



JUDICIARY OF  
ENGLAND AND WALES

A v R

Court of Appeal (Criminal Division)

13 March 2012

SUMMARY TO ASSIST THE MEDIA

**The Court of Appeal (Lord Chief Justice, Mr Justice Silber and Mr Justice Maddison) has today dismissed the appeal of a woman against her conviction for perverting the course of justice after she pleaded guilty to making a false retraction of a rape allegation.**

**Background:**

The facts to this case is set out in paragraphs 1 - 57.

This appeal against conviction follows the woman's guilty plea at Mold Crown Court on 15 October 2010. That court sentenced her to eight months imprisonment on 5 November 2010. An earlier appeal against sentence was heard by the Court of Appeal on 23 November 2010 and the Court quashed the sentence and imposed a non-custodial sentence. The woman, having changed legal team, later lodged an appeal against her conviction.

On 28 November 2009 the appellant reported she'd been raped by her husband on 3 occasions. (para 10)

On 21<sup>st</sup> December it was reported that the appellant wished to withdraw her allegation of rape against her husband. The police contacted Victim Support Service to establish whether any problems had been reported to them. The investigating officer was told that none had been mentioned. During the Christmas period there was something of a reconciliation. Sexual intercourse took place between the husband and wife. This was not rape, nor even reluctant acquiescence, but consensual sexual intercourse. It happened because, in her reported words, she "wanted" to. Throughout this period she must have been aware that her husband was in breach of the bail condition that he should have no communication or contact with her. The only realistic conclusion is that she connived at it. She now finds it difficult to explain her behaviour at this time. It does however provide the contextual background to the submission by Mr Quinn that there was a viable defence of duress open to the appellant. (para 14)

On 7 January 2010, the appellant contacted the police to withdraw her complaint. (para 15)

On 14 January, the appellant admitted that she had had consensual sexual intercourse with her husband over the Christmas period and pleaded with the police not to arrest him. (para 16)

On 23 January, the appellant made a series of false complaints against her husband to 'spite him'. (para 17)

On 7 February, the appellant made her first false retraction. (para 19)

On 11 February, the appellant insisted to police that the allegations of rape were false. (para 21)

On 12 February, the Crown offered no evidence against her husband when he appeared at Mold Crown Court. (para 23)

On 16 April, the appellant was arrested on suspicion of perverting the course of justice. She said in categorical terms that she was never raped by her husband. (paras 24 and 25)

On 23 June, she was charged with perverting the course of justice on the basis of her false allegation against her husband. (para 26)

On 30 July, the appellant met counsel for the first time and he advised her to 'stick with the truth'. (para 29)

On 5 August, the appellant contacted the police and said she had been raped. Her reasons for retracting the allegation is set out in paragraph 31.

On 31 August, she was arrested and interviewed again. (para 32) During the interview:

"She was asked directly whether her husband had put her under pressure to withdraw her allegations when she first did so. She responded:

"We discussed it and our thinking was that if, because I had asked my solicitor how long do you think Terry would get inside and they said and I know Terry has told me this since, that his solicitor had said more or less, he's get about 10 years, and serve half. Then we discussed about me ringing up and saying that I was lying and like he'd said and Tracey said as well, that it would be a suspended sentence for just like 2 or 3 months. And then me sitting there stupidly thinking right, what's best for the kids, Daddy missing for 5 years or Mummy missing for 3 months and that's where them, yeh, ...".

"At this the interviewing officer interrupted and made an extremely pertinent observation:

"So you say, "our thinking",... "

"And she responded:

"Sorry, me and Terry would sit down and discuss this and I remember saying to him "look, Mummy disappearing for 2 or 3 months is better than Daddy disappearing for 5 or 6 years". And yeh, he wasn't happy with the idea, but he didn't stop me." " (para 37-39)

On 16 September, the appellant was charged with an additional offence of perverting the course of justice by falsely retracting a true allegation of rape. (para 41)

On 15 October, she pleaded guilty to the second charge. (para 42)

According to the Pre-Sentence Report of 4 November, the appellant's explanation for the retraction of the allegation of rape was that after her husband had been arrested and remanded in custody she felt "immense guilt". She decided that taking divorce proceedings would be "punishment enough for him" and so she withdrew the complaint. (para 47 - 48)

Further explanation for her withdrawing her allegation is set out in paragraphs 51 - 56.

**The Offence - perverting the course of public justice:**

This is discussed in detail in paragraphs 58 - 59.

**Lord Judge, on behalf of the Court concluded: "In our judgment, it is plain that this conviction cannot be quashed on the basis that the appellant's conduct did not fall within the ambit of the offence of perverting the course of public justice." (para 59)**

### **The Defence - Duress:**

This is discussed in detail in paragraphs 60 - 70.

Lord Judge, on behalf of the Court, said:

"The contemporaneous evidence available to the appellant's legal advisers, once she had decided to tell the truth provided a great deal of mitigation, but no viable defence of duress. That was not the case that she was advancing in her instructions to them, or for that matter in her accounts to the police, who were undoubtedly sympathetic to her situation, and did their best to dissuade her from withdrawing the allegation and then to find an explanation for her doing so. She did not suggest to any of them that when she falsely retracted her truthful complaints she was acting under the threat of serious ill treatment or violence at the hands of her husband or anyone else. The police interview on 16<sup>th</sup> August is one of the crucial features of this case. By now, it must be remembered, the appellant was asserting that her husband had raped her more than once, and had treated her with violence, and that she was confirming the truth of her allegations against him. If she had been threatened by him with violence if she did not withdraw the complaint, as it seems to us, it is unconceivable that she would not have said so at the time. If she was asserting that he forced a retraction by raping her or threatening to rape her, there was no reason why she should not also have explained her retraction of the rapes by reference to any such threats." (para 64)

He added:

"Even her most recent statement does not suggest that she was threatened with violence during this period, and in particular, at the time when she made her false retractions." (para 66)

**Lord Judge concluded: "... we can see no basis for concluding that the appellant felt exposed to violence or the threat of violence when she made the false retractions on which her prosecution was founded. The defence of duress was not realistically available, and faced with the material now available, no responsible counsel would have advised her that the case should be contested on this basis." (para 70)**

### **The plea:**

The basis of the plea is discussed in detail in paragraph 71. The Court concluded that "There is nothing in the material available to us to which suggests that the plea was equivocal."

### **The decision to prosecute:**

This is discussed in detail in paragraphs 72 - 87.

Counsel for the Crown "accepted that if the most recent CPS Guidance about the approach to be adopted to cases where truthful allegations are retracted by the victim of rape or domestic violence had been in existence at the time when the appellant pleaded guilty, she would not have been prosecuted. This Guidance followed the expression by the Director of Public Prosecutions of his view on this particular case. ... [However, counsel] did not accept that there had been an abuse of process or, that if all the steps suggested by Mr Quinn had been taken, a stay of proceedings would have been ordered." (para 79)

Lord Judge, on behalf of the Court, agreed:

"... We have detected the development of what may, if not arrested at an early stage, become a new form of satellite litigation, in which the exercise of the prosecutorial discretion is made subject to a judicial review or abuse of process/stay of proceedings argument in the Crown Court.

"As to judicial review, there can, we suggest, be very few occasions indeed when an application for permission by or on behalf of a defendant should not be refused at the outset on the basis that an alternative remedy is available in the Crown Court. This is the appropriate tribunal for dealing with these questions on the rare occasions on which they may arise. Precisely the same considerations apply to a case involving summary trial." (para 80 - 81)

He went on to say:

"... It is elementary, but it has become necessary to emphasise, that Guidance issued by the Director of Public Prosecutions does not and, as a matter of law cannot, create any immunity or defence. ... It is not the function of the court to substitute its own view for that of the Crown about whether there should be a prosecution." (para 83)

Lord Judge concluded:

**" ... A prosecution which did not constitute an abuse of process at the date of conviction cannot acquire that characteristic, on the basis of new or amended prosecutorial guidance or policy subsequently issued." (para 86)**

#### **Conclusion:**

Lord Judge, on behalf of the Court, concluded:

**"The reality of this case is that the appellant was undoubtedly guilty of a serious crime, from which police officers did all they reasonably could to dissuade her. Compassion for her position, and indeed for any woman in the same or a similar position, should have produced a non-custodial sentence. That is why this court acted speedily to quash the custodial sentence and replace it with a community order which would offer practical assistance to the appellant in the immediate aftermath of her release from prison. The court also expressed itself in clear and direct language, which was immediately considered by the Director of Public Prosecutions, who has now issued fresh guidance about how cases involving false retractions of true allegations by vulnerable defendants will be addressed in the future. All that acknowledged, we cannot dispense with or suspend the statute, or grant ourselves an extra statutory jurisdiction. Accordingly, we are not entitled to interfere with this conviction. Accordingly the appeal must be dismissed."**

-ends-

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.**