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No: 201801371/A3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday, 18 July 2018

**B e f o r e:**

**LORD JUSTICE HOLROYDE**  
**MR JUSTICE JULIAN KNOWLES**

**RECORDER OF BIRMINGHAM**  
**HIS HONOUR JUDGE INMAN QC**  
(Sitting as a Judge of the CACD)

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

**R E G I N A**

v

**A.M.**

**Mr William Emlyn Jones** appeared on behalf of the **Attorney General**

**Mr Khadim Al'Hassan** appeared on behalf of the **Offender**

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

1. LORD JUSTICE HOLROYDE: On 5 January 2018, after a trial before a recorder and a jury in the Crown Court at Bradford, Ansar Mahmood, to whom we shall refer as the offender, was convicted of a total of eight sexual offences committed against his stepdaughter when she was aged between seven and 14. On 7 March 2018 he was sentenced by the recorder to a special custodial sentence under section 236A of the Criminal Justice Act 2003, comprising a custodial term of 15 years and an extension period of one year. He was also made subject to a Sexual Harm Prevention Order of indefinite duration, about which no issue arises. Her Majesty's Attorney General considers the custodial sentence to be unduly lenient and so applies, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.
2. The victim of the offences, to whom we shall refer as "S", is entitled to the protection of the provisions of the Sexual Offences (Amendment) Act 1992. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during her lifetime be included in any publication if it is likely to lead members of the public to identify her as the victim of the offence. This prohibition continues to apply unless varied or lifted in accordance with section 3 of the Act. This judgment must be anonymised accordingly.
3. We can summarise the relevant offending substantially by adopting the terms of the factual summary in the Final Reference. In 2008 the offender married S's mother. S was then aged five; her brother was aged eight. Initially she felt that the offender was nice to her. After a time however he began to ask her things that made her feel uncomfortable, such as whether her father used to touch her on her chest or between her legs and whether her father used to get into bed with her. As a result, S tried to keep away from him, but the offender began to force her to come close to him and to touch her. When they were alone, a situation which the offender would engineer either by sending S's older brother upstairs if he was present in the living room or by pulling S into her bedroom, he would put his hand up S's top and touch her chest. If S's mother came into the room he would move away and pretend that he and S had just been talking. He also instructed S not to tell anyone what he was doing and offered to give her money or take her shopping as an incentive to keep quiet.
4. Having begun when S was seven years old, this offending happened more frequently as time went on. It was reflected in count 5 of the indictment, a multiple incident count of sexual assault of a child aged under 13, contrary to section 7 of the Sexual Offences Act 2003. Count 5 alleged that the offence had occurred "on at least five occasions" between S's seventh and thirteenth birthdays.
5. The offender raped S for the first time when she was aged just eight or nine, that offence being charged in count 1 as rape of a child aged under 13 contrary to section 5 of the 2003 Act. There was then a period when full sexual intercourse was not repeated, but the offender did carry on assaulting S as previously described.
6. In January 2013, shortly after S's tenth birthday, her mother gave birth to another daughter. There were four or five occasions during her mother's pregnancy when S

was taken out by the offender in his car and driven to a quiet location. On each of these occasions the offender ordered S to get into the back of the car. She complied through fear. He would put down the seats, lie her down, put his hand up her top and touch her breasts under her clothing. He would also put his hand down her trousers and insert the tip of his finger into her vagina for a few seconds. This was reflected in count 6, a multiple incident count of assault of a child aged under 13 by penetration, contrary to section 6 of the 2003 Act, on at least two occasions between January 2012 and January 2013 when S was aged nine or 10. Again, the offender would instruct her not to tell anyone about this. S stopped going out with him in his car.

7. S described a specific occasion on an evening when her mother was in hospital giving birth. The offender came into her bedroom whilst she was lying on her bed. He tried to touch her breasts but S moved to prevent this. He then removed his own clothing and lay down next to her. He encouraged her to remove her clothing. He then climbed on top of her, pulled her lower clothing down and tried to penetrate her vagina with his penis. He did not succeed and S managed to get away from him and left the room. This attempt to rape S when she was aged 10 was reflected in count 4, which charged attempted rape of a child aged under 13, contrary to section 1 of the Criminal Attempts Act 1981.
8. When S was aged 10 or 11 the offender raped her again, and thereafter did so repeatedly until the summer of 2016 when S was 13. The rapes were often committed in S's bedroom. The offender would come into the room when S was in bed, remove his clothing, force S down and rape her vaginally. She described him as "quite heavy handed". When he withdrew from her, S saw him ejaculate, from which it may be inferred that he was not using a condom. The offender also raped S in the back of his car.
9. These repeated offences were reflected in counts 2 and 3, which charged further offences contrary to section 5 of the 2003 Act: a multiple incident count alleging that the offender raped S on at least five occasions between her tenth and thirteenth birthdays, and a further multiple incident count alleging that the offence was committed on at least five occasions after her 13th birthday.
10. In January 2016, when S was aged just 13, her mother gave birth to another child. On an occasion when the mother was in hospital the offender sexually assaulted S in the living room by pulling her towards him, touching her breasts under her clothing and putting his finger into her vagina. Her three siblings were present. During that same period the offender had done the same thing to her in her bedroom. This conduct was reflected in counts 7 and 8, sexual assault contrary to section 3 of the Act and assault by penetration contrary to section 2 of the Act.
11. S had not told anyone what the offender had done to her over the years. She explained that sometimes he could be very angry and that she was scared of him. However, her school attendance dropped to the extent that social services became involved and S was assigned to a children's mentor. It was to her mentor that on 28 June 2016 S first disclosed that the offender would "feel her up". The matter was referred to the police. The offender was arrested and interviewed under caution. He denied any sexual

activity with S and accused her of telling lies. He maintained these denials at trial, but was convicted of all offences.

12. The offences caused severe harm to S. In her personal statement she described a childhood characterised by fear and unhappiness as a result of her abuse. Her relationships with her mother and siblings have suffered, leaving her sad and lonely. Her school work has also suffered. She feels unable to trust anyone and is bullied at school by people who know what has happened to her. She says she feels that, "No one will ever care about me. I have absolutely no confidence and I feel like my reputation has been shattered. I feel like I have been used and I have lost all respect for myself." She described the process of telling the police about the abuse and giving evidence at the court as "overwhelming" and "quite frightening", although it is apparent that she faced that process with great courage. She says that she feels she is trapped in a life which she did not ask for.
13. Each of the offences of which the offender was convicted is a specified offence for the purposes of the dangerousness provisions contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003. In addition, the offences charged in counts 1, 2, 4 and 6 are offences to which the provisions of section 236A of that Act apply. These provisions have the effect that in the case of an offender of particular concern who is not sentenced to imprisonment for life or to an extended sentence, the court must pass a special custodial sentence which includes an additional period of one year's licence.
14. The offender had no previous convictions. A pre-sentence report indicated that he continued to deny the offences and accordingly showed no insight into his offending. The author of the report invited the court to consider whether an extended determinate sentence would be the best way to manage future risk. At an early stage of the sentencing hearing, the recorder gave the following indication of his approach:

"I propose to reflect the overall behaviour with sentences in relation to counts 1, 2 and 3, and I bear in mind that the effect of some of the convictions means that the defendant has to be deemed an offender of particular concern, with the result that he has an extended licence and he cannot apply for parole until he has completed two thirds of his sentence.

...

So obviously the dangerous provisions, whilst I have to consider them, I do not propose to apply them in this case..."

In his sentencing remarks, the recorder summarised the circumstances of the offending which he described as a campaign of sexual abuse of S from the age of about seven until her 14th year. He noted that S had been entitled to look to the offender for protection and support but he had instead systematically abused her for years and had shown no remorse. The recorder summarised the offending in these terms:

"It goes without saying that these are offences of the utmost gravity, committed over a significant period of time, and starting when [S] was

only seven years of age. There was planning and grooming on your part, and there was the grossest abuse of your position as her step father. The offences will have a hugely detrimental effect on the psychological welfare of [S] for years to come, and although we all hope that this is not the case, she may be unable to enjoy a normal life. You have taken that away from her."

15. Consistently with the approach which he had indicated earlier, the recorder went on to say that he did not intend to pass a sentence under the dangerousness provisions of the 2003 Act. He took into account the contents of the pre-sentence report, the fact that the offender had no previous convictions and the fact that whilst in this country the offender had been a hard-working man. He then imposed concurrent sentences as follows. On counts 1 and 2, special custodial sentences under section 236A comprising a custodial term of 15 years' imprisonment, plus one year's extended licence; counts 4 and 6, special custodial terms comprising a custodial sentence term of eight years' imprisonment plus one year's extended licence; count 3, 15 years' imprisonment; count 8, six years' imprisonment; counts 5 and 7, four years' imprisonment. The recorder concluded by purporting to explain the effect of the sentences in the following words:

"The effect of that is that you will be eligible for parole after serving two thirds of the fifteen-year sentence."

Regrettably, neither counsel then appearing pointed out to the recorder that he was in error in his understanding of the release provisions applicable to offenders of particular concern. Where a special custodial sentence is imposed pursuant to section 236A, the Secretary of State must refer the offender to the Parole Board when the offender has served half his custodial term. The Parole Board will then consider whether it is necessary for the protection of the public that the offender should continue to be in custody. It is therefore possible for the offender to be released on licence after he has served half his custodial term and the recorder was accordingly mistaken in thinking and in telling the offender that there could be no possibility of his being released on licence until he had served two-thirds of the 15-year custodial term. We are unable to say whether that error may have played any part in the approach which the recorder took to the issue of dangerousness, about which he said nothing in his sentencing remarks apart from the few words which we have quoted.

16. We are grateful for the written and oral submissions we have received from Mr Jones for the Attorney General and Mr Al'Hassan for the offender, neither of whom appeared below.
17. Mr Jones submits that the total sentence was unduly lenient. He points to the following aggravating features. As to harm, there was severe psychological harm caused to the victim; at the outset of the offending S was particularly vulnerable by virtue of her extreme youth and her personal circumstances as the offender's stepdaughter living in his home; the offending had been sustained over a period of approximately six years, during which there had been multiple offences including at least 11 rapes (six of them when S was aged under 13). As to culpability, the offences

involved a gross abuse of trust and features of grooming behaviour. There were additional aggravating features of ejaculation, steps being taken to ensure that the offending was not reported and the presence of other children on one occasion. Mr Jones submits that there appears to be no mitigation other than the offender's previous good character. He points out that under the Sentencing Council's Definitive Guideline on sentencing for offences contrary to the Sexual Offences Act 2003, the rapes were Category 2A offences of rape of a child under 13. For a single such offence the guideline starting point is 13 years' custody. Given that the offending amounted to a campaign of rape, as the learned recorder recognised, involving at least 11 offences of rape and many other sexual assaults, Mr Jones submits that a total sentence of 15 years' custody plus the additional year of licence did not properly reflect the gravity of the overall offending.

18. Mr Al'Hassan agrees that the rape offences fall within Category 2A of the guideline. He submits however that the sentencing was not unduly lenient, even if it might appear to have been lenient. The learned recorder had had the advantage of hearing the trial and had heard the evidence both of S and of the offender. Mr Al'Hassan points not only to the previous good character, but also to the fact that no allegation is made of any sexual offence against either of the offender's other daughters, nor is any allegation made of any offending during the period when he was on bail in respect of these offences. Mr Al'Hassan draws to our attention that the offender appears to be making reasonable progress in prison, that he faces likely deportation at the end of his sentence and that the sentence is in any event a very lengthy one.
19. We have reflected on these submissions. We start by considering the guideline for a single offence of rape of a child aged under 13. As we have indicated, the guideline shows a starting point of 13 years. The category range is 11 to 17 years. We agree that the offences against S of rape were correctly assessed as falling within Category 2A in relation to the offences when she was aged under 13. We think it important to emphasise that they come within Category 2A for more than one reason. In determining harm the case comes within Category 2 both because of the severe psychological harm suffered by S and because when the rapes began she was particularly vulnerable due to her extreme youth and her personal circumstances. It comes within Level A culpability both because of the grooming behaviour and because of the abuse of trust.
20. At step 2 of the sentencing process, in deciding whether to move up or down from the guidelines starting point, the court is required to consider the aggravating and mitigating features. In addition to those aggravating features which have already been taken into account in reaching the appropriate category, there were the serious aspects of ejaculation and steps taken to prevent reporting. The principal mitigating factor was that the offender had no previous convictions. However, at page 31 of the guideline the following appears:

"In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence."

The only other factors in the offender's favour were his history of hard work and the fact that he had brought upon himself the loss of his business and the prospect of deportation. In the face of such serious offending, these matters can carry little weight.

21. In those circumstances, it is in our view clear that the aggravating features significantly outweigh the mitigating features. As a result, even for a single offence of rape of S when she was aged under 13 the sentence should have been in excess of the starting point of 13 years.
22. It is then necessary to take into account the number of offences. Over a period of about six years, as we have said, S was raped at least 11 times. There was in addition an attempt to rape her when she was under 13. The offender digitally penetrated her vagina at least twice when she was under 13 and again when she was over 13. He touched her breasts on at least five occasions when she was under 13 and again after her 13th birthday. On one of those occasions siblings were present.
23. With each of these crimes the offender added to the harm which he had already caused and increased the seriousness of his overall offending. We remind ourselves that in relation both to rape of a child aged under 13 and rape of an older victim, the guideline recognises the seriousness of repeated offending by saying "offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate."
24. The recorder was in our view correct to reflect the overall criminality by concurrent sentences on counts 1 to 3. With respect to the recorder, however, we agree with the submission of the Attorney General that the recorder failed adequately to reflect the overall seriousness. The total custodial term of 15 years is only two years longer than the guideline starting point for the single offence charged in count 1 and, as we have indicated, each of the offences charged in counts 1, 2 and 3 merited in isolation a sentence in excess of that starting point. It is of course necessary to take account of totality. Even with that principle firmly in mind, however, we cannot think that a total custodial term of less than 20 years was appropriate.
25. We therefore grant leave to refer. We conclude that the total sentence was unduly lenient. We quash the sentences imposed on counts 1, 2 and 3. On counts 1 and 2 we substitute concurrent special custodial sentences pursuant to section 236A, comprising 20 years' custody plus one year's additional licence. On count 3 we substitute a determinate sentence of 20 years' imprisonment. All other sentences are as before. All sentences are to run concurrently. The Sexual Harm Prevention Order remains unaltered. Thus the total sentence becomes a special custodial sentence comprising a custodial term of 20 years and an extension period of one year. As we have explained, the offender will be eligible for consideration for release on licence after half that custodial term, but he has no entitlement to be released at that stage. When he is released he will be on licence for the remainder of the custodial term and for an additional year thereafter.

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