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Neutral Citation Number: [2024] EWCA Crim 273

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2024/00442/A4



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 7th March 2024

B e f o r e:

LORD JUSTICE LEWIS

MRS JUSTICE CHEEMA-GRUBB DBE

THE RECORDER OF NORWICH
(HER HONOUR JUDGE ROBINSON
SITTING AS A JUDGE OF THE COURT OF APPEAL (CRIMINAL DIVISION))

-

R E X

- v -

HAMODA ALIZARIF EBRAHIM

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Mr T Edwards appeared on behalf of both Appellant

J U D G M E N T



Thursday 7th March 2024

LORD JUSTICE LEWIS:

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 the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 25th January 2024, in the Inner London Crown Court, the appellant, Hamoda Alizarif Ebrahim, who is now aged 34, was sentenced for three offences of sexual assault as follows: on count 1, to 16 weeks' imprisonment; on count 2, to 24 weeks' imprisonment; and on count 3, to 28 weeks' imprisonment. All of the sentences were ordered to be served consecutively. The total sentence was, therefore, one of 68 weeks' imprisonment. The appellant now appeals against sentence with the leave of the single judge.

3. The facts of each offence can be stated briefly. The first offence occurred at about 2 pm on 10th July 2023. The victim caught a Thameslink train from Farringdon Station in London to go to Brighton. The train had been relatively empty, but after it had passed through London Bridge Station the appellant sat next to the victim, who was asleep. The train continued on its journey. The victim was subsequently woken up by a female police officer who said that whilst she had been asleep she had been kissed on the upper arm and touched by the appellant whom the police officer and a colleague had been keeping under observation as he had been acting suspiciously. The appellant was removed from the train at East Croydon Station to await the arrival of the British Transport Police. He was then released on bail.

4. The second offence occurred at about 6.30 pm on 19th September 2023. The victim of that offence got on to a Jubilee Line underground train at Canary Wharf Station. The carriage was busy and the victim found a space between the glass screen and the wall of the train with her back to the glass screen. The appellant subsequently boarded the train and stood next to the victim. The victim subsequently moved away from the glass screen and the appellant moved behind her. The victim subsequently felt someone push up against her and then felt someone touching her leg, which she described as a "caressing" feeling. The victim then realised that the appellant had in fact lifted her skirt up about 30 centimetres and was touching her sexually. She confronted the appellant. The train pulled into Canada Water Station and the victim and the appellant got off the train. The victim looked at the appellant who then made off. It subsequently appeared from the CCTV footage that the appellant had deliberately targeted the victim.

5. The third offence occurred at about 7 pm on 25th September 2023. the victim got off a Northern Line train at London Bridge Station to transfer to a train going to Haywards Heath. She had been talking to her boyfriend on her mobile phone when she was approached by the appellant. He had his mobile phone in his hand and was showing the victim some sort of map as if he needed directions. As the appellant showed the victim his phone, he brushed his hand across her left breast for a couple of seconds. She tried to get away from the appellant, who then asked if she was single. As the victim was trying to get away from him, the appellant bent down and kissed her on her skin on the lower right-hand side of her waist. The victim said, "Don't touch me. Don't be weird with me", and walked off. The appellant was subsequently arrested once again by the police.

6. We have read the victim impact statements of each of the three victims. We bear in mind the psychological impact that this type of offending has had on the three victims. The effect of behaviour of this kind is far greater than the limited physical contact might suggest.

7. The judge had a pre-sentence report. The author noted that the offences demonstrated an unhealthy attitude and a sense of entitlement towards women. The appellant had used transport services to commit sexual assaults on victims, with a degree of planning to manufacture a situation where he could commit a sexual assault, or opportunistically subject a victim to a sexual assault. The author assessed the appellant as likely to commit further offences and as presenting a high risk towards lone females. The appellant had one conviction for facilitating a breach of immigration law, for which he was on licence at the time that he committed these offences.

8. The sentencing judge categorised each offence as a category 3B offence for the purposes of the Sentencing Council guidelines on sexual assault. The starting point for one such offence would be a high level community order, with a sentencing range from a medium level community order to 26 weeks' custody. The judge considered that the following aggravating factors were relevant to all three offences: first, they were committed whilst the appellant was on licence; second, they involved targeting lone females; third, they involved an element of planning; fourth, they were committed on public transport; fifth, the victims were vulnerable, although not particularly vulnerable; and sixth, the impact on the victims had continued. In addition, the appellant committed the first offence whilst he was under the influence of alcohol, having drunk about eight cans of beer. The second and third offences were aggravated by the fact that they were committed whilst the appellant was on bail for the first offence. In terms of mitigation, the judge accepted that these were the appellant's first offences of this nature and that he had shown some remorse which justified a downward adjustment.

9. Taking into account both the aggravating matters and the mitigation, the judge considered it fair to make a substantial upward adjustment to the starting point. That adjustment merited

sentences, in his view, beyond the category range. He took account of the appellant's guilty plea and reduced the sentences for each offence by 20 per cent. In the result the sentences were: 16 weeks' imprisonment for the first offence – that is 20 weeks, reduced by 20 per cent to reflect the guilty plea; 24 weeks' imprisonment for the second – that is 30 weeks, reduced by 20 per cent; and 28 weeks' imprisonment for the third offence – that is 35 weeks, reduced by 20 per cent.

10. The judge considered the guideline on totality and decided that as the three offences involved conduct on three separate occasions against three separate victims, consecutive sentences were appropriate. The total sentence therefore was 68 weeks' imprisonment. The judge considered whether to suspend the sentence, having regard to the relevant guideline, but decided that the personal mitigation was not strong and that there was at present no realistic prospect of rehabilitation, and that consequently an immediate custodial sentence was justified.

11. In his clear written and oral submissions, Mr Edwards submitted that the sentence was manifestly excessive. First, he submitted that the aggravating features did not justify a departure from the sentencing guidelines. This was, effectively, the appellant's first sentence for offences of this nature. Furthermore, even if each of the sentences had been adjusted to the top of the range – that is 26 weeks' imprisonment – that would have resulted in a total sentence of 78 weeks' imprisonment, and, given the 20 per cent reduction for the guilty plea, the result would have been a significantly lower sentence (62½ weeks' imprisonment) than the 68 weeks' imprisonment actually imposed.

12. Secondly, Mr Edwards submitted that insufficient regard was given to the principle of totality. He submitted that it was not possible to see how that principle was given effect to in this case. The sentences were ordered to run consecutively, so that totality was not given

effect to by making one of the sentences concurrent. Sentence on two of the offences were above the top of the sentencing range, namely 30 and 35 weeks' imprisonment before the reduction for the guilty plea.

13. Thirdly, Mr Edwards submitted that it was wrong to adjust the sentence for the third offence to 35 weeks before the reduction for the guilty plea, as compared with the 30 weeks for the second offence. He submitted that the aggravating features did not justify that course of action.

14. We take the three grounds of appeal together. The judge's sentencing remarks were clear, concise and thorough. They identified the relevant aggravating features and explained the reasoning behind the sentence. Nevertheless, we acknowledge that there is force in the submission that, notwithstanding the aggravating features in relation to the second and third offences, those features were not sufficient to take the offences outside the sentencing range and beyond 26 weeks' imprisonment.

15 We also acknowledge that the sentencing judge had regard to the guideline on totality and was entitled to pass consecutive sentences, as the three offences involved conduct on three separate occasions against three separate victims. Nevertheless, we consider that there is force in the submission that the overall sentence was not proportionate, given the offending as a whole. For these two reasons, the sentence in this case was manifestly excessive.

16. We consider that the total sentence for the appellant's three offences, having regard to the aggravating features and the limited mitigation, and before any reduction for a guilty plea, would be in the region of around 46 weeks' imprisonment. In terms of the sentences for the individual offences, we consider that appropriate sentences, before any reduction for the guilty plea, would have been in the region of 14 weeks' imprisonment for count 1, 16 weeks

for count 2, and 16 weeks for count 3. Reducing each of those sentences by 20 per cent to reflect the guilty pleas would result in sentences of 11 weeks' imprisonment for count 1, 12 weeks for count 2 and 12 weeks for count 3. Those sentences are to be served consecutively. That would result in a total sentence of 35 weeks' imprisonment.

17. We therefore allow the appeal. We quash the sentences on counts 1, 2 and 3 and we substitute sentences of 11 weeks' imprisonment on count 1, 12 weeks on count 2, and 12 weeks on count 3. All of the sentences are to be served consecutively to each other.

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

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