



Neutral Citation Number: [2023] EWCA CRIM 1149

Case No: 202203602 B1
202203643 B1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 October 2023

Before:

LADY JUSTICE SIMLER

MRS JUSTICE MAY

and

MRS JUSTICE STACEY

REX

- V -

MOEEZ BANGASH and JONATHAN MAKENGO

Tyrone Smith KC appeared on behalf of BANGASH
Jane Bickerstaff KC and Sachin Rajput appeared on behalf of MAKENGO
Hugh Davies KC and Louise Oakley appeared on behalf of the Crown

JUDGMENT

LADY JUSTICE SIMLER:

Introduction

1. These are appeals against sentence by leave of the single judge.
2. Following a seven-week trial at the Central Criminal Court before Her Honour Judge Durran and a jury that concluded on 7 July 2022, Makengo (then aged 25) and Bangash (then aged 26) were both acquitted of murder but convicted of manslaughter in the circumstances described below.
3. On 14 November 2022 the appellants, together with others convicted in the same trial, were sentenced. For manslaughter, Makengo was sentenced to an extended sentence of 21 years' imprisonment pursuant to section 279 of the Sentencing Act 2020 comprising a custodial term of 16 years and an extension period of five years, and Bangash was sentenced to imprisonment for life with the period of 14 years (less 765 days spent in custody on remand) specified as the minimum term under section 322 of the Sentencing Act 2020.
4. A co-defendant in the same trial, Tyler Moore, was convicted of murder and sentenced to imprisonment for life with a minimum term of 20 years (less 765 days spent in custody on remand) specified under section 322 of the Sentencing Act 2020. Because of the Covid-19 restrictions in force at the time, five other defendants were tried separately at an earlier trial between August and October 2021 before Her Honour Judge Joseph KC at the Central Criminal Court. Four of those were convicted of murder (Shariq Khan, Hassan Riaz, London Beqa and Omari Thompson) and one (Ihnsanullah Aman) was acquitted of both murder and manslaughter.

Summary of the facts

5. This was a joint enterprise killing of Mohammed Usman Mirza, then aged 19. On 19 November 2019 he was killed in a pre-planned revenge attack by friends or associates of Atiq Rahemi. Rahemi, together with another man, was shot at point blank range in the early hours of 28 September 2019 by a group of masked men. Mirza was a suspect in the attempted murder of Rahemi and was wanted by police for questioning. It was suggested that the intended target of the attack on Rahemi was Bangash, and he received a threat of life warning from the police after the shooting.
6. The detailed circumstances leading to the attack on Mirza and the attack itself are fully and clearly summarised by the judge in her careful sentencing remarks. For present purposes it is sufficient to provide the following summary.
7. The prosecution case was that Mirza considered Shariq Khan (also known as "Tyga") and Bangash as his friends. However, Khan and Bangash were also friends or associates of Rahemi. In the weeks leading up to the fatal attack (between 5 October and 18 November), several cars were stolen to be used to drive participants to the scene of the planned attack. A black Ford Kuga was stolen between 14 and 15 November. The cars

were also used to complete reconnaissance of sites later used to dispose of the cars. Immediately after the attack, two of the stolen cars (a red Peugeot and a white Captiva) were set on fire and telephone calls were made summoning assistance to take participants away from the burning cars. Petrol cans had been filled earlier in the day to use to accelerate the destruction of the cars. Telephones were used to make decoy calls designed to make it look as if their owners were elsewhere at the time the attack took place.

8. Khan had arranged to meet Mirza on 19 November on the pretext of the two committing a robbery together. At 10 pm that evening, Mirza met Khan in the stolen red Peugeot at Burnside Road. They drove to a garage area near Owen Waters House and were followed by the stolen white Chevrolet Captiva, arriving soon after 10.15 pm. A group ambushed Mirza. They followed him up an alleyway towards Owen Waters House. He was fatally stabbed many times with bladed weapons and finally collapsed in front of Owen Waters House. He made a dying declaration to a witness and his cousin (Isfahan Khan) that Tyga from Ilford had set him up and stabbed him. He was pronounced dead at 11.53pm that evening.
9. It was alleged that Moore, Khan, Riaz and Thompson were the people who stabbed Mirza or were present at the scene when he was stabbed. Makengo, Bangash, Beqa and Aman were not alleged to be present at the scene but were said to have been involved in the planning, organisation and implementation of the murder. After the attack some of the men were seen on CCTV meeting at a Domino's Pizza in Elm Park. Moore, Makengo, Bangash and others then travelled to a massage parlour in Swiss Cottage, which had been booked by Bangash. These meetings were characterised as a post-murder debrief. Cell site evidence showed them travelling from Swiss Cottage back to Ilford in the early hours of 20 November 2019.
10. The roles of Makengo and Bangash were clearly set out by the judge in the course of her detailed sentencing remarks. We shall return to these below.
11. In summary, Makengo was involved in the theft of three of the stolen vehicles on a number of days prior to the attack and had control of the Ford Kuga after it was stolen. His phone and the car were linked to the reconnaissance of the site used for the destruction of the White Captiva (in Express Drive). He also remained in telephone contact with other accused throughout the evening. Later he drove Moore, Bangash and Thompson from Ilford to Swiss Cottage and back, for the debrief at the massage parlour. He was stopped by police in the Ford Kuga on 29 November. An examination of clothing from the burnt-out Captiva car found DNA linked to him.
12. In police interview Makengo gave an account stating he had no knowledge of Mirza or the attack. On the date in question he had been with others unconnected with the murder. During a re-interview he provided a prepared statement, again denying participation and answered no comment to questions.
13. Makengo gave evidence at trial and maintained his denial of any involvement in the plan to attack Mirza, who was not known to him. The phone contact he had with some of the defendants, who mostly lived in the same area as him, was in relation to supplying drugs on a social basis. He did not know Beqa or Aman. He denied any knowledge of the offences leading to Mirza's death, including the theft of cars. He accepted trying to

create a false alibi and lying in police interview, but said that he had panicked given the seriousness of the allegation and wished to distance himself from the other accused. He did not wish to admit to criminal behaviour (drug supply and driving whilst disqualified). He acquired the Ford Kuga from Riaz to cover a drug debt. He accepted driving Bangash and Thompson to the massage parlour, but not Moore. His DNA may have been present as a result of secondary transfer from a bag of drugs or something similar.

14. Bangash was considered by Mirza to be a friend but was in reality a double agent with ties to Rahemi. He exploited his connections with Mirza to assist, alongside Khan, with coordinating Mirza's arrival at the scene of the attack. At just before 5pm on 19 November, he arranged the booking of the massage parlour in Swiss Cottage, later used for the debrief. He made calls to Mirza right up to the minutes before his death. At around this time, Bangash called others, including Makengo at 10.17 pm, to update them in accordance with the alleged plan. At 10.20 pm, as he was dying, Mirza called his cousin stating that he had been stabbed and that Tyga had set him up. At 10.21 pm, the cousin called Bangash and they subsequently met. The cousin believed that Bangash would help him find Mirza. Bangash made further calls to the massage parlour, later travelling there with Moore, Makengo and Thompson, to meet other accused at 12.30 am. At 2.40 am Bangash was still in contact with Mirza's cousin.
15. Bangash told police initially that he last saw Mirza five days earlier and that there had been limited communication between them. In police interview he answered no comment to questions asked of him.
16. He did not give evidence at trial.

The sentences

17. Both appellants were sentenced without pre-sentence reports, and we make clear at this stage that no report was then or is now necessary in either case.
18. Manslaughter is an offence listed in schedule 19 of the Sentencing Act 2020. Both men were over 21 on conviction and the offences were committed after 4 April 2005. Section 285 of the Sentencing Act 2020 was therefore potentially engaged in both of their cases, and the question whether life sentences should be imposed had to be considered. That in turn meant consideration and determination of the question whether the offender in question posed a significant risk to members of the public of serious harm occasioned by the commission of further specified offences. Thus, a discretionary life sentence or an extended sentence were possible outcomes.
19. The judge made factual findings about Bangash's role as follows:

“You were involved in the planning of the offence, you connived with Mr Khan to ensure Mr Mirza was present in the Ilford area and met Mr Khan on 19 November. You had direct contact with Mr Mirza and deliberately deceived him and acted as a double agent to ensure he was present in the Ilford area, meeting with Mr Khan on 19 November. You communicated with co-defendants around the time that Mr Mirza was attacked, including with Mr Makengo, and with phones belonging to

Tyler Moore and Hassan Riaz on what were their dirty mobile phone numbers. You made a booking at the massage parlour in Swiss Cottage to facilitate the debrief after Mr Mirza was attacked. I am not persuaded that the fact that you booked the massage earlier in the day has any real significance as you knew that an attack was to take place later.

Immediately before Mr Mirza was attacked, you were part of a multiway call involving Mr Mirza, Mr Makengo and Mr Khan, as the red Peugeot was being driven into the garages. You were involved in the aftermath in the sense that you continued to act as a double agent, communicating with and driving around with Isfahan Khan immediately after Mr Mirza was attacked. You travelled to Swiss Cottage with Mr Makengo, Mr Moore and Mr Thompson in a stolen vehicle, where you met up with Khan and Riaz for a debrief.

Mr Smith makes representations in his helpful sentencing document in relation to your role. I accept it is not clear that you were the intended target of the attack on Mr Rahemi. I am satisfied, however, that you had oversight as to the planning in the form of stealing cars and identification of locations.

I cannot be sure that you knew the mechanism of how Mr Mirza would agree to get into the car with Shariq Khan and I cannot be sure that you knew that knives would be used, but I am entirely satisfied that you were a principal figure in the planning of this attack on Mr Mirza. You were the primary link with him. You were a trusted friend of both Mr Mirza and Isfahan Khan. You made sure that others effectively did the dirty work of stealing the cars, the reccy of the sites of the attack and for the destruction of the cars. You kept yourself away and as a principal leader only you could have ensured a total arms' length involvement for yourself.

When Isfahan Khan received the final telephone call from Mohammed Mirza, you were the first person he called. You went with him to try to find Mr Mirza, knowing full well where he was and what had happened to him. The prosecution characterised your role as that of a double agent, displaying outward friendship to Mr Mirza while plotting with others to have him injured and I accept that overarching description of your role. You organised the celebration or debrief at the Swiss Cottage massage parlour."

20. The judge made factual findings about Makengo's role and involvement as follows:

"Jonathan Makengo, you are 25 years of age. On 19 November 2019 you were 22 years of age. It is submitted by the prosecution that you should be sentenced as a trusted lieutenant of Shariq Khan, that you intended that Mr Mirza be caused harm falling just short of grievous bodily harm. You were given access to and allowed to drive a stolen Ford Kuga that was stolen overnight on 14 and 15 November. You were still driving this vehicle on 19 November and were still in possession of the vehicle on 29 November 2019 when you were arrested. You were involved in the planning of the offence and assisted

in stealing vehicles. You were in communication with Mr Khan in the early hours of 19 November while Mr Khan was in the vicinity of Owen Waters House. Immediately thereafter, you were also in contact with Mr Riaz and Mr Moore. You were involved in transporting Mr Riaz and/or collecting the petrol after it had been purchased by Beqa and Aman. You were present at the reccy around Express Drive between 17.00 and 17.45 in the evening of 19 November 2019. Immediately before Mr Mirza was attacked, you were part of the multiway call involving Mr Mirza, Mr Bangash and Mr Khan as the red Peugeot was being driven into the garages. You were involved in the aftermath in that you drove Mr Bangash, Mr Moore and Mr Thompson to Swiss Cottage in the stolen Ford Kuga for the de-brief and you were driving the stolen Ford Kuga in convoy with the Vauxhall Mokka when it returned to the scene where Mr Mirza had been attacked on 20 November, with Mr Khan, Mr Riaz and Mr Moore.

Mr Berry too in his helpful sentencing note disputes that you were a trusted lieutenant, that you were involved in the transportation of petrol to assist Beqa and Aman, and disputed that you were party to a multiway call involving other defendants.

I am satisfied that while you were trusted by Shariq Khan, you were not a leading mind in this operation. You were acting on his instructions and carried out a number of significant tasks. I am satisfied you participated in the reccy of the attack scene, were involved in stealing cars, drove the Kuga to assist in preparation for the attack. You were involved subsequently when you returned to the scene of the attack, but like Mr Bangash and Mr Beqa, you did not attend the scene.

...”

21. In sentencing both Bangash and Makengo, the judge first dealt with culpability. The prosecution contended this was a case involving very high culpability (category A) with a starting point of 18 years and a range of 11 to 24 years in the Sentencing Council’s Manslaughter Guideline, with death caused at a time when both had an intention to cause harm falling just short of grievous bodily harm. Leading counsel for both appellants sought to persuade the judge that a lower category applied. She was, however, satisfied that a significant violent assault on Mirza was planned, falling just short of really serious bodily harm. She said she came to this view based on the significant planning, involving thefts of vehicles, their destruction, the use of dirty phones, the provision of petrol and clothing to conceal the identity and cars of those involved. There was a high risk of death given the large group attack in which Mirza was significantly outnumbered. The combination of these two features, both extreme in nature, led to her conclusion that culpability was very high in both cases. The starting point was therefore 18 years. The judge made clear, however, that she could not be sure either one knew those carrying out the attack would be armed with knives.
22. The judge found that there were aggravating features in both cases that were additional to the factors placing the case in category A of the guideline. It was a revenge attack in the context of ongoing violence between different factions; it was to be a group attack to take place in public areas at a time when others were likely to be, and were in fact, aware of and affected by it; the significant physical suffering caused to Mirza; and that neither was a person of good character.

23. In the case of Bangash, the judge found that his one conviction for an offence of violent disorder in 2015 did not significantly aggravate this offence.
24. The mitigating features in his case were his age and the positive references she had received about him. Bangash was 26 at the date of sentence and 23 years old at the time of the offence, and although the judge did not find him to be immature for his age, she recognised that some allowance should be made for this.
25. The judge then addressed the question of dangerousness in accordance with step 3 of the Sentence Council Guideline. She found that Bangash is dangerous: he was part of the planning group for a sophisticated revenge attack intending violence just short of really serious harm, albeit she could not be sure he knew those carrying out the plan would be armed. Weighing all the circumstances of the case, she concluded that this manslaughter offence was so serious that a life sentence was required. Having taken a starting point of 18 years she elevated that to 24 years to reflect the aggravating features and then reduced it to 21 years to reflect the mitigation (primarily Bangash's youth).
26. Makengo was 22 years old at the date of the offence and 25 at sentence. He had three convictions for eight offences but none for violence. There was a psychiatric report dated 13 September 2022 from Dr Alan Reid in his case.
27. As far as mitigating features were concerned, having seen him give evidence, the judge found him to be immature for his age and said she was making a significant reduction because of his age. She said that Makengo could not be described as a leading or organising mind but there was nothing to suggest he was under any peer pressure to play his part in the planning of this enterprise. She referred to Dr Reid's psychiatric report which detailed his difficult personal circumstances growing up. He had difficulties with his mental health. He had a promising future in sport of some kind before he was injured and then turned to a life of crime.
28. The judge was satisfied that Makengo is dangerous because he was part of the planning group for a sophisticated revenge where violence falling just short of really serious harm was to be caused. This was revenge for an attempted murder involving a firearm and he knew those carrying out the directions of others would administer group violence.
29. In Makengo's case the judge was not satisfied that the offence was so serious that a life sentence had to be imposed, given his involvement and knowledge of the background, and bearing in mind that he worked under the direction of others. However, she was satisfied that Makengo willingly engaged in a sophisticated revenge attack on someone not apparently known to him. Further, she had regard to Dr Reid's observations about his need to fit in and concluded that until that tendency diminished, he would pose a significant risk to the public of serious harm occasioned by the commission of further specified offences. A determinate sentence would not therefore be sufficient. Accordingly, the judge concluded that an extended sentence should be imposed. Her starting point of 18 years was elevated to 22 years to reflect the very substantial aggravating features. Bearing in mind his mitigation and how he came to be involved in criminality, she reduced that to 16 years. This was the custodial term with an extended licence period of five years.

The appeals

30. There are a number of overlapping grounds of appeal against sentence common to both appeals.
31. Both Mr Smith KC and Ms Bickerstaffe KC contend that it was wrong for the judge to determine that the appellants were dangerous and to impose a discretionary life sentence in the case of Bangash and an extended sentence in the case of Makengo without inviting submissions from the Crown or defence, or at all. This question was not ventilated in writing or in oral argument. The prosecution referred to the relevant provisions but made no submissions as to their application to the facts and circumstances of this case and did not address the judge on this issue. Neither defence counsel mitigated on this basis and the judge did not indicate that she had dangerousness in mind or invite counsel to address her on this basis. The absence of submissions on this question was compounded by the lack of any independent assessment, in the form of a pre-sentence report in either case, to assist with the likelihood of re-offending and the risk posed by each appellant.
32. In any event, it was wrong in principle to conclude that either appellant was dangerous. There was an insufficient basis for these conclusions. The fact the jury could not be sure that Bangash and Makengo knew the attackers would be armed was the strongest evidence against such a finding. Given this and the jury's verdict which meant they could not have intended to cause really serious harm, there was no material that could properly lead to a conclusion that either young man was a significant risk to members of the public of serious harm. There was nothing in the role and conduct of each appellant when properly viewed in light of the manslaughter verdicts, nor in their personal circumstances and characteristics, that afforded any basis for findings of dangerousness in either case. A determinate sentence should have been imposed in each case.
33. Furthermore, both appellants contend that culpability was wrongly categorised as A when at best the evidence in relation to each appellant was only capable of justifying category B. There was no basis for a conclusion that there were "extreme" features and nor could it be said that there was a multiplicity of category B features that raised the case to a category A offence.
34. Mr Smith submitted on behalf of Bangash that there was insufficient evidence to support the factual findings made by the judge about his role, in particular, that he had a leadership role in planning the whole enterprise, and making sure others did the dirty work for him. These were unreasonable findings and, moreover, the judge's findings were completely at odds with the logical inferences that should have been drawn from the jury's verdict in his case. How could it be said that Bangash had organised a knife attack if he did not know the attackers were carrying knives? If Bangash did not know this was to be a killing why would there be a need for him to organise stolen cars? Why would there be a need to obtain petrol before the incident to set the stolen cars on fire after the assault if this was merely an assault that was to fall short of causing serious harm? The fact that the jury could not be sure that Bangash knew that the attackers were carrying and would use knives was the strongest possible evidence that Bangash was

not the organiser. The judge was simply wrong to find that he was the architect of this pre-planned attack. At best he ensured that a meeting would take place between Mirza and others where some harm would occur. His role was significant but not essential since Khan and Mirza knew each other and had arranged to meet that evening.

35. Ms Bickerstaffe adopted these submissions as to role and categorisation in Makengo's case. She submitted that the extreme character of one or more culpability B factors and/or a combination of culpability B factors does not safely feature in relation to Makengo to result in category A applying. In his case too, the jury could not have been of the view that he intended for those present at the scene to use at least really serious harm towards the victim because he was acquitted of murder. Moreover, the judge accepted that he would not have known that those present at the scene would have knives. He too can only have intended that some harm be caused. Makengo was not associated with Rahemi or Mirza and was not present at the scene. There was no direct evidence to support his involvement in transporting petrol at any time and the judge was not entitled to draw that inference. Further, the fact that he was not present at the scene of the murder, means he would arguably not have known the extent of any force used by those present.
36. Finally, both appellants contend that even if the judge was justified in concluding that this was a category A offence within the guidelines, the notional sentence was too high in each case. The aggravating features identified by the judge were the very features of culpability B (or so closely associated with those features) that resulted in category A being the more appropriate category in this case. They had already been taken into account in reaching the category A conclusion, and there was no justification for increasing the starting points to 24 and 22 years respectively.

Analysis and conclusions

37. We start with role and categorisation. The judge presided over this seven-week trial. Unlike this court, the judge had the obvious benefit of having heard and been immersed in all the evidence (including factual/eyewitness, cell site, telephone, forensic and expert evidence) about this revenge attack, its planning and execution. She was uniquely well placed to evaluate the role of each appellant in the offending. She made determinations of fact, as she was entitled to do, and in our judgment, was fully entitled to make the findings she did.
38. Despite the attractively presented and superficially compelling challenge by Mr Smith to the rationality of the judge's factual findings, we are satisfied that there was no inconsistency in her factual findings, the manslaughter verdicts and her conclusion that she could not be sure either appellant knew the attackers would be armed with knives. We are satisfied that the judge was amply entitled to conclude that the significant planning, the stealing of cars, the use of dirty phones and petrol to set fire to the stolen cars were all part of reputation building, and the demonstration of power and strength in the context of ongoing violence between rival factions and the earlier attempted murder by shooting. The jury were not sure that either appellant had the necessary intent for murder, but this was a death caused in the course of an unlawful act: a minutely planned, remorselessly executed revenge attack by a group of men on one unsuspecting man. These were, on any view, extremely serious features. There was clearly a high risk of death given the group attack in which Mirza was significantly outnumbered.

The fact that each appellant's own intention fell just short of really serious harm does not alter this, or the extreme planning and remorseless execution that were features of this organised attack. As we have said, it was reputation building violence in a show of strength and power.

39. Both appellants played an intrinsic part in the attack. Both knew and intended an attack just short of grievous bodily harm by four men on Mirza. It was a clearly motivated revenge attack. This was offending at the most serious end of the spectrum for manslaughter. Their own roles, motivation and participation are unchanged by the verdicts.
40. In the case of Bangash, the history of his engagement with others, including his friend Rahemi, the detail of telephone activity, the planning and movements before, during and after the attack, amply entitled the judge to find that he was a leading organiser. He orchestrated events, while ensuring that others took the risk of attending the scene of the attack itself. For example, he was part of the multiway call involving Mirza, Makengo and Khan before the attack, and as Mirza was being driven to the ambush, Bangash was speaking to him by phone, providing reassurance to him, as he was driven to the prearranged place for the ambush. The evidence undoubtedly justified the assessment of very high culpability in Bangash's case and the description of double agent.
41. The same is true in relation to Makengo's role, motive and participation, and we reject the submission that his conduct properly assessed was in category B at most. There was ample evidence of Makengo's involvement in planning the revenge attack intending violence just short of really serious harm. He assisted in stealing cars. Petrol cans produced by Aman and Beqa were put into the Kuga and driven to the scene by Makengo. He took part in the reccy near Express Drive where the red Peugeot was burnt out. Makengo spoke to Khan on the morning of the attack, at a time when Khan was in the area of Owen Waters House, and immediately afterwards, he was in contact with Riaz and Moore, all principals in the murder. Makengo was also part of the multiway call immediately before the attack, as the judge was entitled to conclude; and he was involved in the aftermath. The judge made wholly justifiable determinations of fact. Her findings as to the nature of the offending generally, and Makengo's own conduct and the role he played in it, cannot be impugned. They provide ample justification for her assessment of very high culpability in Makengo's case.
42. For all these reasons we are satisfied that this was demonstrably a category A case for both Bangash and Makengo.
43. As to the approach to the question of dangerousness, we consider that it would have been better for this question to have been ventilated in the course of the sentencing hearing and an express opportunity given to defence counsel to make submissions on it. That said, in light of the nature and seriousness of this organised attack, the possibility of dangerousness findings was inherent in the case, and by implication, the possibility of a discretionary life or extended sentence. Furthermore, it was expressly referred to in the prosecution sentencing note. Given the evidence as a whole, and the judge's wholly justifiable determinations of fact as to each appellant's role and character, we can see no basis for interfering with the findings of dangerousness that she made. We repeat: this was an organised revenge attack; meticulously planned over

weeks and remorselessly executed by a large group of men; and each appellant played an intrinsic and significant role in it.

44. Bangash was, as the judge found, a leading organiser. He planned and orchestrated events in a way that would demonstrate his faction's strength and power, and he ensured that others took the risk of attending the scene of the revenge attack itself. The judge was uniquely well placed to assess the role he played in planning and effecting the execution of the attack, his overall culpability and the risk he posed. The findings she made were amply open to her, and entitled her to conclude that he posed a significant risk of serious harm in all the circumstances. Her conclusion that a life sentence was necessary, was both rational and reasonable: the seriousness and sophistication of this revenge attack, in which he intended violence just short of serious harm to be caused, was an ample basis for concluding that his role in this offence was at the most serious end of the spectrum. We have concluded that there is no proper basis on which to interfere with her assessment that he is dangerous, and that a life sentence was necessary in his case.
45. Likewise, Makengo was trusted by Khan, one of the principals in the attack, and played his part in the planning and putting into effect the group attack on Mirza. Though he did not know weapons would be used, he must have known this was to be a group attack by four on one in which he intended violence just short of serious harm to be caused. The judge considered the detail of his role in undertaking significant tasks leading to this revenge attack following the shooting and attempted murder of Rahemi. She properly considered Makengo's maturity relative to other convicted defendants, as well as his evidence during the trial. She was able to make a clear assessment of him when he gave evidence. She also had proper regard to the report of Dr Reid. Her judgment that he too posed a significant risk of serious harm in all the circumstances, and that an extended sentence was necessary, was properly based, and cannot be impugned.
46. That leaves the question whether the ultimate sentence imposed in each case was, as both Mr Smith and Ms Bickerstaffe contend, manifestly excessive. As we have explained, having concluded that this was a very high culpability manslaughter offence in each case, the judge identified a number of features that aggravated the offence for both appellants, and which she expressly said were not features she had already taken into account in placing the offending in category A. In Bangash's case this resulted in an increase from the 18-year starting point in category A to 24 years, and in Makengo's case, an increase to 22 years. Both counsel contend that the increase was too high and that the aggravating features were already encompassed in the 18-year starting point in each case.
47. We have set out the aggravating features relied on by the judge. We have concluded that there is force in this ground. With all respect to the judge to whom we pay tribute for her careful, detailed sentencing remarks, we consider that she fell into error in aggravating the starting point to the extent to which she did in both cases, and that there was an element of double counting. In particular, we consider that the first two aggravating features she identified (it was a revenge attack in the context of ongoing violence between different factions by a group of men) were very closely connected with the judge's assessment that this was category A offending with a starting point of 18 years' imprisonment. On the other hand, we are satisfied that the judge was entitled to have regard to the fact that this was a planned attack in public areas where others

were liable to be affected and that significant suffering was caused to Mirza by the group attack, albeit neither appellant knew knives would be used. Neither man was of good character. We do not understate the seriousness of the appellants' respective roles in this offending, but viewed overall, we have come to the conclusion that although the features identified by the judge justified an increase in the starting point in each case, we consider that an increase of 6 and 4 years respectively was manifestly too high.

48. Having regard to these conclusions and balancing the mitigating considerations applicable to Bangash, we consider that the notional determinate term in his case should have been 18 years. On that basis, the sentence should have been one of life imprisonment with a minimum term of 12 years. We therefore allow the appeal in his case to this limited extent only: we quash the sentence of life imprisonment with a minimum term of 14 years, and substitute for it a sentence of life imprisonment with a minimum term of 12 years.
49. So far as Makengo is concerned, and again balancing the aggravating and mitigating considerations applicable to his case, there should have been a notional determinate term of 14 years. His extended sentence should therefore have comprised a custodial term of 14 years. We consider that an extended licence period of four years was appropriate. We therefore allow the appeal in his case to this limited extent only: we quash the extended sentence of 21 years (comprising a custodial term of 16 years and an extended licence period of five years), and substitute for it an extended sentence of 18 years, comprising a custodial term of 14 years and an extended licence period of four years.