IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 7/2021
IND. 43/2019
SC#1031/2019

BETWEEN:

AM

Appellant

- and –

Her Majesty the Queen

Respondent

BEFORE:

The Rt. Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Hon. Sir Michael Birt, Justice of Appeal

Date of Hearing**:** 6th May 2022

Appearances: Appellant in person
Mr. Scott Wainwright, Office of the DPP for the Respondent

JUDGMENT

Transcript of oral judgment dated 6th May 2022 and Approved for Release 23rd June 2022

Goldring J, President

1. In his notice of appeal, the Applicant, AM, applies for leave to appeal against conviction and sentence. On 17th of September 2020, he was convicted by a jury of five counts of defilement of a child under 12 ("child J"). Counts 1, 2, 6 and 7 alleged her defilement, contrary to s.134 of the Penal Code, counts 3 and 4 alleged indecent assault on her, contrary to s.132 of the Penal Code. The Applicant was further convicted on count 5. That alleged defilement of another girl under 12 ("child H").

2. The Applicant was one of three defendants of whom, as we understand it, two were convicted of sexual offences against these girls. The other two defendants were, as he put it, his cousins. He was the oldest. He was 47 at the time of the sentence. He had some 43 previous convictions. None was of a sexual nature.

3. On the 7th of April 2021, the trial judge, the Honourable Justice Richards QC, sentenced him to 4 years 10 months on the counts of defilement. She ordered that 2 years 5 months of the sentence on count 5, the defilement of child H, be served consecutively. She sentenced the Applicant to 3 years 8 months concurrently in respect of the indecent assaults.

4. In his application for leave to appeal the Applicant states:

> "*Misdirection of fact and law. Learned judge failed to sum up defence case. Sentence is excessive.*"

5. The issues in the trial were succinctly summarised by the judge in the earlier part of her summing up. She said (page 7/23 and following):

> "*So, the Crown's case in summary is that during a period of time between 2014 and 2018, the complainants were residing in a yard…They would visit the yard on the opposite side of the road … where they would pick fruits…[Child J's]…evidence is that on various occasions…when she was 9 or 10 years old, [AM] sexually assaulted her by both intercourse and by placing his penis in her mouth. [Child H's] evidence was that she too was sexually assaulted by [AM].*"

A little later:

> "*The defence is that these things did not happen, so that either the complainants, the two complainants, are being untruthful when they say that it did or they are mistaken about what they say happened. Thus, what is in dispute, the central issue in this case, is whether any act of defilement or indecent assault occurred between any of these defendants and either of the two complainants, or both.*"

6. In the note, which Mr Wainwright on behalf of the Respondent, who was trial counsel, has provided, he set out the position in these terms:

"The Appellant was convicted of a series of sexual offences committed against two young girls. The offences took place in and around the home address of the grandmother of the girls with whom the Appellant was a friend and neighbour. The appellant was known to the girls. They referred to him as [P]."

7. Mr Wainwright goes on to describe the indecent assaults as involving the Applicant inserting his penis into the victim's mouth. The offences in respect of child J took place over about three years: July 2015 to July 2018. She was between 8 and 11 years old. That concerning child H occurred on an occasion between September 2016 and September 2017. At the time, that child, was aged 7 or 8 years.

8. The Applicant's submissions to us went considerably further than what he set out in his notice of appeal. He submitted a document, running to some ten pages, which we have carefully read, and which sets out the basis of his application. We bear in mind everything that is there set out, although shall only refer to a limited number of matters.

9. The first and possibly fundamental point that the Applicant seeks to make is that there was no evidence of sexual intercourse. He rightly says there was no DNA. Mr Wainwright has told us that the girls were never examined medically at any stage.

10. The second point the Applicant makes is of delay. He submits that he could not deal with the allegations because he did not know when the events were said to have occurred; the judge failed to direct the jury as to the possible prejudice to his case in respect of that; he refers to authority from the United Kingdom dealing with historic sex cases. This was however not a case of historic abuse.

11. He complains about inadequate disclosure, although that seems to us to take the case no further. He sets out various other complaints to which it is unnecessary to refer.

12. We have read the summing up with care. It is simply unarguable to suggest the defence case was not summed up. The Applicant's evidence was summarised from pages 93 to 99. His denials were, in terms, referred to (see, for example, page 96/8). Before the jury retired, the judge reminded the jurors of the points made by Mr Rutherford QC, who was leading counsel for the Applicant. She set out the points he had made. Included in them was the absence of medical evidence, a point Mr Rutherford plainly made to the jury.

13. This was a careful summing up. The judge considered all relevant issues. In our view, it is simply unarguable to submit the convictions were unsafe.

14. We turn to the question of sentence.

15. The maximum sentence for defilement is 20 years' imprisonment, for indecent assault, 10 years. We have read the judge's sentencing remarks. She took into account the Cayman Islands Sentencing Guidelines in respect of the offence of defilement. She concluded the case fell within category 2 of harm and category B of culpability (see paragraphs 40 and 52 of her sentencing remarks). That accorded with the defence submissions. That gave a starting point of 5 years' custody, a range of 3 to 7 years.

16. She found, as an aggravating feature, that "*hush money*" had been paid to the girls. Taking into account the Applicant's past addiction issues and the absence of previous similar offences, she concluded that the right sentence was 4 years 8 months.

17. In our view, having regard to the extreme seriousness of these offences, involving as they did sexual intercourse with children, in one case over a period of time, and following a trial, it cannot begin to be argued that imprisonment for 4 years 8 months is excessive. Indeed, given that these children could not have consented, and that these offences might have been charged as rape, it seems to us that thought needs to be given as to the appropriate balance in the Sentencing Guidelines between sentences for defilement and rape in circumstances such as the present.

18. As to the imposition of a consecutive sentence in respect of child H, that too plainly cannot be criticized as being too severe. The judge was entitled to reflect the difference in victims.

19. In the circumstances, therefore, these applications for leave are without merit. There can be no justification for extending time. The application to do so is therefore refused.