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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

V

ERIC ALEXANDER MILLAR

NICHOLSON LJ

Introduction

This is an appeal by Eric Alexander Miller ("the appellant") against convictions on 21 April 1999 on seven charges of rape at a trial before Gillen J and a jury at Belfast Crown Court sitting in Antrim and against sentences imposed by the trial judge of 10 years' imprisonment on each charge on 4 June 1999. Leave to appeal against conviction was granted by Sheil J on 9 September 1999.

The Court of Appeal heard the appeal and gave judgment, after three days of argument, on 1 June 2000. They dismissed the appeal against convictions and sentences. They stated that they would give reasons for their

decision as soon as practicable. It has not been practicable until today to give our reasons.

The Case for the Prosecution

This was based primarily on the evidence of J. She said that she joined a scout troop as a cub leader when she was 14 or 15 years old. The appellant was one of three leaders of the pack. Meetings were held on Friday evenings. On a particular Friday evening when she was 15 years of age, the appellant asked her to go into the roof space of the hall in which the meetings were held. She described how he raped her there. At the time he was 36 years of age, a policeman and married. He told her not to tell anybody and that if she told anybody they would think that she was cheap and dirty and would not believe her.

The first count of rape on the indictment was based on this incident.

Over the next few weeks he brought her home on Friday evenings in his car, stopped in a laneway at the bottom of Craigantlet and demanded oral or full sex. On some occasions he raped her; on others he forced her to give him oral sex. She was afraid of him; he warned her to tell nobody and she told nobody. He told her to go on the pill.

The incidents at the laneway formed the basis of Count 2. He start to phone her at home and if she was alone would come round to the house and demanded sex on the hall floor or in the living room and would then leave. She was still a schoolgirl.

These incidents founded Count 3.

She went to a camp for scouts at Gosford at the age of 16. At his request she went a day before the camp began. He brought his caravan. He told her that he needed to speak to her in his caravan. She went to it and he raped her on the floor. He told her that she deserved it, that she was a tease, that no one would believe her. His wife came to the camp the next day. This incident was the basis of Count 4.

She said that he became assistant district commissioner responsible for all scout groups in East Belfast. He asked her round to his house, told her to go upstairs, followed her up, took out of a cupboard in a work room some women's underwear, told her to put it on and go into the next room, which had a large double bed. He came into the room wearing black stockings and suspenders and high-heeled shoes. He had a vibrator and a leather studded thing which he put round his penis. He raped her and she then got up, got dressed and went home. Before she left he said he would tell people she was cheap and dirty if she told anyone and no one would believe her. She identified the vibrator and leather studded strap which were found in a police search of his home in 1996. This incident occurred after she had learnt to drive a car. Her evidence was the basis of Count 5.

There was a Gang Show in 1993. She was then 20 years of age. There had been a gap since the last incident. He phoned and asked her to take part. He drove her to rehearsals and took her home. On two occasions he stopped in the laneway at the bottom on Craigantlet and raped her. Thereafter she

drove herself to rehearsals. These two incidents in the laneway were the basis of Counts 6 and 7.

On the issue of consent and the issue as to whether he knew she was not consenting or was reckless, she said: "Well, I presume when somebody is lying totally motionless and stiff, and their eyes shut and face screwed up, that is a good indication that they don't want to do it". This was in cross-examination in the course of which she said that she did not scream or scrape or do anything of that kind or say anything.

She stated that in order to avoid him she went to school in the morning, had her name put in the register and then went home. She started to have very bad migraine headaches. She had her phone number changed when her father and mother were away on holiday as she was afraid that he would find out that she was on her own. She also left the Scouts to try to keep him from contacting her.

She told her doctor on the first occasion when she asked her to put her on the pill – which the appellant had asked her to go on – that she and her boyfriend wanted sex. She had no boyfriend. She remained on the pill until she met her husband in case the appellant contacted her and demanded sex.

She said nothing to her mother or father. She tried to tell one of the other Scout leaders but only managed to say that she had been raped by an uncle. He said that this was a sick joke and she may have said at some later stage that it was a joke. Thereafter he never permitted her to be with him unless someone else was present. This convinced her, as she had previously

thought, that no one would believe her. She told a girlfriend on her 18th birthday about what had happened but made her promise not to say it to anybody, thinking it better left forgotten.

On the first occasion that she went out with her husband to be she told him that she had been raped but did not name the person. She did so in case he did not want to go out with her again.

The first night that she and her husband, then her boyfriend, tried to make love she just could not and did not want him near her. She went to a consultant of the Nexus Institute to ask for counselling in 1996. She was told by the consultant that because she has been under the age of consent when the first incidents occurred, the police would be informed. This was about 2 years after she me her husband for the first time. She was given the choice to tell the police herself or the police would be contacted and they would contact her. She decided to go to the police.

About 2 weeks before she went to the police she received a note from the appellant asking her to contact him. She was then a part-time police reservist and he was a serving police officer. One of the factors which influenced her decision to go to the police was the receipt of the note, which was produced to the court and identified by her as in his handwriting. She said that she was afraid that it was all going to happen again.

She had asked the appellant to act as a referee for her application to join the police force, which she did (in January 1993). This was because he was the only policeman whom she knew was high up in the Scouts, thought

that he was the most respected person that she knew and her parents told her to go to him as a referee. She wanted to get into the police very badly.

She did not complain to the police about the incidents until September 1996 (when she was 23 years of age) because she hoped that it was all over and she could move on with her life. "It wasn't", she said, and "it's still not over and it will never be over". She said that she and her husband were still having sexual problems.

She said that she thought most 15 year old (girls) did not know that it was illegal (for an adult) to have sex (with a girl of that age) without consent. At that age she did not realise that the appellant would have to tell that he was gravely at fault. Until the night she told her parents (after she had told the police) she was afraid that other people would believe him, would think her cheap and dirty and that she deserved it and that it would hurt her parents. She said that she did not think that she became an adult until she told them.

Suggestions were made in cross-examination of sexual intimacy with others, some of which she accepted but she denied the substance of the case for the defence and the substance of the allegations of sexual intimacy with others than her husband.

The prosecution also relied on the evidence given by detectives who interviewed the appellant.

The Case for the Defence

This was based primarily on the evidence of the appellant who said that he had been a police officer since 1977 was married in 1986 and had two children. He had been involved with the Scout movement from eight years of age. In 1989 he was cub-scout leader and assistant district commissioner for cub-scouts.

He met J in February 1988. She was a helper. He had sexual intercourse with her in the loft of the church hall on a Friday evening in the early part of 1990 (when she was seventeen).

He and J were very close friends and she wanted to be very close to him. There had been personal banter. She would have been in no doubt why they were going to the loft. She removed her own clothing. He used a condom. She gave absolutely no indication that she was not consenting. He took her home in his car as he did from time to time at her request. He never took her to Craigantlet and never had sexual relations with her in his car. On a couple of occasions they had oral sex in his car. She did not object. They were always on friendly terms.

He went to the Gosford Camp in 1989 as assistant cub-scout chief. He took his caravan down and his wife joined him. J was never with him in the caravan. She was at the camp before the opening of it. She mixed well at the camp.

She would call at his house uninvited in relation to scouting matters and her application to join the RUC and to get advice on the selection and

fitness procedures. His wife was always there. She called to have a picture framed.

He and J had sexual intercourse once in her house and once in his house. When he went to her house she was wearing nothing more than a dressing-gown and they had sex in the living-room. It was in the afternoon. He had no reason to suppose that she wasn't a willing participant. In his house they had sex once in his bedroom. She came to his house in her car. She would had no doubt as to why she was there. He did dress up in some ladies' clothing. He put on a leather strap (on his penis) which he took off before intercourse. It was an erection aid. He never used a vibrator on J. She gave no indication that she did not welcome his attentions. She never lay rigid or screwed up her face.

He was not proud of what happened and he regretted unreservedly what did happen. His wife had forgiven him. He was stunned when he was arrested. At the police station he denied involvement with J at the first interview. It was a very difficult thing to admit to. He accepted full blame for the relationship.

In 1993 he was asked to assist in producing the Gang Show and advised J that she could audition for it and she carried on after that. She was pleased to be in the show. He did not have sexual intercourse with her after any rehearsal or after the Gang Show. He never asked J to go on the pill. She told him she was on the pill. He wrote her the note (about which she gave evidence) with the intention of trying to persuade her, amongst others, to

come back into the Scout movement. He had not seen her for three years before he wrote her the note.

He left her Scout group in June 1991 and did not see her again until the Gang Show of 1993. He became assistant district commissioner for the cub-scouts in 1988. The affair with J started in May 1990 and ended in June 1991. It was a short term romance. There was no discussion such as saying goodbye to each other or "It is all over". His wife was always with him on Friday evenings until early 1989; she travelled with him to the pack and travelled home from the pack with him. He did not mention this to the police until his fourth interview in October 1996. Previously he had told the police that she helped out for a short time.

The trial judge asked a number of questions after the appellant gave evidence, was cross-examined and re-examined. The appellant told him that during the period of romance he felt very close to J. He didn't believe that she told him that she was in love with him. They would have exchanged words of affection saying "I like being in your company, I like being with you". The romance was conducted solely on Friday nights. They did not exchange any gifts. He did not send her a birthday card or buy her a gift. They were trying to keep it as secret as possible. They did not discuss at the end of the romance that they would not be seeing each other again. They just went their separate ways and contact was lost without either saying the romance was over.

When she told him she was on the pill, they were engaged in a romance but he didn't think to ask her why she'd bothered to go on the pill

when he was using a condom. It was just the girl's decision. She showed her keenness to see him in women's clothes by saying: "Yes, go ahead" when he said would she fancy seeing him with that type of clothing. There was a vibrator there on the occasion when they had intercourse in his bedroom. So far as the note to her was concerned it was a trait of his to keep notes short and sweet if she had contacted him he would then have explained to her that he wanted to talk to her about going back to the cubs.

His relationship with her ended on good terms. At the Gang Show they were on good terms. He was not aware of anything in their relationship which would have caused her to make the allegations against him. He had not seen her between the Gang Show in November 1993 and 3 September 1996 when he sent her the note.

When he said to the police that his wife helped him at the scout hall [on Friday evenings] for a short time he meant that she had been helping him every Friday night for five years. Five years was a relatively short time in relation to the length of time that he had been in the Scout movement.

When the allegations were made that he had sexual intercourse in the car at Craigantlet with J he was aware that he had the perfect alibi because his wife was with him. He did not tell the police because it just didn't come to mind at the time. When he got home it was in fact his wife who reminded him that she had been at the hall for quite some time. It just slipped his memory that she had been there very single Friday night. If J had been fearful of him she could have complained to any of the other cub leaders with whom

she was on friendly terms. On occasion the group Scout leader would have called in and the Rector made a point of trying to call in every week but that wasn't always possible. It would have been incredibly easy to change from his pack to another pack. She called to his house about half a dozen times. The signing of the forms could have been done on a Friday night. It was not imperative for her to call at his house. He would have called at her house potentially about thirty times a year from when she joined in 1998.

But he didn't think she called as often as that. He would put a figure of a dozen times. He saw her parents on some of these occasions, knew them by their Christian names. They were there when he spoke to her from time to time.

The judge then asked counsel if anything arose out of the questions he had asked.

Counsel for the appellant asked a number of questions arising from the answers to the judge's questions. He had previously objected to the judge's questions.

Other witnesses were called for the defence including the young man (whose penis she had held) and the man to whom she had said that she had been raped by an uncle. The latter told the judge that the appellant's wife came to the hall something in between "virtually every Friday night" and "only the odd Friday night". The appellant's wife also gave evidence in support of the case that she was present at the hall every Friday evening until February 1989.

The grounds of appeal were as follows:

> "1. The convictions were unsafe and unsatisfactory.
>
> 2. The convictions were against the weight of the evidence. The evidence of the complainant indicated that she had had sexual relations with the Appellant over a period from 1988 until 1993 during which time she had never given any indication to the Appellant that she did not want sexual relations. She did not make any protest or complain to him. During this period she had frequently and voluntarily been in his company when there was no compulsion on her to do so. She made no complaint against the Appellant until September 1996 after she had been a member of the Police Reserve for at least three years.
>
> 3. The complainant has made a claim for criminal injury compensation, a fact which was not known to the Appellant until after his convictions.
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> 4. During the course of the trial, the Learned Trial Judge inappropriately and unfairly cross-examined the Accused at considerable length and continued to do so despite the objection of Defence Counsel.
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> 5. The Learned Trial Judge did not fairly and properly put the Appellant's Defence to the Jury in his summing up. He considerable understated the Appellant's defence, frequently criticised it and greatly diluted its effectiveness. In contrast, the Learned Trial Judge, in his comments, was much less critical of any defects or deficiencies in the Crown case and from time to time sought to excuse them and bolster the Crown case.
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> 6. The Appellant did not receive a fair trial.
>
> 7. The Learned Trial Judge wrongly admitted evidence of items PLR2 and PLR11 (the vibrator and leather strap) and also evidence of the Appellant's 'dressing-up'.

8. The Learned Trial Judge misdirected the Jury as to the meaning of 'consent'."

There was a detailed skeleton argument and extremely able submissions were presented to us orally by Mr Donaldson QC who, with Mr Barr, appeared for the appellant. Mr Orr QC and Mr Ramsay appeared for the prosecution.

Mr Donaldson QC applied and was granted leave to add two additional grounds of appeal (grounds 8 and 9). He then outlined the issues on each count of the Indictment, having reminded us that there had been a previous trial before Pringle J and a jury in which the jury disagreed. Gillen J, the trial judge in this case, informed the jury of this fact because, in cross-examination, there had been reference to a previous trial. We consider that the passage in the transcript in which Gillen J dealt with this delicate topic could serve as a model for any trial judge in similar circumstances. Mr Donaldson pointed out that there was no corroboration of J's allegations, as did Gillen J in his charge to the jury. In essence the case had to be decided on her word against the appellant's word.

He then dealt with the first ground of appeal that the verdict of the jury was against the weight of the evidence. He relied on the lateness of the complaint and the allegedly unsatisfactory reasons given by J for the delay. In the outline of the facts which we set out earlier under the heading "The Case for the Prosecution" we indicated what her reasons were stated to be.

We need not re-state them. We are satisfied, on a careful study of the transcript, that J first met her husband to be in June 1994, not June 1993. The

Gang Show was in November 1993. Counsel did not take any point at the trial that she had sexual intercourse with the appellant after she met her husband. In our view her evidence and the evidence of her mother clearly indicated that her allegations in connection with the Gang Show preceded her first meeting with her husband.

Whilst J went to live with H and his mother nine weeks after she met him, it has to be borne in mind that, until she did so, the appellant lived close by her family home and her mother, understandably disappointed by her daughter's behaviour and unaware of what had happened in the past, stated in evidence that she later learnt that J went to live with the H family in Larne in order to be away from the area in which the appellant lived. There was no evidence that J returned to live with her mother when the constable went to Belsize. She stayed with his mother.

J and the appellant described how he drove her from her home to rehearsals on two occasions because they lived so close to each other and she stated that thereafter she drove herself to rehearsals. But when she went to Larne she ceased to be close to his home and this confirms that her departure to Larne occurred after meeting H in June 1994.

So skilled and experienced counsel as Mr Donaldson and Mr Barr would not have failed to take the point in cross-examination at the trial if rape had been alleged after she met H. Nor would it have escaped the attention of the trial judge who questioned her at the end of her evidence. It is plain that

neither counsel on either side nor the judge were of the view that she was alleging rape after she met her husband-to-be.

The jury must have been satisfied with her evidence that she told her husband-to-be that she had been raped and that she did not disclose the name of the rapist because she wanted what had happened in the past to remain in the past. The jury were alive to the fact that H was a police officer but, although he did not give evidence, they must have accepted that he respected her decision not to report it or to name the rapist. But the incidents had started five years earlier, and the jury would have been alert, no doubt, to the prevailing view that many incidents of rape go unreported by the victim.

We find nothing strange in the fact that H was present when she made her various statements to the police and that he did not give evidence. He had no first-hand knowledge of the events which had happened before he met J and no challenge was made to her evidence that she had sexual difficulties with him. If such a challenge had been made and he had given supporting evidence, it would have been highly likely that the case for the appellant would have been severely damaged.

Accordingly we reject the argument that the reasons given for the delay in complaint to the police were unsatisfactory. We do not accept that the bar to complain was removed when she joined the Part-time RUC Reserve in 1993 or when she met her husband-to-be. We reject the oral argument that she alleged that she was raped after she met him for the reasons give above. See (a) of the skeleton arguments. It is to be noted that the skeleton argument

did not raise the argument the she alleged rape after she met her husband-to-be. Nor did it feature in the skeleton argument.

Reliance was placed in oral argument on the fact that the police did not pursue with her the allegation which she made to a scout leader that "she was raped by an uncle". But she dealt with this in detail in her evidence. It was confirmed that she said it by the scout leader who was called by the defence. She said that she had initially intended to name the appellant and then, as she stated, referred to an uncle, hoping that the scout leader would tell her parents. We consider that, far from damaging the case for the prosecution, his [and her] evidence [about this incident] strengthened it. It was a cry for help in our view. She was then 16 years of age.

It was alleged in oral argument from the bar that she never shed a tear at the first trial but cried continuously at the second trial. We are satisfied that if counsel had thought that this point could be made effectively to the jury, it would have been made. We do not know what happened at the first trial. It is apparent that she did cry during the second trial. It was a matter for judgment by counsel at the second trial whether a point should be made to the jury about her crying. It was not made in cross-examination. We are satisfied that these sorts of judgment are best made by counsel at trial. Accordingly we reject this argument on appeal.

No doubt counsel in addressing the jury may or may not have chosen to attack the genuineness of the tears. The jury were in the best position to assess whether they were genuine.

It was contended at 9(b) of the skeleton argument that she never at any time complained to the appellant or objected to sexual activities or manifested that she resented sexual intercourse or sexual activity. But we consider – and no criticism of counsel is intended because her answer could not have been foreseen, we presume – that her behaviour during sexual intercourse, as described by her in cross-examination, must have been accepted by the jury, and, as she said, no adult could have failed to realise that she was not consenting. A further damaging piece of evidence, which was not challenged was that she reacted in the same way to the sexual advances of her husband-to-be as she stated that she reacted to the sexual advances of the appellant.

We accept that she went to see the appellant seeking references for the RUC and to ask him to frame a picture for herself. On the face of the transcript and, no doubt, to the jury she presented a picture of a person who, as a teenager, respected a man 20 years older than herself who held responsible positions of trust in the community and was highly regarded by others. At the same time she said that she believed when she was 15 – and we infer that the jury must have accepted what she said – that it was not unlawful for an adult to have sex with someone of her age, that if he said that she led him on, she would be blamed and he would not be blamed.

This point, difficult as it may be for many adults to comprehend, may explain [at least] in part cases where children do not complain about what close relations do to them. They may think at the time that the person concerned is entitled to do it, unacceptable though it may be. When they

become adults, they realise that it was legally as well as morally wrong and, if damaged physically or emotionally by it, may meet someone to whom they confide who persuades them to complain; a late complaint is then made. In the present case J said that she regarded the appellant as an "uncle" and respected him as a scout leader. See (c) of the skeleton argument.

We acknowledge that there were no obvious signs that she was under any pressure, constraint or compulsion or was shy or particularly sensitive but the jury heard her say that her schooling was affected, that she got the telephone number of her home changed, and took other steps set out under the heading "The Case for the Prosecution", such as resigning from the Scouts in order to avoid the appellant. The jury must, inferentially, have accepted her account of her sexual relationship with the appellant. She said that what had happened to her might never be overcome and she now worried about her daughter. Accordingly we attach no significance to the evidence that, externally, she appeared to behave normally. It is, unfortunately, commonplace. See (d) of the skeleton argument.

We find insufficient support for the argument that she was a forward or brazen girl from particulars (i) to (vi) of pages (4), (5) and (6) of the skeleton argument. We do not consider it necessary to comment on any of these particulars. We reject, therefore, all the arguments based on Ground 1 of the appeal. In particular we regard "the remarks" of the trial judge complained of as entirely proper and reject the contention that he sought to minimise and excuse her behaviour.

We deal next with Ground 2. We read and re-read the summing-up of the trial judge and we took into account the criticisms of it. In our view it was a model which judges trying cases of this kind should seek to emulate and would benefit from studying. It set out for the jury the issues which they had to decide fairly and squarely. No two cases are the same but those who wish to learn or to improve their own "script" could well read a copy of the summing-up, which is available.

The case for the defence was put fairly. There was no inappropriate sarcasm or extravagant comment and in our view counsel was unable to justify this attack on the summing-up.

The third ground of appeal was based on the conduct of the judge in "cross-examining" the appellant. We have set out his questioning of the appellant in the passage headed "The Case for the Defence". In our view every question was relevant and justified. We do not subscribe to the view that a judge should sit silent. He should help the jury on issues where he considers that they need help. This may involve the questioning of witnesses who may not have done themselves justice or done better than they deserved. In this case one of the critical issues was whether J was used by the appellant as a means of satisfying his sexual needs without regard for her feelings or whether there was a "romance" between them for about a year. Counsel for the prosecution cross-examined the appellant on this issue. But in our view the judge rightly considered that the jury would be assisted by deeper questioning. This gave the appellant the opportunity to make the story of

romance more plausible. Instead he dug a hole for himself which became deeper, as it was explored by the judge without undue pressure and without giving the impression that he disbelieved the answers of the appellant.

In our view this is a role which a judge is entitled to fulfil. We consider that a judge who recognises that there are issues for the jury to examine which have been left in the air or on which they may have been misled is entitled to explore them, so long as he is seen to be fair to the witness, whether for the prosecution or the defence and makes it clear to the jury, as the trial judge did, that decisions on questions of fact are for them, that they must make up their own minds, whatever they suppose that the judge thinks.

The fourth ground and the eighth ground appear to be the same, namely that the trial judge misdirected the jury as to the meaning of "consent" because he told them that submission was not consent. There could be willing submission, it was argued; the burden of proof was on the prosecution to show that the appellant did not mistakenly believe that she was consenting.

Any fair reading of the judge's charge coupled with the evidence of J must, in our view, lead to the conclusion that the jury were properly charged about the issues of consent and of recklessness as to whether there was consent. The facts that she did not scream or shout or say anything such as "don't do it", that she did not fight or scratch or scrape or make any physical movement to prevent sexual intercourse were fully explored in the course of the case and presented to the jury by the trial judge. The evidence which she

gave was that she submitted to intercourse unwillingly and indicated it as she described in cross-examination. It was in the context of this evidence that the judge told the jury that submission was not consent. No reasonable member of the jury could have taken from the judge's charge that willing or voluntary submission was not consent.

A judge does not have to give legal directions about each count, if each count charges the same offence as the other count or counts. If one is charged with seven murders, one legal direction on the ingredients of murder is sufficient unless there is some legal distinction to be drawn between the crimes or their ingredients. There was, in our view, none in any of the seven counts of rape which the appellant faced. A single direction on the legal elements involved in the charge of rape was sufficient to cover all seven counts in this case. The trial judge gave the appropriate direction. There could have been no confusion in the minds of the jury about the issue of consent or confusion about the word submission. In any event he did not confine himself to a single direction.

Accordingly this ground fails.

Ground 5 was that J made a claim for criminal injury compensation on 2 October 1996 after she had been to the police and made two statements to them. This was not known to the appellant's advisers until their client was sentenced in June 1999. On that date a medical report from her general practitioner for medico-legal purposes was supplied to the judge. Had this fact been known to the jury, it was claimed, it might have affected their view

of her credibility and motivation and the reasons why she delayed for so long in making complaints.

This point, they would only have had merit if she had made the claim before she went to the police. Obviously she was advised that she was entitled to make the claim after she went to the police. It is not known who advised her. It may have been the police or it may be that she sought legal advice after she went to the police or the organisation from which she sought help may have advised her. Obviously her husband did not advise her to make a claim when she disclosed to him in 1994 that she had been raped.

Any competent counsel could have asked her whether she had made a claim. Those of us who have been in the position which counsel were in would be cautious about asking the question. On one view it costs nothing. On another view it could damage the case for the appellant, as was discussed in argument. She was legally entitled to make the claim. Having gone to the police and made her complaint in our view a criminal injury claim was not going to impair her credibility and would not have affected her credibility or motivation.

It was only if she went to the police in order to set up a criminal injury claim that her credibility could be impaired. Plainly that was not the case as she had been to counselling with the Nexus Institute who informed her that they would go to the police if she did not. During the course of oral argument we indicated that we would not give leave to call fresh evidence on this issue

under section 25 of the Criminal Appeal Act 1980 as the criteria for a successful application had not been met.

That ground must fail, accordingly.

Ground 6 which alleges that as a result of Grounds 1 to 5, the appellant did not receive a fair trial must fail, since we have rejected Grounds 1 to 5.

Ground 7 was unarguable. The evidence that there was a vibrator and a leather strap found in the appellant's house confirmed, though it did not corroborate, J's account of the rape at his house. The production of them was not prejudicial to the appellant who dealt with them in his evidence and would have had to deal with them in cross-examination. They could have been produced to him in cross-examination, having been found in his house.

Ground 8 was a repetition of Ground 4 which we rejected.

We feel that we ought to pay tribute to the care put in to this appeal by the appellant's lawyers. If we have not sought to answer expressly every point made on his behalf, it is not because we have failed to take each point into account. We have not referred to Mr Orr's helpful reply to Mr Donaldson's submissions but we gratefully acknowledge his assistance. One has only to look at the skeleton argument, leave aside the oral submissions, in order to acknowledge our indebtedness.

On the question of sentence we took into account the fact that the appellant is a man of previous good character, that there are glowing testimonials to his work with the Scouts and other significant evidence of the

respect in which he has been held in the community. These were placed before the trial judge.

On the other hand there are a number of serious aggravating features. He took advantage of his position of trust, he treated a young girl of 15 in an inexcusably degrading way, he took advantage of her fear of him, he damaged her life and no-one knows the extent of that damage save that it is ongoing and could be life-long. He showed minimal remorse. We infer that self-pity predominated. He instructed his counsel to put her private life into the public domain. Every piece of "dirt" that he could find was put to her. He sought to have her shamed and disgraced. No-one could say that the sentences imposed were excessive, let alone manifestly excessive.

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