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No: 201203163 A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 20 September 2012

B e f o r e:

LORD JUSTICE PITCHFORD

MR JUSTICE BEAN

MR JUSTICE UNDERHILL

R E G I N A

v

ESTHER FARAJA NGWATA

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(Official Shorthand Writers to the Court)

Mr B Singh appeared on behalf of the **Appellant**

Judgment

As Approved by the Court

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1. MR JUSTICE BEAN: The appellant married a man known as Thierry in 2009 in the Democratic Republic of the Congo. He had been living in the UK and had British citizenship. She arrived here in February 2010 on a two-year spouse visa to live with him in Dublin. She was pregnant. Their baby was born two months later.
2. In June 2010 she left the marital home with the child and went to live with her sister in Coventry. In July the sister contacted the police reporting that the appellant had been physically and sexually abused by her husband. The police spoke to the appellant, who at that stage said there had been no such abuse.
3. Thierry informed her that he was under a duty to tell the Home Office that they were no longer living together. She subsequently applied for indefinite leave to remain saying that she had been the victim of domestic violence. On 24 November 2010, she went to a police station in Coventry and alleged that she had been the victim of serious sexual offences and domestic violence at the hands of her husband.
4. In subsequent interviews over the period of November 2010 to February 2011 she gave detailed accounts saying that she had been locked in the flat every day while her husband was at work and subjected to repeated domestic violence, including rape at knife point and repeated rape. In February 2011 she forwarded the police an email which she said she had received by accident suggesting that her husband had paid a sum of money, just under \$1,000, for the murder of her and her son when they got back to the DRC. Her relatives gave statements in support of her allegations.
5. The husband was arrested. He was held in police custody for 14 hours and bailed for further enquiries. He told the police that he had suspected for some time that he was going to be the target of false allegations. Fortunately he had covertly recorded conversations that the appellant had had with him and others. There was evidence of her discussing the allegation with other family members: for example, of her being told not to forget to say things about being raped. As a result of the police listening to those tape recordings she was arrested in August 2011. In interviews she repeated the allegations, but inconsistencies began to emerge in her account.
6. When she was prosecuted for perverting the course of justice the matter went to the Crown Court and at the plea and case management hearing she pleaded not guilty. Between that time and the date fixed for trial she changed her plea and tendered a plea of guilty on this basis:
 - (1) It was not her idea to commit the offence;
 - (2) She initially denied what others claimed had happened (that is a reference to the first police enquiries in July 2010);
 - (3) She told her husband the truth and the pressures that were upon her;
 - (4) She was new to the laws and customs of this country and was being 'advised' by others;
 - (5) She was told it was in her and her son's best interests to say what she

eventually did;

(6) She succumbed to the advice and pressure;

(7) At the relevant time she was destitute and depressed such that her judgment was impaired.

7. The Crown did not seek to contradict that basis of plea. We only observe in respect of (4) that the appellant may have been new to the law and customs of this country, but she cannot have imagined that they allow people to make very grave and false allegations of the kind which she made against her husband without serious consequences.
8. She was sentenced by HHJ Nawaz to three years and three months' imprisonment. That was on the basis of a starting point, had there been a contested trial, of four years, with credit of approximately 20 per cent for a plea of guilty before the trial date, but not one entered at the earliest opportunity.
9. In his notice of appeal Mr Balbir Singh cited a number of previous decisions of this court, some of them from some years ago. Any citation of authority on the subject of perverting the course of justice by making false allegations of rape must, in our judgment, include the decision of this court in R v McKenning [2009] 1 Cr App R (S) 106, which though not a formal guideline case is an authoritative statement by Lord Judge CJ of the policy considerations which apply in cases of this kind. We refer, in particular, to paragraphs 15 to 18 of this court's judgment:
 - i. "15. Our attention has been drawn to a number of cases. They were not, as far as we are aware, before the judge; but they do not sufficiently focus on the serious policy question which the judge addressed. The judge noted the effect of this offence on the victim, Mr Holling. He pointed out that the full panoply of measures to help women who were genuinely victims of rape had been deployed; all that was wasted; the victim suffered the humiliation to which we have referred in the course of the narrative. There had been ample opportunity for the applicant to tell the truth and bring the ordeal to an end. He referred to the so-called "low conviction rate" for rape, much of which, the judge said, was ill-informed, but he pointed out that when the public knew that people like the applicant were wicked enough falsely to cry rape, that would affect the minds of juries assessing the evidence of genuine victims.
 - ii. 16. Our view can be briefly summarised. We endorse the approach taken by the judge. This was not, as so many cases involving the offence of doing an act tending or intended to pervert the course of public justice, a case of a guilty man or woman seeking to avoid responsibility for a crime -- often and frequently a relatively minor motoring offence. That is bad

enough; but of its kind this was a very serious offence. Sexual intercourse with a woman without her consent is a shameful crime. When proved it merits, and it receives, heavy punishment. The reality must, however, be faced that when rape has taken place it is frequently very difficult to prove. It is also the case that when the defendant is truly innocent, a false allegation can be extremely difficult for him to refute. That is why, after sexual intercourse has taken place between adults, the investigation and prosecution of the allegation of rape presents the police and the Crown Prosecution Service, and, if the matter eventually goes to court, the jury with highly sensitive and sometimes desperately difficult decisions. Currently this is a very serious problem. The consequences for an innocent man against whom the allegation is made are very serious. In this case there was enough independent evidence eventually to enable the investigators to discover that the potential defendant was truly an innocent man. In the end he was fortunate. But for the meantime his entire life must have had a nightmarish quality. That lasted for three months. It could have been brought to an end at any time by one word from the applicant.

- iii. 17. However, quite apart from the consequences to Mr Holling, this allegation involves more than the individual victim. Every false allegation of rape increases the plight of those women who have been victims of this dreadful crime. It makes the offence harder to prove and, rightly concerned to avoid the conviction of an innocent man, a jury may find itself unable to be sufficiently sure to return a guilty verdict.
- iv. 18. This offence caused great problems for the victim; but it also damaged the administration of justice in general in this extremely sensitive area. In our judgment the sentence imposed by the judge fell within the appropriate range. Accordingly the application for leave to appeal against sentence will be refused."

10. That judgment is important for three reasons: firstly, as we have said, it is an authoritative statement by the Lord Chief Justice; second, it indicates that previous authorities are not of much assistance because they do not, as the Lord Chief Justice said, sufficiently focus on the serious policy question which he identified; and third because the case itself, in which a sentence on an early plea of guilty of two years' imprisonment was upheld, is a useful benchmark.

11. In the case of McKenning the defendant's motive in making a false allegation of rape was to protect herself from potential violence from her boyfriend (at that time a serving prisoner) had he found out, as she believed he would, that she had had sex

with another man. In the present case the appellant's motive was to obtain indefinite leave to remain essentially by fraudulent means.

12. In the submissions of Mr Balbir Singh today he concedes -inevitably - that the case passes the custody threshold, as he put it, "by some margin". He submits that a starting point of three years after a trial would have been appropriate before credit for the plea of guilty and personal mitigation. He points out that at the time that the appellant came to be sentenced by the learned Judge she had served three months in custody already, and was entitled to further credit of about three months more for time spent under curfew. Since the date of sentence she has now served a further five months in custody, in other words, a total representing a sentence not far short of two years. Mr Balbir Singh also emphasises the basis of plea and has informed us that the appellant has had very few opportunities to see her child during the period she has been in custody.
13. We bear all of this in mind but, having regard to what the Lord Chief Justice said in McKenning, we are unable to reduce the sentence to the extent that Mr Balbir Singh suggests. We do, however, consider that the starting point of four years taken by the Judge was somewhat too high. We consider that the appropriate starting point would have been one of three years. Giving the appellant credit of one fifth for the plea of guilty, as the learned Judge did, the result is that we quash the sentence of three years, three months imposed by the learned Judge and substitute a sentence of two years and five months' imprisonment. To that extent this appeal succeeds.