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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202100215/A3-202100217/A3

NCN: [2021] EWCA Crim 317

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 26 February 2021

LORD JUSTICE DAVIS

MR JUSTICE SPENCER

MR JUSTICE BOURNE

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

REGINA

V

NATHAN MAYNARD-ELLIS

DAVID LEESLEY

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MR L MABLY QC appeared on behalf of the Attorney General.

MR D MASON QC & MR S ALLEN appeared on behalf of the Offender Maynard-Ellis.

MR T FORSTER QC & MR J MANN appeared on behalf of the Offender Leesley.

J U D G M E N T

1. LORD JUSTICE DAVIS: The Solicitor General applies for leave in this case to challenge sentences on the grounds that they are unduly lenient.
2. The offenders are Nathan Maynard-Ellis (a man aged 30) and David Leesley (a man aged 25). After a trial lasting several weeks before Soole J and a jury in the Crown Court at Coventry, both offenders were on 9 November 2020 convicted by the jury of murder. In addition, the first offender, Nathan Maynard-Ellis, was also convicted of four counts of rape, one count of attempted rape and one count of making a threat to kill. The offenders had previously, at various stages, pleaded guilty to disposing of a corpse and perverting the course of public justice.
3. On 21 December 2020 each of the offenders was sentenced to imprisonment for life, which of course was a mandatory sentence. In the case of the first offender the judge set a minimum term of 30 years and in the case of the second offender the judge specified a minimum term of 19 years, in both cases less days spent on remand. The structure of the sentencing was that on the murder count the judge sentenced to life with the minimum terms as we have indicated; in terms of the various other counts on the indictment each of the offenders concurrently was sentenced to 6 years for the count of disposing of a corpse and each was sentenced to 4 years on the counts of perverting the course of justice. So far as the first offender was concerned, on the various counts of rape, attempted rape and threats to kill, relating to one complainant (who may be called "CW") the judge imposed a total concurrent term of 14 years' imprisonment for that group of offences, taking count 10 (the last rape count) as the lead count for that purpose.
4. The background facts are disconcerting. They need some setting out.
5. So far as the counts of rape, attempted rape and threats to kill are concerned, the position was that in 2007 the first offender had begun a relationship with a young woman who may be called "CW". She was aged 15 at the time (the first offender himself being 17 at the time). CW was vulnerable. During the relationship she was subjected to violent and controlling behaviour at the hands of the first offender. According to her, she soon became aware that he was fascinated by serial killers and horror films and was obsessed with pain and death and had fantasies about killing people. According to her, he would sometimes carry a black hood or a rope and a knife in case he found someone to kill and, according to her, had speculated about what it would be like to have sex with a corpse and had said that he would like to strangle women. She was to say that he forced her to watch a number of sexually sadistic films and so on and required her not to report his conduct to anybody. He was to say, according to her, that if she did not shut up he would kill her. Further, on her evidence, those threats were accompanied by sexual violence. For example, on a particular holiday in 2007, on her evidence, he had anally raped her on two occasions and had ejaculated, those being counts 5 and 6 on the subsequent indictment. He then threatened her in order to stop her reporting it.
6. In the summer of 2008 he had taken CW to a secluded nature reserve where he had attempted anal rape (count 7 on the indictment) and then vaginally raped her (count 8). According to her, the attack had been sustained and indeed the first offender had said that he had a gun with him.
7. So far as count 9 was concerned, the first offender had taken CW to a secluded area by a canal, had produced a knife and threatened to kill her. He then, on that occasion, vaginally raped her, that being count 10. She was in fact to say in the course of her

evidence that the first offender gained increased sexual pleasure if she tried to resist or fight against his sexual attacks and so she had learned not to oppose him.

8. So far as the count of murder was concerned, the position was this. At some stage after his relationship with CW ended the first offender came out as gay. He then began a relationship with the second offender. By May 2019, they had been living together for some years. They were living at the time in a small flat at Tipton.
9. It appears that over the years the first offender's obsession with death and horror had continued. Indeed, when the flat was examined it was found that there were stuffed animals on the walls, various reptiles in tanks and knives and other tools were on display. The bookcase contained books about serial killers and there were DVDs of horror films including depictions of beheading and necrophilia. There were face masks and models of characters from horror films. It was plain that the second offender must have been aware of the first offender's violent sexual fantasies.
10. On the evening of Saturday 11 May 2019 the first offender went out alone. The second offender remained in the flat. Later that night the first offender entered a pub called the "Bottle and Cork" in Dudley. He there met a woman, Julia Rawson, who had previously been unknown to him. She had been on a night out with a friend but by the time she encountered the first offender in the pub she was on her own and was drunk. The first offender, on the other hand, was sober. The evidence was to the effect that Ms Rawson then flirted with the first offender and wrote her name on a napkin and put it in his pocket. That napkin was subsequently found by the police in the flat.
11. At around 2 o'clock in the morning the two left the pub together and took a taxi back to the flat. At some point after the arrival at the flat Ms Rawson was attacked and killed by the two offenders. Most distressingly, after that attack the offenders then cut her body into 12 parts using a saw. They then hid the parts so that they were not found for over a month. Her limbs were cut off, her head was removed and her body was cut through at the spine. The hands and feet were also separately cut from the limbs.
12. The disposal of the body meant that the pathological evidence necessarily was limited. However, there was evidence indicating at least four forceful blows to the head; those blows would have rendered Ms Rawson unconscious. It was not known whether or not she may also have been subjected to another form of fatal attack such as strangulation. There was a hyoid fracture which could have been consistent with neck compression but equally that may have been caused for other reasons. When the body parts were found a kidney was noted to be missing; but it could not be said whether this was as a result of decomposition or deliberate removal.
13. At all events, after killing her the offenders acted together in attempting to cover up what they had done. On 12 May 2019 they burned bloodstained clothing in an incinerator bin at the home of the first offender's mother - the use of the incinerator being seen by a neighbour. Further, having dismembered the body they then put the parts into carrier bags and on 13 May 2019 walked to a nearby canal and hid the bags in separate locations on adjacent wasteland. Their presence in this area was observed by a witness and caught by CCTV footage. Furthermore, on 13 May 2019 the offenders ordered a new carpet and carpet fitters attended the flat on 14 May for that purpose.
14. On 16 May 2019, with the unwitting assistance of a friend, the first offender took the old carpet and underlay and a bloodstained sofa to the rubbish dump. At some point a bloodstained rug was taken to a lock up rented by the offenders. Both the sofa and the

rug were subsequently retrieved by the police. There was bloodstaining on the sofa, with heavy bloodstaining having run down on one side. In the meantime it appears that the offenders were going about their daily lives giving no indication that anything untoward had taken place.

15. However, the disappearance of Ms Rawson had been reported to the police. A missing person's inquiry was carried out. CCTV footage from the Bottle and Cork pub showed her leaving the pub with a man. In due course that man was identified as the first offender. He was initially to deny that it was him when he was arrested, stating that he was not the man in the footage. So far as the second offender was concerned, he was not detained at that stage; instead he provided a signed witness statement in which he falsely set out an alibi for the first offender, stating that he and the first offender had been in bed together all night and that he knew nothing of Ms Rawson's disappearance. The second offender was himself in due course arrested.
16. When interviewed, each gave a pre-arranged version of events designed to deny any involvement in Ms Rawson's disappearance. The second offender was later to admit, in due course, that his statement had been false. He was to say that he had gone to bed alone and had left the first offender in the living room. However, he sought to support the first offender in the explanations given about the reasons for buying a new carpet and he continued to deny any involvement in Ms Rawson's disappearance.
17. Neither offender had any previous convictions.
18. Subsequently, by a defence statement served on 2 August 2020 the first offender was to admit killing Ms Rawson. He was to state that she had asked to come back to his flat, that she had made a sexual advance towards him, which had angered him, and that he had responded by hitting her on the head with a rolling pin. He was to say that he had heard voices telling him to attack her. He relied on the defence of diminished responsibility arising from his diagnosis of Asperger's Syndrome and Chronic Depressive Disorder. As for CW, he denied having any non-consensual intercourse with CW and denied that he had made any threat to kill CW.
19. Reports had been obtained with regard to this proposed defence of diminished responsibility, in particular from Dr Clarke and Dr Kennedy, each of whom was a consultant forensic psychiatrist. It is fair to say that the reports of each of them were very cautiously framed. It had been ruled out that the first offender was suffering from schizophrenia at the time; nor was there any evidence of him experiencing any psychotic episodes in the period leading up to the killing. However, both experts stated the view that *if* the first offender's account was accepted then that would be capable of giving rise to a defence of diminished responsibility. Amongst other things, it had been noted that the first offender had in the past said that he had experienced voices but that had not resulted in any kind of violent conduct. Consequently, the critical matter, really, so far as the jury was concerned in this respect was whether or not the first offender's account was to be accepted.
20. On 6 October 2020 the trial commenced on the count of murder and on the counts relating to CW. The first offender gave evidence; the second offender did not. As we have said, on 9 November 2020 they were respectively convicted on the various counts.
21. Sentence took place on 21 December 2020. The trial judge, of course, had had the benefit of seeing and hearing the evidence as it had unfolded over several weeks of trial. His sentencing remarks were detailed. Amongst other things the judge made clear that

he found that the two offenders had acted together in murdering Ms Rawson and then in dismembering her body.

22. Importantly, so far as the first offender was concerned, the judge did not find that he had gone to the pub looking for someone to kill. He accepted that the meeting with Ms Rawson was in effect by chance and indeed, it was Ms Rawson who had in effect made friendly approaches towards the first offender. Accordingly, the judge could not be sure that he had gone to the pub that night with the intent of finding someone to kill. The judge went on to say this:

    i. "However, I am sure that, at some point after you got into the taxi together and against the background of your established fantasies about killing someone, you formed the intent to kill her and that the killing was not decided by you on the spur of the moment in the flat."

23. The judge went on to find that in the attack on Ms Rawson in the flat the first offender had "been very quickly joined" by the second offender. The judge said this:

    i. "However and whenever the assault began, I am sure that you, Maynard-Ellis, instigated it and took the leading role, but I am also sure that you, Leesley, readily and physically joined in the attack."

24. Some suggestion had been made during the course of cross-examination that the offenders engaged in cannibalism, by reason of the missing kidney. The judge rejected that on the footing he could not be sure that that was so.
25. The judge then went on, in considering the minimum term to be set, to say this:

    i. "For the purpose of deciding the minimum term, I must first identify, in each case, the appropriate starting point by reference to schedule 21 of the Criminal Justice Act 2003. Contrary to the prosecution's primary submission, I am not able to conclude that the murder of Julia Rawson itself involved sexual or sadistic conduct within the meaning of the statutory language and the relevant case law. Whilst I conclude that Maynard-Ellis's underlying depraved obsessions and fantasies were a trigger for his decision to kill that night, the evidence and, in particular, the forensic pathology does not demonstrate that the murderous assaults itself involved the features which that exceptional category requires."

26. The judge therefore found that the appropriate statutory starting point in each case was accordingly 15 years.
27. The judge then went on to say that, so far as the first offender was concerned, the judge did not consider that there was a significant degree of planning although he did consider that there was a significant degree of premeditation. He then said this:

i. "Although you did not identify Julia Rawson as a victim until a late stage that night, in my judgment that decision was the culmination of the underlying fantasy which must be treated as an aggravating factor.

ii. The second statutory aggravating factor is your dismemberment and then concealment of the body. This terrible and comprehensive act of defilement and indignity, causing such particular intense and lasting distress to her family and friends, must be met with substantial additional punishment."

28. The judge then of course also had to deal with the position so far as the counts relating to CW were concerned. The judge, amongst other things, said this:

i. "Since the total determinate and concurrent sentence for the offences of rape will exceed seven years, that addition to the minimum term will be calculated at a starting point of two-thirds of the total determinate sentence, but then subject to the principle of totality. In this way, the sentence of life imprisonment and its minimum term will encompass all your offending."

29. The judge then went on to deal with very fully with the facts relating to each particular count in so far as they concerned CW and imposed the sentences which we have already indicated. Having done that, and taking all those matters into account and after referring to considerations of totality, the judge set the minimum term in the case of the first offender at 30 years, less time spent on remand in custody.
30. So far as the second offender was concerned, the judge accepted that there was a lack of premeditation. The judge found that the second offender had been in thrall to the first offender. He confirmed his conclusion that it was the first offender who had instigated the attack although the second offender had then immediately joined in. The judge went on to say:

i. "In my judgment, you were thereupon doing Nathan's bidding and sharing his intent. In the same ready way, you then took part in the dismemberment and all the other aspects of the cover up. I accept that Nathan was playing the leading role through all this but, at all times, you were giving him your immediate and unquestioning support."

31. The judge then indicated the sentence which he would impose by reference to the other matter on which the second offender fell to be sentenced; and concluded that the appropriate overall minimum term in his case was to be set at 19 years less time spent on remand in custody.
32. In imposing sentence the judge was of course required to have regard to the terms of schedule 21 to the Criminal Justice Act 2003. It had been submitted to the judge on behalf of the Crown that this case fell within paragraph 5 of schedule 21 and was to be taken as an offence where the seriousness was “particularly high”. In particular, reliance

was placed on paragraph 5(2)(e) which takes as illustrative of a case where the seriousness is particularly high a case of "a murder involving sexual or sadistic conduct". If that was the correct assessment then under that paragraph the appropriate starting point in determining the minimum term was 30 years. However, as will be gathered the judge rejected that. He did not find this to be a case of a murder involving sexual or sadistic conduct. Consequently he took the starting point as one of 15 years' imprisonment in accordance with paragraph 6 of that schedule.

33. On behalf of the Solicitor General Mr Mably QC submits that these sentences, in terms of the minimum term, are unduly lenient. His primary point is that the murder with regard to both offenders should have been assessed as having a seriousness which was particularly high and so should have attracted a starting point by way of minimum term of 30 years. He submitted that the judge had been wrong to take a starting point by way of minimum term of 15 years. He submitted that the judge had erred in principle or alternatively reached findings of fact which simply were not open to him on the evidence adduced in concluding as he did.
34. We are wholly unpersuaded by this argument. This was a matter for the trial judge who had seen and heard all of the evidence as it unfolded. The judge had accepted that a sexual or sadistic motivation could have a part to play in the assessment which he made. But overall the judge had to focus, looking at the evidence as a whole or on whether there was sexual or sadistic conduct. On the evidence which he had heard he could not be sure that there was, as he held. It is always difficult to challenge a trial judge's evaluation of the facts. It is particularly difficult where a trial judge is not making a positive finding of fact but rather making a finding that he cannot be sure to the criminal standard that a particular factual situation exists. We can see no error in law or principle on the part of the judge at all in this context. The question here, in the last analysis, was one of evidential appraisal; and his evidential appraisal was, we conclude, open to him.
35. There can be occasions, we accept, where an appellate court can find that a judge had reached a conclusion simply not open to him in terms of whether or not the judge had been made sure (see, for example, Attorney-General's Reference Nos 25 and 26 of 2008 (R v George and Walters) [2008] EWCA Crim 2665; [2009] 2 Cr App R(S) 116. But, in our view, this is not such a case.
36. It has been repeatedly stressed in this context that the matter is one for the evaluation of the trial judge who has heard the evidence both factual and expert: see, for example, cases of R v Kolman [2018] EWCA Crim 2624; [2019] 1 Cr App R(S) 33 and R v Bonellie [2008] EWCA Crim 1417; [2009] 1 Cr App R(S) 55. Moreover, as those cases also confirm, the mere fact that a defendant may at the time have taken pleasure in the killing does not of itself necessarily bring the matter within paragraph 5(2)(e) of schedule 21 of the 2003 Act.
37. In the present case the judge knew full well what the psychiatric evidence said; he knew full what the pathological evidence said; he knew full well what CW had said in her own evidence. He was well aware that there was evidence that the first offender had an obsessive interest in violently assaulting and killing a female.
38. Nevertheless, as both Mr Mason QC and Mr Forster QC have stressed, the evidence has to be looked at as a whole. In effect Mr Mably's submissions came down to saying that this was sadistic or sexual conduct just because of the first offender's motivation. But the word used is "conduct": it is not motivation (in contrast, it may be noted, to what is

contained in paragraph 4 (2)(b) of schedule 21). We accept, of course, that sadistic or sexual motivation has a part, and it may well be an important part, to play in the overall evaluation. But the word "conduct" also embraces consideration of all the activities that occur. In the present case, the judge made no finding that what occurred after Ms Rawson had been struck down with the four blows thereafter was sadistic or sexual. For example, he did not make any finding that any necrophilia had occurred. He did not make any finding that the dismemberment was itself designed to be part of a course of sexual or sadistic conduct. He did not find that there had been any cannibalism.

39. We put to Mr Mably in the course of argument whether he was saying that someone with a sadistic motivation and outlook would have committed a murder falling within paragraph 5(2)(e) if he lures a victim back and then from behind stabs that victim in the back once with a knife through to the heart. Mr Mably said, yes that would indeed be a murder within paragraph 5(2)(e). Thus, in terms of the starting point on that argument the position is then no different as compared to a case where a particular defendant, for example, may lure a victim back to his home, then tie that victim up with chains and ropes and then for sexual and sadistic gratification torture that victim over several hours before the victim dies. It seems to us that the courts do indeed need to keep an eye, and a close eye, on the various factual scenarios such as can occur. Therefore it is quite wrong to say that a sexual or sadistic motivation of itself will always bring a matter within paragraph 5(2)(e) of Schedule 21.
40. As the trial judge also pointed out, and as is reflected in the case of R v Boland and Tinsley [2007] EWCA Crim 90, where a sustained assault is said to involve sadistic conduct, that in effect requires there to be "wholly exceptional brutality accompanying the killing" such as to take the murder up from a starting point of 15 years to a starting point of 30 years. In our view, the judge was entitled to conclude, having regard to all the evidence, that this was not such a case. The appellate court has no proper basis for interfering with his appraisal.
41. Mr Mably then went on to submit in the alternative that what is actually listed in paragraph 5 of schedule 21 is only illustrative and is not exhaustive; and he submitted that, in any event, the circumstances of this murder was such as to attract a starting point by way of minimum term of 30 years. But really for the like reasons as we have given in our opinion the judge was entitled not to view it that way.
42. Finally, so far as the first offender is concerned, Mr Mably relied on the serious offending against the complainant, CW. He submits that when one factors in the necessary punishment for that offending the sentence overall should have gone significantly above a minimum term of 30 years as selected by the judge. But the judge here had selected a total of 14 years for that particular offending relating to CW. He then had to have regard to what the appropriate term to be served would be and he then also had to have regard to considerations of totality. Although the judge did not spell it out, one can deduce that the judge must have, for the murder alone, gone significantly above 20 years so far as the first offender was concerned; and he then appears to have added in the region of at any rate around 6 years to reflect the other offending involving CW, considerations of totality also coming into play. It seems to us that it cannot be said, looking at the offending overall, that a minimum term of 30 years which the judge reached was unduly lenient.
43. Having reached that conclusion, it really follows that the same conclusion must likewise be reached with regard to the second offender. Mr Mably did submit that here too the

sentence was in any event, even if a starting point of 15 years was appropriate, unduly lenient. But we do not agree with that, in the light of the findings that the judge made.

44. Overall therefore, we are not persuaded in either case that these sentences were unduly lenient. It may be that some judges might have set a minimum term somewhat higher than this particular judge set. But that is entirely beside the point. He was the trial judge. This Court is simply concerned to consider whether it can be said that the minimum terms which he selected were unduly lenient. This Court takes the view that they were not. Accordingly, we refuse leave in each of these cases.

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