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JOSEPH KENNAN

COURT OF APPEAL (The Lord Chief Justice, Mr Justice Laws and
Mr Justice Keene): April 3, 1995

Longer than normal sentence—rape—length of sentence.

Fourteen years' imprisonment, passed as a longer than normal sentence under the Criminal Justice Act 1991, s.2(2)(b), upheld for rape.

The appellant was convicted of rape and assault occasioning actual bodily harm. The appellant encountered a 16-year-old girl who had been working as a prostitute. The girl went with the appellant to a flat, not for the purposes of prostitution; when they arrived, the appellant punched her in the face and threatened her with a penknife. He made her undress and have sexual intercourse, after which he punched her again and tried to strangle her. Police arrived and the appellant released her. The victim suffered bruising, abrasions and some loose hair. The appellant had many previous convictions, for offences including robbery, assault occasioning actual bodily harm and drug offences. The appellant's previous sexual offences included indecent assault on a male, buggery, rape, and two offences of buggery of females; he had received sentences from three to eight years for these offences. The present offences were committed less than seven months after his release from a sentence of eight years for buggery of a woman. Sentenced to 14 years' imprisonment, passed as a longer than normal sentence under the Criminal Justice Act 1991, s.2(2)(b), with an order under the Criminal Justice Act 1991, s.44, for rape, with four years' imprisonment concurrent for assault occasioning actual bodily harm.

Held: medical reports disclosed no symptoms of psychiatric or mental illness. Previous decisions of the Court (such as *Ely* (1994) 15 Cr.App.R.(S.) 881) confirmed that the offender's record could provide evidence of a danger of serious harm to the public from the offender. The Court was in no doubt that the sentence was entirely right to exercise the power under section 2(2)(b). The appellant's record of violent sexual crime was appalling and the present offences involved a combination of sex and violence. The appellant was a clear danger to the public and the use of section 2(2)(b) was entirely justified. It was argued that 14 years was too much. The Court accepted that the length of the sentence imposed for the protection of the public had to be balanced against the need to see that the sentence was not out of all proportion to the nature of the offending on the instant occasion. Taking into account the age of the victim, the use of a knife to threaten her, the use of additional force, the effect on the victim, who was put into a distressed and hysterical condition, and the fact that the appellant was on licence and on bail at the time of the offence, the sentence of 14 years was not out of all proportion to the offence. The appellant did not plead guilty and had shown no remorse; the fact that the victim was a prostitute did not mean that she was not entitled to the protection of the law. The sentence of 14 years and the order under section 44 were fully justified. The sentence of four years for assault occasioning actual bodily harm was imposed as a commensurate sentence, not under section 2(2)(b). There was no basis for upsetting that sentence.

Case cited: *Ely* (1994) 15 Cr.App.R.(S.) 881.

References: longer than normal sentence, *Current Sentencing Practice* A4-3B; *Archbold* 5-151e.