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IN THE COURT OF APPEAL
CRIMINAL DIVISION

On appeal from Manchester Minshull Street
(His Honour Judge Corbett-Jones)



Neutral Citation Number:
[2024] EWCA Crim 1130

Case No: 2023/03521/A1

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 4th July 2024

B e f o r e:

THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
(Baroness Carr of Walton-on-the-Hill)

MRS JUSTICE CUTTS DBE

MR JUSTICE HILLIARD

R E X

- v -

OMAR CHOUDHURY

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr J Scobie KC appeared on behalf of the Applicant

J U D G M E N T

Thursday 4th July 2024

THE LADY CHIEF JUSTICE: I shall ask Mr Justice Hilliard to give the judgment of the court.

MR JUSTICE HILLIARD:

1. On 14 August 2023, following a trial in the Crown Court at Manchester Minshull Street, the applicant (then aged 22) was convicted of causing the death of Alisha Goup by dangerous driving.

2. On 13th September 2023, he was sentenced to 14 years' imprisonment. On 18th September 2023, he was disqualified from driving for a total period of 14 years and four months, consisting of a discretionary period of five years and an extension period of nine years and four months pursuant to section 35A of the Road Traffic Offenders Act 1988.

3. Co-accused Hamidur Rahman was also convicted of causing death by dangerous driving and sentenced to 14 years' imprisonment.

4. The applicant now renews an application for leave to appeal against sentence after refusal by the single judge.

5. Alisha Goup was 16 years old when she died. She was a student at Oldham Sixth Form College, where she was studying for her A Levels. We have read the statements and letters about her which were available in the Crown Court. The judge rightly said that Alisha was a source of immense pride to her family and was universally loved and cherished by everyone whose lives she touched. It is clear to us that many people have been deeply affected by her death.

6. By the time of the offence on 23 February 2023, there was animosity between the applicant and Hamidur Rahman. The family of a girl whom Mr Rahman was dating disapproved of the relationship. Mr Rahman blamed the applicant for the fact that the girl's family had found out about the relationship. Mr Rahman was determined to confront the applicant about trouble which he believed the applicant had caused for him. The applicant gave evidence at his trial that Mr Rahman had made threats to him.

7. On 23 February, the applicant was driving a powerful BMW motor vehicle in Oldham. It was insured in his mother's name, but had his personalised number plate. The applicant was on the policy as a named driver. He had made modifications to the vehicle to increase its power and to increase the noise made by its exhaust. These modification had been made after the BMW had passed its MOT test. The modifications were such that it would not have passed any subsequent test. Mr Rahman was driving a smaller, but equally powerful BMW.

8. At 11.28 in the morning, the applicant's phone received messages saying that there were lots of police on the Oldham Road and not to be speeding. Thus, he had had a warning that very morning.

9. In the afternoon of 23 February, CCTV footage showed the applicant driving through a clearly marked pedestrian precinct in order to park directly outside a bank that he wished to visit. He then continued his journey through Oldham.

10. Mr Rahman spotted the applicant driving in the opposite direction on St Mary's Way. Mr Rahman turned his vehicle around and drove after him. He pulled up alongside the applicant and they exchanged words. The applicant drove off and Mr Rahman followed him. Mr Rahman overtook the applicant and drove across the front of his vehicle, causing him to stop.

Mr Rahman ran at the applicant's vehicle whilst armed with a bat. The applicant reversed at speed, drove forward and then reversed at speed a second time along the wrong side of the road, before mounting a pedestrian island and driving off. Mr Rahman returned to his vehicle and set off after the applicant.

11. Mr Rahman drove in an aggressive manner, causing the rear of his vehicle to fishtail as he attempted to negotiate a corner. The vehicles continued along busy roads with bus stops and commercial premises. Witnesses thought that the vehicles were racing or trying to escape from the police.

12. By this time, the applicant was driving at about 65 miles an hour in a 30 miles an hour speed limit area. He drove into an opposing lane in order to pass stationary traffic. There was a pedestrian crossing some distance ahead. The applicant drove through the crossing at speed, overtaking another vehicle on the crossing, on the wrong side of the road. A car turning right, ahead of the applicant and going in the same direction, had no opportunity to see the applicant's vehicle, and the two vehicles collided. The applicant's vehicle had still been on the wrong side of the road at the time of the collision.

13. The speed at which the applicant's vehicle was travelling caused it to leave the ground and cross onto the pavement where Alisha Goup was walking in Rochdale Road, in a busy area of Oldham. She died instantly. The applicant's vehicle travelled on before he brought it to a stop.

14. The applicant was arrested. When interviewed, he said that he could not recall the collision. He was shown CCTV footage and agreed that his driving fell far below the standard of a competent and careful driver.

15. The police recovered video material from the applicant's mobile phone. The applicant had not been convicted of any prior criminal offence, but the video material showed him driving the BMW at 150 miles an hour on a motorway in October 2021, and on another occasion at 120 miles an hour in November 2021. He had driven another vehicle around parts of Oldham at speeds reaching 100 miles an hour. On another occasion, in December 2022, he had driven at over 90 miles an hour on one of the same roads as involved on 23 February. On yet another occasion, he had filmed himself whilst driving on a motorway.

16. At trial the applicant contended that he had acted under duress in driving in the way he did, in fear of his life from Mr Rahman. The jury rejected the defence.

17. The applicant acknowledged to the author of his pre-sentence report that he could have stopped and telephoned the police. The report made reference to possible immaturity, but also to what are described as "underlying pro-criminal attitudes in relation to reckless risk-taking and dangerous driving". He was studying at university at the time of the offence. The report said that he showed little remorse, appearing concerned about himself and the situation in which he found himself.

18. The judge was provided with a number of letters which spoke to a better side of the applicant.

19. When he passed sentence, the judge said that nothing that happened in the courtroom could lessen the devastating loss for Alisha's family and loved ones. He said that the applicant was obsessed with his car. On previous occasions he had deliberately chosen to drive in a way which showed his quick willingness to disregard the rules of the road and to drive at grossly excessive speeds to amuse himself and to show off to others, whilst placing other road users at real risk.

20. The judge said that the applicant had said in evidence that Mr Rahman had brandished a knife when he ran to the applicant's vehicle. The judge did not accept the applicant's evidence and said that he was sure he had made a false claim to try and justify the way in which he then drove.

21. The judge considered the applicable sentencing guidelines. He said that there were a number of factors which put the applicant's culpability "firmly" into category A. There had been a deliberate decision to ignore the rules of the road and there was disregard for the risk of danger to others. It had been a prolonged, persistent and deliberate course of dangerous driving. The applicant had moved between a number of different roads over a significant area of densely populated streets. The applicant's speed was in excess of the limit and highly inappropriate for the prevailing road conditions, given that this was such a heavily populated stretch of road. What had happened was akin to racing and competitive driving. The applicant had performed a highly dangerous manoeuvre when driving in the opposing lane to overtake traffic.

22. The judge noted that the starting point for a culpability A offence was 12 years' imprisonment, with a range extending between eight and 18 years' imprisonment.

23. The judge said that the offence was aggravated by the evidence of the applicant's previous bad driving. As a pedestrian, Alisha had been a vulnerable road user. The fatal incident had been witnessed by many members of the public. The applicant's vehicle had been modified in such a way as to mean that it would not pass an MOT test. The judge concluded that the combination of multiple category A culpability factors and the aggravating features required him to make a significant upward adjustment from the 12 year starting point.

24. The judge accepted that the applicant had been threatened by Mr Rahman with a bat and then pursued by him. However, he said that whilst this may have been what started the incident, it did not justify the appalling driving which followed. He said that as long as the applicant was in his vehicle, he was not faced with an immediate threat to life, as he had sought to portray it. He knew the roads well and could have driven in a safe manner to a place of safety, such as a police station.

25. The judge said that the incident with Mr Rahman may have been the trigger, but the driving which followed was of the same character as could be seen in the recordings on the telephone. The judge said he was sure that the applicant drove in the way he did, not simply because of the threat from Mr Rahman, which he could have dealt with in a responsible way, but because in large part the applicant did not believe that the rules of the road applied to him. He said that the applicant retained a high level of culpability for what happened and could only expect a modest downward adjustment on account of how it began.

26. The judge said that he took account of the applicant's lack of previous convictions, but this had to be viewed against the evidence of previous bad driving.

27. The judge referred to the pre-sentence report, but said that he did accept that the applicant did have some remorse and had shown some empathy. He said that the applicant was less mature than Mr Rahman. Although he had not fully matured as an adult, he was far from being a youth. The judge said that the very serious nature of the offence, the multiple culpability factors and the aggravating factors outweighed the available mitigation by some considerable margin.

28. Mr Scobie KC, on behalf of the applicant, now argues that the sentence of 14 years'

imprisonment was manifestly excessive. It is not disputed that the case falls into the most serious culpability category, but he says that the judge did not take sufficient account of all the circumstances of the case, the applicant's age and lack of maturity, and his previous character. We are grateful to him for his submissions which he has advanced to best effect.

29. We have given the submissions careful consideration. As to the circumstance of the offence, in our judgment the judge was well placed to decide how much weight to attach to how the incident began when set against how it continued and the other options which were open to the applicant. We see no arguable basis for interfering with the judge's assessment that the applicant retained a high degree of responsibility and that only a modest reduction should be made for how events began. Indeed, it seems to us to be indisputable that the applicant had an existing propensity to drive dangerously, and Mr Rahman's actions were merely the prompt for him to behave in a way he was already disposed to do when it suited him.

30. Like the judge, we acknowledge that there is a better side to the applicant, and he had not been convicted of any previous offence. Good character would in any event be of limited weight when set against an offence of this gravity. But the overall picture included, as we have said, evidence that the applicant had been driving at speeds of 150, 120, 100 and 90 miles an hour on other occasions. The judge had his age and maturity well in mind whilst observing that the applicant was not a youth.

31. As it seems to us, the judge's application of the sentencing guidelines to the facts and circumstances of this case cannot be faulted. He had in mind all relevant factors. His task was to make an assessment of the offence and of the competing considerations he had identified, before arriving at the final sentence.

32. Notwithstanding Mr Scobie's helpful submissions, we cannot find any arguable grounds for saying that the judge made any error at all.

33. In these circumstances, this renewed application must be refused.

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

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
