



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 72
HCA/2019/162/XC
HCA/2019/159/XC
HCA/2019/153/XC

Lord Justice Clerk
Lord Menzies
Lord Turnbull

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in

APPEALS AGAINST SENTENCE

by

(1) MUHAMMED RAUF; (2) SHAHIDA ABID; (3) SAIMA HAYAT

Appellants

against

HER MAJESTY'S ADVOCATE

Respondent

First Appellant: G Allan QC, Campbell (sol adv); John Pryde & Co (for Campbell & McCartney, Glasgow)

Second Appellant: J Scott, QC (sol adv), M Guarino (Sol Adv); Paterson Bell

Third Appellant: MacConnachie, QC, Green; John Pryde & Co (for Livingstone Brown, Glasgow)

Respondent: A Prentice QC (sol adv) AD; Crown Agent

8 November 2019

Introduction

[1] These appeals concern the appropriate punishment part to be imposed as part of a life sentence in respect of a conviction for the murder of a single deceased in circumstances

where the violence is extreme and premeditated. The first and second appellants are married to each other. The third appellant was married to the deceased, Haider Hayat. All three appellants were convicted after trial of murder by repeatedly striking the deceased on the head and body with a hammer and a knife or similar implements. The third appellant was also convicted of previously evincing malice and ill will towards him. There was also a docket attached to the indictment disclosing that the third appellant had assaulted the deceased on various occasions over a period of 4 years which allowed evidence relating to such matters to be led.

[2] The second and third appellants were also convicted of attempting to pervert the course of justice which essentially consisted of trying to clean up the premises, disposing of cctv footage and concocting a false story which the trial judge described as “preposterous”. There was evidence that the third appellant had feigned unconsciousness when the paramedics arrived.

[3] The first appellant was sentenced to life imprisonment with a punishment part of 24 years; the second and third appellants were sentenced to life imprisonment with a punishment part of 25 years and 6 months standing their conviction in respect of charge 2, in respect of which concurrent sentences of 3 years were passed.

[4] All three appellants now appeal against their respective sentences in relation to charge 1 on the indictment on the basis *inter alia* that the punishment parts imposed by the sentencing judge were excessive.

Background

[5] There was considerable evidence led at the trial in relation to the behaviour of the third appellant towards the deceased, including threats of and actual violence towards him. Some of this evidence came from those who witnessed it. Other evidence came from what

the deceased, described as a very quiet person, reluctant to contact the police, had told his Imam and family members, and what was contained in written notes discovered after his death, and which he seems to have prepared with a view to obtaining advice about divorce. The deceased told his brother that during a visit to Glasgow he awoke to find the third appellant standing on one side of the bed with a hammer, a knife and rope in her hands. The third appellant asserted that the deceased had been an abusive husband. It is true that the third appellant left the deceased and moved to Glasgow with the children, but this may be consistent with either account. Further, the deceased visited them there on several occasions, transporting the third appellant's belongings for her, and just prior to the murder had taken the family on holiday to Blackpool. The trial judge considered that the weight of evidence pointed towards the third appellant as the abuser in the relationship. The jury must have accepted at least some of this evidence, from the fact that they did not delete the libel of previous malice and ill will. The trial judge noted that all three appellants gave varying and inconsistent accounts of what they maintained had taken place.

Circumstances of the offence

[6] The murder took place in the third appellant's flat, to which the first and second appellants were regular visitors. A downstairs neighbour recorded noise from that flat at about 0300 on the morning of the murder, as if more than one person were running from the living room towards the bedroom, where subsequent evidence suggested that the assault appeared to have commenced. The neighbour heard thumping noises, groaning and whimpering for about 10 minutes. It sounded as if a male person was being attacked. Regular thumping at a steady pace could be heard on the recording when played in court, which the Crown submitted was the striking of the deceased on the head.

CCTV evidence

[7] There was evidence that CCTV cameras installed in most of the rooms at the locus had been deliberately disconnected prior to the killing. There was a basis in the evidence for concluding that (a) the deceased could not have done this and (b) that the third appellant had been involved in doing so. CCTV footage from earlier in the evening showed the second and third appellant in intense conversation, whispering to each other, on several occasions. The second appellant was clearly observed making cut throat motions; the third appellant could be seen making stabbing motions towards her own body. There was also evidence of telephone contact between the appellants, including between the first and third appellants.

Pathology and scientific Evidence

[8] The deceased had many injuries across his whole body but the main injuries were to his head and neck. There were at least 100 separate blows to the head, the skull being effectively demolished into small pieces. The deceased's throat was cut at least 16 times, probably inflicted when he was already dying. One of the cuts was so deep that it cut through the strap muscles, the thyroid cartilage and the epiglottis, penetrating to just in front of the spine. The degree of violence was intense, severe and brutal.

Evidence of the First Appellant

[9] The first appellant gave evidence admitting responsibility for the killing but asserting provocation. He said he had instructed the "clear up" operation. His evidence was inconsistent at times and the accounts provided varied throughout his evidence. He could not explain the injuries suffered by the deceased, and some of his evidence was contradicted by the pathology evidence. The trial judge concluded that provocation could not arise in the

circumstances and withheld that plea from the jury. The other appellants did not give evidence.

Submissions

First appellant

[10] Essentially the appeal for the first appellant was advanced on a comparative basis under reference to well-known reported cases such as *HM Advocate v Al-Megrahi*, *HM Advocate v Walker* 2003 SLT 130 and *HM Advocate v Boyle* 2010 JC 66.

Second appellant

[11] The argument for the second appellant was that the judge failed to give appropriate weight to mitigating factors relating to her personal circumstances and lack of convictions; had speculated unduly about the possibility of her direct involvement in the murder, as opposed to involvement by accession and planning; and that the circumstances of charge 2 were not sufficiently serious to justify imposing a greater sentence on her than on the first appellant who was the main assailant.

Third appellant

[12] Whilst there was limited circumstantial evidence capable of supporting the inference that there was active involvement on the part of the third appellant, the more significant body of evidence, pointed away from this. The sentencing judge ought to have distinguished between the part played by the principal actor, namely the first appellant, and the third appellant whose involvement was less direct. The post incident "cover up" was haphazard and ineffectual. The false story given to police was demonstrably false, and this did not justify a greater sentence for the third appellant compared with the first. Whilst there was evidence of a planned attack on the night of the murder, there was no proper

foundation for the view that the third appellant had been plotting the murder of her husband over a period of months.

The Sentencing Judge's Reports

[13] The sentencing judge considered the appellants had committed the "brutal murder of a defenceless man" who was most likely asleep in his bed at the time the attack commenced. This was a "relentless and merciless attack with lethal weapons" lasting in excess of 6 minutes, on the basis of the "chilling" recording played to the jury.

[14] In her sentencing remarks the trial judge stated that "Mr Rauf may well have been the main assailant but all three of you are responsible for what was a merciless attack on Mr Hayat and all three of you are equally responsible for his death." This appears to be essentially consistent with the approach taken by the advocate depute at trial, although the possibility that the women may have been directly involved to some extent appears to have arisen at some point, although in what way and to what degree is not apparent. In describing the cross case in the charge, the judge explained to the jury:

"You're invited to hold that all three accused were acting together, acting in concert, that all participated to a greater or lesser degree in the assault upon Mr Hayat, each may have played a different role but, looking at the whole evidence, all three are equally responsible for the killing, even if you were to take the view that all, or the majority, of the blows inflicted were inflicted by the first. You are invited to find all three guilty of murder."

[15] In her report in respect of the second appellant, the trial judge observes (p22) that "Forensic evidence implicated the women as participants" and later states "As I trust is apparent in the evidence in this case there was ample evidence to suggest that all three 'may well have been' involved in the actual attack" [The emphasis is ours]. In the report in relation to the third appellant, responding to a ground of appeal against conviction which asserted that there was "almost no evidence to allow an inference that the appellant

participated as actor in the crime”, the trial judge states that she disagrees with this. She refers to the planning, which of course does not itself make the third appellant a direct participant in the attack, and her view that the third appellant is a manipulative woman, which no doubt informed the trial judge’s view that she was a “principal behind this crime”. She adds that there was evidence to support the inference that all three appellants were actively involved in the killing, citing (a) the neighbour’s evidence that it sounded as if more than one person had run from the living room to the bedroom at the start of the attack; (b) that the blood of the deceased was found on several weapons at the locus; and (c) that there was some blood staining from the deceased on the clothing of both women. There was, of course, a great deal of blood at the locus and the women were involved in trying to clear up evidence of the crime. All of this does not seem to be a strong basis for asserting that there was a realistic basis for suggesting that the woman had been physical assailants of the deceased. In fact such a suggestion appears to be contradicted by the very clear direction which the trial judge gave the jury at pp 91/92 of the charge that:

“I should direct you that if you acquit the first accused of charge one, as the Crown case is ... as the Crown case is presented that he is the principal actor in the killing, I have to direct you that if you acquit Mr Rauf then you are bound to acquit the second and third accused.”

Decision

First Appellant

[16] In *Mitchell v HMA* 2012 JC 13 the Lord Justice Clerk (Gill) noted that “comparing the sentence appealed against with sentences imposed in other cases gives limited guidance”.

At para 31 Lord Hardie observed that:

“In *Walker v HM Advocate* the court recognised the difficulty of undertaking a comparative exercise involving cases which had not been the subject of consideration by the appeal court, as well as the general difficulty in comparing the nature and

gravity of one case with another (para 9). ... There is, in my opinion, the additional difficulty associated with a comparative exercise that even in those cases considered by the appeal court taken as comparators, the court was concerned with the question whether a sentence imposed was excessive. ... The court did not specify the range available to the sentencer but merely concluded that the sentence imposed was entirely appropriate to the crime and was not excessive."

[17] It is rare that circumstances of two cases are so similar that a direct comparison may be carried out. *Collins v HMA* (unreported, 16 October 2019) was one such case. In *Boyle v HMA* 2010 JC 66, in giving general guidance for sentencing in murder in which bladed weapons were involved the court nevertheless noted (para 17) that:

"The foregoing are guidelines and should be treated as such. The circumstances in which murders are committed and the circumstances of offenders vary substantially. It is important that sentencers should retain sufficient discretion in selecting a punishment part as to allow them to take the particular circumstances appropriately into account."

[18] The most significant aspects of the present case are the planning, and the extraordinarily brutal extent of the violence perpetrated against the deceased. The first appellant was, by his own admission, the individual directly responsible for the latter. We do not consider that there is any basis for thinking that the punishment part selected by the trial judge was other than appropriate. It cannot be described as excessive and in his case the appeal must fail.

Second and third appellants

[19] It is clear that each of these appellants was involved in the planning of the murder, and they must take responsibility for doing so. They were present when the murder was perpetrated and sought to cover it up afterwards, however haplessly they did so. However, from the judge's direction to the jury it must be accepted that there was not a basis for convicting either of them as actor: their guilt was guilt in concert with the first appellant. That does not, of course, alleviate them of the responsibility for the murder. Nevertheless,

the sustained and merciless attack, the degree of brutality and violence, was at the hand of the first appellant. Notwithstanding their involvement in the second charge, which was in relatively limited scope, we do not consider that there was a basis for imposing upon them, for that reason alone, a sentence greater than that imposed upon the first appellant. We have also considered whether the position of the third appellant was exacerbated by the aggravation of showing malice and ill-will towards the deceased. However, we have concluded that it does not. The real effect of this evidence was to enable the Crown to establish, together with the cctv evidence, that this must have been a premediated murder. All three were guilty of the premeditation. We do not think there is a basis for distinguishing between the appellants on that account. Accordingly, in the case of the second and third appellants, the appeal must therefore succeed to the extent that the punishment part must be reduced to that imposed upon the first appellant.