Nos. 7028/C/85, 4722/B/85, 5103/B/85,
3514/B/85, 5061/C/85, 2906/B/85,
4817/C/85, 35/F/86, 36/F/86
7487/C/85, 2570/B/85 and 2622/C/85

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice,

Friday, 21st February, 1986.

Before:

THE LORD CHIEF JUSTICE OF ENGLAND
(Lord Lane)

MR. JUSTICE MANN

and

SIR ROGER ORMROD

REGINA v. KEITH BILLAM

REGINA v. JOHN REVILL

REGINA v. KENNETH CRAIG

REGINA v. STEPHEN ANDREW STRONG

REGINA v. MARK BANNISTER

REGINA v. JIMMY ANTHONY TEMPLE

REGINA v. HENRY DONAGHEY

REGINA v. GURMOHAN SINGH and JASWANT SINGH

REGINA v. MOHAMMED RAFIQ

and

REGINA v. PETER YOUNG and RODNEY JACKSON

(Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.,
Pemberton House, East Harding Street, London, EC4A 3AS.
Telephone Number: 01-583 7635. Shorthand Writers to the Court.)

MR. J. HALL appeared on behalf of the Appellant Billam.

MR. G. LOCKE appeared on behalf of the Appellant Revill.

MR. P. CORRIGAN appeared on behalf of the Appellant Craig.

MR. P. SMITH appeared on behalf of the Appellant Strong.

MR. P. HARRIS appeared on behalf of the Appellant Bannister.

MR. P. SWANIKER appeared on behalf of the Appellant Temple.

MR. J. COLLINS appeared on behalf of the Applicant Donaghey.

MR. S. ASHURST appeared on behalf of the Applicants Gurmohan Singh and Jaswan Singh.

MR. A. McCALLUM appeared on behalf of the Applicant Rafiq.

MR. L. SCOTT appeared on behalf of the Applicant Young.

THE APPLICANT JACKSON was not present and was not represented.

J U D G M E N T

(As approved by Judge)

THE LORD CHIEF JUSTICE: We have had listed before us today a number of cases where there has been a conviction for rape or attempted rape, in order to give us an opportunity to restate principles which in our judgment should guide Judges on sentencing in this difficult and sensitive area of the criminal law.

In the unhappy experience of this Court, whether or not the number of convictions for rape has increased over the years, the nastiness of the cases has certainly increased, and what would ten years ago have been considered incredible perversions have now become commonplace. This is no occasion to explore the reasons for that phenomenon, however obvious they may be.

We would like, if we may, to cite a passage from the Criminal Law Revision Committee's 15th Report on Sexual Offences, Command Paper 9213 of 1984, which reflects accurately the views of this Court. It is

as follows: "Rape is generally regarded as the most grave of all the sexual offences. In a paper put before us for our consideration by the Policy Advisory Committee on Sexual Offences the reason for this are set out as follows -- 'Rape involves a severe degree of emotional and psychological trauma; it may be described as a violation which in effect obliterates the personality of the victim. Its physical consequences equally are severe: the actual physical harm occasioned by the act of intercourse; associated violence or force and in some cases degradation; after the event, quite apart from the woman's continuing insecurity, the fear of veneral disease or pregnancy. We do not believe this latter fear should be underestimated because abortion would usually be available. This is not a choice open to all women and it is not a welcome consequence for any. Rape is also particularly unpleasant because it involves such intimate proximity between the offender and victim. We also attach importance to the point that the crime of rape involves abuse of an act which can be a fundamental means of expressing love for another; and to which as a society we attach considerable value.' "

This Court emphasised in Roberts (1982) 4 Cr. App. R. (S) 8, that rape is always a serious crime which calls for an immediate custodial sentence other than in wholly exceptional circumstances. The sort of exceptional circumstances in which a non-custodial sentence may be appropriate are illustrated by the decision in Taylor (1983) 5 Cr. App. R. (S) 241. Although on the facts that offence amounted to rape in the legal sense, the Court observed that it did not do so in ordinary understanding.

Judges of the Crown Court need no reminder of the necessity for custodial sentences in cases of rape. The criminal statistics for 1984 show that 95 per cent of all defendants who were sentenced in the Crown Court for offences of rape received immediate custodial sentences in one form or another. But the same statistics also suggest that Judges may need reminding about what length of sentence is appropriate.

Of the 95 per cent who received custodial sentences in 1984, 28 per cent received sentences of two years or less; 23 per cent over two and up to three years; 18 per cent over three and up to four years; 18 per cent over four and up to five years and 8 per cent over five years (including 2 per cent life). These included partly suspended sentences and sentences to detention centre or detention under section 53(2) of the Children and Young Persons Act 1933, as well as imprisonment or youth custody. Although it is important to preserve a sense of proportion in relation to other grave offences such as some forms of manslaughter, these statistics show an approach to sentences for rape which in the judgment of this Court are too low.

The variable factors in cases of rape are so numerous that it is difficult to lay down guidelines as to the proper length of sentence in terms of years. That aspect of the problem was not considered in Roberts (cited above). There are however many reported decisions of the Court which give an indication of what current practice ought to be and it may be useful to summarise their general effect.

For rape committed by an adult without any aggravating or mitigating features, a figure of five years should be taken as the starting point in a contested case. Where a rape is committed by two or more men acting together, or by a man who has broken into or otherwise gained access to a place where the victim is living, or by a person who is in a position of responsibility towards the victim, or by a person who abducts the victim and holds her captive, the starting point should be eight years.

At the top of the scale comes the defendant who has carried out what might be described as a campaign of rape, committing the crime upon a number of different women or girls He represents a more than ordinary danger and a sentence of fifteen years or more may be appropriate.

Where the defendant's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large,

to remain a danger to women for an indefinite time, a life sentence will not be inappropriate.

The crime should in any event be treated as aggravated by any of the following factors: (1) violence is used over and above the force necessary to commit the rape; (2) a weapon is used to frighten or wound the victim; (3) the rape is repeated; (4) the rape has been carefully planned; (5) the defendant has previous convictions for rape or other serious offences of a violent or sexual kind; (6) the victim is subjected to further sexual indignities or perversions; (7) the victim is either very old or very young; (8) the effect upon the victim, whether physical or mental, is of special seriousness. Where any one or more of these aggravating features are present, the sentence should be substantially higher than the figur suggested as the starting point.

The extra distress which giving evidence can cause to a victim means that a plea of guilty, perhaps more so than in other cases, should normally result in some reduction from what would otherwise be the appropriate sentence. The amount of such reduction will of course depend on all the circumstances, including the likelihood of a finding of not guilty had the matter been contested.

The fact that the victim may be considered to have exposed herself to danger by acting imprudently (as for instance by accepting a lift in a car from a stranger) is not a mitigating factor; and the victim's previous sexual experience is equally irrelevant. But if the victim has behaved in a manner which was calculated to lead the defendant to believe that she would consent to sexual intercourse, then there should be some mitigation of the sentence. Previous good character is of only minor relevance.

The starting point for attempted rape should normally be less than for the completed offence, especially if it is desisted at a comparatively early stage. But, as is illustrated by one of the cases now before the Court, attempted rape may be made by aggravating features into an offence even more serious than some examples of the full offence.

About one-third of those convicted of rape are under the age of 21 and thus fall within the scope of the Criminal Justice Act 1982, section 1. Although the criteria to which the Court is required to have regard by section 1(4) of that Act must be interpreted in relation to the facts of the individual case rather than simply by reference to the legal category of the offence, most offences of rape are "so serious that a non-custodial sentence cannot be justified" for the purposes of that provision. In the ordinary case the appropriate sentence would be one of youth custody, following the term suggested as terms of imprisonment for adults, but making some reduction to reflect the youth of the offender. A man of 20 will accordingly not receive much less than a man of 22, but a youth of 17 or 18 may well receive less.

In the case of a juvenile, the Court will in most cases exercise the power to order detention under the Children and Young Persons Act 1933, section 53(2). In view of the procedural limitations to which the power is subject, it is important that a Magistrates' Court dealing with a juvenile charged with rape should never accept jurisdiction to deal with the case itself, but should invariably commit the case to the Crown Court for trial to ensure that the power is available.

Keith Billam on 31st October 1985 in the Crown Court at Sheffield before Mr. Justice Jupp pleaded guilty to two counts of kidnapping, one count of rape, one count of wounding with intent and two counts of robbery. The sentences imposed upon him were ten years' imprisonment in respect of each kidnapping, life imprisonment in respect of the rape and seven years' imprisonment each for wounding and robbery. All those sentences were to run concurrently.

He now appeals by leave of the single Judge.

The facts were lengthy but put as briefly as possible, they were as follows. On 2nd July last year posing as an official in a car park in Barnsley, he insinuated himself into the motor car of his victim

in order to direct her, so he said, to the Council offices. He produced a pair of scissors, stabbed her hand and threatened to kill her. She was kept captive for a considerable length of time: something like 4 or 5 hours. During that time he drove her to various secluded places. He tied her wrists and ankles, cut off her bra and knickers with the pair of scissors, he stole her watch, and stole her purse. Eventually he ordered her into the back of the car where he raped her. He then drove her to another secluded spot, pushed her out of the car, threatened to kill her, stabbed her in the neck and finally kicked her about the head before leaving her there.

He made two telephone calls to police officers who were acquaintances saying that he had done something terrible which he did not want to do again, the inference being that he was frightened that he might do it again. Indeed that is exactly what he did, because early next morning a woman sitting in a car in the car park of the Victoria Hospital at Blackpool, waiting for a friend to come out of hospital, found the appellant getting into the car posing as a car park attendant and saying the car had to be moved. He got in and drove off to some wasteland. When the woman protested he punched her in the face and threatened to kill her. He prodded her in the stomach with a vegetable knife and said, "I'm going to fuck you. I've been watching you", and he also threatened to cut out her insides with the vegetable knife. He stole her money and drove away. It does not take very much imagination to guess what would have happened next had everything gone according to plan. But during the course of the journey, whilst the car was in motion, the woman managed to open the door and throw herself out of the motor car. Mercifully, apart from bruising and grazing and having dirt engrained underneath the skin, she suffered no serious injury.

The appellant kept the motor car. He changed the number plates. He was eventually arrested shortly afterwards after a chase at speeds of 100 miles an hour by the police.

When he was interviewed he said that he had merely been interested in

stealing the car to use it in burglaries. When he was asked about the first victim he said, "She either did something or said something and I flipped my lid and raped the girl... if it wasn't for that bloke coming she might have been dead now".

He is in his forties. He has 16 previous court appearances including convictions for robbery, assault with intent to rob and assault occasioning actual bodily harm.

We have seen a number of reports, amongst which is a psychiatric report of 3rd October, which says, amongst other things, this: "The problem is essentially one of a personality disturbance, rather than mental illness, and this disturbance is characterised by poor control over tension, frustration and aggression, with a diminised concern for the feelings of other people."

The social enquiry report said, "Billam is possessed of a powerful personality and seems to hold a peculiar power to dominate vulnerable and inadequate women." As we can see for ourselves, he is a very large man, we are told 6 ft. 4 ins. tall and said to weigh something like 15 stones.

There is a further report about him which contains this remark: "So far as Billam is concerned, this problem may lead to further offending on his release from what he expects to be a rather lengthy custodial sentence. Such personality disturbances are notoriously resistent to any form of psychiatric intervention."

Counsel on his behalf, Mr. Hall, if we may say so in a hlepful address before us, has drawn our attention to the material authorities in which this Court has examined the circumstances under which life imprisonment is proper in a case such as this. He points out to us that this was the sole offence of rape, though he concedes that had the second woman not thrown herself out of the car very likely the same thing might have happened to her. He suggests that this does not warrant an indeterminate sentence and that a determinate sentence would be appropriate.

We disagree. We think this is par excellence a case where this man's mental condition is such that if he is released into the community he is likely to present a danger to women for the foreseeable future. It is not possible to predict when that situation may come to an end. In those circumstances we think the learned Judge was correct in what he did, namely to impose a life term, and that appeal is dismissed.

John Revill,who is now aged 18, on 19th July last year in the Crown Court at Liverpool before Judge Wickham and a jury was convicted of rape and sentenced to eight years' imprisonment. He received concurrent sentences of five years' and one year's youth custody for offences of robbery and possessing an offensive weapon.

The victim was a 21-year old student at the University of Liverpool. Just before midnight on a night in February 1985 she was walking back to her Hall of Residence, when the appellant armed with a knife confronted her and forced her to give him her purse. He then forced her at knifepoint to go to a nearby tennis court, threatening to kill her if she told anyone, saying that he would stab her. He then further forced her to kneel on all fours, in which position he raped her.

When arrested subsequently he was found to be in possession of a serrated kitchen knife. He later confessed to the rape and the robbery. However at the trial he put forward an alibi, which necessitated the victim giving evidence. Such were the psychological effects of the happenings of that night upon her that she had to abandon her university career shortly afterwards.

At the time of the offence the appellant was 17. He had eleven previous convictions, the most recent of which was for armed robbery. On that occasion he committed the offence once again whilst in possession of a knife.

The Prison Medical Officer says of him that he at all costs, through primitive means, will gain his own way. He is also described as a

potentially dangerous young man who requires a custodial establishment geared to cope with a chronic difficult inmate.

A Mr. Locke appearing on his behalf today urged before us only one point, and that is the youth of the appellant. As I say, he was aged 17 at the time of the offence and is 18 now.

The starting point in such a case as this must be one of five years.
B The rape was aggravated by the use of a knife, by the threats to kill and by the serious psychological injury to the victim. The recent conviction for robbery whilst armed with a knife puts point to the opinions which have been expressed about him, namely that he is a very dangerous young man.
C Had he been older, a sentence of nine years' or ten years' imprisonment would have been perfectly proper. The sentence of eight years' imprisonment makes sufficient allowance for his age, which is indeed the only mitigating feature in the case.

D Accordingly his appeal is dismissed.

Kenneth Craig on 5th August last year before Judge West Russell at the Central Criminal Court pleaded guilty to offences in three indictments.
E On the first indictment he was sentenced to four years' youth custody for robbery, with concurrent sentences for having a firearm or imitation firearm with intent and assault occasioning actual bodily harm of three years and eighteen months respectively.

F On the second indictment, which charged him with rape, he was sentenced to five years' youth custody consecutive to the sentence on the first indictment, but with concurrent sentences for burglary, robbery and theft.

On the third indictment he was sentenced to eighteen months' youth
G custody concurrent for burglary.

The total sentence was therefore one of nine years' youth custody.

The facts put as briefly as possible are these. In the early hours of 22nd February last year with two other youths the appellant Craig, who was
H then aged 16, rang the bell of a house in Clapham. When the elderly lady

who lived inside answered the door, he pushed his way inside the house. He carried a gun. He slapped the woman across the face and attempted to pull the rings off her fingers. He swore at her, kicked her, pulled off her bracelet and he then searched the house for jewellery, pausing from time to time to hit the unfortunate woman about the face causing her mouth to bleed and eventually causing her to fall to the ground.

Her husband arrived on the scene, whereupon there was a fierce struggle before all the youths ran away, having helped themselves to jewellery, cufflinks and so on.

The offences charged in the second indictment had taken place about ten days earlier, on 10th February last year, when the appellant snatched the handbag of a young woman in the street at Clapham. She fell to the ground when she struggled to retain it. The next day he broke into a house in Tootingstealing jewellery, goods and cash.

On 19th February he broke into another house in the same road and stole £1,000 in cash, fur coats and a video recorder.

The charge of rape arose out of incidents which took place on 27th February. On that occasion the appellant let himself into a flat by means of a key which the victim had unfortunately through oversight left in the front door of the flat. He armed himself with a Hoover extension tube, went round the flat stealing property and ordering the victim to do as she was told. Once again he tried to take the rings off her fingers and slapped her as he had done with the original victim. He then pushed her into the bedroom, undressed her and raped her. He disconnected the telephone and left, having helped himself to easily portable valuables as he could lay his hands on.

The burglary, which was the subject of the third indictment, took place in November 1984 when the appellant broke into a house and took a video recorder and some money.

He had two previous findings of guilt in 1984. They included three

offences of robbery with six others taken into consideration.

Counsel on his behalf, Mr. Corrigan, now makes before us the following submissions. First of all in regard to the four years' youth custody in respect of the robbery, he points out that this was a plea of guilty, the appellant was only 16 years old at the time and he points out, correctly, that when questioned the appellant immediately volunteered an admission and gave information to the police which enabled the co-defendants to be arrested. He points to an apparent disparity between the sentences imposed upon this appellant and the co-defendants with regard to the robbery, but it is plain that that apparent disparity is not a real one and is accounted for by the fact that this man was in possession of the firearm. The suggestion is that his frankness should earn him something by way of a lesser sentence so far as the robbery was concerned.

So far as the rape is concerned, it is suggested that that was so to speak a chance rape: the real intention was burglary and the rape only took place as an unforeseen incident, committed by this young man.

The only ground which we consider to have validity in this case is the question whether the overall, global sentence was perhaps too long. Nine years' youth custody for a 16 or 17-year old is of course a very long time. Not without some hesitation, we have come to the conclusion that although both sentences, five years for the rape and four years for the robbery, were richly deserved, when viewed overall the sentence is somewhat too long. Therefore we propose to remedy that by quashing the sentence of four years' youth custody for the robbery and substituting therefor a sentence of two years' youth custody, which will run consecutively to the five years' youth custody for the rape. We also quash the sentence of three years' youth custody for the offence of having a firearm in the first indictment and substitute for it a sentence of two years' youth custody, which will run concurrently with the two years for robbery. The total sentence in the case of Craig will be seven years' youth custody. To that

extent his appeal is allowed.

Stephen Andrew Strong appeals by leave of the single Judge.

It arises in this way. At Carlisle Crown Court before Mr. Justice Rose the appellant pleaded guilty to rape and was sentenced to six years' imprisonment.

The facts of the case were these. On 29th April 1985 the appellant forced his way into the victim's house, having called previously to inquire if her husband was at home or not. He pushed her to the floor, made her hold his penis, forced himself upon her and raped her. She was aged 24 and recently married.

He was arrested later that day. He admitted the offence immediately and admitted also that he had forced the woman to take off her jeans.

He is 23 years of age, a farm labourer. He has only one previous conviction and that was for making offensive telephone calls.

This case has caused us some considerable difficulty. Let me try to explain why. On the face of it a man who behaves as this man did, and as we have described, can expect to receive a sentence of something like six years' imprisonment, allowing for his plea of guilty. The fact that he raped the woman in her own home would justify such a sentence.

This man is by way of being something exceptional. He is obviously of good character, apart from the telephone calls. He is a farm labourer. He is on all accounts, and we have no reason to doubt it, extremely naive, childish, immature and in fact the opposite of callous. It seems to us that he does not fit the picture of the ordinary rapist, if there is such a thing.

He is at the moment, we understand, at Grendon Underwood, and we very much hope that he will continue there, because he is exactly the type of person who may be enabled by the doctors at Grendon Underwood in the future to live a normal life without this offence or any other offence being committed.

Consequently, not without very great hesitation, in view of those facts

and in view particularly of the fact that within almost an hour or so of the offence he was admitting his guilt and thereby sparing the girl the indignity and fear of giving evidence, we feel we tan take an exceptional course. We quash the sentence of six years' imprisonment and substitute for it one of four and a half years' imprisonment. To that extent this appeal in the exceptional circumstances is allowed.

On 19th July 1985 at St. Albans Crown Court before Judge Blofeld, the appellant Mark Bannister pleaded guilty to rape and was sentenced to five years' detention under section 53(2) of the Children and Young Persons Act 1933. His co-defendant who was at the time aged 20 was sentenced to eight years' youth custody.

The facts of this distressing case are these. On 6th March 1985, shortly before midnight, the victim, a 16-year old girl, was on her way home in Watford. As she walked from the bus she was seized from behind by the appellant and his co-defendant. Both were wearing balaclava helmets, with holes cut in the helmet so they could see. She was pushed to a carefully selected secluded spot. She was ordered to undress. When she refused the appellant threatened to use on her a knife which he brandished. She then undressed at knifepoint, while the appellant acted as lookout. Her wrists and ankle were tied to some scaffolding by rope or cord which had been brought specially for the purpose. It should be added that some of the electric light bulbs on the scaffolding had been removed in order to make it more difficult for these young men to be seen.

The co-accused then pushed cloth into the victim's mouth and secured it with sticky tape. He then raped her while the appellant kept watch. Eventually the co-accused cut the girl free and both the men ran off.

The appellant was interviewed some little time afterwards by the police. He admitted that the rape had been carefully planned. A rope had been taken there to tie up the victim, the light bulbs had been removed from the scaffolding for the purposes already indicated. He said that

when the time came he was too scared to carry out his part of the plan, which was also of course to rape the girl.

This appellant has three findings of guilt, none of them for offences of a sexual nature.

The submissions made by counsel, Mr. Harris, on his behalf are these: first of all that he was not given sufficient credit for his pleas and admissions to the police; secondly, that insufficient distinction was drawn between the co-defendant and himself so far as sentence was concerned; thirdly that he had volunteered information, which he need not have volunteered; fourthly that he played no actual part in the initial attack on the girl -- the tying up was all done by the co-defendant, not by him; next, that he stood in awe or fear of his co-defendant and was easily led; and this is his first custodial sentence and was therefore too long.

In the view of this Court the description given by the learned Judge at the Court below of this crime as brutal, calculated, planned and vicious, was accurate. He took sufficient account of the appellant's youth, he took sufficient account of the matters which are urged before us today and which I have described and he took sufficient account of the absence of actual physical injury to the victim. But he regarded a substantial sentence was necessary. So do we. The sentence of five years' detention is in no way too severe. The appeal is dismissed.

On 23rd April 1985 in the Crown Court at Winchester before Mr. Justice Stuart Smith and a jury, the appellant Jimmy Anthony Temple was convicted and sentenced as follows: causing grievous bodily harm with intent, twelve years' imprisonment, attempted rape, seven years' imprisonment concurrent, and robbery, four years' imprisonment concurrent, that is to say a total of twelve years' imprisonment.

He now appeals against that sentence by leave of the single Judge.

The facts of the case were these. The victim was a German woman on holiday in England, aged 58. On the 9th August 1984 that unfortunate lady

was walking in the New Forest, near Brockenhurst, when the appellant ran past her. He then returned and affected to show interest in the map that she was carrying and a short conversation took place between them. She then walked away, whereupon the appellant grabbed her from behind, forcing her to the ground. Over the course of the next 15 minutes or so she was subjected to the most appalling treatment. She was repeatedly hit about the face, her clothing was ripped, the appellant attempted to rape her many times, saying "I want a fuck", but was unable to achieve penetration. The reason for that was, the medical evidence at the trial indicated quite clearly,so far as this particular woman was concerned, penetration was a physical impossibility. The victim thought she was going to be killed and eventually gave up struggling because she was in too much pain

She said the appellant was extremely angry and before parting hit her a final blow upon her face. He rifled her handbag and stole its contents. He took about £10 and a pen and as a parting gesture, for good measure, he kicked her in the back. She managed to struggle back to the roadside, where she received help. She was taken to hospital. She had to be detained in hospital for fifteen days.

These were the injuries she suffered: a broken nose, and possible fracture of the sternum; extensive swelling and bruising about the head; closed and swollen left eyelid; cut inside lip; contusions and bruising inside the mouth; bruising and swelling about the shoulder and chest; bruising to the upper thigh and forearm; bruising to the back; bruising and bleeding above the vagina and a tear at the back of the vagina.

The appellant put forward an alibi at the trial and contested the case.

He is aged 27. He lives with a woman by whom he has one child. He was employed as a van driver. He had one finding of guilt and six previous convictions, mainly for dishonesty, but including one offence of rape and aiding and abetting rape in 1979, which resulted in imprisonment for

four years.

It is said that he is not mentally ill and not likely to be dangerous. The medical report contains this somewhat cryptic passage: "With regard to his state of mind on the afternoon of the present offence, there is no doubt that he was experiencing disturbed emotions as a result of having taken his girlfriend to a clinic that very morning for a termination of pregnancy. Caring, resentment and sexuality were confused in a way he could not clearly have formulated then and has only since then, in his writings, now formulated, ...", and the doctor gives three examples.

Counsel's submissions on his behalf are these: first of all, the appellant is remorseful, and secondly he submits that the sentences on each of the three counts is excessive.

So far as the seven years' imprisonment for attempted rape is concerned, at that time that was the maximum sentence: it has since been raised to imprisonment for life. Quite plainly, if ever there was a case where the maximum sentence of seven years should have been imposed, this was it. The learned Judge felt that his hands were tied by that maximum sentence for attempted rape. He wished to pass a condign sentence, which seven years was not.

However we do not think, understandable though his feelings are, that twelve years' imprisonment for the offence of wounding under section 18 was appropriate. It is plain that he was correct in thinking that the sentence for the section 18 offence should be ordered to run concurrently with the sentence for the attempted rape. We feel that a sentence of four years' imprisonment for causing grievous bodily harm with intent was sufficient in the present case. We substitute that sentence for the sentence of twelve years' imprisonment, and that will run concurrently with the sentence of seven years for the attempted rape, which we leave standing.

However, robbery was no part of the rape and a sentence to run consecutively in respect of the robbery is perfectly correct in principle. What we propose

therefore to do is this. We quash the sentence of four years' imprisonment concurrent in respect of the robbery, and substitute therefor a sentence of three years' imprisonment to run consecutively. The result will be a total imprisonment of ten years as opposed to twelve years imposed by the learned Judge. To that extent this appeal is allowed.

In the case of Henry Donaghey, learned counsel, Mr.Collins, has wisely withdrawn his application: wisely because the Court was minded to order loss of time had the application continued as was originally intended.

In the case of Gurmohan Singh and Jaswant Singh the circumstances were these. On 22nd November 1985 in the Crown Court at Leeds before Mr. Justice Kennedy and a jury, the applicants were convicted of rape and sentenced as far as Gurmohan was concerned to ten years' imprisonment and so far as Jaswant was concerned to seven years' imprisonment.

They now apply for leave to appeal against sentence.

They were jointly charged with another man called Javed Mashih, who was convicted of rape and sentenced to eighteen months' imprisonment, six months to be served and the balance suspended. His application for leave to appeal against conviction and sentence was refused by this Court on 27th January last.

The facts of the case were these. On 22nd March last the complainant, a married girl of 22 years, went out for an evening to a disco. She was with three girls friends and the four of them met a number of young men, amongst whom were the two applicants and their co-accused. The events of the evening were somewhat confused, but,to cut a long story short, the complainant became separated from her girl friends and eventually, in the early hours of the morning, found herself in a motor car with the two applicants and Javed, who was the driver.

The car was driven, plainly on the orders, so the Judge found, of Gurmohan, by Javed to a remote part of the countryside. By the time they got there midnight had passed and they were in the early hours of Sunday

morning. The girl was put in the back of the car and there she was raped first of all by Gurmohan, as well as being subjected to various indignities including having his penis put in her mouth. He was followed into the back of the car by Jaswant who also acted in a precisely similar manner amd also raped her. By this time she was in a speechless state lying in the back of the car unable to act, naked, legs apart. It was in those circumstances that Javed also raped her. She was later found to be suffering from venereal disease and to be pregnant, but the Judge dismissed those matters from his mind.

The burden of Javed's appeal both against conviction and sentence was his very limited Intelligence Quotient. He was badly sub-normal.

So far as these two applicants are concerned, the suggestion made by learned counsel on their behalf, Mr. Ashurst, is this. First of all they are not dangerous people. Secondly, they had no previous convictions recorded against them, and the Judge failed to give them credit for their good character. Next it is said that the disparity between the sentences imposed on these two men and that imposed upon Javed was such as to leave them with a justifiable sense of grievance: or, put the other way, indeed would have led any responsible member of the public who knew all the facts to think that some injustice had been done.

In view of the way in which Javed behaved and in view of his very limited intelligence, the apparent disparity between his sentence and that imposed on these two is completely explained. The Judge took the view, which was quite justified on the facts, that the only reason that Javed had been invited by the other two to rape the girl after they had done so was in order to prevent him from giving evidence against them if they were discovered. Secondly, his limited mental intelligence also came to his help so far as the length of sentence was concerned. There is nothing in the disparity point so far as Javed and the other two are concerned.

Next it is said that the disparity between the ten years and seven years was not justified. The Judge over something like a week of the trial had been in a position to judge the respective responsibilities of Gurmohan

and Jaswant. We have no reason to think that he was wrong in coming to the conclusion that Gurmohan was the organiser and Jaswant was merely a lieutenant. The difference in the sentence between the two was accordingly justified.

Next it is suggested that the sentences of ten years and seven years were in any event too long. This was a case where rape was committed by two or three men acting together -- a gang rape as it is called. The three men had in effect abducted this girl in their motor car, taken her to the countryside and there held her captive so that they could rape her. Consequently, as already indicated, the starting point of sentencing was something like eight years. The incident was the brainchild of Gurmohan. There were no mitigating features: indeed all the features, apart from their lack of previous convictions, tended to aggravate the crime. Ten years was not out of the way so far as Gurmohan was concerned nor was the seven years imposed on Jaswant in any way too long.

Those applications likewise are refused.

Turning to the case of Rafiq, which is an application for leave to appeal against sentence referred to this Court by the Registrar, Rafiq is 26, and on 20th November 1985 he pleaded guilty to attempted rape and was sentenced to four years' imprisonment. His plea of not guilty to the full offence was accepted.

He now applies for leave to appeal against that sentence and, as I say, his application has been referred to this Court by the Registrar.

The complainant was only 14 years of age. Rafiq was a friend of her family and a regular visitor to the house. On 26th February last year the girl's mother went out for the evening with her sister, the girl's aunt, leaving the victim alone with a 6-year old cousin in the house. The applicant at about 1 o'clock in the morning, having made certain that the coast was clear and that the mother was out, walked into the house without knocking and started making advances to the girl. Mr. McCallum

on his behalf describes the approaches as bizarre. We do not find them so much bizarre as deplorable.

In short, she told him to stop it and to "get lost". He pushed her against the wall, touched her breasts over her clothing, pulled down her trousers and pants and pushed his erect penis against her private parts. She thought that he had penetrated her, but in the light of the plea and the acceptance of the plea of not guilty to the full offence, we of course take it that penetration did not take place. In any event he ejaculated. The girl was telling him to stop throughout. The applicant then left the house telling the girl not to tell her mother, "or else".

The matter was reported to the police eventually, although the girl was very reluctant to admit what had happened to her mother. He said to the police that his penis had only just entered into her vagina. The girl's hymen was still intact.

It is said that the girl was sexually well developed. We accept that there were no scratches or injuries upon her. We accept that he was remorseful and that he was of good character, that the incident was short and isolated. But this was as near to the full offence as one could get without actually committing the full offence. The victim was a young virgin. The applicant took advantage of his position of trust as a neighbour, and had it not been for the plea of guilty and his good character, the sentence might very well have been considerably longer. No proper complaint can be made of four years' imprisonment for attempted rape in these circumstamces. The application is refused.

The case of Young and Jackson are two applications for leave to appeal against sentence: in the case of Young presented by counsel and in the case of Jackson a non-counsel application.

They arise in the following circumstances. On 2nd April 1984 at the Crown Court at Leeds the two men were convicted and sentenced as follows: Young, aged 20, on count 1, aiding and abetting rape, five years' youth

custody; on count 2, rape, seven years' youth custody concurrent; Jackson, who is aged 29, on count 1, rape, eight years' imprisonment; and on count 2, aiding and abetting rape, five years' imprisonment concurrent. Both renew their application for leave to appeal against sentence after refusal by the single Judge.

During the summer of 1984 these two men were part of a team of workmen repairing drains near Pontefract. They met and talked to two 15-year old school girls from the adjacent High School. On 14th July of that year these two with another workman called Monkman took the two girls to a public house in Pontefract with the intention and effect of getting the girls drunk. When they had achieved that particular part of their aim, they took the girls back to the works cabin which had been erected to house the workmen carrying out the drainage operation. Monkman stayed outside with one of the girls. He indecently assaulted her, and duly pleaded guilty and was sentenced for that indecent assault. But these two applicants took the other girl into one of the cabins. Such was her state of intoxication that she was promptly sick on the floor. Despite that both men took turns to rape her, pinning her arms above her head on the bench. When they had thus entertained themselves she was allowed to dress herself and go home.

Young was seen. He denied any rape. Indeed he said no one had sexual intercourse with the girl at all. Eventually however he admitted that sexual intercourse had taken place, adding these words, ".... so what? She's just another cabin slag". He admitted the plan to get the girls drunk and to have sexual intercourse with them. Jackson admitted sexual intercourse but denied it was without the girl's consent.

As I have said, Monkman was convicted of indecent assault and was sentenced to five years' imprisonment in total.

Now it is submitted on behalf of Young by Mr. Scott that the sentence imposed upon him of seven years' imprisonment in all was too long. The reasons he puts forward are these: first of all that Young is of significantly

limited intelligence, although he appears to be normal, and that the low intelligence made him more susceptible to persuasion by the other two men. In any event he found it difficult to refuse to go along with their plans, because he was depending upon them for a lift back home after the day's work was done. Then it is said that there was no physical violence. Of course no physical violence was necessary, because the girl was incapable by reason of alcohol of offering any resistence. Next it is said that he has supportive parents to go back to when he comes out of prison. Next it is said that the girl had previous sexual experience. That is a matter which is of no moment in circumstances such as these.

It seems to us once again that this is a case of two men raping a girl in turn, each assisting the other to do so, with the added unpleasant feature of making their objective more easy to obtain by plying the girl aged 15 with drink first. We see no reason to think that the sentence of seven years' youth custody, even allowing for his age of 20, is in any way too long.

So far as Jackson is concerned, for reasons already indicated, this was a bad type of rape by two men. It had a number of significantly aggravating features and eight years' imprisonment was by no means out of the way.

These applications are both refused.
