

Neutral Citation Number: [2019] EWCA Crim 1449
2018/01680/B5
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 26th July 2019

B e f o r e:

LORD JUSTICE GREEN

MR JUSTICE GARNHAM

and

HIS HONOUR JUDGE MICHAEL CHAMBERS QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

SAIMA JAN

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Mr A Morris appeared on behalf of the Applicant

Mr J Traversi appeared on behalf of the Crown

J U D G M E N T
(As Approved)

LORD JUSTICE GREEN: I shall ask His Honour Judge Michael Chambers QC to give the judgment of the court.

HIS HONOUR JUDGE MICHAEL CHAMBERS QC:

1. This is a renewed application for leave to appeal against conviction following refusal by the single judge.

2. The applicant, Saima Jan, was the wife of Rahim Saeed, the co-accused. They were both jointly charged on an indictment which, following an amendment at the close of the evidence, read as follows: "Statement of Offence – Theft, contrary to section 1 of the Theft Act 1968 Particulars of Offence - RAHIM SAEED and SAIMA JAN, between the 23rd day of October 2010 and the 19th day of March 2011, stole approximately £367,416.66 belonging to Gregory Moniak."

3. On 22nd March 2018, following a trial in the Central Criminal Court, both defendants were convicted of that offence of theft. On 19th April 2018, the applicant was sentenced to two years' imprisonment, suspended for eighteen months with requirements. The co-accused was sentenced to four years' imprisonment.

4. The complainant, Gregory Moniak, was a mutual friend of the applicant and her husband. On 11th November 2010, the complainant received an inheritance from his father's estate in the sum of £448,797.50, of which approximately £370,000 was transferred into a savings account in his name. Thereafter, there was regular contact between him and the applicant and her husband.

5. In December 2010, the complainant and the co-accused travelled together, first to Thailand, and, in January 2011, to Pakistan, before returning to Thailand in February, where the complainant remained for several years.

6. Within a very short period of the monies being transferred into the savings account, during a series of transfers and transactions, money was syphoned from the complainant's savings account into various accounts in the names of the applicant and her husband, various relatives and persons who were associated with them. The sum of £160,000 was transferred, via internet banking, into accounts belonging to the co-accused; £38,000 was transferred between 30th December 2010 and 14th January 2011 in six separate tranches to a joint account in the names of the applicant and the co-accused; a further £59,000 had been transferred between 19th November 2010 and 22nd February 2011 in fifteen separate tranches to an account in the sole name of the applicant; and a further eight beneficiaries, who were related to the defendants, had a total of £83,000 transferred into their accounts. The sums would first be transferred from the complainant's savings account into his current account, and thereafter into the accounts of others. Other transfers included a cheque for £20,000, which was drawn on his account on 18th November 2010, made out to the applicant. Eventually, the sum of only 80 pence was left in the complainant's account.

7. After that small amount was left in the complainant's account, sums were sent out to him in Thailand by both defendants so as not to arouse suspicion.

8. Only one of the grounds of appeal is pursued. It relates to the sufficiency of evidence at the

close of the prosecution case. We record that the other grounds have been abandoned. It is submitted on behalf of the applicant that at the close of the prosecution case there was insufficient evidence against the applicant for the case to be left to the jury.

9. In helpful written submissions, which have been supplemented orally by Mr Morris, the thrust of the argument is as follows: that there was insufficient evidence on which a jury properly directed could convict, to show that the applicant had knowledge of the entirety of monies which had been transferred. It is submitted that, in a joint enterprise of this nature, the jury needed to be directed that her criminal liability was limited to only those transactions in respect of which she had direct involvement and knowledge, unless there was sufficient evidence to show that she had knowledge of the them. The evidence was not there, submits Mr Morris.

10. The prosecution case was that the two defendants, husband and wife, had acted in concert. The fact of the transactions as such was not in dispute. What was in dispute was whether the complainant had consented to them and whether the applicant was a party to them. The complainant's evidence was that he had not given consent to any of the transactions and had no knowledge of them.

11. As has been emphasised by Mr Traversi on behalf of the respondent, if one looks at the timings of the transactions, the number and pattern of them, and the fact that, following depletion of the monies from the accounts, the applicant was also involved in the transfer of monies to allay the suspicions of the complainant the jury could be satisfied that, firstly, the two defendants had acted in concert, and, secondly, that the applicant was fully aware of the totality of the fraudulent endeavour.

12. The submission by the applicant was made under the principles of *R v Galbraith*. In a case where adverse inferences are relied upon the leading case is *R v G and F* [2011] EWCA Crim 1756. This court held that, where a key issue is whether there is sufficient evidence on which a reasonable jury could be entitled to draw an adverse inference against the defendant from a combination of factual circumstances based upon evidence adduced by the prosecution, the question is whether a reasonable jury could, on one possible view of the evidence, reject all realistic possibilities consistent with innocence and so reach that adverse inference, not whether all reasonable juries would do so. Again, it was emphasised in that case that the principles of *Galbraith* are still applicable.

13. However, in our judgment, there was at the close of the prosecution case sufficient evidence for a jury to infer that the applicant had full knowledge not simply of the transactions in which she was directly involved, but the transactions as a whole because this was a joint venture with her husband. Further, the case turned primarily on the credibility of the complainant; issues of credibility are for a jury.

14. Having perused carefully the ruling that was made by the learned Recorder and the evidence, we are satisfied that a jury properly directed could have returned a verdict of guilty in relation to the applicant as charged in the particulars of the indictment in this case. For all those reasons, this renewed application is refused.

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