

Neutral Citation Number: [2018] EWCA Crim 1381

No: 201801651 A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 23 May 2018

B e f o r e:

LADY JUSTICE HALLETT DBE
(VICE PRESIDENT OF THE CACD)

MR JUSTICE JAY

MR JUSTICE MARTIN SPENCER

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

R E G I N A

v

ANNA JUDITH COSTIN

Ms C Pattison appeared on behalf of the **Attorney General**

Mr O D Woolhouse appeared on behalf of the **Offender**

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J U D G M E N T

(Approved)

1. THE VICE PRESIDENT: On 29 January 2018, at Shrewsbury Crown Court, the offender pleaded guilty to seven counts of doing an act tending and intended to pervert the course of justice. On 23 March 2018, His Honour Judge Peter Barrie sentenced her to a community order for 3 years with a rehabilitation activity requirement of 60 days to run concurrently in respect of all seven counts. Her Majesty's Solicitor General, represented by Ms Pattison, seeks the leave of the court to refer that sentence to us as unduly lenient.
2. The facts of the offences are, in summary, that between 5 January 2016 and 20 March 2016, the offender reported to police seven allegations against four men, namely four allegations of rape, two allegations of sexual assault and one allegation of assault. They were all fully investigated and they all turned out to be false.
3. *Allegations against AS*
4. In slightly more detail, on 5 January 2016 the offender reported to the ambulance service and then police officers that she had been raped by AS. She said he had arrived at her home and that whilst he was there he has grabbed her, ripped her top, pushed her onto the carpet, removed her clothing and raped her vaginally.
5. On 5 January, AS was arrested on suspicion of rape. He was interviewed. He denied the offence and provided an alibi for the evening in question. However, he was medically examined and then released on police bail. Police investigation through examination of CCTV footage confirmed the alibi that he had advanced.
6. Nonetheless, on 13 February 2016, the offender reported a second allegation against AS. This was an allegation of sexual assault, again in which she claimed that AS had gone to her home and after a verbal exchange he had grabbed her legs above the knees, causing a tear in her clothing. She said she pushed him away but he came back and placed his hand down her top, grabbing her breasts.
7. Again AS was arrested the next day. He was interviewed and again he gave evidence of being elsewhere.
8. *Allegations against PB*
9. On 29 January 2016, the offender reported she had been raped by PB. She said that he had turned up at her home unexpectedly and when she invited him in, without warning he forced her onto the sofa, pulled down her clothing and raped her vaginally. PB was arrested on suspicion of rape. He was interviewed the following day, having been kept in custody. He was released on bail pending further investigation, having only been able to tell the police that he was at home alone watching the television. Fortunately for him, the police investigated sufficiently thoroughly that they were able to confirm that he was at home at the time that he said.

10. Again, despite this, on 8 February 2016 the offender reported a second allegation against PB. Again she said that he had come to her home, pushed past her into her flat, pushed her on the floor and raped her vaginally.
11. Police officers visited PB. He told them he had been at home all day but on this occasion he was able to show them that he had ordered a takeaway meal. He was arrested and police searched his flat and noted the remains of the takeaway. His phone was also investigated and that showed a telephone call to a local takeaway shop. He was interviewed. Further investigation in relation to the takeaway showed that he must have been at home at the time that he said and the allegations made by the offender were false.
12. Not satisfied, the offender on 20 February made a third allegation against PB. She said that on this occasion he sexually assaulted her. He had hugged her and placed his left hand down her pyjamas and his finger in her vagina. He only stopped when she produced a panic alarm.
13. Police again investigated. This time they seized CCTV footage that covered the area of the offender's home and it revealed that the allegation had to be false.
14. On 26 June, an officer conducted an achieving best evidence interview with PB. He had a community nurse present and an appropriate adult and he explained how the offences had impacted upon him given his particular mental and learning difficulties. He was described by Ms Pattison this morning before us as particularly vulnerable and the impact upon him has been quite significant.

Allegations against AH

15. On 19 February 2016, the offender reported that AH forced his way into her house, "thumped" her in the face and assaulted her. In the front garden police found a kitchen knife which she claimed AH had brought with him. However, examination of the CCTV footage showed that no-one came to her house during the time she claimed and it was in fact the offender who had dropped the knife out of her window and onto the front garden. She had done this immediately before she made the false report. AH was not arrested.

Allegations against BH

16. The first allegation against BH was made in April 2015. The offender claims this was genuine. It has been investigated but there was no charge.
17. On 29 March 2016, she reported to NHS Emergency Care that she had been raped. When officers attended her home she said she had been walking locally when she had bumped into BH. Later that day, he forced her onto her front on the sofa, pulled her trousers down, told her she was a sexy woman and would make a good prostitute and vaginally raped her. He ejaculated inside her before licking her vagina.
18. Police contacted BH and discovered that he was able to provide a cast iron alibi, in that he was away on holiday at the time of the alleged rape.

19. *Arrest*

20. On 24 February 2016, the offender was arrested on suspicion of attempting to pervert the course of justice. She was interviewed the same day and provided a prepared statement. She said that in relation to BH she did not make it up. She admitted to making up the allegation against "the Asian" on 2 June 2015 but:

"I don't want to answer any questions in relation to the incidents on 19 and 20 February, save to say I am under a lot of stress. I confirm I made up the following allegations: rape PB, rape AS, robbery. The other allegations are all true. I agree to have psychiatrist assessments".

21. In relation to the sexual assault she alleged by AS, she said it did not happen but she had reported him to get back at him because he owed her money. In respect of the assault by AH, she said she did not want to talk about it and she had dropped the knife outside her house because she felt like it.
22. She was then interviewed again on 31 March 2016; she admitted lying that she had been raped and assaulted by BH. She explained she suffered from autism, stress and post-traumatic stress disorder as a result of being raped at the age of 10. She said she experienced flashbacks during which she distorted facts, people and locations, creating situations she believes to be true.
23. On 1 December, she was interviewed in respect of the allegations made against AS and PB. She answered no comment. She was then charged in October 2017.

Victim impact

24. Three of the victims have summarised the impact upon them of the false allegations. They have obviously been highly significant, particularly for the victim with learning difficulties. They report that the allegations have affected their relationships with women, they have been subjected to abuse, they have lost sleep and need medication.

Antecedents

25. The offender has 16 previous convictions recorded on seven different occasions. For the most part her offending involves offences contrary to the Protection from Harassment Act 1997. She has had restraining orders, fines, conditional discharges and community orders placed upon her. She has frequently breached such orders in the past. She was on bail for the present offences when she committed an offence that led to a conviction for harassment in April 2017.
26. In October 2016, she appeared before His Honour Judge Barrie to appeal against a conviction for breaching a restraining order and to appeal against the terms of a criminal behaviour order. The court dismissed the appeal but simplified it in a way suggested by the Crown. The facts of this case related to her persistent and extraordinarily regular habit of telephoning the emergency services unnecessarily. However, at that time it was claimed on her behalf that there had been a dramatic

reduction in the number of calls that she was making between the making of the order and the hearing before Judge Barrie.

27. When this case was listed for sentence on 23 March 2013, Ms Pattison informs us that everyone believed that the facts had been opened to the judge on a previous conviction. Prosecuting counsel at that time, not Ms Pattison, offered to open the facts again but the judge declined to hear him. It may be therefore that the judge was not aware of the full impact of the offences committed.

Reports

28. The judge had the benefit of reports and letters. There was pre-sentence report dated 18 January 2018. In the analysis section it stated the offender had confirmed she made up allegations as calls for help, but maintained that each of the three victims to which she referred had been harassing her and asking her for sexual favours and she had only made the false allegations because she wanted this to stop. A suspended sentence with no requirements was recommended.
29. In a report from a community mental health nurse dated 24 January, Jo Andrews confirmed she had been working with the offender since June 2017. The offender has been diagnosed with autism, pathological avoidance demand syndrome and emotional unstable personality disorder. The nurse reported that on numerous occasion the offender has engaged with many public services. However, she also reported that since January 2018 what had been a history of repeated attempts at self-harm had reduced, as had the contact with other services.
30. There was a letter before the judge dated 24 January from the offender apologising for making the false allegations, explaining her medical conditions, claiming she had made changes to her life and threatening to kill herself if sent to prison or a secure unit.
31. In a psychiatric report ordered by the judge from Dr Singh, he reported that significant progress had been made in her behaviour over the last few years. He feared that if she was incarcerated she would carry out the threat of suicide. He was of the opinion she required ongoing support, care and advice from a psychologist, speech therapist and support worker. He noted that whereas previously she telephoned the emergency services or visited A&E or her doctor on almost a daily basis, this had significantly reduced. By January 2018 she was ringing the emergency services once a month.
32. In a further report from Dr Singh from February 2018 he recommended the offender should have an appropriate social support package. He stated that she needed to continue to work with the community team, keep appointments with Dr Mohamad and her support worker, and again he opined that imprisonment would be quite harmful given the considerable risk of suicide. Detaining her in hospital would have no clinical value.
33. Dr Mohamad, who is a consultant psychiatrist, reported that the offender has adult ADHD and significant features of autistic spectrum disorder and possibly underlying borderline personality disorder.

34. There was a care plan and report from a social worker from the mental health social health team that proposed 7 hours of social support care per week.

35. *Sentencing remarks*

36. Bearing all this in mind, the judge observed in passing sentence:

"The best news I have heard in this case is that things have got better over the last two years and I want to say well done to you about that. This is still serious. Because you have been doing well and because of all the reports that I have read, I am not going to send you to prison this morning. That is quite unusual for making false complaints about rape because it is a terrible thing to put the men through."

37. He concluded that prison would be inappropriate because of the risk of self-harm or suicide, albeit he noted that previous decisions of this court indicated for offence of this seriousness, sentences in the region of four and a half years on a plea of guilty would not be faulted.

Subsequent material and proceedings

38. Her Majesty's Solicitor General obtained information post the sentence hearing within time to put the matter before the judge under the slip rule. This material indicated that, contrary to the conclusion reached by the judge on the information then before him, there had been a continuation in the offender's behaviour: she had made two further complaints of sexual offences that resulted in no charge, there was an attempted rape allegation in October 2017 and a sexual assault allegation in March 2018. Furthermore, there was a letter from an organisation called Shropshire Mind, dedicated to assisting those with mental health difficulties, that indicated her behaviour had become so bad that she had been banned from their premises. She had also been heard to make a remark that indicated that the threat that she would take her own life may have been contrived to deceive the judge. She told one of the professionals assisting her that she would threaten to take her life if given a custodial sentence, knowing that this would make sure she did not get a custodial sentence. The author of the report stated that when she made this comment she appeared pleased with herself and confident that she would "get away with the upcoming trial".

39. Furthermore, her behaviour was so bad that she is the first person ever to have been banned from the premises of Shropshire Mind. She is perceived as presenting a very high risk to staff and to other professionals with whom she has contact. They felt that they were not achieving anything other than pacifying her and what was called her narcissistic presentation. There was also a worrying development that she had taken on the name of one of the professionals with whom she had worked.

40. The judge considered the new material and has provided full written reasons for declining to change his order. He remained firmly of the view that imprisonment is an unsuitable penalty and that it is in the long-term public interest to divert the offender

away from her pattern of behaviour. If so, the intensive package of support and therapy in place is the best way to protect her and the public.

The reference

41. Ms Pattison put before us a number of aggravating factors: (1) the nature of the allegations, which were particularly serious; (2) the number of false allegations, including repeated allegations against some of the victims; (3) the number of victims; (4) the impact upon the victims, (one of whom is vulnerable) in that they have suffered arrest, interview, assaults, verbal abuse, intrusive medical examinations; (5) an element of premeditation; (6) the fact the offences occurred over a significant period of time; (7) the fact the offender indulged in persistent attention seeking with no regard for others or the consequences for them; (8) the offender has a history of failing to comply with previous court orders.
42. Furthermore there is a public interest and policy consideration in deterring offences of this kind. False allegations divert police time and resources, they are likely to damage the administration of justice in respect of the investigation and prosecution of genuine cases, in particular other cases involving rape.
43. The mitigating factors included the guilty pleas, her background and significant mental health issues, and the fact that there may have been some reduction in the level of her attention-seeking behaviour.

Previous decisions

44. Because there is no definitive guideline from the Sentencing Council, a number of previous decisions of this court were put before us in which the court has repeatedly set out the public interest and policy considerations that govern sentencing in cases of this kind. In R v David C [2007] EWCA Crim 2551, for example, the court stated that:

" .. because rape is a repulsive crime, a false allegation can have dreadful consequences, obviously and immediately for an innocent man who has not perpetrated the crime. But also ... because every occasion of a proved false allegation has an insidious effect in public confidence in the truth of genuine complaints, sometimes allowing doubt to creep in where none should in truth exist."
45. In R v Day [2009] EWCA Crim 2445, the Court of Appeal stated that a false accusation of rape was not just wrong against the man concerned and an attack on the criminal justice system but also that it diverted scarce and expensive police resources. The sentence of 2 years in a case of one false complaint of rape leading to a man spending 10 hours in custody was said to be appropriate and could have been longer.
46. A case with more similar allegations to the present is R v Vine [2011] EWCA Crim 1860. The offender made false allegations against nine men, one of whom was aged just 16 and in the middle of his GCSE examinations. The men spent up to 40 hours in police custody. The offender admitted making up the allegations to get back at the men for how they had treated her before and after consensual sexual activity. This

court held the offender had to be dealt with severely despite her low IQ, limited language skills and lack of appreciation for the seriousness of her actions. A sentence of 4 years 6 months was deemed appropriate, the court having started at a figure of approximately six and a half to seven years after a contested trial and reduced for mitigation including a guilty plea and no relevant previous convictions.

47. On that basis, Her Majesty's Solicitor General argues that the sentence was unduly lenient and seeks the leave of the court to refer it.

48. *Offender's response*

49. Mr Woolhouse, on behalf of the offender, accepts that in many circumstances sentences in the region of four and a half years may well be appropriate for offences of this kind, but he sought to persuade us that this was an exceptional case where the offender had exceptional mitigation. He reminded us of the contents of various reports from professionals who supported and cared for the offender over the years. He urged us to exercise caution in adopting the argument that because the judge had not had the facts of the offences opened to him and did not know the recent history of making false allegations that somehow he may have misunderstood the seriousness of the offending.

50. Mr Woolhouse argued that the judge was well aware of the consequences of this offending behaviour but considered, rightly he submitted, that the best course for potential future victims and for the public as a whole is to allow this offender to continue receiving treatment and support in the community. She is somebody who has a well-documented history of self-harming and any thought that her threat to commit suicide might be contrived, should be seen in that context.

51. *Conclusions*

52. We are indebted to both Ms Pattison and Mr Woolhouse for their submissions and have considered them with great care.

53. We acknowledge the extent of the offender's difficulties and the considerable care and support that professionals have offered her over the years. However, to our mind, the level of seriousness of these offences is such that it was not possible to impose upon her a community penalty. Although the judge recognised the consequences of these offences, in our judgment, he placed too much emphasis on the offender's problems and difficulties and insufficient emphasis on the impact of her offences on the victims and for the criminal justice system as a whole. We note that the offender continued to make false allegations as recently as March 2018, just days before she appeared before His Honour Judge Barrie.

54. We give leave to Her Majesty's Solicitor General to refer the sentence to us and find that, having considered all the aggravating features put before us and the mitigating features, including the extensive history of mental health difficulties, this sentence is unduly lenient.

55. We turn to the question of the length of the custodial sentence that must be imposed. We are satisfied, as the court in Vine was satisfied, that a figure of approximately six

and a half years to seven years following a contested trial would be appropriate on these facts. In the light of the offender's very substantial mitigation and her pleas of guilty, we will reduce that figure to a figure of 4 years' imprisonment. She will have to serve that sentence as soon as she surrenders to custody.

We assume the authorities will be alerted to her risk of self harm.

56. Mr Woolhouse, when is she going to surrender and where?
57. MR WOOLHOUSE: My Lady I don't know that presently, I am afraid.
58. THE REGISTRAR: My Lady, the Attorney General's office has suggested Shrewsbury police station.
59. THE VICE PRESIDENT: Does she still live in Shrewsbury?
60. MR WOOLHOUSE: Yes, she does. Forgive me, I hesitate for a moment. I know she lives in Shrewsbury because she has to travel to Telford, I believe, to attend probation.
61. THE VICE PRESIDENT: We will order Shrewsbury police station, at whatever time in a moment. If there are any problems, you can always let me know and I can amend the order.
62. MR WOOLHOUSE: Thank you very much.
63. THE VICE PRESIDENT: So, Shrewsbury police station. When?
64. MR WOOLHOUSE: Could I ask for this Friday?
65. THE VICE PRESIDENT: Any submissions, Ms Pattison?
66. MS PATTISON: No, thank you, my Lady.
67. THE VICE PRESIDENT: We think midday tomorrow, Mr Woolhouse.
68. MR WOOLHOUSE: Very well, thank you.
69. THE VICE PRESIDENT: If that causes insuperable problems, I can always consult my Lords and deal with it. So, midday, tomorrow is the 24th. Anything else we need to say? No. Thank you both very much for your help.

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