IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
AT MINSHULL STREET, MANCHESTER
HER HONOUR JUDGE LANDALE T20227179

CASE NO 2023 03190/04129/04143 B2
[2024] EWCA Crim 1344

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 4 July 2024

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE

MR JUSTICE JAY

MRS JUSTICE ELLENBOGEN

REX
v
INSAR HUSSAIN
MOHAMMED GHANI

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MR MEYRICK WILLIAMS & MR DAVID BARR appeared on behalf of the Appellant HUSSAIN
MS CLARE WADE KC & MS REBECCA PENFOLD appeared on behalf of the Applicant GHANI
MS CHARLOTTE RIMMER appeared on behalf of the Crown

J U D G M E N T
(Approved)

THE VICE-PRESIDENT:

1. This case concerns sexual offences against children. The victims of those offences are entitled to the life-long protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly, during their respective lifetimes, no matter may be included in any publication if it is likely to lead members of the public to identify either of them as a victim of these offences. We shall refer to the victims simply as 'C1' and 'C2'.
2. After a long trial in the Crown Court at Manchester, Minshull Street before Her Honour Judge Landale and a jury, Insar Hussain was convicted of three offences against C1: one offence of rape (count 30) when she was aged between 14 and 16, and two offences of penetrative sexual activity with a child (counts 29 and 35) when she was aged 14. Mohammed Ghani was convicted of five offences of penetrative sexual activity with a child, namely C1 (counts 5, 11, 14, 17 and 20). The total sentence on Insar Hussain was 17 years' imprisonment, and on Mohammed Ghani 14 years' imprisonment. Meaning no disrespect, we shall hereafter refer for convenience to the appellants by their surnames only.
3. Hussain appeals against his conviction on count 30 with the leave of the single judge. He renews an application for leave to appeal against his convictions on counts 29 and 35 following a refusal of leave by the single judge. Both Hussain and Ghani renew applications for leave to appeal against sentence, which were refused by the single judge.
4. Hussain and Ghani were two of eight defendants who stood trial on an indictment containing 80 counts alleging sexual offences against C1 and C2.
    - Hussain was convicted of the three counts which we have mentioned but was acquitted on other charges: six alleging rape, two alleging sexual intercourse with a girl aged under 13, three alleging indecency with a child, one alleging penetrative sexual activity with a child, and one alleging trafficking within the UK for sexual exploitation.
    - Ghani was convicted of the offences to which we have referred, but he too was acquitted on other charges: ten of rape, one of sexual intercourse with a girl aged under 13, two of indecency with a child, two of buggery, and one of penetrative sexual activity with a child.

Summarising the position of the co-accused:

- One was convicted of four offences of penetrative sexual activity with a child and one of causing a child to engage in sexual activity. He was acquitted of counts alleging rape. All the charges in his case related to C1.
- A second co-defendant was convicted of one offence of rape and two of indecency with a child, the victim of those offences being C2.
- A third defendant pleaded guilty to four offences of penetrative sexual activity with a child, namely C2. He was acquitted of two charges of raping C2.
- The remaining three defendants were acquitted of all the charges which they had faced. Two had been charged in relation to C2, the third in relation to C1.

5. We summarise the facts of the case as briefly as is appropriate. In September 2015, C1 (then aged in her mid-20s) reported to the police that as a child she had been sexually exploited by a number of older men in the Rochdale area. She described meeting Hussain and Ghani when she was aged 12 and agreeing to go drinking and smoking with them. Her account was that although no alcohol was consumed at their first meeting, on subsequent occasions she was given alcohol in considerable quantities by the two men. C1 said that she really liked Ghani, believed they were in a genuine relationship and would do anything he asked just to please him. He in contrast treated her, as she was to describe it, like a piece of meat. She met him frequently between 2002 and 2006, often being collected by Ghani from school whilst still wearing her school uniform. She described how she had been caused by Ghani to perform oral sex on him and have vaginal sex with him. She said that had happened from the age of 12 onwards. She said that Ghani had persuaded her to perform oral sex on his friends, telling her that he would love her even more if she did that for him. Because of what he said, on a particular occasion she reluctantly allowed Hussain to have sex with her.
6. C1 went on to describe events at a particular flat in Rochdale to which she said she went

with Ghani and at which Hussain and other men were present. Summarising her evidence, she said that she was given alcohol and then caused to have vaginal sex with and perform oral sex on both Hussain and Ghani. Other men present then also made her perform oral sex on each of them. One of the counts of which Ghani was convicted related to that occasion. He had gone into the bedroom at the flat with her, ejaculated in her mouth and told her to stay there. Hussain then came into the room. C1 said she had had sex with Hussain on a number of other occasions over a lengthy period. Count 30 (of which he was convicted) was said to be such an occasion. She also said that she had performed oral sex on Hussain on numerous occasions (one charged in count 35).

7. C1 said that when she was aged 13 or 14, she was persuaded by Ghani to let him have anal sex with her, which she found extremely painful. On an occasion charged in counts 11 and 14, he first penetrated her anus and then her vagina. She described many other occasions (including those charged in counts 17 and 20) when Ghani penetrated her vagina and her mouth with his penis.

8. C1 also gave an account of an occasion when she was aged 15 or 16 when she described being taken by Hussain to a flat, at which Hussain received money from another man and told her she was to have sex with him. Both Hussain and the other man (who was one of those charged on the indictment) were acquitted in relation to this allegation.

9. Hussain was arrested in March 2016. When interviewed under caution, he largely made no comment but denied any sexual activity with a child under 16. He was further interviewed and responded in a similar way later in 2016, and again in early 2021.

10. At trial, on the charges in relation to Hussain, the prosecution relied on C1's evidence and on the evidence of another young woman, who described going to the flat with Ghani and Hussain. The prosecution case also relied on the appellant's association with his co-accused, on his having relied at trial on matters he had not mentioned to the police when interviewed, and on his failure to give evidence.

11. The defence case on behalf of Hussain, in a nutshell, was a complete denial of the

allegations. He said that C1 had correctly identified him as a delivery driver but had wrongly identified him as the person who offended against her. It was put on his behalf in cross-examination that C1 was unreliable because she had been abused by so many men and it was said that she was "in it for the money". Reference was made to a contrast between photographs said to show Hussain at the relevant times and the description of him at those times given by C1. As we have indicated, Hussain did not himself give evidence but he called a witness.

12. Following conviction there was a period of adjournment before the sentencing hearing. The judge was assisted by pre-sentence reports in relation to both Hussain and Ghani.

    - Hussain (aged 38 at the time of sentence) had no relevant previous convictions but had in 2020 been sentenced to a total of 20 months' imprisonment for offences including production of a controlled drug of Class B.
    - Ghani (aged 39 at sentence) had one previous court appearance for possessing a controlled drug of Class B.

13. On behalf of Hussain, Mr Williams, who has represented Hussain also before us today, referred to **R v Williams** [2021] EWCA Crim 1915 in support of a submission that the total sentence imposed on Hussain should be reduced to some extent to reflect the fact that Hussain had spent a significant period of time remanded in custody awaiting trial for an unconnected offence of which he was ultimately acquitted.

14. In his sentencing remarks the judge began with some general observations and then dealt with Ghani followed by Hussain.

15. The judge said of Ghani that he had been at least 5 years older than C1. He had ruthlessly exploited her innocent affection as a way to get sex for himself and had pressured C1 to have sex with his friends including Hussain. The judge said that his behaviour had corrupted C1. He had indeed treated her as a piece of meat. He had done as he pleased with her, having no interest in her other than for sex. C1 had done all she could to please him. It was accepted that his offences fell into category 1A of the relevant sentencing guideline.

16. The judge found aggravating features: ejaculation, the presence of others on many though not all occasions, and the making of a threat that if C1 did not have sex with Hussain, a particularly unpleasant video recording of her would be shown to her mother. The mitigation identified by the judge was that Ghani had been aged between 19 and 21 at the time of the offending, had not offended and had led a useful life since the time of the offending, and was spoken of highly as a family man in a number of references.

17. The judge made plain that she proposed to impose concurrent sentences, with the result that the sentence on one offence could properly exceed the guideline sentencing range for a single offence. She took account of the principle of totality. She imposed sentences of 14 years' imprisonment on counts 17 and 20; and 8 years' imprisonment on counts 5, 11 and 14, all those sentences being concurrent.

18. The judge said that Hussain had also been at least 5 years older than C1. He too had treated her like a piece of meat. There was clear evidence that he had given her copious amounts of alcohol despite knowing that she was a child. He had penetrated her mouth with his penis on multiple occasions and on one occasion raped her vaginally. The judge said that it would "be wholly artificial to interpret the jury verdict on Count 30 as meaning the single-incident count was intended to reflect an occasion when alcohol was not given to facilitate sex". On that basis the judge placed count 30 into category 2A of the relevant guideline, with a starting point of 10 years, and a range from 9 to 13 years.

19. There were aggravating features of ejaculation, no use of condoms and the threat to show C1's mother the video to which we have referred. The judge was satisfied that that had occurred in Hussain's presence and that Hussain had laughed at what he had seen being done to C1. Counts 29 and 35 fell into category 1A of the relevant guidelines. There were similar aggravating features in relation to those offences.

20. Hussain too had been aged 19 to 21 at the time. He had no relevant convictions and had committed no sexual offences since these. He too was spoken of well as a hard-working family man, respected by friends, who provided references. The judge declined to make any

reduction in his sentence because he had spent time in custody for an entirely unrelated offence. Taking account of totality and treating count 30 (the rape offence) as the lead offence, she imposed concurrent sentences of 8 years on count 29, 17 years' imprisonment on count 30 and 12 years on count 35.

21. Hussain now advances two grounds of appeal against conviction.

- He argues that the conviction on count 30 is unsafe because it is inconsistent with other verdicts. Leave to appeal on this first ground was granted by the Single Judge.
- He renews his second ground of appeal, which is that all the convictions are unsafe having regard to all the circumstances of the case.

22. In support of the first ground of appeal, Mr Williams submits that C1 had alleged multiple incidents of sexual abuse which can conveniently be grouped as follows.

- Counts 22 to 29 alleged specific occasions when C1 said there had been oral and vaginal penetration;
- Counts 33 to 38 were multiple-incident counts of oral and vaginal sex, with alternative counts according to the jury's conclusions about whether or not there was consent;
- Counts 30 and 31 were single-incident counts, in effect alternative to the multiple-offence counts and again distinguished by the jury's findings on the issue of consent. The jury were directed that they could convict on count 30 or count 31 if sure that the alleged offending happened at least once.

The defence, through cross-examination, had challenged the credibility of C1 and of the prosecution witness who gave evidence of other sexual activity at the flat. It was, as we have said, argued that C1 was unreliable because she had been sexually exploited by others and was motivated by a desire for financial gain. It is submitted by Mr Williams that the verdicts on the indictment as a whole, with the only rape conviction of any defendant being the conviction of Hussain on count 30, demonstrates what was described in written submissions as "a wholesale rejection" of the prosecution case and showed that the jury "rejected C1's narrative entirely". It was further submitted in writing that since count 30

was a reflection of C1's evidence that sexual offences were committed against her so often that she could not recall details, that the jury's verdicts showed that they had rejected the allegations of rape which had been the subject of any detailed evidence. Mr Williams submits orally to the court today that he recognises it may be "going too far" to speak of wholesale rejection, but he says it is a troubling indication of the unsafeness of the conviction that count 30 was based solely on "the general evidence" whereas the jury acquitted on counts of which more detailed evidence was given.

23. The written grounds in relation to ground 2 again relied on what was said to be a wholesale rejection of the prosecution case and asserted that, in a case dependent upon C1's evidence alone, there was at least a lurking doubt. Again Mr Williams puts the matter somewhat differently in his oral submissions today. He accepts that if he fails in his challenge to the conviction on count 30, there is nothing more to be said in support of his second ground. If, on the other hand, his first ground succeeds, then the unsafe conviction on count 30 lends support, he argues, to his more generalised ground of appeal against the other counts.

24. Ms Rimmer on behalf of the Respondent in her very helpful written and oral submissions opposes both the appeal and the application for leave. She submits that the conviction on count 30 was not inconsistent with the acquittal on other counts of rape and in any event it cannot be said that no reasonable jury could have reached that guilty verdict.

25. As to ground 2, Ms Rimmer points out that no criticism is or could be made of the judge's directions of law, which included a conventional direction to consider each count separately and a careful explanation of those counts which were alternatives to one another. All factual and evidential issues were before the jury for their consideration. In those circumstances, submits Ms Rimmer, the convictions are all entirely safe.

26. We consider first the argument advanced under ground 1. The starting point is the decision of the court in **R v Durante** (1972) 56 Cr App R 708. It is sufficient to read the short headnote:

> "An appellant who seeks to obtain the quashing of a conviction on the ground that the verdict of Guilty on a count on which he was convicted was inconsistent with a verdict of Not Guilty on another count has a burden cast upon him to show not merely that the verdicts on the two counts were inconsistent, but that they were so inconsistent as to call for interference by an appellate court."

27. That decision was endorsed in **R v Fanning** [2016] EWCA Crim 550. Part of the headnote to the report of that case in [2016] 2 Cr. App. R. 19 reads:

> **"**In cases in which an appeal was brought on the ground of inconsistent verdicts there was a clear test in that the defendant had to satisfy the court that the two verdicts could not stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts of the case could have arrived at the conclusion being considered. The defendant had to satisfy the court that the verdicts were not merely inconsistent but were so inconsistent as to demand interference by an appropriate court."

The court went on to say (as summarised later in the headnote) that:

> **"**… absent any specific direction, it was generally permissible for a jury to be sure of the credibility or reliability of a complainant or witness in relation to one count in an indictment and not to be sure of credibility or reliability of the complainant or witness on another count."

28. Those principles are well established. In our judgment their application to the circumstances of the present case leads to a clear conclusion. The jury had to consider a complex indictment, reflecting the wide-ranging evidence, covering a long period of time, of a damaged young woman who on any view (as even Hussain asserted) had suffered dreadful sexual abuse at the hands of other predatory men. The jury had to grapple with difficult issues of reluctant acquiescence. They had to consider each count separately and were entitled to come to different verdicts on different counts. Hussain himself, of course, had given no evidence to contradict or undermine what C1 said about him. It was wholly unrealistic to speak of wholesale rejection by the jury of the prosecution case. Their verdicts on count 30 and other rape counts simply mean that they were sure that C1 had been raped once but unsure whether she had been raped on other occasions. Mr Williams was therefore wise to draw back from that use of language in his oral submissions.

29. We can see no merit in the submission that the jury could not reasonably convict on count 30 (about which C1 gave no details) whilst acquitting on counts of rape (which had been

alleged in greater detail). Count 30 required the jury to decide whether rape (whether or not described in circumstantial detail) had been committed at least once by Hussain. Nothing in Mr Williams's submissions has persuaded us that there is any reason why the jury could not be sure of that fact even though they were unsure about other allegations.

30. It is therefore impossible to say that no reasonable jury who had applied their minds properly to the facts of the case could have reached the conclusions which this jury did. Given that count 30 (alleging a single incident) was an alternative to a count alleging multiple incidents of rape, we are not persuaded that there is any inconsistency between the verdicts; but if there is, it is certainly not such as to demand interference by this court. Ground 1 accordingly fails.

31. We can deal with ground 2 briefly. So far as the written grounds are concerned, we agree with the single judge that it was unarguable. There was, as we have said, no wholesale rejection of the prosecution case. Not guilty verdicts on counts when C1 was said to be 12 or 13 did not undermine guilty verdicts on counts when she was said to be older. The jury were entitled to, and clearly did, accept parts of C1's evidence as being truthful, accurate and reliable. As presented orally, this ground seems to stand or fall with our conclusion about ground 1. It therefore falls with it.

32. We turn to the applications for leave to appeal in relation to sentence. On behalf of Hussain it is submitted that the sentence of 17 years' imprisonment on count 30 was wrong in principle or manifestly excessive because the offence was miscategorised under the sentencing guideline. Mr Williams argues that it should have been found to fall within category 2B and not 2A, with a resultant starting point of 8 years' custody rather than the 10-year starting point which the judge took. It is further submitted that the judge was wrong to find that alcohol had been given to C1 to facilitate sex on the occasion of which the jury had convicted. Even taking into account that count 30 was the lead offence in concurrent sentencing, and even if the judge was correct in her categorisation, Mr Williams argues that the sentence of 17 years was so far in excess of the starting point that it was much too high.

33. Mr Williams goes on to maintain the submission that the judge should have given credit for

the period of time when Hussain had been remanded in custody on an unrelated matter. He points out that in **R v Williams** this court did feel able to reduce the sentence to recognise the fact that the appellant in that case had spent a significant period in custody for an alleged offence of which he was ultimately acquitted.

34. These grounds are again opposed by the respondent, who argues in support of the judge's approach and eventual decision.

35. Like the single judge, we are satisfied that both grounds are unarguable. The judge had presided over a long trial. She was entitled to categorise count 30 as she did, to find that alcohol had been used to facilitate the offence, and to find the aggravating features which she did. The eventual sentence on that count plainly reflects, in what was a sensible and appropriate sentencing structure, the overall sentence for the totality of the offending.

36. As to the point made about the time spent remanded in custody on another matter, we deprecate any attempt to rely on the decision in **R v Williams** without addressing the principles which have been very clearly stated by this court in two other cases: **R v Prenga** [2017] EWCA Crim 2149, and **R v Dacres** [2024] EWCA Crim 447. In **Prenga** at [45] and [46] the court stated two principles as follows:

> **"**First, the discretion to modify a sentence, which is otherwise lawful is, on the basis of case law, an exceptional jurisdiction. This is because the rules laid down in the CJA 2003 for the according of credit against sentence for periods spent on remand or on qualifying bail are intended to lay down a comprehensive scheme governing the issue. A defendant's entitlement to 'credit' is thus fixed by statute. Parliament has made policy choices in approving this regime, for instance as to the amount of credit for time spent on qualifying curfew (50% of the actual days). Parliament has also made clear that time spent on remand in cases unrelated to the case under consideration should not prima facie warrant any adjustment to the sentence. The cases where the statutory regime does not ensure justice should therefore be rare.
>
> Second … it is not uncommon for two parallel or overlapping sets of proceedings to be brought against an individual for two different offences. It is not unusual for a defendant to be on remand in relation to one, serious, charge in circumstance where (otherwise) he would have been on qualifying curfew in relation to some other, less serious, charge. Where the most serious charge is discontinued, credit is not normally given in relation to sentence on the second charge."

The court in **R v Williams** did not refer to those important principles.

24. In **Dacres** the court at [24] said this:

> "We have no doubt that the principled approach in *Prenga* must be adopted in any case where the operation of s240ZA(4) means that a period in custody will not count as time served. Cases where the statutory regime does not confer the appropriate benefit on an offender will be rare. The discretion to modify what otherwise would be the proper sentence is an exceptional jurisdiction. In this context, for the circumstances to be exceptional they must be more than unusual. They must be such that the application of the statutory regime would lead to real injustice."

37. It is very regrettable that the decision of the court in **Prenga** was not brought to the attention of the judge in this case when she was being invited to make a reduction in the sentencing for these offences because of a remand in custody on an unconnected matter. Mr Williams explains the oversight in part by saying that **Prenga** is not cited in Archbold. In the light of the cases we have mentioned, the principle is clear: the court has a discretion to give credit for time remanded in custody which will not be taken into account by the statutory regime, but that discretion is an exceptional jurisdiction to be exercised only where the application of the statutory regime will lead to real injustice. It follows that the discretion will rarely be exercised. It also follows that any attempt to rely on the specific decision in **R v Williams**, without addressing the principles stated in **Prenga** and **Dacres**, must be expected to fail.

38. The attempt fails here. It is not possible to criticise the judge's decision. We therefore reject Hussain's grounds of appeal. We are satisfied that the total sentence in his case, though stiff, was not manifestly excessive.

39. We turn to the grounds put forward on behalf of Ghani. Ms Wade KC submits that the overall sentence of 14 years' imprisonment imposed concurrently on each of counts 17 and 20 was manifestly excessive. In the written grounds of appeal it was submitted that since the statutory maximum sentence for an offence contrary to s.9(1) Sexual Offences Act 2003 is 14 years, the judge in imposing that sentence must have failed to make any reduction for the appellant's mitigation. Ms Wade recognises that those written grounds were not expressed as clearly as perhaps they might have been. She clarifies her submission very

helpfully. She accepts that within the structure of concurrent sentencing the judge could properly have passed a sentence in excess of the relevant category range, which goes up to 10 years' imprisonment; but she says the overall sentence of 14 years went too far beyond that range in all the circumstances of the case.

40. Ms Wade relies on the mitigation available to Ghani: in particular, that he was of good character before these offences, had not committed any sexual offence subsequently, and as a young adult aged between 19 and 21 should have been sentenced on the basis that he was not yet fully mature. Further, Ms Wade points out that the age difference between offender and victim was only about 5 years. She also points to the significant delay between Ghani's arrest in March 2016 and his first appearance before a magistrates' court in April 2022. It is further argued on behalf of Ghani that the judge gave undue weight to the aggravating features, and that in some respects her findings failed to reflect sufficiently the not guilty verdicts returned by the jury on counts involving consent on the part of C1.

41. Again, the grounds of appeal are opposed by Ms Rimmer on behalf of the respondent.

42. As the single judge pointed out, the initial reliance in written grounds on the statutory maximum penalty for a single offence was misplaced. The judge was not imposing the statutory maximum for a single offence, nor was she characterising either count 17 or count 20 as the worst example of its kind. As she made clear, she was, quite appropriately, passing concurrent sentences on those counts which reflected the overall criminality of all five offences. Ms Wade was therefore wise to clarify the points as she did in her oral submissions.

43. We are satisfied that the judge took into account the mitigation available to Ghani, but in truth it could carry very little weight against his cynical abuse as a young adult of a child who craved his affection. The judge was entitled to make the findings she did as to the aggravating features and she did not give undue weight to them. The fact that Ghani was acquitted on other counts does not assist his present argument; the plain fact is that if he had been convicted of one or more of those offences the total sentence upon him would

inevitably have been significantly longer.

44. In our view the judge, having presided over the trial, was in the best position to assess the seriousness of the offending, and we are not persuaded that there was any arguable error in her approach or her conclusions. The overall sentence was, as in Hussain's case, stiff but not arguably manifestly excessive. It follows that the grounds of appeal are not arguable.

45. We express our thanks to all counsel for their written and oral submissions.

46. Drawing the threads together, for the reasons we have given:

- Hussain's renewed application for leave to appeal against conviction is refused and his appeal against conviction dismissed.
- The renewed applications by each applicant for leave to appeal against sentence are refused.
- Although we have refused leave to appeal in relation to sentence, we think it very desirable that the principles in **Prenga** and **Dacres** should not again pass unnoticed. We therefore give leave for this judgment to be cited.