England and Wales Court of Appeal (Criminal Division) Decisions

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Case No: 201205763 A5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL
12 June 2013

B e f o r e :

LADY JUSTICE RAFFERTY DBE
MR JUSTICE KEITH
RECORDER OF BIRMINGHAM - HIS HONOUR JUDGE DAVIS QC
(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

R E G I N A

v

SARAH LOUISE CATT

Computer Aided Transcript of the Stenograph Notes of
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A Merrill Communications Company
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Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mrs F Oldham QC appeared on behalf of the Appellant
Mr A Edis QC appeared on behalf of the Crown

HTML VERSION OF JUDGMENT ↟

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1. LADY JUSTICE RAFFERTY: Sarah Louise Catt is 36. On 23 July 2012, in the Crown Court sitting at York, she pleaded guilty to administering poison with intent to procure a miscarriage contrary to section 58 of the Offences Against the Person Act 1861, and on 17 September that year was sentenced to 8 years' imprisonment. By leave of the single judge she challenges the length of her sentence.

2. The Abortion Act 1967 fixes the legal outer limit for a lawful termination at 24 weeks.

3. Mrs Catt is a married woman with two young children and an obstetric history which on any view would alert the reader to the potential for difficulty. In 1999, aged 21, she presented at hospital at 23 weeks' gestation. She did not return again until full term and she delivered a child immediately surrendered for adoption. In 2000 she presented at hospital at 23 to 25 weeks' pregnant and had a termination. In 2002 she presented at hospital seeking a termination. Her pregnancy had hitherto been concealed. The scan showed it was too far advanced. She gave birth to one of her children on 1 July 2002. In 2004, aged 26, she presented at hospital in labour. Once again, the pregnancy had been concealed. Without going any further, we venture to suggest that it is a history which throws out the potential for disturbance, personal misery and entrenched problems.

4. In 2009 once again she became pregnant. The Crown's case was to be that her last menstrual period had been mid-August 2009 and that she had been contemplating a termination from as early as January 2010. Computer equipment showed that on 27 January 2010, about 23 weeks' pregnant, she visited the Marie Stopes website and looked at information about termination. On 16 February 2010, at 26 weeks, she visited the same website. Between 20 January 2010 and mid-March 2010 she had intermittent contact with the Marie Stopes clinic. On 9 March 2010 she searched "My GP has rung Marie Stopes can they tell them anything?" "What happens if my GP thinks I have had an illegal abortion?" "Will the police be informed if I have had an illegal abortion?" "Can police access my medical records?" She searched also in relation to the Abortion Act 1967 to the effect "Will I be charged with child destruction?"

5. On 15 March 2010 to the Marie Stopes clinic she gave her last menstrual period at 23 November 2009. Based on that date she was booked in for consultation the next day, 16 March 2010, but did not attend. She had no further contact with Marie Stopes.

6. On 15 March 2010, she went to the Pregnancy Advisory Service where the period of her pregnancy was estimated at 26 weeks 3 days. The same day, at a hospital with more sophisticated equipment, the calculation was 29 weeks 5 days. These final two estimations put her beyond the limit for legal termination. That day on her computer she searched "30 weeks pregnant when is my due date?", "Inducing an abortion at 30 weeks", "Where can I get an illegal abortion?", "Late abortion using misoprostol [a drug capable of terminating pregnancy or of inducing labour in its later stages]", "Where can I buy misoprostol without a prescription?" and "Where can I get an illegal abortion?" On 14 April 2010, searches included "What happens if I take Cytotec [another name for misoprostol] at 34 weeks?"

7. She found a company to supply misoprostol and ordered it. It was delivered on 10 May 2010, by which time she would have been some 38 weeks' pregnant. On 21 May 2010 she searched "What if I take misoprostol at term?" and on 26 May 2010, at give or take 40 weeks, "How soon will misoprostol work?" The Crown relied on the inference that she took the drug between 21 and 26 May 2010.

8. Her computer also revealed an historic search in 2008 "sales@abortion-pill-online.com" and that in March 2009 she had ordered another drug associated with termination. The Crown suggested this showed a degree of previous research, knowledge of available drugs and of the timing for ingesting them.

9. As a result of the mid-March scans, the health authorities awaited contact with a view to antenatal care. When there was silence, the midwifery department telephoned Mrs Catt on 17 May 2010. She

claimed that on 15 March at the Marie Stopes clinic she had had a termination, a lie she maintained for some considerable time, in particular on 11 June 2010 to her GP, on 14 June to a nurse and on 27 July to the police. To those officers she claimed to have destroyed all documentation in relation to the termination because she did not want to be reminded of it.

10. On 10 September 2010 she was arrested. She was interviewed over 9 1/2 hours over some four days. She maintained her account she had paid £1,700 for a termination at Marie Stopes. She said she had not retained any paperwork. She said her husband was ignorant of the pregnancy and had not been consulted about the termination. She accepted ordering misoprostol. She claimed it was for possible future use but said it never arrived. In the final interview in October 2011, she said, "This all hinges on me being able to give birth by myself and the disposing of a baby and taking delivery of a package. None of those things happened, so I don't know what you want me to say. I'm not going to admit to something that I haven't done just because it fits with what you're trying to get me to say."

11. Her computer revealed that for up to seven years she had been having an affair. The man involved told the police that before half term in 2009 she had said she was pregnant. She broke off the relationship in December 2009. In January 2010 he said she told him, "There's no baby and it's not your concern." They resumed an occasional sexual relationship from about June that year and there were no further discussions about the pregnancy.

12. The judge said she maintained an untruth for a considerable length of time during police investigations. He gave her full credit for her guilty plea tendered at an early stage. The critical element of her offending was the deliberate choice she had made in full knowledge of her due date to terminate the pregnancy close to term, if not at term, aware both that after week 24 termination was unlawful and that her child's birth was imminent. Immediate custody was inevitable. Concealment and deceit played a part in her relationship with her parents, her employers and her husband. Throughout police interviews she maintained the lie that she had undergone a legal termination. The judge rejected a suggestion she made during the investigation that when she took misoprostol she thought the birth would involve essentially only blood and excrement. No matter under what Act the Crown had chosen to indict her the maximum sentence was life and the gravamen of what she had done unchanged. She ended the life of a child presumptively capable of being born alive by inducing birth or miscarriage. The judge could not accept much that she had told others about what had taken place, but took account of all that had been said on her behalf, in particular that she was a good mother to her two children. But for the drugs she intentionally took there was no reason to think she would not have delivered a healthy child. Had he been safely born and she had then killed him, she would face a charge of murder, and the judge's starting point for the minimum term she must serve before she could be considered for parole would have been 15 years. He went on to say that this was not an offence of murder. The court had to bear in mind the nature of the calculated intention. The child was so near birth that all right-thinking people would consider this more serious than involuntary manslaughter or indeed any offence save murder. With no real mitigation and no remorse detected, a substantial determinate period of imprisonment was necessary. There was no reason to think she would not act in the same way if the same circumstances again arose. The risk of that was so small it was not necessary to consider statutory provisions as to dangerousness. What little help there was in any authority the judge reminded himself of, but the sentence had to be passed on the basis of the seriousness of the offences couched in terms of culpability and of consequences. The starting point, taking into account aggravating features, was 12 years.

13. Born on 4 June 1977, Mrs Catt had no relevant previous convictions. The judge had various reports. That of an Initial Child Protection Conference Agency, dated 10 April 2012, concentrated upon the welfare of the two children in the family. Dr Frazer prepared a psychiatric report, dated 30 August 2012, in which he excluded a mental disorder. Mrs Catt had mild depression of mood. She would benefit from psychological therapy for issues around loss and her coping strategies in terms of stress, particularly when pregnant. The prognosis was positive.

14. To the author of a pre-sentence report, dated 12 September 2012, she explained her termination lie as told in the hope that matters would be dropped. The author found it difficult to assess whether she accepted responsibility. She acted alone and never sought to blame any other. She was known to conceal pregnancies and to mislead professionals and she might well conceal a future or current

pregnancy. She could plan and carry out an illegal course of action and hide this successfully from those closest to her, but there was no evidence she presented a risk to the public or to her two children. That said, the social services assessment was of high risk and the youngsters were on a protection plan.

15. The judge had a letter of remarkable restraint, dignity and loyalty from her husband. He writes:

> "I am writing on behalf of my family, especially my two young children...nine and eight... They are far more dependant on [my wife] than they are on me... My hope for the future is that everything can eventually be back to normal... I hope as a family we can stay together and provide the children with good experiences that they can look back on with fondness in their later life."

16. The ground of appeal is stark: after an early plea of guilty, 8 years' imprisonment on these facts is manifestly excessive. Mrs Oldham QC contends that the judge adopted the wrong approach. He treated the case as a homicide worse than manslaughter and somewhere between manslaughter and murder. He described Mrs Catt as "cold and calculating" and failed to give any, or any sufficient, weight to her complicated obstetric history, clear from the report of Dr Frazer. Dr Frazer more than once made reference to Mrs Catt's emotional state. When she described events her eyes filled with tears and he felt she was clearly still emotionally upset by the episode in 1999 to which we have referred. She felt she had damaged many people's lives by her actions. She could not face the pregnancy of her sister-in-law, and her inability appropriately to react saddened her. That said, she had her own two children, whom she adored, to live for. Finally, she appeared very remorseful and sad over what had happened.

> The judge declined to adjourn for the preparation of a psychologist's report. We have read one, prepared post-sentence by Ms Lowe.

17. She concludes that Mrs Catt lacks maturity in relation to emotional demand, and during five pregnancies has either concealed the pregnancy or presented too late for termination. She has a maladaptive coping style entrenched over time which avoids problem-solving and denies the problem. She tries to avoid negative judgments and keeps information from others. She has an overriding motivation to maintain the family unit. Her strong belief is that adoption of a child of hers would bring shame on her family. A pattern of emotional detachment from a foetus began during her first pregnancy. Previous life experiences and her basic personality leave her unable to choose correctly and to implement any number of possible [acceptable] solutions when faced with an unwanted pregnancy. The judge was criticised finally for failing to give any or sufficient weight to what is said to be the only available helpful authority, R v Mohammed (unreported, Thursday 24 May 2007, a first instance sentencing exercise). Its conclusions were never subject to review in the Court of Appeal and we find no help within it.

18. These facts are mercifully highly unusual. Mrs Catt waited until term before premeditatedly she destroyed her child - the archaic language of an old Act of Parliament. She lied about it to Dr Frazer who was left thinking she had taken the abortifacient at 31 weeks' gestation. She has prevented post-mortem examination with its potential to determine the cause and timing of death because she has consistently refused, or is unable, to reveal the location of the body. The initial explanation for that silence was a consequence of legal advice. Mrs Oldham's current instructions are that Mrs Catt is "not emotionally able to address the issue".

19. Mr Edis QC for the Crown referred us to R v Magira [2008] EWCA Crim 1939, not on all fours with this case but he suggests of some assistance. The husband of a pregnant woman obliged her to terminate her pregnancy against her will. He pleaded guilty. The starting point was 5 years with a 25% discount for plea and his appeal against sentence was dismissed. We discerned little beyond general principle: presented with a novel sentencing exercise the judge should stand back and assess the facts before approaching the task.

20. As a consequence of the professional opinion of Dr Frazer, the judge had no option but to treat her as a normal, rational individual who did what she did for reasons of her own, never adequately explained.

21. There are the following aggravating features: the termination was at full term; the body has never been recovered; there was careful planning and acquisition of the abortifacient; the criminal acts were done

despite considerable experience of pregnancy and its range of consequences. There are these mitigating features: the plea of guilty, the views of Dr Frazer, a man of significant experience, that Mrs Catt appeared very remorseful, and of Ms Lowe that her emotional attachment to a child in utero is difficult; Mrs Catt has two young children to whom it is accepted she is a good mother and whose development will be adversely affected by her absence from the family home.

22. As we said at the commencement of this judgment, this woman from, at the latest, her undergraduate years had a history of struggle. Her obstetric history we suggest would, without more, prompt attention to her emotional state. As years have gone by, nothing has happened to contradict that. We find remorse a stratified, subtle, challenging concept against the backdrop of all we know. We have considered Mrs Catt's disinclination, if that be the correct word, to identify where the body lies. We suspect that this too is complicated.

23. Where a case is novel, as everyone accepts this is, the court's task is to reach a view on culpability and harm - the extinguishing of a life about to begin. The route to our conclusion draws upon the richness of jurisprudence on other offences, and to the desire of the court to achieve a just outcome.

24. Of one thing we are confident: a wise disposition of this case should remember two young children and a notably forbearing husband. We cannot improve on the final words of his letter: "I hope as a family we can stay together and provide the children with good experiences that they can look back on with fondness in their later life." The sooner that hope is restored to them, the better. This was an extraordinarily difficult sentencing disposition. The judge had help neither from jurisprudence nor statute. In our view, however, a starting point of 12 years was manifestly excessive and, after reduction for plea, 8 years similarly so. The appropriate starting point was in the region of 5 years and, loyal to the judge's assessment of credit for the plea, the end result should be a term of imprisonment of 3 1/2 years. To that limited extent, this appeal succeeds.
