

**IN THE COURT OF APPEAL
CRIMINAL DIVISION**

Royal Courts of Justice
The Strand London WC2
18 November 1985

B e f o r e:

LORD LANE (LORD CHIEF JUSTICE)

MR JUSTICE BOREHAMAND

and

MR JUSTICE MCCOWAN

R E G I N A

-v-

VERMET MBATHA

O Thorold appeared on behalf of the **Appellant**.

© Crown Copyright

MCCOWAN J:

1. On 6 July 1984 at the Central Criminal Court the appellant pleaded guilty and on 10 July was sentenced as follows: on a count of rape and on a count of buggery, he was sentenced to life imprisonment on each; on two counts of attempted rape, two counts of attempted buggery and a count of burglary with intent to rape no separate penalty was imposed.
2. He appeals against sentence by leave of the single judge.
3. The facts of counts 1 and 2 were that on 24 February 1984 he burst into the lavatories of a London college and forced a young woman to kneel over the lavatory. He attempted to bugger her, and then raped her. He pushed her back into the cubicle by grabbing her throat as she tried to escape and then made off.

4. The facts of counts 3 and 4 are that on the very next day the appellant followed his victim to her hotel. He pushed her back on her bed when she opened the door when he knocked, attempted both rape and buggery and left when she became very distressed.
5. Turning to the facts of counts 5 and 6, later the same day he followed his next victim into the lift of a block of flats, grabbed her round the neck and tightened the scarf she was wearing, saying he had a knife. He forced her clothing down and made her bend over. He buggery her and also attempted rape. The woman persuaded him to stop by inviting him to her flat. There she slammed the door against him and shouted to her mother to summon the police, whereupon the appellant ran away.
6. Finally, as to the facts on count 7, on February 26 he followed a young woman to her flat and forced her through the front door. Fortunately for her, her boyfriend was inside and he restrained the appellant while the police were summoned.
7. The appellant is a man of 31 years. He has five previous convictions including attempted rape and burglary with intent to rape in 1977 and indecent exposure also in 1977. He has been made the subject of two hospital orders under section 60 of the Mental Health Act 1959, in 1977 and in 1978. He was in fact detained for two months under the first order and one month under the second. He has been treated by a psychiatrist since 1976 and has been admitted to a mental hospital both compulsorily and voluntarily on many occasions.
8. There were reports before the Court from a Dr Sathiamoorthy, the Medical Officer at Brixton Prison, and Dr Bradley, a Consultant Psychiatrist. There were also certificates under section 37 of the Mental Health Act 1983 before the Court from respectively Dr Sathiamoorthy and Dr Ghosh, who is a Consultant Psychiatrist. All these doctors are approved under section 12 of the Mental Health Act 1983.
9. Dr Sathiamoorthy in his certificate said, "This patient is suffering from mental illness." He specified that the illness was manic depressive psychosis. He went on to say, "He is stable on treatment. All his previous offences and the present serious ones were committed when he was without treatment. He has repeatedly defaulted on agreed treatment. He requires treatment on a formal basis to achieve stability for the long term. This man has proved to be violent and dangerous when he is off medication. He constitutes a grave threat to the public, especially towards younger women. It is my opinion that he needs psychiatric treatment under conditions of maximum security until such time he is completely stable and is no longer a danger to the public."
10. All the doctors were of the same opinion, namely that the appellant's condition could be controlled with the use of drugs, but he could not be relied upon to take them without supervision. The current offences occurred because he had stopped his medication, leading to hyperactivity and increased sex drive. In such a condition he was a danger to women. He required treatment under maximum security, and a hospital order with a restriction order was therefore recommended. At the time of the hearing before the trial judge, a bed was available for him at Park Lane Hospital, Maghull, Liverpool.
11. Dr Sathiamoorthy gave evidence and the trial judge asked this question: "Is it at all possible to give any forecast of how long it might be necessary to detain him for the protection of the public?" to which the doctor answered, "At least 15 to 20 years. These

illnesses tend to burn out after 15 to 20 years, so, taking his age into consideration I would think Mr Mbatha would need continuous treatment for 15 to 20 years.”

12. The judge adjourned his decision so that he might further consider what was the right course to take. He very obviously took the greatest possible care about this case. What he had to say in passing sentence was this: “The facts of this case and the history of this defendant show him to be extremely dangerous to women ... I accept counsel’s submission that there is a direct causal link, as he puts it, between the defendant’s manic depressive psychosis and these attacks. But I consider that there is also a substantial element of criminality in this behaviour. It is clear that the defendant knew what he was doing at the time of these attacks. The fact that he had received no punishment in the past may have encouraged him to believe that he was free to lose control by not taking the drugs which he knew perfectly well he needed ... I consider that there was a considerable and blameworthy element of calculation in all that he did ... In my view the public are entitled to the maximum protection against this man which the law can provide. I do not think that an order under section 37 with restriction is, to quote the words of the section, ‘the most suitable method of disposing of the case’.”
13. We fully understand and sympathise with the judge’s anxiety. However we have had the advantage of having before us further material. In the first place there was a further report from Dr Bradley of 7 June 1985, in which he said this: “In so far that he voluntarily discontinued treatment with Lithium in February 1984, because of his feelings of depression associated with fears of possible assassination, he must take some responsibility for becoming mentally ill again. However, many patients give themselves ‘holidays’ from their prescribed drugs from time to time when the mood alters and in spite of medical encouragement to continue taking the Lithium they fail to do so and sometimes relapse. Such relapse is by no means a foregone conclusion and many patients will be able to stop their Lithium for some months without incurring a serious mood swing. Mr Mbatha took the risk and the results are now, of course, obvious. However, it seems to me unlikely that he visualised the disastrous effects of the simple act of discontinuing a drug.”
14. There was also before us a report of 3 July 1985 from Dr Ghosh. He said: “His illness does respond to treatment and he is then a model patient. However his past history suggests that he becomes dangerous especially to women, when he is left untreated. The high sexual drive described by him is a part of the illness and is associated with elevated mood. In the hypomanic phase the patient is incapable of controlling his behaviour although in some cases he might be aware that what he was doing was wrong. The lack of insight which led him to stop taking his Lithium when he was getting depressed, is also a common feature of mental illness. The Mental Health Act 1983 recognises such lack of insight when a patient is becoming ill; hence the need for compulsory treatment. The lack of insight also influences the way the patient would perceive the likely effects of coming off medication, in that he would not see the coming off medication as actually leading to a deterioration in his mental state.”
15. Finally we have before us a report from Dr Dexter, who is Principal Medical Officer at Wormwood Scrubs. That report indicates that the appellant has been under his care since 10 July 1984. In that report the doctor says: “It is a feature of manic depressive psychosis

that the patient becomes abnormally elated and hyperactive and loses control of his behaviour ... when he is hypomanic (the technical term for the periods of abnormal elation and hyperactivity) he is dangerously out of control. In my opinion when he is psychotic he is not responsible for his actions and therefore when the offences were committed. Medically speaking he appears to me to be the type of case for which sections 37 and 41 of the Mental Health Act were intended and I have no hesitation in recommending that the court takes action under those sections.”

16. Dr Dexter gave evidence before this Court and confirmed those views orally. He has also been able to confirm to us that a bed is still available for the appellant at Park Lane Hospital, Magull, Liverpool.
17. In the light of that further material this Court has, with some hesitation, been persuaded that an order under section 37 with restriction is the most suitable method of disposing of this case.
18. This Court had to deal with a similar problem on 8 November 1985, in the appeal *Seymour Joseph Howell*. There the Lord Chief Justice giving the judgment of the Court said this: “We do not think that the course taken by the judge, although we understand his reasons well, was a proper one. In circumstances such as these, where medical opinions are unanimous and a bed in a secure hospital is available, we think a hospital order under section 37 of the Act should be made together with a restriction order without limit of time under section 41. Consequently what we propose to do is to quash the sentence of life imprisonment and substitute therefore a hospital order under section 37 together with a restriction order under section 41 without limit of time.”
19. In the present case we propose to deal with the appellant in the same way. Accordingly the sentences of life imprisonment are quashed and we substitute therefor a hospital order under section 37 together with a restriction order under section 41 without limit of time. The appellant must of course remain in custody in prison, until the bed is available within the period of 28 days and he is actually transferred to that hospital.
20. There is only one further matter which this Court would like to refer to. We order that a copy of this judgment should be attached to this man’s documents. The reason for that order is so that any tribunal which considers this man’s case in future may be alerted to the concern which this Court has and which the judge at the Central Criminal Court had over the dangers which would be involved in releasing this man prematurely. Particular regard will no doubt be had by them to the view of Dr Sathiamoorthy that for the protection of the public it will be necessary to detain the appellant for at least 15 to 20 years.

LORD LANE CJ:

21. In order to make the matter quite clear, under section 37(4) of the Mental Health Act 1983, pending admission of this man to the bed which we are told will be available within 28 days at Park Lane Hospital, this Court gives a direction that this man shall be conveyed to a place of safety, namely the prison in which he is at present incarcerated, and from there in due course within 28 days will be taken to his bed in a secure hospital.

This document was prepared for Mental Health Law Online, based on the words of the judges as stated in (1985) 7 Cr App R (S) 373, with the addition of paragraph numbering and some typographical amendments.