

COURT OF APPEAL.

189

27th September, 1995.

Before: Sir David Calcutt, Q.C., (President),  
J.M. Collins, Esq., Q.C., and  
Miss E. Gloster, Q.C.

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MH

-v-

Her Majesty's Attorney General

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Applications for leave to appeal: (1) against conviction before the Criminal Assize on 8th December, 1994; and (2) against a sentence of 8 years' imprisonment imposed by the Superior Number of the Royal Court on 30th January, 1995, following a not guilty plea to 1 count of rape.

The Deputy Bailiff refused leave to appeal against conviction on 17th August, 1995, and against sentence on 24th February, 1995.

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Advocate D.F. Le Quesne for the Appellant.  
D.E. Le Cornu, Esq., Crown Advocate.

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JUDGMENT.

5 THE PRESIDENT: On 8th December, 1994, the applicant, MH,  
was convicted before the Criminal Assize on a charge of  
rape, and was thereafter sentenced to eight years' imprisonment.  
The Deputy Bailiff, sitting as a single judge of this Court,  
refused applications for leave to appeal, both against conviction  
and against sentence. The applicant thereafter sought the leave  
of the full Court to appeal both against conviction and against  
sentence. On 25th September, 1995, we refused leave to appeal  
against conviction, but deferred giving our reasons. We then  
10 heard the application for leave to appeal against sentence, but  
reserved our decision. We now give our reasons and decision  
respectively.

The Crown's case, at trial, was that in the early hours of the morning of Monday, 25th April, 1994, the applicant raped a young woman by the name of A , in a field off La Rue au Blancq in the Parish of St. Clement. In outline, the Crown asserted that the applicant, in drink, had driven A in his car to the field in question, and that he had there had sexual intercourse with her in his car, she not consenting, and he knowing that she was not consenting or being reckless as to whether she consented. He had also subjected her to performing oral sex on him.

Sexual intercourse undoubtedly occurred on this occasion. As defending counsel rightly said, when opening his client's case at the trial: "The dispute is solely on the question of whether or not A consented to what happened". Consent was the only live issue in the case.

Criticism has now been made, in a large number of respects, of the evidence which was adduced at the trial by the prosecution, and, in particular, of alleged inconsistencies in that evidence. Although there were undoubtedly some inconsistencies, it is unnecessary for us to go into those various criticisms. Before we could interfere with the verdict of the jury, we would have to be satisfied either that the verdict was unreasonable, or that the verdict could not be supported having regard to the evidence, or that there was a wrong decision on a question of law, or that there was a miscarriage of justice. We are not so satisfied.

In our view there was ample evidence to justify a conviction for rape, if the jury chose to accept that evidence. It was for the jury, who saw and heard the witnesses, to decide what evidence it accepted, what evidence it rejected, and what weight it should attach to any particular piece of evidence.

Criticisms have also been made in various respects of the (then) Deputy Bailiff's summing-up. We totally reject those criticisms. In our view the summing-up was impeccable and cannot be faulted in any way. We would simply point out that the Deputy Bailiff went out of his way to draw attention to those parts of the evidence which, if the jury accepted them, would have significantly told in the applicant's favour.

It was for these reasons that we refused the application for leave to appeal against conviction.

We now turn to consider the matter of sentence. As already indicated, the Royal Court sentenced the applicant to eight years' imprisonment. In giving Judgment on sentence, the Deputy Bailiff is recorded as having said this:

*"We agree with the Crown Advocate that the appropriate starting point on the facts of this case is a sentence of eight years' imprisonment."*

5           Mr. Le Cornu, the Crown Advocate, said in his submissions to  
us that he accepted that the Crown had not suggested to the Royal  
Court that a sentence of eight years' was the appropriate starting  
point. He suggested to us that, when sentencing the applicant, the  
10          Deputy Bailiff had mistakenly referred to a 'starting point' when  
in fact he meant the appropriate sentence. The Crown, in its  
conclusions, had moved for a sentence of eight years'  
imprisonment.

15           In our view, having reviewed the principal authorities  
relating to sentences in cases of rape, a sentence of eight years'  
imprisonment, on the facts of this particular case, would be  
plainly excessive. We take the view that the Royal Court gave  
over-much weight to such aggravating features as there were, and  
insufficient weight to such mitigating factors as there were.

20           The principal aggravating feature was the oral sex. There  
were other aggravating features, but we do not believe that it  
would be right to attach much weight to them. So far as mitigating  
factors were concerned, there was in fact no physical violence,  
25          the applicant showed some consideration for        A's        physical  
condition, and the applicant did not abandon:        A        in the  
field, but eventually drove her and dropped her off close to her  
home, as she had requested.

30           We accept that five years' imprisonment is an appropriate  
starting point in a contested case of rape. In this particular  
case, balancing the aggravation with the mitigation, we are of the  
view that an increase of one year over the starting point of five  
years is appropriate.

35           Accordingly, we grant the application for leave to appeal  
against sentence, and, treating the application as the hearing of  
the appeal against sentence, substitute for the sentence of eight  
years' imprisonment, a sentence of six years' imprisonment.

Authorities.  
(Conviction appeal)

D.P.P. v. Kilbourne [1973] 1 All ER 440.

R. v. Spencer and Ors. [1986] 2 All ER 928.  
R. v. Smalls and Ors.

R. v. Makanjuola (17th May, 1995) TLR.  
R. v. Easton.

Archbold: p.1/596: 4-379.

Gorval v. AG (1973) JJ 2503.

Evans v. AG (1965) JJ 527 CofA at p.530.

Authorities.  
(Sentence appeal)

Keith Billam and Ors. (1986) 8 Cr.App.R.(S) 48.

Current Sentencing Practice:

Release 22:8-iv-92: pp. 22215-22218.

Release 25:i-iii-93: pp.22219-22220.

C.S.P.R.28: July 1994: P.22220/1-22220/3.

David James Shields [1994] 15 Cr.App.R.(S) 48.

Glenford Daley [1986] 8 Cr.App.R.(S) 429.-