



SHERIFF APPEAL COURT

**[2017] SAC (Crim) 6
SAC/2017/72/AP**

Sheriff Principal D L Murray
Appeal Sheriff N C Stewart
Sheriff Principal CAL Scott QC

OPINION OF THE COURT

Delivered by SHERIFF PRINCIPAL D L MURRAY

in Appeal by Stated Case against Conviction

ALI RAZA

Appellant

Against

PROCURATOR FISCAL, GLASGOW

Respondent

**Appellant: Paterson, Solicitor Advocate, Paterson Bell
Respondent: Erroch, Advocate Depute, Crown Agent**

12 April 2017

[1] The appellant appeals by stated case his conviction following trial at Glasgow Sheriff Court for contravention of Section 7(1) of the Sexual Offences (Scotland) Act 2009 on 27 October 2016, sentence being passed on 24 November 2016.

[2] The amended charge with which he was convicted is in the following terms:

“(001) on 26th November 2014 at Lenzie Street, Glasgow, you ALI RAZA did

intentionally direct a sexual verbal communication at AB, born 10.10.2000, c/o Police Service of Scotland, in that you did ask her to perform oral sex and to masturbate you and offer to pay her money for performing same; CONTRARY to Section 7(1) of Sexual Offences (Scotland) Act 2009.”

[3] For the purposes of this appeal, the salient terms of Section 7 of the 2009 Act are as follows:

“(1) If a person (“A”), intentionally and for a purpose mentioned in subsection (3), sends, by whatever means, a sexual written communication to or directs, by whatever means, a sexual verbal communication at, another person (“B”)—

- (a) without B consenting to its being so sent or directed, and
- (b) without any reasonable belief that B consents to its being so sent or directed,

then A commits an offence, to be known as the offence of communicating indecently. ...

(3) The purposes are—

- (a) obtaining sexual gratification,
- (b) humiliating, distressing or alarming B.

(4) In this section—

...
“verbal communication” means a communication in whatever verbal form, and without prejudice to that generality includes—

- (a) a communication which comprises sounds of sexual activity (whether actual or simulated), and
- b) a communication by means of sign language.”

[4] The factual background to the events alleged on 26 November 2014 is set out in the sheriff’s findings numbered 1 to 9; the conduct of the appellant at findings 9 and 13; and the response of the complainer at findings 11, 12, 15 and 17. The sheriff in her stated case poses two questions for the Opinion of the Court, the first question being the essence of the appeal.

That question is in the following terms:

“Did I err in repelling a submission made on behalf of the appellant in terms of section 160 of the Criminal Procedure (Scotland) Act 1995?”

The second question is:

“On the facts stated, was I entitled to convict the appellant?”

[5] The appellant focused the appeal on whether the words said to be used and which

flow through into the charge, have been corroborated. We were directed to finding-in-fact 10 which provides:

“[10] The appellant asked the complainer to give him a wank. He also asked her to give him a blow job. The appellant intentionally directed these sexually verbal communications to the complainer for the purpose of obtaining sexual gratification.”

In finding-in-fact 14, the sheriff found:

“[14] The appellant said to the complainer “Are you scared I’m going to rape you?”

It was noted that finding-in-fact [14] did not make any reference to this comment being made for the purpose of sexual gratification.

[6] The section 160 submission, recorded at page 17 of the Appeal Print, was to the effect that in order to prove the charge, the Crown required to produce corroborated evidence that the appellant had made a sexual verbal communication. It was submitted that the terms of the communication narrated in the charge could not be corroborated by circumstantial evidence. This was a unique charge and it required corroboration of the words alleged to have been uttered by the appellant.

[7] The sheriff’s reasons for repelling the submission under section 160 are recorded at paragraph 39 of the stated case. The sheriff did not accept that the precise terms of the sexual communication said to have been uttered by the appellant required to be corroborated. She considered that the actus of the charge was the intentional directing of a sexual verbal communication at the complainer and that the remarks the appellant accepted he made to her and to the police provided the necessary corroboration of the complainer’s evidence. In addition, the sheriff narrates that on account of a series of features, including the complainer’s age (13), her attire (in school uniform) and her having been lured to an occult location for an illegal purpose (the intended purchase of illicit drugs), she was

satisfied the appellant had by his actions contravened section 7(1). [We conclude the reference to section 9(3) in the stated case to be a typographical error, and no issue was taken about this in the appeal.]

[8] The appellant's solicitor-advocate submitted that the phrase "Are you scared I'm going to rape you?" might not have been associated with sexual gratification and that there was no finding by the sheriff that these words were used for the purpose of sexual gratification. It was accepted that the appellant had asked the complainer for a hug, but again, there was no finding that those words were used for the purpose of sexual gratification. It was submitted that the age of the complainer, the circumstances in which the complainer found herself and her attire were not sufficient to provide the necessary corroboration of the verbal communication identified in the charge. The circumstantial evidence here was insufficient to corroborate the primary evidence of the complainer.

[9] The Crown opposed the appeal and invited the Court to accept the sheriff was entitled to repel the section 160 submission and to convict. Accordingly, it was argued that the first question in the stated case should be answered in the negative and the second question in the affirmative. With regard to the sufficiency of evidence the Crown submitted there did not require to be direct corroboration of the precise words used. The charge involved reference to oral sex and masturbation and to the appellant offering to pay the complainer money. Reference was made to the unreported case of *Lyons v Procurator Fiscal, Glasgow* dated 29 January 2014 where the High Court did not uphold the conviction. The advocate depute submitted that the case of *Lyons* could be distinguished as the corroboration of the offence available in the instant case was of much greater significance. The complainer's account was corroborated by reference to the appellant's response when detained and to his police interview wherein the appellant confirmed having asked the

complainer “Are you scared I’m going to rape you?” In addition, in the same police interview conducted by DS Convery, the appellant had admitted that he asked the complainer for a hug and that he was aware of the complainer being scared (page 15 of the Appeal Print). The sheriff had accepted the complainer’s evidence of what had been said to her. Therefore, the advocate depute contended that little by way of corroboration was required. In any event, the requirement for corroboration was clearly satisfied in the instant case, thereby entitling the sheriff to repel the no case to answer submission and to convict the appellant.

[10] The issue in this appeal, shortly put, is whether there was corroboration of a sexual verbal communication having been made by the appellant to the complainer, and, more particularly, whether the sexual element of any such communication had been established by corroborated evidence. The starting point is the acceptance by the sheriff of the evidence of the complainer. The evidence of the complainer plainly supported the libel. Beyond that, we consider that the various adminicles of evidence to which the sheriff makes reference in the stated case, when taken together are sufficient to corroborate the sexual element of the charge as spoken to by the complainer in her evidence. In our opinion, the evidence of the remarks which, by his own admission, the appellant accepts were directed at the complainer and the evidence of the circumstances in which the dialogue with the complainer was undertaken both serve to provide ample corroboration of that feature.

[11] In the circumstances we shall answer the first question of the stated case in the negative and the second question in the affirmative. Accordingly the appeal falls to be refused.