# Regina v Syeda Nazminara Ali

No. 2011/04582/A1

Court of Appeal Criminal Division

21 October 2011

**[2011] EWCA Crim 2567**

**2011 WL 5105086**

Before: Mr Justice MacKay and Mrs Justice Sharp DBE

Friday 21 October 2011

## Representation

Mr A Houston appeared on behalf of the Appellant.

## Judgment

Friday 21 October 2011Mr Justice MacKay:

1 On 23 December 2010, in the Crown Court at Southampton, the appellant pleaded guilty to 16 counts of fraud and one of perverting the course of public justice. On 8 July 2011 on each of the fraud counts she was sentenced to concurrent terms of one year's imprisonment, and on the count of perverting the course of public justice she was sentenced to a consecutive term of two years' imprisonment. The total sentence was therefore one of three years' imprisonment. She appeals against sentence by leave of the single judge.

2 The frauds arose in this way. Provident Personal Credit Ltd ("Provident") is a company that lends money to people of limited means. It does so through a number of agents who issue the loans and then collect the payments. In January 2009 the appellant began to work for Provident as an agent in Southampton. She was trained. Applications for loans had to exhibit proof of identity, residence and other such matters. The forms were returned to Provident to be checked and, if approved, the money would be paid out through the agent who handed it over to the borrower. This system imposed a significant degree of trust on the agents.

3 If an agent's new business, in the form of new loans, exceeded a certain level an investigation was triggered and checks were made. That is what happened in the case of the appellant.

4 In June 2009 the security manager discovered that it appeared to be the case that a number of false loans had been proposed to customers who did not, in fact, live where they were said to live. Checks revealed that the appellant had submitted false loan applications. Many of the alleged customers had never asked for a loan. The

potential loss to Provident if the loans had been processed was £7,650. In fact, because of the system it had in place, Provident "nipped the scheme in the bud" and no loss was incurred.

5 On 29 June 2009, Miss Haywood, a representative from Provident, went to the appellant's home as part of the check-up procedure on these suspicious loans. No one was there. She went back a day or so later when she was met by the appellant who burst into tears. At first she thought that it was to do with the false loan applications. Miss Haywood was then told by the appellant that when she had returned home on 30 June two men had bundled her into a car driven by a third and had taken her to an address which she identified, where they had raped her anally and vaginally. They told her that if she went to the police her children would be beaten up. Miss Haywood persuaded her to go to see a doctor. The appellant repeated her story at the doctor's surgery. The police were informed. She was video-interviewed on 7 and 14 July 2009. She repeated the allegations. She gave details of what she said had happened, and she named all three men who were among the list of customers for whom she claimed to be applying for loans.

6 An extensive police investigation followed. Given the seriousness of the charge that was entirely foreseeable.

7 Thereafter, matters became more complicated. On 28 July the appellant retracted her allegation of rape. However, the three men, again foreseeably, remained under a cloud of suspicion, despite a formal retraction statement made by the appellant. They were arrested and interviewed on 29 July 2009 in one case, and on 26 October 2009 in the other two cases. Investigations were made at a number of properties, including the alleged scene and other properties which were implicated. The CCTV recording which would have covered the point of her abduction was viewed.

8 A particular telephone number kept cropping up in the course of the investigations. It turned out to be a telephone number of a man variously known as Gurais Mamand or Naveed (the appellant's fourth husband), although she had not named him up to this stage. He is of Afghan origin, an illegal entrant into the United Kingdom, and his immigration status is still in the balance. Records show that he married the appellant on 3 July 2008.

9 Following the appellant's pleas of guilty on 23 December 2010, the matter was adjourned. A tentative date for a Newton hearing was fixed. That, too, was vacated by agreement.

10 A psychiatric report, dated 7 April 2011, was prepared by Dr Morton, who asked the appellant to give the relevant history. She then introduced for the first time a new allegation of rape (nothing to do with the original three men). She told the psychiatrist that when the investigation by Provident started she was "met" by Naveed, who was angry with her. He introduced her to another man who, he said, had taken a loan from her. They then took her to a house in Derby Road where she was raped.

11 In the course of her examination the appellant admitted to Dr Morton that she had indeed been the wife of Naveed but had divorced him some time in 2010. She gave an account that Naveed had previously tried to coerce her to become a suicide

bomber and to blow up the Croydon Immigration Office. The appellant said that it was he who had made out multiple Provident loan forms for his friends and that she had merely signed them. It was in that context that she told the psychiatrist about the new version of the rape.

12 A pre-sentence report, dated 5 July 2011, repeated the allegation that the appellant had been coerced into putting these applications forward by Naveed. She linked this to the other coercion that he had exerted upon her to become a suicide bomber. She admitted that the allegation against the three men was false, but now said that she had been raped by Naveed in the presence of two men. She had been frightened to tell the police about it.

13 Dr Morton's view was that the appellant suffered from neither mental illness nor depression. She has a labile emotional state and expressed fantasies and odd perceptual experiences. His opinion was that it was difficult to know whether she had faked the account that he was given. Her condition was best described as one of a histrionic personality disorder. The psychiatrist was unable to say whether her version of events was true; it was a matter for the court to decide.

14 It was against that complicated background that the prosecution opened its case to the sentencing judge in the way we have summarised. The prosecution made it clear that they considered the new rape allegations to be as false as the original allegations. If the truth or otherwise of those matters were to make a difference to sentence, there should be a Newton hearing.

15 Defence counsel responded that although the appellant's instructions were that it was true that she had been raped, he declined the Newton hearing. He wanted the judge to deal with the matter without such a hearing. He said:

> "&…. if there is any fantasy there and we now know that there is no psychiatric illness, that is best assessed not so much from the witness box in a Newton style hearing, but by those that are best qualified to do so and so all I can say …. is what my client's instructions are.
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> …. so what it amounts to is this: the psychiatrist cannot say whether or not what [he] is submitting is true or false. That is for the court to decide, the psychiatrist says. But what the psychiatrist does say is that she has a personality disorder, a histrionic personality disorder. How your Honour uses that to credit or discredit her submissions, your Honour, I simply say that is a tool."

16 When he came to pass sentence in the face of that invitation by defence counsel, the judge simply said to the appellant:

> "I have come to the conclusion that it is extremely difficult to believe anything you say …."

17 That is criticised in the grounds of appeal, as is the appellant's then counsel's conduct of the mitigation procedure. This raises an immediate problem. There is no waiver of privilege such as would allow defence counsel to say why he took the position he did. We must therefore assume that what he said was in accordance with the instructions that he then had.

18 Faced with this complex and shifting account, the attitude of the appellant's own counsel and the evaluation by the psychiatrist of her potential for misleading, the judge was entitled to form the view he did. It is established law that there are cases where no purpose is served by a Newton hearing if the account being put forward by a defendant is a "wholly implausible" one. That, in our judgment, was the position here. Counsel's attitude in declining a Newton hearing and leaving the judge, as he did, to decide in the light of the expert evidence and all the facts what the position was, was not taking a course that we can say was an obviously unreasonable one. No doubt he was anxious not to lose the full credit that the appellant would otherwise receive for her plea of guilty by a Newton hearing which, having seen the appellant and taken her full instructions, was a procedure that he may well have judged was likely to result in her being disbelieved. He was also entitled to take into account the limited impact of the alleged rape as it then stood, even if it had happened, remembering, as we must remember, that it remained the case that she had made a serious and false allegation against three innocent men.

19 We turn to the merits of the appeal. Had the offences of fraud stood alone, we consider that the sentence of twelve months' imprisonment was manifestly excessive. Mr Houston, who did not appear below, submits today that a much lower custodial sentence of three months or so would have been appropriate. We do not disagree. Putting aside the "rape or no rape" issue, the appellant had in her favour a plea of guilty, mitigation of a personal nature — her circumstances as a single mother of three young children and an unhappy matrimonial history of three arranged marriages which had gone wrong, followed by a fourth to Mr Naveed who, she said, was an abusive spouse.

20 In respect of the offence of perverting the course of public justice, the sentence imposed by the judge was towards the top of the sentencing range, after taking into account the plea of guilty. We were *referred to R v England [2011] 1 Cr App R(S) 51* , where a lower sentence was passed for a similar false allegation. However, we bear in mind here that part of the culpability attaching to this offence is the fact that three men, not one man, were put in the gravest jeopardy by it. These men, for a time that has not been accurately identified, but must have been a matter of months, were in a position where they must have feared prosecution for an offence which they would have been told would attract at least a five year sentence if proved against them. The appellant's most recent version, even if true, was not a convincing explanation as to why she had committed the offence at all.

21 We return to our earlier finding. Given the history, given the medical evidence, and given what was known about the appellant, the judge was fully entitled to take the line that he did at the invitation of the appellant's own counsel about whether there was any merit in her proposed mitigation or whether it was wholly implausible. He took the second view. We consider that he was entitled to do so.

22 On any view, therefore, the sentence of three years on conviction, two years, having given her full credit for the plea of guilty and additional items of personal mitigation, was an appropriate sentence. So far as the sentences for the offences of fraud are concerned, they should strictly run consecutively to the sentence for the offence of perverting the course of public justice. The exceptional circumstances of this case, and in particular the appellant's social position and personal family mitigation, enable us to take the following course.

23 We quash the concurrent sentences of twelve months' imprisonment on the 16 counts of fraud. We substitute on each count a sentence of three years' imprisonment, to run concurrently with each other and concurrently with the two year sentence for perverting the course of public justice. The total sentence is therefore one of two years' imprisonment in all, instead of the three years that she received initially. To that extent the appeal is allowed.