

NCN: [2019] EWCA (Crim) 1602

No: 201902495 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 6 September 2019

B e f o r e:
LORD JUSTICE SIMON
MRS JUSTICE McGOWAN DBE
MR JUSTICE FREEDMAN

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

R E G I N A
v
MOHAMMED TAWOS QORAISHI

Mr L Mably QC appeared on behalf of the **Attorney General**

Mr B Tetlow QC appeared on behalf of the **Offender**

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J U D G M E N T

LORD JUSTICE SIMON:

1. This is an application by HM Solicitor General to refer to this court a sentence passed on the offender, Mohammed Qoraishi, aged 27, under section 36 of the Criminal Justice Act 1988 as being unduly lenient.
2. The sentence was passed in the Crown Court at Maidstone by His Honour Judge Griffith-Jones QC on 7 June 2019. On 27 April, the offender had pleaded guilty to the murder of his wife, Parwin Qoraishi, on 25 December 2018. At the sentencing hearing on 7 June, the offender was sentenced to a term of life imprisonment with a minimum term to be served of 16 years and 82 days.
3. The offender and his wife Parwin were cousins and grew up in the same household in Afghanistan. The offender came to this country in 2017 aged 16 and settled in Hull. Parwin came here in 2011 aged 12 and settled in Maidstone with her family. The marriage was an arranged marriage and took place in Afghanistan in August 2018. There were, however, tensions between the two sides of the family and on their return the offender continued to live in Hull and Parwin in Maidstone.
4. The issue of whether Parwin should move north or the offender should move south was a matter of dispute within the family. Eventually, in mid-November, the issue was resolved when the offender moved to Maidstone. He was unhappy with this arrangement and made his feelings known. At first he lived with Parwin and her family; however, relations were strained and he soon moved into his own flat. Parwin did not join the offender in the flat immediately but, after a period of discussion, she moved in on 20 December. There

remained significant tension between the two of them. The precise nature of the tensions is unclear but text messages showed that Parwin was saying that she needed to forget certain things in order to build trust in the offender. On 24 December, her younger brother, Hejran, came to stay at the flat. He was aged 6.

5. In the late morning of 25 December, the offender and Parwin had an argument over an extended period. A neighbour heard what sounded like a vigorous disturbance, with the offender shouting loudly and Parwin screaming. During the course of the argument or as a result of it the offender attacked Parwin in the kitchen; and over the course of a sustained assault caused her fatal injuries. He struck her several times on the back of the head with a frying pan and with such force that the pan was dented. He used a large kitchen knife with a blade 8 inches long to stab a total of 38 times, wounding her in the head, neck, chest, abdomen and thighs, and he also strangled her.
6. Her cause of death was recorded as complications from multiple stab wounds, with blunt force trauma to the head, and compression of the neck. Seven of the stab wounds in isolation, two in the neck and five in the abdomen, could have been potentially fatal. Some of the stab wounds appeared to have been inflicted when she was at the point of death or had already died. Considerable force was used to inflict some of the stab wounds. By way of example, one wound passed all the way through the victim's left thigh and into the right thigh and one stab wound to the chest cut through a rib. Other stab wounds to the chest penetrated the pleural cavity in the lungs and penetrated the diaphragm and stomach. After the attack, the offender left the flat and drove off in his car. ANPR evidence showed that he left the flat by 12.22 pm.

7. The attack had been carried out in the presence of Hejran. At around 12.30 pm, Hejran, having been left unattended, was found by neighbours wandering in the street, crying and seemingly lost, and saying that he wanted to go home. The police were called and they eventually established Hejran's home address.
8. The police enquiries led them to the offender's flat. Arriving at about 2.30 pm, they found Parwin lying in the kitchen, heavily bloodstained. An ambulance was called but she never regained consciousness, and death was formally pronounced at 3.28 pm. She was aged 19.
9. Meanwhile, the offender headed to Dover, no doubt in order to try to leave the country. Local police were alerted and this led to his arrest at 4.38 pm.
10. The offender was interviewed under caution. He said that Parwin's father was hostile to him and that he had argued with her on 24 December because she was standing up for her father. However, he declined to answer questions about the events of 25 December. He was charged with murder on 27 December.
11. Understandably, Hejran continues to be traumatised by what he witnessed.
12. The offender had no previous convictions. The case was first listed for a PTPH on 18 January, but the hearing was relisted as a mention at the defence request and the matter adjourned pending the preparation of a psychiatric report.

13. A PTPH took place on 22 February 2019 but the offender was not arraigned at the defence request as it was seeking further information from the psychiatrist who had been instructed on the offender's behalf.
14. A further PTPH on 5 March was also adjourned at the defence request so as to allow time for the preparation of an addendum report.
15. At a mention hearing on 1 April, the case was fixed for 29 April for a further PTPH. It was on that date that the offender pleaded guilty.
16. At the sentence hearing on 7 June 2019, the judge found that the offender had intended to kill the victim. He also identified the aggravating factors: (a) the frenzied nature of the attack involving the use of different weapons and a large number of blows and wounds as well as strangulation; (b) some of the injuries were inflicted after death; (c) the victim was only 19; (d) some of the injuries were defensive injuries, indicating the victim knew what was happening; (e) the murder was committed in the presence of a child; (f) the offender fled the scene, leaving the child unattended, in an attempt to escape responsibility.
17. The judge also identified the mitigating factors: (a) the offender had no previous convictions; (b) the offence was not premeditated; (c) he had expressed some remorse, although that was a matter that carried little weight in the circumstances; and (d) his plea of guilty.
18. In respect of the plea, the judge held that the offender was entitled to full credit amounting

to one sixth. Although the plea was not entered at the first hearing, it was understandable and legitimate for the defence to have delayed arraignment in order to obtain a final psychiatric opinion. When the final report was delayed so that it was not available on the 29 April, the offender had chosen to enter his plea without waiting for it.

19. The judge took a minimum term starting point of 15 years. Having regard to the aggravating factors and the "limited" mitigating factors he stated that the appropriate minimum term was 20 years. He then reduced that term to give a full one sixth discount for the plea and deducted the 161 days the offender had spent on remand. The minimum term imposed was therefore 16 years and 82 days. No issue is taken on the credit for the plea.

20. Mr Mably QC, who appears for the Solicitor General, acknowledged that judge was right to take a minimum term of 15 years as the starting point under schedule 21 of the Criminal Justice Act 2003. The 25-year starting point did not apply, because although a knife was used to murder, it was not taken to the scene by the offender. The 15-year starting point assumes an intent to kill. Nevertheless, Mr Mably submitted, although a knife was not taken to the scene, it was used, and this had a major bearing on the assessment of culpability and the appropriate level of sentence. The key point was that a large kitchen knife was used to kill the victim. The use of a weapon, and in the present case the additional use of the frying pan, was a material aggravating factor, whether or not taken to the scene. This alone justified a substantial uplift from the starting point.

21. In addition, he drew attention to three further aggravating factors: first, the fact that the

victim was also strangled; second, the sustained and gratuitous nature of the attack; and third, the fact that the attack took place in the presence of a child. Against this, particularly the violence of the attack, the mitigation available, previous good character and his expressions of remorse, counted for little.

22. Mr Tetlow QC, who appears for the offender, commended the judge's comprehensive, balanced and measured sentencing remarks. He submitted that the uplift from the starting point of 15 years was substantial and properly reflected the fact that the aggravating factors outweighed the mitigating factors. The lack of premeditation was a recognised mitigating factor and the judge had rightly accepted that the fatal violence was due to a sudden loss of temper. As he had put it in his sentencing remarks:

... I do accept that you were not your normal self, that you were in a rage and that you snapped. However, the inescapable fact is that you then proceeded deliberately to perform these acts of utter barbarity.

There was no psychiatric explanation.

23. Mr Tetlow drew attention to the feature of domestic killing that was not present in this case: a history of physical and mental abuse by a partner with a propensity for violence which culminates in murder and which is plainly an aggravating factor; see, for example, *R v Thomas* [2009] EWCA Crim 904 at [26], and *R v Bristol* [2012] EWCA Crim 1684 also at [26].
24. Here, although there were tensions in the marriage, there was no suggestion that the offender had ever been violent towards her before. The tensions in the marriage appear to have been due, at least in part, to the offender having to relocate from Hull, where he had

made his home since arriving in this country from Afghanistan when he was 16, where he was in employment and where he had lived without getting into any sort of trouble.

25. Mr Tetlow rightly acknowledged that nothing in the background to their marriage explains or excuses the sudden and brutal attack on Parwin but it was at least consistent with his expressed feelings of remorse. As the judge expressed it:

You have now, in the cold light of day, had to face the enormity of what you have done...

26. We have the benefit of a helpful post-sentence report from HMP Elmley. The report describes the improvement in the offender's mental condition from suicidal ideation, when he first arrived, to an improved mood following sentence:

... he has been able to gradually adjust to the enormity of his circumstances and the realisation in regard to the seriousness of the index offence.

27. This was a particularly violence murder that has caused the deep and abiding sadness and sense of loss described in the victim statements of Parwin's father and mother and which will remain with them forever.

28. The offender killed Parwin in her own home at the age of 19 and, as the sentencing judge observed, he deprived her of all future joys and potential accomplishments, starting with her acceptance for a place at university. The murder was carried out with two weapons, one of which was a large kitchen knife. The attack was sustained and particularly violent, involving blunt force injury, stabbing and strangulation. The defensive injuries showed that the victim knew what was happening to her and tried to defend herself, and that the

offender persisted in his attack, inflicting 38 stab wounds.

29. In *R v M, AM & Kika* [2010] 2 Cr App R (S) 19, this court observed:

... it is always an aggravating feature of any case involving injury — and of course death — that the injury or death has resulted from the use of a knife or any other weapon...

30. The reason is plain. The danger posed by the weapon itself and the difficulty in defending against its use is an aggravating circumstance even if the weapon is at hand.

31. This was not the only aggravating circumstance. This particularly violent killing was carried out in the presence of a child, the victim's 6-year-old brother, who remains traumatised by what he saw; and he was left unattended as the offender fled the scene seeking to save himself and escape his responsibility.

32. Against this, and as the judge recognised, other than the plea, the mitigation was limited. The crime was not premeditated but his lack of previous convictions had to be weighed against the seriousness of this offence. He had expressed remorse but it was his plea of guilty which provided the most potent mitigation.

33. The issue then is whether the judge's expressed assessment of 20 years as the minimum term, subject to credit for plea, was too low and led to a sentence that was unduly lenient.

34. The judge took the correct starting point for the minimum term under schedule 21, paragraph 6, as 15 years. There were no statutory aggravating factors as described in

paragraph 10 but those factors are not exclusive. The prolonged use of a weapon was a significant aggravating factor, as was the commission of the offence in front of a child. On any view of the matter, these serious features of the crime necessarily made it more serious and elevated the minimum term from 15 years.

35. The judge took a term of 20 years before giving credit for the plea. Some judges might have taken a higher term before credit but we are not persuaded that the judge erred in reaching the view he did. He must have taken into account the lack of premeditation, which is a statutory mitigating factor described in paragraph 11B of Schedule 21, and so he must have taken a minimum term of more than 20 years, before credit for the plea.
36. As this court has said on more than one occasion, the fixing of the minimum period to be served for murder cannot be approached as an entirely mathematical exercise: see, for example, *Thomas*, above, at [15]. It involves a weighing of material factors. In the present case, the judge in careful sentencing remarks explained how he reached the conclusion he did. Having done so, no criticism is or could be made for the amount of credit he gave for the plea. The offender, by accepting responsibility for his crime, had not waited for a psychiatric report and had spared the victim's family the ordeal of a trial.
37. For these reasons, although we grant leave to refer we decline to interfere with it.