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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 933

CASE NO 202103929/A3



Royal Courts of Justice  
Sitting at Mold Crown Court  
The Law Courts  
Mold  
CH7 1AE

Wednesday 25 May 2022

Before:

LADY JUSTICE NICOLA DAVIES DBE  
MRS JUSTICE JEFFORD DBE  
MRS JUSTICE COLLINS RICE DBE

REGINA  
V  
CHUN XU

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MR T CROWTHER QC appeared on behalf of the Applicant

**J U D G M E N T**

1. MRS JUSTICE JEFFORD: On 9 November 2021 in the Crown Court at Merthyr Tydfil, the applicant, then aged 32, was convicted following a trial of the murder of Wenjing Lin and the attempted murder of Yongquan Jiang. Wenjing was the 16-year-old daughter of Meifang Xu and Yongquan was Meifang's husband and stepfather to Wenjing.
2. On 12 November 2021 the applicant was sentenced to life imprisonment for the murder of Wenjing with a minimum term of 30 years. For the attempted murder of Yongquan he was sentenced to 25 years' imprisonment to run concurrently. He sought leave to appeal in respect of the minimum term. Leave was refused by the single judge and he now renews that application.
3. Meifang's parents had, in China, lived next door to the applicant's parents. She had known him since birth and treated him like a member of her family.
4. In 2020, Meifang and the applicant were both now living in the United Kingdom. The applicant and his brother-in-law collected £30,000 from Meifang which was intended to be sent back to China to repay money she had borrowed to start a take-away business. The applicant did not send all of the money to China and eventually told Yongquan that he had used, and lost, much of the money in gambling. Meifang's evidence was that £14,000 of that money had not been sent back to China. The applicant was paying off the debt that he owed to Meifang in instalments and the amount of the debt had been reduced to something in excess of £7,000. At trial there was evidence that, or that the applicant believed that, Meifang had told his sister or other members of his family about his debt and his gambling.
5. On 4 March 2021 the applicant visited Meifang and her family at their take-away business, the Blue Sky Chinese take-away in Treherbert. The applicant had called Meifang the day before asking to visit, which was unusual, and had asked Meifang not to

tell anyone else that he was visiting. He spent the afternoon and the evening with the family and after the shop closed at around 11 pm they all had dinner, before going to bed. The applicant stayed the night.

6. The night before that the applicant had stayed at another business in Pontypridd and had taken with him, from that business, a knife.
7. At 7.55 am on 5 March 2021 the applicant made internet searches on his mobile phone including, "Will fingerprints be burnt by fire?", "My fingerprints are on the knife. Will the fingerprints still exist after [the knife] is burnt by fire?", "Fingerprints are left on a brick if [I] burn the [brick] [can I] get rid of the fingerprints?".
8. Later that morning the applicant strangled 16-year-old Wenjing to death. Wenjing, still at school, had got up earlier than others to log on to an online maths class. She was an exemplary student who was expected to receive excellent GCSE results. Her mother heard her getting up and getting into the shower. Wenjing was exchanging Snapchat messages with a friend and the last message was sent by her at 9.27 am. Her friend tried to message her further but got no reply. By that time she had been killed by the applicant. He had strangled her face to face with his bare hands.
9. At 10.21 am the applicant rang Meifang's mobile phone. She was still asleep and did not answer. Yongquan woke at around 11 am. He saw the applicant standing at the bottom of the stairs. The applicant asked Yongquan if he could have some fish out of the freezer in the basement to take with him when he left. Yongquan, in his dressing gown and bare foot, led the way down to the basement. Yongquan then opened the freezer and bent in to get the fish out. The applicant started to stab him with a knife to his neck. Yongquan turned round and saw that the applicant had two knives. He asked the applicant what he was doing but he did not reply and kept attacking Yongquan, aiming the knife towards

his head. Yongquan grabbed him to try and stop him and they fell to the floor. There was a struggle and the applicant stopped his attack saying that he was tired and asking if they should stop fighting. Yongquan took hold of the applicant's hands to protect himself and they sat on the basement stairs. He asked the applicant why he had attacked him and the applicant replied, "Money, money, money."

10. Yongquan then called out for his wife. He asked the applicant if he could ring his wife but the applicant said "No". Yongquan asked if he could ring his daughter and the applicant said he could, although he (the applicant) of course knew by that time that she was dead. Yongquan tried calling her but received no reply. The applicant then told him to stop using his phone and said he wanted to kill himself. He threw one of the knives away but kept the other.
11. Yongquan heard his wife upstairs and called out to her. The applicant then resumed his attack on Yongquan as Meifang came downstairs to the basement. Yongquan told his wife that the applicant had stabbed him from behind. She tried to call a friend, but the applicant stopped her by biting her on the arm. Yongquan then managed to get the knife off the applicant and went upstairs. There he found Wenjing lying on the floor by the shop counter. Efforts to revive Wenjing were hopeless.
12. For the purposes of sentencing and having heard all of the evidence at trial, the judge formed the view that this was a carefully and callously planned crime which the judge described as a vengeful and murderous attack. The motive for this attack on the family was revenge for Meifang having told others about the applicant's gambling and debt. He took advantage of his relationship with the family, their friendship and the fact that Meifang saw him as part of her extended family to engineer a situation in which he would stay the night and find the family vulnerable in their own home.

13. The judge was sure that the applicant's intention was to kill Meifang, but first to kill the other members of her family in such a way as to cause her the maximum possible anguish. He was thwarted in his plan, and did not go on to kill Meifang, only because Yongquan fought back and was able to subdue him. As part of his plan the appellant had taken with him a knife which he used in the attack on Yongquan. He had carried out internet searches about the destruction of fingerprint evidence by fire.
14. The applicant first quietly killed Wenjing with his hands and then lured Yongquan to the basement waiting until he was in a vulnerable position bent over the freezer to attack him from behind with two knives, slashing and stabbing him about 20 times.
15. As the judge summarised it, this was a revenge attack with the aim of killing a family in retribution for a very trivial reason.
16. In fixing the minimum term the judge carefully considered whether this offence could properly be characterised as a murder for gain. He was not sure that it was a murder for gain and he did not proceed on that basis. Instead he took as his starting point a minimum term of 15 years in accordance with paragraph 5 of schedule 21 to the Sentencing Act 2020. He properly concluded that there were no statutory aggravating features, but he took into account other aggravating features to which we have already made reference. Those were the planning of this offence including the deception of the family, the young age of Wenjing, the fact that she was murdered in her own home and the terror that she must have felt when strangled face to face.
17. If that offence of murder were to be sentenced in isolation the minimum term the judge would have fixed was one of 22 years' imprisonment. The applicant does not, and could not in our judgment, argue that such a minimum term would have been manifestly excessive. The judge had, however, also to take into account the conviction for the

attempted murder of Yongquan. Having regard to the Definitive Guideline for cases of attempted murder, the judge found this to be a Category 2B case. That categorisation was accepted by the applicant in counsel's note for sentencing and it is not and could not be criticised before us.

18. Accordingly the starting point for this offence of attempted murder was a sentence of 25 years' imprisonment and the range was 20 to 30 years. There were a number of aggravating features of this offence. Again it was planned and, in particular, the applicant had lured his victim into a vulnerable position. He used the knife or knives that he had brought with him, it was a sustained attack, and the attack on Yongquan has had a significant impact on him, to some extent physical but particularly mental in that he has lost his confidence. Further, both he and Meifang feel deeply the loss of their beloved daughter. Nonetheless the judge did not increase the sentence over the starting point and imposed a sentence of 25 years' imprisonment for this offence.
19. The judge correctly noted that the applicant would have served 16 years and eight months of a determinate sentence of that length. He similarly correctly observed that he could not simply add that to the period of the minimum term for the offence of murder, but rather that he should have regard to the criminality as a whole. He directed himself in that respect, taking account of the decision of the Court of Appeal in R v Farhad Mahmud [2014] EWCA Crim 1008 and the decision in R v Jama Ahmed [2018] EWCA Crim 739. Having done so he increased the minimum term to one of 30 years' imprisonment. In doing so he explained clearly the approach he was taking and that he was uplifting the minimum term to reflect the conviction for attempted murder and the overall criminality of the applicant.
20. Mr Crowther QC, who appears pro bono on behalf of the applicant accepts that uplifting

the minimum term to take account of the conviction for attempted murder was the proper approach and indeed the one that he had advocated on behalf of the applicant. But he submits that in making that uplift the judge was wrongly double-counting the aggravating features and that the resultant minimum term was in any event manifestly excessive and did not properly reflect totality.

21. We can see no merit at all in that submission. There was some commonality in the aggravating features relating to the count of murder and the count of attempted murder. That is because they were part of the planned sequence of this attack. The planning of this attack therefore necessarily played a part both in the judge's assessment of the minimum term that he would have fixed if the offence of murder had been looked at in isolation and in the fixing of the determinate sentence for the attempted murder. In indicating the minimum term that he would have fixed looking at the count of murder in isolation, he took account of the further aggravating features of that offence. Similarly in fixing the determinate sentence for the attempted murder charge he took account of the aggravating features of that offence. What the judge was entitled to do and did was uplift the minimum term to reflect the totality of the offending and the criminality. He properly recognised that he could not add the determinate sentence of 25 years, or the element of such a sentence that would have been served, to the minimum term and instead increased the minimum term by eight years. We have already said that we do not regard that as involving any element of double-counting. Further, taking account of all the aggravating features we do not see that that could possibly be regarded as resulting in a sentence that was manifestly excessive. The minimum term of 30 years properly reflects the overall criminality of this offending.

22. Mr Crowther QC places reliance on the decisions in Mahmud and Ahmed as indicating

the scale of uplift to a minimum term that might be appropriate in a case such as this, although he carefully and clearly does not go so far as to suggest that these decisions set some kind of tariff. His submission is that the uplift in these cases was, as a percentage, significantly less than in the present case. The submission is one of proportionality rather than tariff.

23. We do not consider this comparison or percentage approach to be helpful. Mahmud, for example, was a case in which there was a single act of arson which resulted in multiple deaths or attempted murders. The murder of more than one person meant that the starting point was a minimum term of 30 years and any uplift for the offences of attempted murder has to be seen in the context of that high starting point. In the present case there were two distinct offences, albeit forming part of a sequence of events. The starting point was a lower one, but one which the judge was entitled to increase both for the aggravating features of the murder and for the attempted murder. There is nothing in the decisions in Mahmud or Ahmed which points to or supports some sort of percentage approach to this uplift.

24. In short, all cases turn on their own facts. In this case the judge's sentence was unimpeachable. This appeal has no prospect of success and leave to appeal is refused.

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