

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/03189/A1
NCN [2022] EWCA Crim 1811



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 20th December 2022

B e f o r e:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE SPENCER

SIR NICHOLAS BLAKE

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E X

- v -

AMRIT SINGH JHAGRA

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr J Evans KC appeared on behalf of the Attorney General

Mr L Walker KC and Miss T Bajwa appeared on behalf of the Offender

J U D G M E N T
(Approved)

Tuesday 20th December 2022

LORD JUSTICE HOLROYDE:

1. On 29th January 2022, the offender Amrit Jhagra (aged just 19 and with no previous convictions) murdered Janis Kozlovskis (aged 17) and Ryan Theobald (aged 20) by stabbing them. Following a trial in the Crown Court at Sheffield before Choudhury J and a jury, he was convicted of their murders and of an offence of having an offensive weapon in a public place. For each of the offences of murder he was sentenced to custody for life, with a minimum term of 24 years, less the period of 245 days spent on remand in custody. A concurrent sentence of 18 months' detention in a young offender institution was imposed for the other offence.

2. His Majesty's Solicitor General believes the total sentence to have been unduly lenient. Application is accordingly made, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.

3. In summarising the facts we shall for convenience refer to persons mainly by their surnames alone. We intend no disrespect in so doing.

4. In the early hours of 29th January 2022, the offender, his friend Asa Booth and others were in the centre of Doncaster. They encountered a group comprising Kozlovskis, Theobald and their friends. It appears that there was a history of animosity between Booth and Kozlovskis, and they immediately began to fight. CCTV footage showed their fight moving along the street, with other members of each group following. The judge said that the behaviour of Theobald and his companions was "undoubtedly violent, thuggish and disgraceful", but "no one could possibly suggest that such behaviour warranted the ferocious attack that was about to befall them".

5. As the offender followed the fight, he took out a knife, which he had on his person, and held it by his side. It does not appear that anyone else in either group was armed with any weapon.

6. Theobald then joined in the fight by punching at Booth. The offender moved towards Theobald and swung the knife at his face. He then stabbed Theobald in the chest. Theobald sustained a stab wound which penetrated his heart and lung to an estimated depth of 13 to 15 centimetres, and slash wounds to his cheek and eyebrow. He collapsed and died at the scene.

7. The stabbing of Theobald caused others to become involved in the fighting. Booth punched another member of Kozlovskis' group, knocking him to the ground. Kozlovskis chased Booth. He posed no threat to the offender as he ran past, but the offender lunged at him with his knife and Kozlovskis went down. The offender then struggled with Kozlovskis on the ground and stabbed him repeatedly in what the judge described as a "frenzied and vicious attack".

8. Kozlovskis sustained three stab wounds to his body, one of which penetrated his heart and lung to a depth of 10 to 12 centimetres; a stab wound to the neck; and a stab wound to the knee, which was delivered with such force that the knife penetrated the femur. He died shortly afterwards in hospital.

9. The offender left the scene. Apparently, he took his weapon with him. A few days later, he surrendered himself to the police. When interviewed under caution he made no comment, but put forward a prepared statement in which he accepted his involvement in the incident. He stated that he had acted in defence of himself and his friends against a group who had attacked them in the past and had previously threatened to kill him.

10. The offender's evidence at trial was to a similar effect. He said that he had been attacked previously by members of the other group, including an occasion when one had chased him with a machete. He claimed that the weapon with which he had inflicted the fatal injuries was a tool which he carried for use in mending his bicycle and also for self-defence. The jury convicted the offender, as we have indicated.

11. At the sentencing hearing, the judge heard Victim Personal Statements from Theobald's mother and sister, and from Kozlovskis' sister speaking on behalf of her family. Their statements made clear the anguish caused by the deaths of the two young victims and the enduring effect on the bereaved, to whom this court extends its condolences.

12. The judge also had the assistance of a pre-sentence report and a number of testimonials from the offender's family and friends.

13. We should add that this court, in addition to seeing all those materials, has been assisted by a short report from the young offender institution in which the offender is detained, from which it is apparent that he has behaved well in custody and has shown himself willing to seek assistance to rehabilitate himself.

14. In commendably clear sentencing remarks, the judge said that the offender was carrying a knife "with the intention of using it to cause injury should the need arise and [he was] ready to use it". The CCTV footage showed that there had been no direct threat to the offender and no real need to defend Booth. He said that the offender had not used the knife to scare people away, as he had claimed, but rather had used it for the purpose for which it was carried, namely, as a weapon to inflict deadly injury. He described the offender's actions as "one more tragic instance of the misery inflicted on society by the scourge of knife crime".

15. Having regard to the offender's age, the judge was required by section 275 of the Sentencing Code to impose the sentences of custody for life for the offences of murder. By section 321 of the Code, he was required to make a minimum term order of such length as he considered appropriate, taking into account the seriousness of the offences. By section 321(3) he had to have regard to the general principles set out in Schedule 21 to the Code. By paragraph 3(1) of that Schedule, the normal starting point in determining the minimum term is 30 years, if the court considers that the seriousness of the offending to be particularly high. By paragraph 3(2)(f), one of the situations which will normally fall into that category is the murder of two or more persons. The judge adopted that starting point. By paragraph 7 of the Schedule, he was then required to take into account any aggravating or mitigating factors, to the extent that they had not been allowed for by the choice of starting point.

16. The judge applied those provisions with obvious care and commendable clarity. He took into account the offender's young age. The offences had been committed only about a month after the offender's 19th birthday. He did not find the offender to be unusually immature for a person of that age, but noted from the pre-sentence report that he appeared not to appreciate the full consequences of his actions. That was in keeping with the fact that persons of his age are still maturing. He made an adjustment of the starting point to 27 years, to allow for age and level of maturity.

17. The judge accepted a submission that none of the possible aggravating factors set out in a non-exhaustive list in Schedule 21 applied in this case. He found that the offender had not gone out looking for trouble or planning to injure anyone. He said:

"Whilst the use of a knife may amount to an aggravating feature, I do not consider it to be a significant one in the circumstances of this case where the normal starting point is

determined by the offence falling within paragraph 3(2) of schedule 21."

The judge accepted that the offence had not been premeditated and that the offender's intention had been to cause really serious bodily harm, rather than to kill. That is one of the mitigating factors listed in the Schedule. He also accepted that there was further mitigation in that the offender was genuinely remorseful; he had no previous convictions; and he was perceived by persons who knew him well to be a quiet and shy person who would not set out to hurt anyone. Finally, the judge made a small further downward adjustment to take account of the continuing effect of the pandemic on those who are in custody.

18. In the result, he reflected all this further mitigation by making a further downward adjustment of the minimum term to 24 years. In those circumstances, the judge imposed the sentences to which we have referred. He rightly emphasised that a minimum term is exactly what it says, and that even after serving it, the offender would not be released until the Parole Board decided that it was appropriate to do so.

19. On behalf of His Majesty's Solicitor General, Mr Evans KC submits that the total sentence was unduly lenient, in particular because the judge failed properly to reflect the fact that the murders were committed with a knife which the offender had carried with him to the scene, and/or because the judge gave too much weight to the mitigating factors.

20. As to the first of those points, Mr Evans submits that taking the knife to the scene with the intention of having it available to use as a weapon, and using it to commit the murders, was a significant aggravating feature and merited an increase above the 30 year starting point. He submits that the provision of paragraph 7 of Schedule 21, to which we have referred, required the judge in the circumstances of this case to treat the carrying and use of the knife

as a significant aggravating feature, notwithstanding that a 30 year starting point had rightly been selected because two victims had been murdered.

21. As to the second point, Mr Evans accepts that the judge correctly identified the mitigating factors, but submits that they should not have led him to so great a reduction in the minimum term.

22. Mr Walker KC, who represents the offender in this court as he did below, emphasises that the judge had presided over the trial, and submits that he was therefore in the best position to assess the weight to be given to the offender's age, maturity and personal mitigation. Mr Walker reminds us of the familiar case law to the effect that the passing of an 18th birthday does not bring with it full adult maturity, and reminds us of the well-established evidence that the brain continues to mature into a person's mid-twenties. He submits that the judge gave appropriate weight to all relevant factors, and that the total sentence was within the range properly open to him. He draws attention to the background to the offence, in that the offender had previously been threatened and bullied by members of the opposing group. He submits that the judge gave weight to the carrying and use of the knife by relying on it when rejecting the potential mitigation that the offender had acted to some extent in self-defence. Mr Walker submits that the total sentence was within the range properly open to the judge and was not unduly lenient.

23. We are grateful to both counsel for their admirably focused submissions.

24. The judge was faced with a difficult decision in determining the appropriate length of the minimum term to be served by the offender as punishment for his offending. In making that decision he had to take into account not only the seriousness of the offending, but also the comparatively young age, limited maturity and personal mitigation of the offender. The

provisions of Schedule 21 are not to be applied rigidly or mechanistically, and the Schedule itself makes clear in paragraph 8 that detailed consideration of the aggravating and mitigating factors could result in a minimum term of any length, whatever the starting point.

25. In our view, the judge correctly identified all relevant factors. He was, as Mr Walker submits, in the best position to assess the weight to be given to the mitigating factors. In our view, he did so carefully and thoroughly. We are not persuaded that there is any basis on which he can be criticised for the downwards adjustments which he made in those respects. We therefore see no merit in the second of the two principal submissions on behalf of the Solicitor General. If that had been the only issue, we would have refused leave to refer.

26. We are, however, troubled by one feature of what was otherwise an impeccable sentencing process. The carrying and use of knives is a matter of very serious concern to the public and to the courts. As this case sadly illustrates, where a knife is being carried in public, with the intention to have it available for use as a weapon, an outbreak of violence which would otherwise not result in serious injury can quickly escalate to one in which lives are lost. For a murder which does not call for a whole life order and does not fall within paragraph 3(1), paragraph 4 of Schedule 21 provides a starting point for the minimum term of 25 years if an offender aged 18 or over took a knife or other weapon to the scene, intending to commit any offence or to have it available to use as a weapon, and used it to commit a murder. Where, as in this case, paragraph 3(1) does apply, the carrying and use of a knife or other weapon is still an aggravating factor, though the weight to be given to it will vary from case to case.

27. We agree with the judge that in some cases which fall within paragraph 3(1), the fact that a knife or other weapon was carried with the requisite intent and used to kill may not necessitate any, or any significant, upwards adjustment to the 30 year starting point. It is

always necessary to avoid double counting of aggravating features of a case. It is, however, important in our view to note that the other eight categories of case identified in paragraph 3(2) as normally being of particularly high seriousness are all cases in which an offender is being sentenced for the murder of one person. The present case attracted a 30 year minimum term because it came within paragraph 3(2)(f) as the murder of two persons. In such a case, the Schedule provides for a minimum term which reflects the fact that more than one person has been murdered, whatever the circumstances of the murders. It follows that paragraph 3(2)(f) does not necessarily give sufficient weight both to the fact that more than one person has been murdered and to the seriousness of carrying a knife in public with the intention to use it as a weapon, and using it to murder.

28. That view is strengthened by the reflection that if the offender had murdered only one of his victims, the starting point would have been 25 years. With all respect to the judge, we are therefore unable to agree with his view that the carrying and use of the knife was not a significant aggravating feature in the circumstances of this case. We note also that the carrying of the knife – a serious offence in itself, even if no use had been made of it as a weapon – was reflected only in the term of 18 months' detention, which was necessarily ordered to run concurrently with the life sentences.

29. We have found this a difficult case. We hesitate to differ from the judge and we are acutely conscious that the minimum term imposed by the judge is a very long one for someone as young as the offender. We do, however, conclude that the failure to make any significant increase in the minimum term to reflect the carrying and use of the knife resulted in an unduly lenient total sentence. In our judgment, that feature of the case necessitated an upwards adjustment of at least two years. We do not differ from the judge in relation to any other aspect of his sentencing.

30. For those reasons we grant leave to refer. We quash the sentences imposed below for the offences of murder as being unduly lenient. In relation to each of the two offences, we substitute a sentence of custody for life, with a minimum term of 26 years, less the period of 245 days spent in custody on remand. The sentence for having an offensive weapon in a public place remains as before.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk