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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MEHMOOD S. OOMERJEE,

Defendant and Appellant.

2d Crim. No. B278139
(Super. Ct. No. 2014003658)
(Ventura County)

A jury convicted Mehmood S. Oomerjee of five counts of sexual penetration of a child under age 16 (Pen. Code § 289, subd. (i))¹ and three counts of lewd act on a child age 14 or 15 (§ 288, subd (c)(1)). The trial court sentenced Oomerjee to six years eight months in prison. We affirm.

FACTS

Father and Oomerjee are cousins. M. (Father) is Z.'s father. Growing up, Z. was best friends with Oomerjee's

¹ All statutory references are to the Penal Code unless otherwise stated.

daughter (J.). Z. would often spend the night with J. at Oomerjee's house. They would sleep in J.'s bedroom. Z. usually slept on the floor. Sometimes she would sleep in the living room or the guest bedroom.

In August or September 2001, when Z. was 14 years old and in the ninth grade, Oomerjee started molesting her. He would come into his daughter's room where Z. was sleeping. He would lie down behind her with his chest to her back. He fondled her breasts under her pajamas and placed his fingers in her vagina. He would pull down her pajamas and place his penis between her buttocks. This happened "[a] lot," possibly more than 10 times. Z. tried to elbow Oomerjee and push him off and tell him to stop. J. was a sound sleeper and never woke up.

On other occasions, Z. slept on a cot in J.'s room. Oomerjee would enter and sit next to the cot at Z.'s back. He placed his hands under her pajamas on her breasts and inserted his finger into her vagina. This happened at least once when Z. was 14 years old and more than once when she was 15.

In February 2003, when Z. was 15 years old, she was staying for two weeks at Oomerjee's house while her parents were in Saudi Arabia. One night Z. and J. decided to record themselves sleeping with a camcorder. Oomerjee came into the room and placed his hands on Z.'s breasts and his finger into her vagina. The next morning Z. and J. noticed someone had turned off the camcorder a few hours into the recording.

One night when Z. was 14 or 15 years old, she was at a slumber party at Oomerjee's home. She was sleeping in the living room with J. and some cousins. Oomerjee entered and placed his hands on her breasts and his finger in her vagina. Z. struggled and asked Oomerjee to stop, but no one woke up.

Z. would sometimes accompany Oomerjee and his family to a relative's home in Buena Park. One night Oomerjee placed his hands on her breasts and his finger in her vagina. Z. told him to stop, but no one woke up.

Z. knew what Oomerjee was doing to her was wrong, but she did not know what was happening because sexual matters were not discussed in her family.

In August 2003, Z. was talking to a friend on the telephone. She told her friend what Oomerjee was doing to her. Her friend encouraged her to tell someone. The next day Z. told her brother (Brother) that Oomerjee was touching her "in places where he shouldn't be touching." When Brother asked her what she meant, Z. touched her breasts and vaginal area.

Within a few hours, Brother told Father that Oomerjee had been molesting Z. Father told his wife. That evening the family had a meeting in the living room. Z. told her family that Oomerjee had molested her multiple times. Everyone cried.

Z. did not want to go to the police because she did not want "the whole world to know that this happened." Father did not want to go to the police because he did not want to break up the family and have Oomerjee go to jail. Later Father believed not going to the police was the biggest mistake of his life.

About a week later, Z. and Brother told J. that Oomerjee had been molesting Z. They told J. in case Oomerjee was also molesting her. J. cried hysterically.

Oomerjee Admits the Molestations

Yakub Dadabhoy is Z.'s uncle by marriage to Father's sister. Father called Dadabhoy and told him that Oomerjee had molested Z. Father asked Dadabhoy to speak to Oomerjee about the molestation.

When Oomerjee and Dadabhoy were alone, Dadabhoy asked if Oomerjee had molested Z. Initially Oomerjee denied it. Dadabhoy told Oomerjee that if he did not admit what he did, Dadabhoy would talk to his parents. Oomerjee admitted that he touched Z. over and under her clothes, but denied he touched any “private part.” Oomerjee said, “I caressed here and there on her body.”

A week later Oomerjee went to Father’s house. Oomerjee told Father he was extremely sorry. Father asked Oomerjee how he could do “something so cheap and so dirty to a child.” Oomerjee continued to apologize.

Later Oomerjee’s brother delivered a handwritten note from Oomerjee to Father. The note said, “Again, I’m apologizing for what I did. I’m really shameful.”

Oomerjee called Dadabhoy 10 to 20 times asking him to ask Father for forgiveness. Dadabhoy asked Oomerjee why he had done what he did and Oomerjee replied, “I will never do this again.”

Emails

In 2004, Brother was hospitalized. Oomerjee emailed Father stating that he would like to visit but knew he could not. Oomerjee’s email said, “You don’t know how much I hate that, but is all my fault. Like always, I will keep asking for your forgiveness. Please, please forgive me.”

In 2007, Father received another email from Oomerjee. Oomerjee stated, “And, as always, I am asking for Allah’s forgiveness and for your forgiveness.” Oomerjee stated there are “not too many days I don’t think of the pain I caused you.”

Z. Reports to Police

In July or August 2013, Z. checked herself into the hospital. She had been cutting herself and having suicidal thoughts. During therapy sessions, she discussed what Oomerjee did to her and told the therapist that he was living in Texas with his grandchildren. In September 2013, when Z. was 25 years old, she reported the molestations to the police.

Mehmuda Dadabhoy

Mehmuda Dadabhoy, no relation to Yakub, is Z.'s aunt. Mehmuda grew up with Oomerjee and their families are very close. In 2010, Father told Mehmuda about Oomerjee molesting Z.

In August 2013, Oomerjee called Mehmuda to complain that nobody was talking to him. Mehmuda called Oomerjee a bastard and a lot of other names. She said that if he had done something similar to her daughter, she would "cut his penis off." Oomerjee replied that she was right and that he did not deserve kindness from anybody. He repeatedly said, "I just pray to God that I am forgiven." It was clear to Mehmuda that he was referring to molesting Z. because that was the only thing they had been discussing. Oomerjee never denied molesting Z.

"Cool Call" to Oomerjee

On October 8, 2013, Z. made a "cool call" to Oomerjee aided by the police. The call was recorded. Z. asked Oomerjee why he put his finger inside her vagina. Oomerjee replied, "I did not see you at all beta." "Beta" means child. Z. acknowledged he did not see her body, but again accused him of touching her vagina and putting his penis and finger inside her. She said, "[S]o then [if] you're sorry so you did those right?" He answered, "[V]ery much so, very much so, beta." She asked him why he did those things

to her. He denied doing anything like that, and denied he just admitted it. He said he apologized to her because she is so mad at him.

Admissions After “Cool” Call

On October 10, 2013, Oomerjee emailed Mehmuda stating, “I’ve done the most stupid thing anybody would have done” Mehmuda believed Oomerjee was referring to what he did to Z. because they discussed the topic over and over.

Mehmuda quoted a portion of a letter from Father in which he said, “My kid was only 13 and was repeatedly molested.” Oomerjee responded that he knows what Father is talking about and stated that he prays every day for forgiveness.

In late 2013 and early 2014, Oomerjee had conversations with Mehmuda in which he admitted he touched Z. over and under her clothes. He admitted that he reached under Z.’s blouse and fondled her breasts. He admitted that on one occasion his daughter was in the room.

Mehmuda testified that Oomerjee never denied doing what Z. had accused him of doing. It was only after a criminal complaint was filed that he called Mehmuda and denied he did anything to Z.

Defense

Oomerjee testified on his own behalf. He denied he molested Z.

Oomerjee denied he admitted the molestations to Yakub Dadabhoy. He denied he ever apologized to Father. Oomerjee asked for Father’s forgiveness because if Father felt he did something wrong, he wanted to be forgiven, although he had done nothing wrong.

Oomerjee also denied he admitted molesting Z. in communications with Mehmuda. He apologized in emails to Mehmuda because he might have touched Z. accidentally.

During the “cool call” with Z., he said he did not see her; he meant that he did not molest her.

Oomerjee’s relatives, including Oomerjee’s daughter, testified that they never saw Oomerjee acting inappropriately with Z.

DISCUSSION

I

Oomerjee contends the trial court erred in admitting hearsay under the fresh complaint exception to the hearsay rule.

Brother testified that Z. told him that Oomerjee touched her and she pointed to her breasts and vaginal area. She also told him, “[H]e touches me in places where he shouldn’t be touching.” Father testified that Brother told him that Z. “got molested by” Oomerjee. Father also testified that Z. herself told him that Oomerjee molested her multiple times at night.

Yakub Dadabhoy testified Father told him Oomerjee molested Z. and asked Dadabhoy to speak to Oomerjee about it. Dadabhoy also testified Z. herself told him Oomerjee “touched her private parts.” She told Dadabhoy that it happened several times.

Z.’s high school friend, Sophia [N.], testified that, sometime at the end of the tenth grade, Z. told her Oomerjee “would put his hands down her pants.”

Our Supreme Court discussed the fresh complaint exception to the hearsay rule in *People v. Brown* (1994) 8 Cal.4th 746. Historically evidence that the victim of a sexual offense reported the offense to another person shortly after it occurred

has been admissible as part of the prosecution's case in chief. (*Id.* at p. 748.) Such evidence is relevant for the nonhearsay purpose of forestalling the trier of fact from concluding the victim had not been sexually molested because she made no complaint. (*Ibid.*) The freshness of the complaint and whether it was volunteered spontaneously or prompted by some inquiry are no longer prerequisites to the admissibility of such evidence. (*Id.* at p. 750.) Our Supreme Court explained: "[I]n light of the narrow purpose of its admission, evidence of the victim's report or disclosure of the alleged offense should be limited to the fact of the making of the complaint and other circumstances material to this limited purpose. Caution in this regard is particularly important because, if the details of the victim's extrajudicial complaint are admitted into evidence, even with a proper limiting instruction, a jury may well find it difficult not to view these details as tending to prove the truth of the underlying charge of sexual assault" (*Id.* at p. 763.)

Oomerjee argues the trial court erred in allowing the witnesses to testify concerning the details of Z.'s extrajudicial complaint. For the most part, the witnesses' description of Z.'s complaint was only that Oomerjee "molested" her. To the extent the witnesses offered any "details," they were minor: Z. pointed to her breasts and vaginal area; it happened multiple times at night; and Oomerjee would put his hands down her pants. These are not the type of specific details that a jury would be inclined to view as proving the truth of the underlying charges in spite of a limiting instruction. (See *People v. Cordray* (1963) 221 Cal.App.2d 589, 594 [victim told mother defendant pulled her pants down and kissed her between her legs]; *People v. Butler*

(1967) 249 Cal.App.2d 799, 804 [victim reported “the man was sucking his thing”].)

Oomerjee claims the trial court’s instruction only made matters worse. The court instructed:

“During the trial, certain evidence was admitted for a limited purpose. You may consider that evidence only for that purpose and for no other.

“Statements made by [Z.], [Father], Sophia [N.], J. Oomerjee, and Yakub Dadabhoy concerning [Z.’s] disclosure of the alleged molestations were admitted for the limited purpose of showing that a complaint was made by an alleged victim, [Z.], and not for the truth of the matter stated. This evidence may be considered only for the purpose of corroborating an alleged victim’s testimony, but not to prove the occurrence of the crime.”

Oomerjee argues that if the testimony is admitted for the purpose of corroborating Z.’s testimony, it could only have been admitted for the truth.

The instruction could have been better phrased, but it appears to be a correct statement of the law. (See *People v. Manning* (2008) 165 Cal.App.4th 870, 880 [“The jury may consider the evidence ‘for the purpose of corroborating the victim’s testimony, but not to prove the occurrence of the crime’”]; *People v. Giron-Chamul* (2016) 245 Cal.App.4th 932, 937, fn. 6 [jury so instructed].)

Even assuming there was error either in admitting the evidence or in the instruction, the error is harmless by any standard. In addition to Z.’s testimony, Oomerjee made numerous incriminating statements to Z.’s family. The statements included admissions that he touched Z. He also apologized to family members and requested forgiveness. In Z.’s

“cool call” to Oomerjee, Oomerjee made many denials. But during the call he also admitted that he put his finger into Z.’s vagina. After the cool call, Oomerjee continued to make incriminating statements to Mehmuda.

According to Oomerjee, all the family members who testified about his incriminating statements were lying. But their testimony was entirely consistent with emails Oomerjee sent to them. The jury simply did not believe Oomerjee’s claim that he might have accidentally touched Z. This is not a matter of Z.’s word against Oomerjee’s. It is a matter of Z.’s word corroborated by Oomerjee’s self-incriminating statements.

II

Oomerjee contends the trial court denied him the right to present a complete defense by refusing to allow evidence that Z. was a jealous person who wanted attention.

At trial Oomerjee’s counsel stated he intended to elicit evidence that Z. was jealous of a female relative, Sauna, in vying for J.’s attention. In addition, he wanted to elicit evidence that Z. vied with her older brother for her parents’ attention. Counsel believed that the evidence goes to a motive for Z. to falsely accuse Oomerjee.

The trial court stated it did not see the correlation between juvenile jealousies and a motive to lie about an unrelated matter. The trial court excluded the matter under Evidence Code section 352.

The trial court has broad discretion under Evidence Code section 352 to determine whether the probative value of evidence is outweighed by the possibility of undue prejudice, confusion or the consumption of time. (*People v. Clark* (2016) 63 Cal.4th 522, 572.) The trial court did not abuse its discretion.

Z. was 28 years old at the time she testified at trial. It is simply speculative to say that whatever juvenile jealousies she may have had carried over well into her adulthood. It is also speculative to say that whatever jealousies Z. may have felt toward her brother and Sauna manifested themselves in an accusation against Oomerjee. Exclusion of evidence that leads only to speculation is not an abuse of discretion. (*People v. Peoples* (2016) 62 Cal.4th 718, 743.)

In any event, for the reasons previously stated, any error was harmless by any standard. Z.'s testimony was corroborated by Oomerjee's self-incriminating statements.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Nancy L. Ayers, Judge

Superior Court County of Ventura

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