

IN THE CENTRAL CRIMINAL COURT

R

- v -

TANIA CLARENCE

SENTENCING REMARKS

Tania Clarence you are now aged 43, and are of previous good character.

At the first reasonable opportunity to do so, you pleaded guilty (on the basis of diminished responsibility) to the manslaughter of three of your children – your twin sons Max and Ben who were aged 3 years 9 months, and your daughter Olivia who was aged 4 years 10 months. You committed the offences in the early hours of Easter Tuesday this year when you were alone with the children at the family home in New Malden. Whilst they were asleep you asphyxiated each of them in turn, and then made a determined attempt to kill yourself.

On 13 October this year, after long and careful consideration, the prosecution accepted your pleas. In my view they were right to do so. The evidence as to your diminished responsibility is clear and convincing. It includes, in particular, reports from two distinguished psychiatrists Dr Joseph (for the defence) and Dr Chesterman (for the prosecution) who each make clear, in compelling detail, that you were mentally ill at the time – suffering from a major depressive episode (which is a recognised medical condition) which substantially impaired your ability to form a rational judgement at the time, and is the explanation for your carrying out the killings. Indeed Dr Chesterman (the whole of whose evidence the prosecution accept) states in plain terms that if you had not been suffering from mental illness at the time you would not have killed your children.

It is equally clear that you are still mentally ill now. Since being charged, and save for a short period, you have been receiving treatment in a secure ward at a psychiatric hospital. You remain vulnerable to a significant deterioration in your mental health with the concomitant risk of a return to suicidal thoughts. Indeed, on the evidence I have heard, further treatment involving both close psychiatric supervision and regular psychological therapy is going to be required for the foreseeable future.

I must now decide what sentence to impose upon you.

The first issue that I must determine is whether, in the terms of the relevant provisions of the Criminal Justice Act 2003, you are a dangerous offender. The prosecution accept that you are not, and I agree. Accordingly, your case does not call for consideration of an indeterminate sentence or an extended sentence.

Nor, as the prosecution also accept, do you qualify for the consideration of a restriction order under s.41 of the Mental Health Act 1983, or for the consideration of a hybrid sentence under s.45A of the same Act.

Accordingly, the stark choice before me in respect of each offence is whether to impose a determinate prison sentence or a hospital order.

On your behalf it is submitted that it is clear that your responsibility and culpability were low and that accordingly a hospital order under s.37 of the 1983 Act should be imposed in respect of each offence.

The prosecution accept that if, on the evidence, I find as a fact that your responsibility and culpability were low, it would be appropriate for me to impose a hospital order. However the prosecution submit that your culpability is not completely extinguished by reason of your diminished responsibility and that your responsibility still remains considerable, such that a prison sentence ought to be imposed – albeit that the medical evidence shows that a prison sentence would lead to a deterioration of your mental illness.

It is for the prosecution to make me sure, on the evidence, of the assertions that they make as to your responsibility and culpability.

Both sides have invited me to consider the evidence on the papers and to make my findings accordingly. In doing so I have borne in mind the approach also urged by both sides that none of those involved can provide an objective narrative of the history between you and your husband on the one hand and the many doctors and social workers with whom you dealt on the other hand. This is equally not the forum to judge the conduct of the health professionals and social workers – save to the extent that the prosecution have made concessions in relation to it. That said, the Prosecution accept that your perception and honestly held belief is an important feature in assessing the cumulative impact of what the doctors and social workers did on your state of mind and make two concessions to which I will return in due course.

Against that background I find the following facts (of which I am, in fact, sure):

You were born and brought up in South Africa and there is a history of psychiatric illness in your family – affecting your grandmother (who committed suicide) and your mother (who attempted suicide when your parents' marriage ended).

You had a lonely and unhappy childhood in consequence of which you learned to suppress your unhappy feelings and not to share them with others. In consequence you developed a personality structure characterised by low self esteem, difficulty in forming close relationships and a feeling of being scarred emotionally by your childhood.

Whilst you were at university in South Africa, and in an abusive relationship with a longstanding boyfriend, you suffered a depressive episode that lasted for about two years.

You met your now husband Gary in South Africa in 1994. You married there in 1997 and then came to this country - after which, in 1998, you suffered a second episode of depression that lasted for some months.

In 2005, after some months of trying, you became pregnant and your daughter Taya was born on 21 April 2006. After suffering a number of miscarriages you became pregnant again in 2008 and your daughter Olivia was born on 15 June 2009. Six months later you became pregnant again, this time with twin boys Max and Ben who were born prematurely at 26 weeks (and with other problems) on 19 July 2010 when you were on holiday with your husband and daughters in Portugal. In the result, the twins remained in intensive care in Portugal until October 2010, and then in hospital in this country until November 2010.

In the meanwhile, your husband's parents had taken your daughters to South Africa where, in August 2010, it had been discovered that Olivia suffered from Spinal Muscular Atrophy (SMA) type 2 – which is the second most severe form of what is a genetic neurodegenerative disorder which leads to progressive muscle wasting, a high risk of fatal respiratory problems and considerably reduced life expectancy – albeit that, these days, people with type 2 can live into their teenage years or early adulthood. By November 2010 it had been discovered that Ben and Max suffered from SMA type 2 as well.

Thus when you all returned to your then small terraced house in Wandsworth that month you faced the enormous challenge of coping with four young children – three of whom had SMA and eventually needed wheelchairs. The prosecution accept that that you loved all four of your children – indeed there is a substantial body of evidence that they were happy and well looked after - and that you were grief stricken that Olivia Max and Ben were destined to die early and before you.

The cycle soon began of hospital visits in relation to one or more of the children, and home visits by medics, health visitors, social workers and the like. By May 2011, and despite help from excellent nannies, it was noted that you were seriously overstretched / under intolerable strain (due to the logistics of appointments, daily routine, emotional and practical difficulties etc – indeed that the practical as well as emotional difficulties that your family faced could not be underestimated).

In July 2011 you and your husband spent all the money that you had, and all the money that you could borrow, on the purchase and adaptation of a house in New Malden to cater for all the needs of the children – in particular, there was wheelchair access and the ability to move around inside using a wheelchair. You lived in rented accommodation until the adaptation of the house was completed in October 2012. You clearly and rightly appreciated the value and worth of the lives of the children, and wanted (for them) as normal a family life as could be achieved. You did not want either the house or the children to be institutionalised and later (once the children were of school age) you enjoyed a good relationship with their schools. To that end your husband worked all hours to make the necessary money, and you devoted yourself entirely and ceaselessly to the care of the children.

In the meanwhile, you were noted as being depressed and concerns were raised about your psychiatric state. In the spring of 2012 you described yourself as “struggling with life” but did not follow up the possibility of therapy.

At the end of 2012 you were allocated an experienced social worker Suzie Holley who was a great help, and in January 2013 your GP noted that you were a caring and patient mother - albeit overwhelmed by the number of medical appointments that you had to attend and the number of medically related home visits

In 2013 the relationship between you and your husband and many of the professionals who were involved with the children reached crisis point. By that time there were something in the order of 60 professionals involved – who often descended in groups on your house, sometimes unannounced. In the result you felt insecure and that your personal autonomy was compromised.

In any event, you and your husband were intelligent people who did not always accept medical recommendations as you both believed in quality of life over longevity - which, the prosecution accept, was an entirely rational and tenable viewpoint. That said, both Dr Chesterman and Dr Joseph conclude that your approach could well have been influenced by your mental state. On any view, it led to clashes with a number of the professionals.

By way of example, in the spring of 2013 you and your husband had a short holiday, just the two of you, in Canada - which was the subject of controversy with some of the professionals. On your return Olivia was ill and was hospitalised and (as the prosecution concede) you were wrongly accused of improper interference with the equipment being used to treat her. You had, in fact, done nothing wrong at all.

Thereafter a pattern emerged, if it did not exist already, of you and your husband needing to be persuaded of the worth of medical interventions; your husband representing the two of you at meetings with the professionals; and eventual agreement to most of the treatments that the professionals wished to conduct.

In the year running up to the fatal events you spoke about killing yourself but not about harming the children. A friend who saw you weekly thought that you looked worn out, but you never moaned. You just got on with looking after the children.

In February 2014 your experienced social worker Suzie Holley was replaced by an inexperienced colleague and resigned. The prosecution concede that the decision to replace her was “perhaps ill conceived”. In March 2014 you and your husband cancelled an intended short break in Budapest as Olivia was ill. That same month you were visited twice by the new social worker. On the second occasion, in particular, she sought (in the absence of your husband) to raise a number of difficult topics when, as the prosecution accept, it was “perhaps obvious” that just one of the topics would have been more than enough and “perhaps not surprising” that you were described as overwhelmed and tearful. When asked you said that you always suffered from depression, but disagreed with medication as treatment.

I accept Dr Chesterman’s opinion that your personality characteristics both made you more susceptible to develop a major depressive disorder and prevented the full extent

of the disorder being recognised by others; and that it is a feature of your depression that you have consistently minimised symptoms both before and since the fatal events. As Dr Chesterman says, you devoted yourself to providing optimal care for your children – suppressing your feelings of distress and sadness by focussing on their needs. However, your increasing distress when witnessing the various medical interventions that the children required, the prospect of the children requiring invasive procedures that you perceived would cause unnecessary suffering, and the constant demands placed upon you, in the absence of emotional support from others, eventually overwhelmed your psychological resources. In the result you suffered the major depressive episode to which I have already referred - in consequence of which you perceived that the situation could only get progressively worse, and that there was little that you could do about it .

As Dr Hopley, who has been responsible for your care in hospital put it, you were exposed to remarkably high chronic levels of physical and emotional stress arising from the complex needs of your family; you were effectively “exhausted and burnt-out” in response to the extended period of caring for, and co-ordinating the care of, your children; for months prior to the fatal events you had not slept properly and your ability to make rational judgments became slowly but increasingly impaired.

Your husband was away in America on a golf trip from 8 April this year. He returned on Good Friday 18 April and departed that same day with your oldest daughter Taya for a short visit to South Africa. Your long term nanny Jade looked after the twins at her home from Good Friday to Easter Monday, whilst your mother and her partner visited you and Olivia.

By the late evening of Easter Monday, which was Taya’s birthday, Jade had returned the twins to you – and thus you were alone with them and Olivia in the family home.

I accept the sequence of events as described in detail by the prosecution during their opening – including the various things that you wrote both before and during the course of the fatal events, but I do not repeat it all given the evidence as to the effect upon you of doing so. Dr Chesterman and Dr Joseph concur, and I accept, that what you wrote indicates the severity of your mental illness and that, in consequence of that mental illness, you perceived that you had no option but to commit suicide and to kill your children. As Dr Chesterman puts it, the evidence indicates that you could not rationally consider alternative courses of action and formed the opinion that the only solution to your predicament was to kill your children and yourself.

You did not reach a settled intention to do what you did until the fatal night. To the extent that there was any planning it was clearly the product of your mental illness not of any culpable conduct over and above that illness.

Nor, in my view, do your views as to the medical treatment of your children (whether formed rationally or resulting from your mental illness) add to your culpability.

Nor was this a mercy killing in the sense in which that phrase is normally used. The children did not ask to be killed, and you did not, and do not, seek to justify your actions as being justified in mercy. What you did was the product of your mental illness.

I also reject the contention that your failure to obtain treatment for your depression adds to your culpability. It was in part the product of your personality characteristics, in part the consequence of a laudable wish to battle on to give of your best for the sake of your children, and in part the consequence of your mental illness itself.

Albeit that the various authorities to which I was referred are not on all fours with this case, I apply the principles that they set out. In doing so I am conscious of the provisions of Schedule 21 to the Criminal Justice Act 2003 and of the likely sentence that you would have received if you had been found guilty of murder. I am equally conscious that nothing that I can do can adequately reflect the worth of the lives of Olivia, Ben and Max - who were lovely children.

As to the facts, I take into account that you have admitted killing three children (although the significance of that is, in my view, much minimised in the particular circumstances of this case); the fact that you intended to kill; the vulnerability of the victims, the objective abuse of your position of trust (albeit that it was a result of your mental illness), and that you have denied Taya a life with her siblings.

On the other hand you were suffering from mental illness - a major depressive episode absent which you would not have harmed your children at all; you accepted responsibility at the scene and you are of previous good character.

Weighing up all the various factors I have no hesitation in concluding that, in the very particular circumstances of this case, your responsibility and culpability were low. As Dr Joseph put it, the link between the violence and your mental disorder was extremely strong.

I am satisfied on the evidence of two registered medical practitioners that you are suffering from mental disorder which is of a nature or degree that makes it appropriate for you to be detained in a hospital for medical treatment and that appropriate medical treatment is available there. Thus, having had regard to all the circumstances, and to the other available methods of dealing with you, I am of the opinion that the most suitable method of disposing of the case is by means of an order under s.37 of the 1983 Act.

Accordingly I propose to impose a Hospital Order on each count. As I have already touched on you do not qualify for a Restriction Order. However, you will not be released until you have recovered from your illness.

Sweeney J
18 November 2014