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## R v P

[2005] EWCA Crim 2910

**Court of Appeal, Criminal Division**

**Sir Igor Judge P, Elias and Ouseley JJ**

**17 November 2005**

*Criminal evidence - Sexual offence - Statement by complainant - Defendant being convicted of **rape** - Complainant subsequently making application for compensation - Application containing **false** and inconsistent statements in respect of **rape** - Whether conviction unsafe.*

The defendant, aged 27, was married to the complainant's grandmother. Subsequently, the complainant, aged 14, and her mother moved into the defendant and grandmother's flat. Some months later, the complainant stated that the defendant had raped her, and that the defendant had ejaculated in her underwear. The defendant denied the allegation, and stated that no **rape** or sexual interference of any kind had taken place. He suggested that the **false** complaint was motivated by the complainant's mother's hatred of him as the husband of her own mother, and that the complainant disliked him personally. A scientific examination of the complainant's underwear revealed a visible stain, and four spermatozoa. It was impossible to determine their origin. Extracts taken from the underwear indicated the presence of at least three individuals, consistent with a mixture from the complainant, her boyfriend at the time, and the defendant. However, that conclusion did not dispose of the possibility of accidental transference, or that the DNA could have resulted from any body fluid, skin tissue or hair (particularly as the underwear had been stored with clothes belonging to others at the address). The judge directed the jury that the issue was the question of who they believed. The defendant was convicted. After conviction, the complainant made an application to the Criminal Injuries Compensation Authority (CICA), which included a number of significant features which had not appeared in the account of the incident she had given to the police, or to the jury. She claimed that she had been woken by the defendant, that he had held a gun to her head and threatened to kill her; that the defendant had raped her anally as well as vaginally; that he had threatened to kill her if she told anyone about the **rape**; that she had become pregnant as a result of the **rape** and had then undergone a termination; and that she had been infected with gonorrhoea and chlamydia. The defendant appealed against conviction.

He contended that he could demonstrate beyond question that the complainant had told deliberate lies about the circumstances of the incident on which the conviction depended. He submitted that the complainant's credibility was 'in tatters' and should be treated as indivisible.

The appeal would be allowed.

The fresh evidence would be admitted. In all the circumstances, the credibility of the complainant was significantly damaged. That damage was inextricably linked to the complaint which had resulted in the defendant's conviction, and rendered the conviction unsafe.

Part, at least, of the application to the CICA was **false**. In other respects, it was inconsistent in significant respects with the evidence before the jury. There were problems with drawing any satisfactory inferences from the scientific evidence. The spermatozoa found on the complainant's knickers was not attributed to the defendant. There was an alternative source. His DNA was found on the knickers, but in the context of the case, the risks of contamination were clear, and the circumstances were insufficient to justify the conclusion that the DNA had to represent sexual contact between him and the complainant. At trial, the prosecution had not suggested that the scientific evidence was conclusive of guilty, and had accepted that there were three possibilities to explain the presence of the defendant's DNA. That measured approach was wise. Taking the scientific evidence at its best on the prosecution's case, it was inadequate to save the conviction.

The convictions would be quashed.

Michael Magarian (assigned by the Registrar of Criminal Appeals) for the defendant.

Isabel Dakyns (instructed by the Crown Prosecution Service) for the Crown.

Vanessa Higgins Barrister.