of the fact that you had no previous convictions, that you had been making efforts to support your elderly parents in Pakistan and the fact that you had not served a custodial sentence before.

Given that the sexual activity offences each involved penile penetration of the vagina, more than one high culpability factor, and a number of additional aggravating factors, the judge was entitled to take the view that each was a very serious offence in its own right, and that in each case the additional aggravating factors greatly outweighed the mitigating features – such that each (and particularly count 14) required a sentence well above the starting point. He then had to balance the fact that there were four such offences committed over a period of time, and also the sexual assault on the other victim, with the principle of totality."

We agree with that reasoning. In those circumstances we refuse the renewed application for an extension of time in which to apply for leave to appeal against sentence.

27. Similar reasoning applies in Butt's case. It was inevitable that a long custodial sentence

would be imposed, despite the personal mitigation which flows from his family and other circumstances. We do not consider that the sentence imposed by the judge is arguably manifestly excessive. His application is also refused.

**Zaman, Ramzan, Haider Ali and Hedar Ali**

28. Zaman was convicted of two counts of rape, contrary to section 1 of the 2003 Act (counts 7 and 8), and also one count of supplying a Class B drug to another, contrary to section 4(3)(a) of the Misuse of Drugs Act 1971 (count 6). He was sentenced to seventeen years' imprisonment on each of counts 7 and 8, to run concurrently with each other, and to six months' imprisonment on count 6, to run consecutively. His total sentence was, therefore, seventeen years and six months' imprisonment.

29. Ramzan was convicted of a single count of rape, contrary to section 1 of the 2003 Act (count 5). He was sentenced to fifteen years' imprisonment.

30. Haider Ali was convicted of one count of sexual activity with a child, contrary to section 9 of the 2003 Act (count 1), for which he was sentenced to five years' imprisonment. In addition, he was convicted of one count of causing a person to engage in sexual activity without consent, contrary to section 4 of the 2003 Act (count 2), for which he was sentenced to fifteen years' imprisonment, to run consecutively. His total sentence was, therefore, twenty years' imprisonment.

31. Hedar Ali was convicted of two counts of rape, contrary to section 1 of the 2003 Act (counts 9 and 11). He was sentenced to fifteen years' imprisonment on count 9 and to a concurrent term of seventeen years' imprisonment on count 11. He was also convicted of two counts of trafficking within the United Kingdom for sexual exploitation, contrary to section 58 of the 2003

Act (counts 10 and 12). He was sentenced to six years' imprisonment on count 10 and to eight years' imprisonment on count 12. Those last two sentences were ordered to run concurrently with each other but consecutively to the sentences on counts 9 and 11. His total sentence was, therefore, 25 years' imprisonment.

32. The broad facts surrounding the convictions of these four appellants were these. A went missing overnight in April 2011. On the morning of 12<sup>th</sup> April, she called a police officer from where she had been staying in an hotel in Bradford. When the police officer arrived, A was intoxicated and had drugs in her possession. She told the police that she had been alone in the hotel room and that she had gone there to drink vodka and take drugs. The police examined the CCTV footage from the hotel. They saw A arrive in a car driven by Ramzan. It was clear to the police that a good deal of sexual activity had taken place in the room overnight.

33. Ramzan was interviewed. He readily admitted having sexual intercourse with A but said that it was consensual. He also said that he believed A to be 19 years old. His initial account was that she encouraged him to arrange for friends to join them at the hotel and that it was in those circumstances that Zaman arrived and also another man called Ataf Ali. A performed oral sex on both Ramzan and Zaman. Another man, Mohammed Askar, also arrived.

34. Both Ataf Ali and Mohammed Askar were defendants on the indictment. They faced a count of conspiracy to engage in sexual activity with a child (count 4). Their submissions of "no case to answer" were successful.

35. The renewed applications for leave to appeal against conviction of both Ramzan and Zaman flow from the consequences of the discharge of Mohammed Askar. Zaman accepted having had both oral sex and sexual intercourse with A. Neither Zaman nor Ramzan gave evidence at trial,

but their defences were that whilst the sexual activity described had taken place, it was entirely consensual.

36. The outline facts concerning the two appellants Hedar Ali and Haider Ali are these. A originally met Haider Ali through her sister. She knew him for some time before anything untoward happened. They were in the habit of going to a flat which she thought belonged to Haider Ali, but in fact it belonged to another man. She was aged 14 or 15 when she started going to this flat with him alone.

37. On one occasion when she met him at the flat he told her that it was not his but owned by a relative. She did not meet the relative until her last visit to the flat. On that occasion Haider Ali gave her a sachet of crystals. They were drugs. She put them into her mouth. That made her feel unwell and (as she described it) "hyper". Haider Ali then had sexual intercourse with her. That was consensual and formed the basis of count 1, sexual activity with a child.

38. After they had had sexual intercourse, Haider Ali left the flat and returned with another man who told A that he owned the flat. Haider Ali insisted that A have sexual intercourse with this man and that if she did not do so, she would not be taken back to the place where she was then staying. He (Haider Ali) pinned her against the wall. The other man then held her down in the bedroom and raped her. The essence of that offence is that Haider Ali coerced A into being raped by this other man and used some violence to achieve it.

39. Hedar Ali was convicted of two counts of rape (counts 9 and 11) and two counts of trafficking for sexual exploitation (counts 10 and 12). These offences were committed in June and July 2011. A was then aged 15 and Hedar Ali was 31. He first met her when she was with her friend B. He encountered her in an area called Witherns. He pulled up alongside her in his

car. He offered her a joint and a lift home, which she accepted. They exchanged contact details.

40. Later he contacted her and took her to an hotel in Bradford. She was often taken there by him to have sexual intercourse with many different men. He would take her there in a car with friends. He would then be given money by the men with whom A had sexual intercourse. He passed some of that money on to her to pay for a taxi home. During the course of these visits, A was given vodka and cocaine. On a number of occasions Hedar Ali himself had sexual intercourse with A. She was not capable of resisting or consenting because of the combination of alcohol and strong drugs that she had taken.

41. It is a striking feature of the appeals and applications before us that more than one of those involved had what might loosely be described as a relationship with A. That manifested itself in continuing contact after their arrest, including with the exchange of letters. To our minds, that merely illustrates how vulnerable this child was in becoming emotionally dependent on some of these abuses. It is not something that provides mitigation to any of the appellants/applicants.

### **The Renewed Applications for leave to appeal against Conviction**

42. Askar was interviewed by the police. His interviews were read to the jury as part of the prosecution case against him. As one would expect, and in accordance with well-established principles of law, the judge warned the jury at that time that the interviews formed part of the case against Askar but were irrelevant to the cases of the other defendants. The two applicants who were affected by the content of the interviews were Zaman and Ramzan.

43. In the course of his interview, Askar explained that when he arrived at the hotel and went to the room, he was confronted by a naked man and a naked girl. He said that they had obviously been drinking. There was a bottle of spirits in the room, which he described as "about a quarter

gone". He said that no one was sober. The point he made was that no one sober would have behaved in such a way in front of (as he put it) his mates.

44. It was submitted on behalf of Ramzan that a fair trial was irredeemably compromised by the giving of that evidence in the course of the prosecution case following Askar's successful application to the judge at half time that there was no case for him to answer. The unfairness was founded upon the fact that the jury had heard the content of the interviews and compounded by the fact that, as a result of the judge-directed acquittal, Askar's potential veracity would have been enhanced in the eyes of the jury.

45. The judge rejected that submission on the basis that he had explained the status of the interview to the jury when it was read. At the invitation of counsel, he arranged for copies of the interviews to be removed immediately from the bundles. When rejecting the submission advanced on behalf of Ramzan by Mr Nadim, the judge indicated that he would remind the jury in the course of his summing-up that they should ignore that evidence.

46. In the course of his ruling, the judge said that he was prepared to proceed upon the basis that the description in the interview was adverse to the applicant's interest. The issue in the trial of the two applicants was consent. The concern which Mr Nadim expressed on behalf of Ramzan was to the effect that the references by Askar to the presence of drink and to behaviour that was influenced by drink might be relied upon by the jury in support of a conclusion that A was insensible, although that is not what Askar described.

47. As the single judge pointed out, the question whether this description was adverse to the applicant's interest was perhaps moot. Whilst Askar certainly suggested that others had been drinking, his account did not suggest that A was so drunk that she was incapable of giving

consent.

48. Before us, the same submissions have been advanced eloquently by Mr Nadim on behalf of Ramzan. Mr A Khan, who appears today on behalf of Zaman, has supported those submissions.

49. It was submitted before the judge that, had Askar remained in the trial, he could have been asked when he gave evidence what he meant by the observations recorded in his interview and, to the extent that either of the applicants disagreed with his description of the drinking and the sexual activity which had gone on, could have been cross-examined. He might have been asked about how drunk A was. That assumes he would have given evidence. Had he chosen to give no evidence, as both Ramzan and Zaman did, these applicants would have faced a similar problem, if problem it be.

50. The application to discharge the jury was not supported at the time by Zaman. It was accepted that the passages in the interview to which objection is made, were not sufficiently prejudicial to warrant that course. We make no criticism of Mr Khan for seeking to associate Zaman with the application which was made. His short point is that if the trial became also unfair for Ramzan, then it became unfair for Zaman.

51. In refusing leave to appeal against conviction in Ramzan's case, the single judge noted that the jury were warned that Askar's interviews were evidence in his case alone. He noted that the judge was generous in proceeding on the basis that Askar's comments were not helpful in Ramzan's case. He continued:

"Even adopting that approach, however, the judge was plainly entitled to take the view that, if appropriate steps were taken, your trial would still be fair. Clearly, appropriate steps were taken.

The interviews were removed from the jury bundle and the jury were directed, both then and in summing up ... to put them out of their minds. No more elaborate directions were required. ..."

The single judge added that he could see no prospect whatsoever of the full court being persuaded that the conviction was unsafe.

52. The reference to the summing-up was to this passage, where the judge said:

"The interviews of Ataf Ali and Mohammed Askar. As I said to you earlier, you must put out of your minds what those two defendants said in interview. It is wholly irrelevant to the charges you will have to consider."

We agree with the observations of the single judge. We also consider that the direction given in the summing-up was clear and adequate. It repeated something which had been said earlier in the trial. In our judgment, there is no possibility whatsoever that these convictions could be unsafe on account of what was said by Askar in interview.

53. In those circumstances, the renewed applications for leave to appeal against conviction are refused.

### **The Appeals against Sentence**

54. In sentencing the four appellants, the judge repeated the general remarks he had made when sentencing Butt and Mahmood a month earlier. He said that the psychological damage caused cumulatively to A was as bad as it could be. He recognised that the four appellants were not responsible for that overall damage, but he repeated that they had contributed to it and bore some responsibility for it. He noted that none of the appellants had the benefit of mitigation



arising from remorse. The reality of the position was that this vulnerable and damaged child had been used as a serial sexual plaything by the four appellants and many others.

55. In Haider Ali's case, the judge concluded that the offence of sexual activity with a child fell within category 1, by reason of the vaginal penetration. There was grooming behaviour and the use of alcohol and drugs. The age disparity was substantial. A was obviously vulnerable. For those reasons, culpability was at level A. The circumstances of causing the other man to rape A were also such as to place the offending, in the judge's evaluation, into category 1A. He noted Haider Ali's domestic circumstances and that he had type 2 diabetes. Haider Ali had a previous relevant conviction for possessing extreme pornography with images involving animals. The sentences imposed on both counts were the starting points suggested in the guideline for offending at that level.

56. In Hedar Ali's case, the judge reminded himself that he had been convicted on two counts of rape (counts 9 and 11) and two counts of trafficking for sexual exploitation (counts 10 and 12). The judge summarised the facts that surrounded the conviction. He noted that Hedar Ali had taken A to the hotel for the purpose of having sexual intercourse with other men, as well as with him. The indictment reflected a specimen count covering six occasions of rape and one specific count. The judge considered that this was an example of gross abuse, given how well he (Hedar Ali) knew that A was vulnerable. Condoms were not used and ejaculation had taken place. His previous convictions included one for a sexual assault and one for harassment, which had resulted in a total sentence of three years' imprisonment. Sexual Offences Prevention Orders were made but breached on two occasions. The judge considered such convictions to be seriously aggravating features.

57. In Ramzan's case, the judge had to sentence for one count of rape (count 5). He noted the

use of alcohol and cocaine. The judge considered that it was obvious to Ramzan that this child was vulnerable. Initially, A said to Ramzan that she did not want to sleep with him. It was then that he called his friends and continued to ask her for oral sex. She refused. In due course, when others were in the room, Ramzan raped her orally whilst others watched and filmed his actions. The judge accepted that the recording had since been deleted, but it was nonetheless an aggravating feature. Having raped her in the way described, Ramzan then left A in the company of a friend, knowing that something similar was about to take place. The judge accepted that Ramzan was not party to any grooming and that he did not threaten A and did not use force against her. The sentence of fifteen years' imprisonment which he imposed was the starting point in the guideline.

58. In Zaman's case, the judge had to sentence for two counts of rape (counts 7 and 8) and supplying drugs (count 6). He raped A orally and vaginally at a time when it was perfectly obvious that she was vulnerable and incapable of consenting. When he had finished, and with no feelings of concern, he simply left the hotel room and abandoned her.

59. So far as the guidelines were concerned, the drug offence fell within category 3 "lesser role", but the other offences fell within category 1, culpability A, for the reasons given by the judge in the other cases. There was a large disparity in age and in Zaman's case there was the use of alcohol and drugs on A. The judge considered it a further aggravation that Zaman had raped her after she had already been abused by Ramzan.

60. Zaman had previous convictions, but not for sexual offences. He had a series of convictions for violence and dishonesty at the lower end of the scale. The total sentence in his case was seventeen and a half years' imprisonment, seventeen years for the offences of rape and six months consecutive for the drugs offence.

61. The common ground of appeal advanced by each of the appellants centres on the judge's approach to harm. There is no doubt that the effect of the cumulative abuse suffered by A was exceptionally severe – indeed, quite devastating. The judge readily accepted that none of the appellants was individually responsible for all of that harm. But he took into account their contribution to the overall picture when he elevated the harm into category 1 and more generally for the purposes of sentencing. He did so in particular alongside A's extreme vulnerability.

62. On behalf of each appellant it is submitted that their individual, limited contribution to that harm should have resulted in the harm being located in category 2 for the purposes of the guideline. In addition, Ramzan and Hedar Ali have individual grounds, to which we will return.

63. The guideline breaks "harm" down into three categories. It identifies the following factors:

"...

- severe psychological or physical harm;
- pregnancy or STI as a consequence of offence;
- additional degradation/humiliation;
- abduction;
- prolonged detention/sustained incident;
- violence or threats of violence beyond that which is inherent in the offence;
- force/uninvited entry into victim's home;
- victim is particularly vulnerable due to personal circumstances."

If none of those features is present, the harm is treated as falling within category 3. If one or

more is present, the harm generally falls within category 2. For the harm to fall within category 1, the guideline suggests:

"The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors may elevate to category 1."

64. In cases involving multiple offenders, it will rarely be possible to disaggregate the individual contributions made to the overall harm. In looking at the question of severe psychological harm for the purposes of this guideline, in our view, a judge is not required to try to disentangle the causative effect of each offender's contribution.

65. Before concluding for sentencing purposes that the harm crosses the threshold of "severe psychological harm", the judge must be satisfied that the conduct in question was a material or significant contributory cause of that severe harm. The judge in this case did just that. He cannot be faulted for his approach. He was careful to recognise that the appellants contributed to, but were not the sole cause of, A's lasting problems. He took that into account. But in our judgment, and as the judge indicated, the extreme vulnerability of A in the context of her being passed from pillar to post and used as a sex toy by these and other men was a potent factor in taking this offending into category 1A for sentencing purposes.

66. We are very far from persuaded that the judge's approach contained any error. The reality in this case is that the victim was exceptionally vulnerable and was used by these and other men because of that vulnerability. There was grooming behaviour and drink and drugs were often available. Extreme psychological harm was caused to the victim. Her vulnerability was undeniable and obvious. The overall circumstances of the offending transcend the imagination of most people. The judge was required to make an evaluative judgment about where the

offending should be located for sentencing purposes. He cannot, in our judgment, be faulted for his conclusion. This point does not assist any of the appellants.

67. That being the only ground in Zaman's case, we dismiss his appeal.

68. Miss Hussain sought to raise a separate argument on behalf of Haider Ali namely that his overall sentence of twenty years' imprisonment was manifestly excessive on grounds of totality. We have treated this as a renewed application on a ground that was rejected by the single judge.

69. The offence of causing a person to engage in sexual activity without consent – in effect, coercing A to submit to rape – was exceptionally serious. When coupled with the other offending, the overall sentence, in our judgment, is not manifestly excessive. We dismiss Haider Ali's appeal.

70. We turn to the discrete points raised by Ramzan and Hedar Ali. As we have noted, on 20<sup>th</sup> March 2012, Ramzan was sentenced to six years' imprisonment for serious drug offences. That offending had occurred between October 2010 and May 2011, and also in October 2011. In the course of his sentencing remarks, the judge mentioned what would have been an aggravating feature, namely, that he thought Ramzan had committed the material sexual offences whilst on licence from the six year sentence. The judge had, in fact, mistaken the chronology. Ramzan was not convicted of the drugs offences on his guilty pleas until after the events with which these appeals are concerned. Mr Nadim immediately corrected the judge and the judge immediately acknowledged that counsel was right to have corrected him.

71. Mr Nadim submits, albeit with little enthusiasm, that there is at least a risk that the judge failed to discount this factor from his calculation when he arrived at a sentence of fifteen years'

imprisonment. We see no warrant for that conclusion in the sentencing remarks. In those circumstances, Ramzan's appeal against sentence is dismissed.

72. In granting leave to Hedar Ali, the single judge noted the additional aggravating feature of his recent sexual offending. But he gave leave to enable Hedar Ali to argue in respect of the two offences of trafficking within the UK for sexual exploitation (counts 10 and 12) that his culpability should have been regarded for the purposes of the guideline within category B and not category A.

73. We remind ourselves that Hedar Ali's overall sentence was one of 25 years' imprisonment, undoubtedly severe. As Mr Uttley recognised in his careful submissions to us this morning, the ultimate question is whether that sentence is manifestly excessive, given the overall offending. The rape counts included specimen counts. Thus, the judge had to sentence for seven identifiable instances of rape over nineteen days. The reality of the two counts of trafficking was that Hedar Ali provided A for the sexual use of others. The circumstances of this offending do not readily fit within the descriptions found in the guideline. For a category 1A offence, the starting point is eight years' custody, with a range of six to twelve years. For a category 1B offence, the starting point is six years' custody, with a category range of four to eight years. There is a significant overlap between the categories and the sentences. The sentences imposed on Hedar Ali fall at the top of category 1B and in the lower half of category 1A.

74. In his sentencing remarks, the judge said:

"You took her to that hotel on a number of occasions, alcohol and drugs were taken, and knowing that [A], a young girl, was incapable of giving consent by reason of her intoxication, you raped her. You took her there knowing not only that you would have intercourse with her, but that others would, and indeed

whilst incapacitated she had intercourse with other men. This was repeated on a further six occasions approximately; it was gross abuse. She was incapacitated by reason of drink and drugs, you knew it, and you knew how vulnerable she was. You only admitted having intercourse with her in evidence at the trial, because your semen was found in a pair of her knickers. It is apparent from that that no condom was used and there was ejaculation. There was an age difference of fifteen years.

You have a previous conviction for sexual assault for which you received a three year sentence, and you have breached the Sexual Offences Prevention order on two occasions. I regard those convictions as aggravating features.

So far as counts 9 and 11 are concerned, for the reasons given earlier, these offences clearly fall into category 1A. So far as counts 10 and 12 are concerned [that is the trafficking counts], these are clearly category 1 offences, because [A] was under the age of 18. I am not persuaded that they are category B offences so far as culpability is concerned. There is, as I say, the aggravating features of your previous convictions and the fact that you were on licence. There is also the use of drugs with alcohol to secure compliance. Those aggravating features, in my judgment, justify elevating these offences to category A."

75. In our judgment, the approach of the judge cannot be faulted. The sentences for each of the offences for which he had to sentence Hedar Ali were within the appropriate range available to him. Standing back, as we must, and looking at the question of totality, given the exceptional nature of his offending, we do not consider that the overall sentence of 25 years' imprisonment can be stigmatised as being manifestly excessive.

76. For all these reasons, Hedar Ali's appeal is dismissed.

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

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