

Neutral Citation Number: [2017] EWCA Crim 482

No: 201604816 C5

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 11th April 2017

B e f o r e:

LORD JUSTICE TREACY

MR JUSTICE GREEN

MR JUSTICE PICKEN

R E G I N A

v

SAMAH NAZ

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(Official Shorthand Writers to the Court)

Mr T Qureshi appeared on behalf of the **Appellant**

Ms R Kodikara appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

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1. LORD JUSTICE TREACY: This is an application for leave to appeal against conviction referred to the court by the Registrar. We give leave.
2. The Appellant was convicted after a retrial on 22 September 2016 at Snaresbrook Crown Court of racially aggravated intentional harassment, alarm or distress. She was fined £1,500, ordered to pay £3,500 prosecution costs and subjected to a £150 surcharge order.
3. The grounds of appeal in brief are that the conviction was unsafe since the trial was conducted unfairly. Criticism is made of the judge's interventions during the trial. On a number of occasions in the presence of the jury he is said to have intervened inappropriately and in a manner akin to a second prosecutor. Moreover, there are complaints about comments made in the absence of the jury.
4. The Appellant was a woman of previous good character who had had a successful career in retail. She was to be a candidate on the behalf of UKIP in the 2015 general election. Since she was of Pakistani and Mongolian origin, her candidature had caused some controversy within the Pakistani community.
5. On 22 March 2015 she drove to a Tesco superstore in Walthamstow, the area in which she was to be a candidate. Shortly after entering the car park, she became embroiled in a heated confrontation with a man of North African appearance.
6. The complainant, Mohammed Wafta, was an employee of Tesco and of Syrian origin. He was engaged in moving trolleys in the car park and went to intervene in the dispute between the Appellant and the other man. He interposed himself between them. The Appellant was claiming that she had been punched in the face. The man was accusing her of swearing at him.
7. The man involved in the dispute drove off in his car, whereupon Mr Wafta said that he was subjected to repeated verbal abuse by the Appellant, including numerous references to him as "a fucking foreigner". He had tried to walk back into the store, but had been followed by the Appellant who repeatedly abused him so that he became very upset. At one point, he had said:

"Well, madam, you are too pretty to say these words. Maybe you deserved a punch because you have a very rude mouth."
8. Mr Wafta's account was supported by a Mr Farooq, who was a Tesco customer, and also by the evidence of Mr Sanders, the store manager, who witnessed the later stages of the incident after the Appellant had followed Mr Wafta back into the store. He said that the Appellant kept repeating abuse, including adding that Mr Wafta was "a fucking foreigner".
9. When the Appellant was subsequently told that she would be charged with a public order offence, she reacted angrily and claimed that there was a Muslim plot against her involving both Islamic State and the local Asian community. She said that the CPS had chosen to believe "a bunch of terrorists".

10. The Appellant gave evidence. She said that she had been assaulted by the male in the car park and that although Mr Wafta come in between them, there was nothing to suggest that he had done so with the intention of helping her. She believed that he knew the male with whom she had the dispute and said that Mr Wafta had said to her, "You fucking deserved that". She believed that Mr Wafta was in league with the male in the car park. Those matters had been denied by Mr Wafta.
11. The Appellant admitted that she was upset in the car park and had used abusive language, but denied an intention to cause alarm or distress and denied calling Mr Wafta "a fucking foreigner" at any stage. She suggested that the prosecution witnessed had colluded to give false evidence against her.
12. There is no complaint about the judge's summary of the legal issues in the summing-up. They were (1) whether the Appellant had the necessary intent, (2) whether Mr Wafta was caused alarm or distress, and (3) whether the Appellant had derogatorily referred to him as "a fucking foreigner".
13. Mr Qureshi on behalf of the Appellant has raised a series of matters in support of the grounds of appeal. The first complaint relates to the cross-examination of Mr Wafta. Defence counsel was putting that he was not an innocent bystander and put the question:

"You would have this jury believe you intervened like a knight in shining armour."

The judge interrupted, saying:

"I don't think this witness has claimed he was a knight in shining armour, so please do not diminish what happened and his conduct on the day..."

He went there, as any right thinking person is concerned, in order to prevent a situation from becoming very worrying indeed. It's not a question of knight in shining armour."

14. Objection is taken to the judge's comments on the basis that whilst the judge may have been justified in criticising the reference to a knight in shining armour, he went further and indicated a favourable view of Mr Wafta's role in the incident when that was a matter in issue before the jury.
15. A little later, after counsel had put to Mr Wafta that he was the first person to use abusive language, the judge intervened again. The relevant passage is as follows:

"MR QURESHI: And now I am putting to him that he didn't say it as a result of my lay client making any derogatory remarks, he did it himself by his own initiative.

JUDGE DEL FABBRO: Why?

MR QURESHI: Because --

JUDGE DEL FABBRO: Why would he say that?

MR QURESHI: Sorry, your Honour?

JUDGE DEL FABBRO: He works at Tesco's, pushing trolleys around, why would he use such language to a woman who he doesn't know.

MR QURESHI: Your Honour, may I raise a matter of law, please.

JUDGE DEL FABBRO: No, just answer that question and then we'll get on with the cross-examination.

MR QURESHI: The reason he used that language is because he was protecting his friend.

JUDGE DEL FABBRO: His friend, which he has denied.

A. He is not my friend.

JUDGE DEL FABBRO: He has denied it repeatedly.

MR QURESHI: Your Honour, yes, and your Honour has asked me what the defence case is and whatever your Honour's view is about the position, the jury will obviously determine the matter.

JUDGE DEL FABBRO: Let's move on. Let's move on.

It was put to you that this man is a friend, you were trying to protect him in some way.

A. He is not my friend.

JUDGE DEL FABBRO: He is not your friend, you don't know him.

A. I don't know him, Sir.

JUDGE DEL FABBRO: Right, let's move on then."

16. This passage is criticised on the basis that the judge wrongly intervened in a way suggesting that he had formed a sceptical or unfavourable view of the case being advanced for the Appellant. These were not of a type and nature tending to clarify the evidence. They were inappropriate challenges to the defence case.
17. The next matter concerns comments made in the absence of the jury. Shortly after the matters referred to, defence counsel raised with the judge that his comments were giving the impression that Mr Wafta was a witness who should not be believed and that the judge was entering into the arena. There then followed discussion between judge and counsel in which the judge said he had intervened in order that the witness' voice should not be lost amongst a series of allegations which had been coming thick and fast.

18. There were then exchanges about the nature of the defence being advanced. The following passage is relevant:

"MR QURESHI: May I just please use this opportunity just to crystallise the defence case. I want to do that, your Honour, because I don't want your Honour to feel that I am chasing irrelevant points.

The defence case is this, your Honour, the suggestion that she was using any racial element is a complete pack of lies and it's a lie, it's a conspiracy, that has been supported by this witness and all the other prosecution witnesses, non-police witnesses, who are coming to court to give evidence.

And so the reason why I am making these allegations and asking these questions is all designed to support the defence case that there is a hidden agenda here.

JUDGE DEL FABBRO: What is that?

MR QURESHI: The hidden agenda is, first of all, Mr Wafta helping his friend and avoiding the accusation that he was helping his friend get away from an assault; and secondly, to protect his job.

And the other witnesses supporting Mr Wafta --

JUDGE DEL FABBRO: So are you going to allege there was collusion between these witnesses, that in the time that it took for police to arrive, they put their heads together and colluded.

MR QURESHI: Well, I hope to show this jury, it didn't all unravel when the police arrived, it unravelled over a period of time.

JUDGE DEL FABBRO: I hear what you are saying, Mr Qureshi, but quite frankly it's far-fetched.

MR QURESHI: It may well be, but those are my --

JUDGE DEL FABBRO: The proper defence here is what I suggested earlier and perhaps people ought to be thinking about that. The proper defence here is that, I was so shocked and I was so upset at what had happened to me that I may have used foul language, I probably did use foul language against this poor, hapless man, but the one thing I didn't say was that he was a "fucking foreigner".

That is what the defence should be. All the rest of it is nonsense.

MR QURESHI: But the witnesses are maintaining she did use that language.

JUDGE DEL FABBRO: Yes, so you put it to him and then in your speech for the jury, you say, can you be sure that she used foreigner.

MR QURESHI: Your Honour, I understand that.

JUDGE DEL FABBRO: Instead we are going to spend time looking at collusions, conspiracies...

MR QURESHI: Well that is unfortunately the defence case, your Honour.

JUDGE DEL FABBRO: Well, it's bunkum. I'm not going to decide this case obviously, the jury do. Anyway let's move on. Let's move on and do the best we can to keep going."

19. The references to "far-fetched" and "bunkum" together with the judge's observation as to what "the proper defence" was are criticised. It is said that by the end of the first day of the trial the judge had clearly given the impression both in the presence and the absence of the jury that he did not believe the Appellant's version of events and that the defence being advanced was a waste of time.
20. In addition, it is said that the judge had in the absence of the jury made repeated critical references to the Appellant's decision to elect Crown Court trial.
21. The next area of criticism relates to what occurred during the Appellant's evidence-in-chief. Complaint is initially made about an intervention by the judge after the Appellant had been giving evidence for about 7 minutes or so when the judge intervened to curtail questions about the Appellant's good character and background. Since we consider that the judge was doing no more than seeking to prevent the evidence becoming unnecessarily detailed on matters which were not in dispute, it is not necessary for us to go into further detail.
22. However, there came a point after the Appellant had given evidence that she was angry with Mr Wafta, whom she perceived as not having assisted her in the confrontation with the male, when the judge intervened again:

"JUDGE DEL FABBRO: Can we just pause here. I just need to understand, why were you so angry at him?

A. Because I felt like at the time he knew the person, so I just felt he was assisting him back into the car; that was what was going through my head.

JUDGE DEL FABBRO: Yes, but you must have appreciated that he had taken somebody off you.

A. No, that's how he has made it out, but he --

JUDGE DEL FABBRO: Just pause here, Ms Naz, you have just told us

that a complete stranger.

A. He didn't --

JUDGE DEL FABBRO: Ms Naz, I'm just trying to recap what you've told us, just to remind you.

You just told us that a complete stranger, a male, has grabbed you by the neck and pushed you up against a car and this Mr Wafta has come and pulled him off you. That's what you told us.

Is that right? Is that what happened?

A. But after he pulled him off me, he then --

JUDGE DEL FABBRO: Never mind what happened afterwards, but he pulled him off you, didn't he, on your account.

A. No, but he wasn't helping me, that's why I felt at the scene, he was not --

JUDGE DEL FABBRO: Pause there, just pause and think about this.

MR QURESHI: Your Honour, that's the way she --

JUDGE DEL FABBRO: Just pause and think about it, because you may not be explaining yourself.

A man has his hand around your throat, around your neck --

A. That's correct.

JUDGE DEL FABBRO: -- holding you up there.

A. Then I walk back and he tells me I deserved it, so how would I --

JUDGE DEL FABBRO: You are conflating issues. Take it in steps, please.

A. Right, okay. But I felt --

JUDGE DEL FABBRO: Listen to what I'm saying, take it in steps.

The man has you around your neck.

A. That's correct.

JUDGE DEL FABBRO: That is your evidence.

A. Yes.

JUDGE DEL FABBRO: Another man, who you don't know, comes up and grabs this man and pulls him off you.

A. Puts him back into the car --

JUDGE DEL FABBRO: Leaving that aside, he pulled him off you, so that the man releases his grip on your throat; is that right? Is that what happened?

A. That's what happened.

JUDGE DEL FABBRO: Right.

A. He then told him --

JUDGE DEL FABBRO: Pausing there --

A. -- the police are on their way --

JUDGE DEL FABBRO: Pausing there, Ms Naz, why were you angry at this man who had saved you from being throttled?

A. Because he then repeats to the person, "The police are on their way, go, go, go."

JUDGE DEL FABBRO: Right, so you were angry at him, because he had helped this man leave.

A. I felt he knew the person, yes, that attacked me.

JUDGE DEL FABBRO: The fact that he saved you from further injury obviously didn't feature in your view at that point.

A. It wasn't like that at the scene, it wasn't as if he was helping me, it was more the attack had happened, he just came, split him away from me, but then he was telling him to go from the scene, so he was saving his friend in my mind."

23. It is said that the judge clearly entered the arena by questioning the Appellant in this way and that what took place was in effect a type of cross-examination in the middle of examination-in-chief with the judge challenging the Appellant's assertions that Mr Wafta had failed to help her.

24. Shortly afterwards, there was a further passage of judicial intervention:

"JUDGE DEL FABBRO: In your upset, Ms Naz, before you entered the store, did you remonstrate with him and say to him, "You fucking foreigner."

A. No. My own mother is an immigrant, I would never --

JUDGE DEL FABBRO: Never mind your mother, never mind --

A. -- I would never use those words.

JUDGE DEL FABBRO: Leave your mother out of it.

MR QURESHI: Your Honour, please can she --

A. I would never use those words.

JUDGE DEL FABBRO: Will you please listen when I am talking.

A. I am listening, but --

JUDGE DEL FABBRO: Please stop.

A. -- I wouldn't say that.

JUDGE DEL FABBRO: Right. The question was very simple, did you use that language, and you said no. And you were going to say something about your mother, which I would like to record, please.

"I did not say to Mr Wafta, 'you fucking foreigner'. My mother is an immigrant and I would not use that language towards anyone".

25. A similar criticism was made about this passage and a further lengthy interruption in which the judge appeared to challenge the Appellant's evidence that the first time she had become aware of an allegation of having used racially abusive language was at the police station in the course of an interview several months after the event. That was not a controversial issue between Crown and defence, yet the Appellant's account was called into question by an extended series of questions put by the judge.
26. There was a further episode during examination-in-chief as Mr Qureshi was seeking to elicit her evidence about the use of racially abusive language:

"MR QURESHI: Did you at any time use any racial abusive language to Mr Wafta?

A. Never.

JUDGE DEL FABBRO: Did you use abusive language? Take it in stages, because the jury have to consider this in stages.

Do you accept that you used abusive language towards him?

A. There was the F word used at one point.

JUDGE DEL FABBRO: And presumably you would categorise that as abusive?

A. Sort of, yes, if you are trying, yes, if you are swearing at some point; yes, that's abusive.

JUDGE DEL FABBRO: That's abusive language. I mean, there may be a reason behind it.

A. But it wasn't towards him in that way. I was explaining things. I was attacked. I might have said I was fucking attacked in that way --

JUDGE DEL FABBRO: "I did use abusive language."

But didn't you say something to him personal? What kind of fucking man are you?

A. Yes, I added that --

JUDGE DEL FABBRO: So that is towards him.

A. Yes.

JUDGE DEL FABBRO: And you would accept that that is abusive towards somebody.

A. Well, at the time of -- if a woman's hurt in that way, it's just the way I expressed myself, it's not --

JUDGE DEL FABBRO: Yes, but it is abusive language; you accept that?

A. Yes, swearing is abusive; isn't it.

JUDGE DEL FABBRO: Right. So you did use abusive language.

Now when you used that abusive language against him, did you intend to hurt him, insult him --

A. Not in any kind of way; no.

JUDGE DEL FABBRO: -- harass him, alarm him?

A. No.

JUDGE DEL FABBRO: You were just expressing yourself?

A. I was expressing myself.

JUDGE DEL FABBRO: "I did not intend to alarm him or harass him."

And then the final question is, in that abusive language that you accept you used, did you refer to him, and that is all that has been alleged here, that he is a... foreigner?

A. No. I would never use those words.

JUDGE DEL FABBRO: "I did not refer to him as a foreigner at all."

Does that cover all the steps, Mr Qureshi?"

27. Again, the complaint is made that the Appellant's examination by her counsel had been interrupted and taken over by the judge, who had then repeatedly cross-examined the Appellant on what was a central issue in the case.
28. A little later, while the Appellant was being cross-examined by prosecuting counsel, the issue was raised by the prosecutor of UKIP's policy in relation to immigrants. The judge permitted the question after objection on the basis that it was relevant to the use of words which formed the subject matter of the case. At that, the Appellant made an observation and the judge then had the following exchanges with the Appellant:

"A. Can I just say our policy is fairer immigration if that's what you're referring to or how you're putting --

JUDGE DEL FABBRO: Yes but the general --

A. -- the party into the frame of being against anyone, it's wrong. It's not right.

JUDGE DEL FABBRO: Yes, yes.

A. Because there's many, many people from many different backgrounds that support UKIP. It's nothing to do with this.

JUDGE DEL FABBRO: I know. Absolutely right and perfectly entitled to do so. People are perfectly entitled to support UKIP but going back to the policies, the policy is focused primarily, not exclusively but primarily on immigration and the basis of focusing on that immigration, the party that is, is because it is considered by the party that the current immigration policies allow too many immigrants into the UK. That is the basis.

A. I wouldn't -- I've never -- I wouldn't put it in that context. I don't -- I just -- I don't agree with that. Sorry, as a daughter of immigrants I wouldn't represent them if that's what they stood for.

JUDGE DEL FABBRO: I mean, that's the question that Ms Kodikara is asking you. In fact it is an open question.

A. It's wrong. I mean, you know, previously in the last trial she had said UKIP has controversial views against immigrants. It's wrong, you know. These are --

JUDGE DEL FABBRO: All right, let's see where we are then for that --

A. It's very wrong what she is saying. It's not true at all. Nothing against anyone. Everyone is entitled or anyone is entitled to join.

JUDGE DEL FABBRO: But the reason why UKIP are so concerned, UKIP as a party -- of course individuals within are different --

A. No. I think they highlight many, sorry, other, you know, policies.

JUDGE DEL FABBRO: Yes but the reason why they are so concerned about immigration is because they believe that immigration is out of control. That is a stated --

A. Not out of control in that way where they are stopping people from coming here. They want people here but they want the skilled.

JUDGE DEL FABBRO: Yes, it's out of control. It's not being controlled.

A. Fairer.

JUDGE DEL FABBRO: Yes.

A. A points based system. Nothing to do with stopping anyone from entering here."

29. Once more, it was submitted that the judge had intervened inappropriately.
30. There was some further criticism of a remark made by the judge in summing-up in reminding the jury about Mr Wafta's admitted comments that the Appellant had perhaps deserved a punch because she had a very rude mouth. We do not develop this criticism further as we do not think it makes any material difference.
31. On behalf of the Crown it was submitted that the evidence against the Appellant was overwhelming and that it was not the interventions of the judge which led the jury to disbelieve the Appellant.
32. We can dispense with that line of response straight away. If the matters complained of rendered the trial unfair, then the strength of the case against the Appellant is totally irrelevant. Every defendant, including a defendant faced with a strong prosecution case, is entitled to a fair trial. That is an absolute right irrespective of the strength of the evidence: see Randall v The Queen [2002] 2 Cr App R 17 at paragraph 28 per Lord Bingham.
33. More pertinently, perhaps, the Crown also contended that the judge's interventions had not led to an unfair trial because (a) some of the matters complained of took place in the absence of the jury, (b) the judge was seeking to ensure that there was no unfairness caused to Mr Wafta in cross-examination and (c) where the judge had questioned the Appellant, he was seeking to clarify her evidence.

34. It was additionally submitted that the summing-up was fair and that it had contained appropriate directions about ignoring any views expressed by the judge. Insofar as the judge had expressed an opinion on the nature of the defence, it was justified and in any event did not impact on the fairness of the proceedings since the jury was not present. The judge had not prevented defence counsel from putting the Appellant's defence so that the course of the trial was unaffected. Overall, it was submitted that the interventions were not such as to render the conviction unsafe.
35. We begin our consideration of the issues by commenting that the summing-up was full, balanced and fair. There has been no criticism of it made on behalf of the Appellant save as to one comment which we do not consider materially affects the position. Not only were the legal issues accurately stated to the jury, but a balanced summary of the evidence was provided, including clear exposition of challenges to the prosecution case and appropriate putting of the defence case.
36. As we were rightly reminded by the Crown, the judge had given proper directions that the assessment of matters of fact was for the jury irrespective of the judge's views or indeed those of counsel. The fact that such a direction was given cannot necessarily and of itself rectify unfairness in a trial prior to the point of summing-up. What is required is an assessment of what occurred in any particular case.
37. We have to say that we have been much concerned about the passages to which we have referred earlier in this judgment. In relation to the complainant Mr Wafta, we think there is force in the complaint made that the judge intervened in such a way in the presence of the jury and whilst defence counsel was seeking to put his case as to give the impression that the judge had formed a positive view of Mr Wafta's account. This was particularly so in a passage where the judge posed a series of questions to defence counsel which appeared to challenge the basis of the questions being put to the witness. We also consider the fact that there was more than one such intervention to be important.
38. We turn next to those passages which arose whilst the Appellant was giving her evidence. We note that the judge on more than one occasion asked a series of questions which went beyond clarification of the Appellant's evidence and which took on the character of cross-examination rather than the neutral eliciting of material. The clear tenor of the passages had the capacity to demonstrate a degree of disbelief in what the Appellant was saying and the posing of a challenge to it.
39. This process occurred on several occasions during the course of the Appellant's evidence-in-chief. In our view, it deprived her of the opportunity of presenting her case in a way of her choosing and without premature challenge to her account. It deprived her counsel, who it can be seen attempted to intervene only to be ignored by the judge, of the ability to present her case in a manner of his choosing.
40. A particular example of this arose in the last of the passages cited from the examination-in-chief where on the crucial issue of abusive language used, the judge completely took over the questioning of the Appellant for a significant period of time

and did so in a manner very different from the way in which defence counsel would have elicited the evidence.

41. We also consider that the excursion by the judge into the policies of UKIP in which he purported to state what their position on immigration was despite the Appellant's attempts to qualify what the judge was saying had the vice of introducing into the arena matters of no or marginal relevance to the trial. Once that issue had been raised, it had the effect of handicapping the Appellant's ability to deal with the matter on her own terms because of the way in which the judge handled it.
42. We also have considered the observations made in the absence of the jury and in particular those suggesting that the line of defence being advanced was "far-fetched" or "bunkum" as well as statements of what the Appellant's defence should have been.
43. Comments of this sort should never have been made. However, insofar as the jury was concerned, those comments were made in their absence and the defence was not prevented from later advancing those aspects which the judge clearly regarded as ill-founded. In due course, the judge, as he was bound to, put the full defence as advanced before the jury. Accordingly, we do not consider that unfairness arises in that respect.
44. In this context, we have gone on to consider whether the Appellant was denied a fair trial in the sense that the judge's attitude, particularly in the absence of the jury, may have affected the quality of her own evidence.
45. An assertion was made in the written grounds that the combination of the judge's remarks and his criticism of the Appellant's decision to elect trial had intimidated the Appellant and prejudiced the way in which she gave evidence. That matter, however, has been put on the basis of mere assertion without support from any evidence or other material. Mr Qureshi has not maintained the assertion before us this morning.
46. Whilst we deprecate the judge's observations in the passage cited, we are not persuaded that of themselves they lead to a finding of unfairness for the reasons given above.
47. We return, therefore, to those passages which took place in the presence of the jury. We have come to the conclusion that interventions which were likely to have had the effect of giving approval to the complainant's evidence or cast doubt upon the voracity of the Appellant's account combined to create unfairness.
48. We consider also that the judge on occasions wrongly descended into the arena and abandoned the neutral role of a judge. What he did went beyond the bounds of permitted judicial intervention designed to control counsel and manage the case effectively. What occurred had the unfortunate effect of depriving the Appellant of the opportunity to present her case, unlikely or not, in its best light when she came to give her evidence.
49. The excursion into UKIP policies on immigration introduced an irrelevant and potentially prejudicial element to the case, particularly where the judge's assertions appeared to have overridden the Appellant's attempts to explain the position.

50. Looking at these matters cumulatively and in the round, we find that there was serious unfairness.
51. A reader of the summing-up alone would be surprised to have seen what occurred earlier in the trial in the sense that it showed a fair and proper balance in which the judge did not enter the arena. We have considered carefully whether that can cure the earlier unfairness. We have come to the conclusion that the unfairnesses which we have identified and which accumulated over the course of the evidence cannot be nullified by the summing-up so as to render the verdict safe.
52. Although in the summing-up the judge said that the facts were a matter for the jury to resolve and that they should ignore the views of the judge or counsel, that conventional direction in this case was wholly insufficient to dislodge the harm or potential harm done by the flaws which we have identified.
53. We have come to the conclusion that because of what occurred during the taking of evidence, this verdict was rendered unsafe through the unfairness of the process. Accordingly, this conviction must be quashed.
54. MR QURESHI: My Lord, thank you for that ruling. May I just make one observation about a potential retrial, please?
55. LORD JUSTICE TREACY: Yes.
56. MR QURESHI: This matter has been going on since March 2015. The incident happened on 22 March 2015. Thereafter, there was a full trial which resulted in the jury being discharged earlier in 2016.
57. LORD JUSTICE TREACY: Was that discharged through disagreement?
58. MR QURESHI: Yes, discharged through disagreement.
59. LORD JUSTICE TREACY: Yes, right.
60. MR QURESHI: Then the retrial, of course, then occurred in September.
61. She is a lady of previous good character. This has been going on for a very, very long time. I would respectfully request whether or not it is in the public interest to have a retrial in the circumstances of this case, given that there has already been two previous trials now.
62. LORD JUSTICE TREACY: All right. We will bear that in mind.
63. What is the Crown's position, please?
64. MS KODIKARA: My Lord, we would seek a retrial in this matter, given, as I have indicated, the evidence in this case. Therefore, we would seek a retrial.
65. LORD JUSTICE TREACY: All right. We will consider that. Thank you.

(A short adjournment)

66. LORD JUSTICE TREACY: We consider that the public interest demands a retrial in this case, notwithstanding the fact that there has already been a trial and a retrial. Accordingly, we make such an order.
67. We make the following orders. We allow the appeal. We quash the conviction. We order a retrial to take place on the count of which a conviction was initially recorded. We direct that a fresh indictment be served. We order that the Appellant be re-arraigned on that fresh indictment within two months. We hope in the circumstances that can take place sooner. We direct that the venue for retrial be determined by the presiding judge for the South Eastern circuit.
68. The Appellant is not in custody. We will come back to the question of bail in a moment.
69. We also think it right to make an order under section 4(2) of the Contempt of Court Act 1981 restricting reporting of the proceedings until after the delivery of verdict in the retrial. We make that order so as to avoid the possibility of prejudice being caused to the retrial by reporting of matters which have been aired in the judgment.
70. Can we just come back to the question of bail?
71. MR QURESHI: Yes. My Lord, she has always been on unconditional bail, so there is no reason, in my respectful submission, why that should not continue.
72. MS KODIKARA: My Lord, I have no representations.
73. LORD JUSTICE TREACY: No.
74. Well, we order that the Appellant is on unconditional bail pending the retrial.
75. Right. Are there any other matters?
76. MR QURESHI: No. Thank you.
77. LORD JUSTICE TREACY: No. Thank you very much