Case No: T20167261

IN THE CROWN COURT IN GUILDFORD

10 Mary road, Guildford, GU1 4QU

Date: 15/11/2017

Before :

MR JUSTICE GREEN

- -

THE QUEEN
- v -
BIPIN DESAI

- -
- -

Mr William Boyce QC and Ms Kerry Broome (instructed by **the Crown Prosecution Service**) for the **Crown**
Ms Natasha Wong QC and Mr Michael Field (instructed by **Freemans Solicitors**) for **Bipin Desai**

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Terminating Ruling: Murder/assisted suicide (Ruling on submission of no case)

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MR JUSTICE GREEN :

A Introduction

1. In this ruling I address the application made by the defence that there is no case to answer on the single count of murder on the indictment. The Prosecution has closed its case.

2. Some of the core facts of this case are not in dispute and serve to set out the issue.

3. The Defendant's father, Dhirajlal Desai, came to live with the Defendant in early March 2015. The Defendant and his wife left the UK to travel to India on 22nd February 2015 and they returned to the UK with the father on 6th March 2015. Dhirajlal Desai lived with the Desai family from then until his death. The family included the Defendant and his wife, Dipti, and their two sons.

4. On the evening of Wednesday 26th August 2015, the Defendant's father died of a lethal dose of the opiate, Oramorph. This has been confirmed by the expert forensic pathologist. The dose administered was many times that needed to kill a person who is not a regular consumer of morphine based drugs. The Defendant's father was not habituated to morphine. The expert evidence indicates that he would have died following ingestion at some point over the following 90 minutes. The Defendant's father was later administered insulin by the Defendant. It is not, however, said that this caused death.

5. The following day, on Thursday 27th August 2015, the Defendant, having spent his day at work, made a 999 call for an ambulance to attend his home address. He told the operator that he had returned from work to find his father, seemingly dead. This was at 18.15pm. He was asked by the operator to verify whether his father was still breathing. The Defendant said that the curtains were closed. He was asked to put his hand against his father's mouth to see if he was breathing and to check whether the chest was rising and falling. He was asked to see whether he could rouse his father by calling out his name. The Defendant, knowing at this point in time that his father was dead, nonetheless went through the process of performing these checks. The operator asked the Defendant whether he thought that his father was beyond help and the Defendant stated that he did not know. He did not know what had happened because he had left for work that morning at about 8am and had only just returned.

6. When the emergency services arrived, the Defendant maintained the pretence that his father had died in his sleep of natural causes. And he perpetuated this pretence to paramedics, ambulance staff, the police and later to his own family and to colleagues and friends.

7. According to the Defendant on Friday 27th August 2015 the Coroners office phoned him and explained that there would have to be a post-mortem on his father. According to the Defendant that night his wife pressed him, sensing that something was wrong. In the early hours of the morning of Saturday 28th August 2015 he told her that he had "*helped Bapa J*". By this he was telling his wife that he had assisted his father to die. His wife was incredulous and angry. She apparently told him that he was a "*stupid, stupid, stupid man*". The commotion woke his sons and he also told them that he had

"*helped Bapa J to die"*. His wife then told him and the boys that they would take him to the Police that same day.

8. On Saturday 28th August, in the morning, the Defendant and his wife and sons entered Guildford Police Station. He told the Police that he was handing himself in for assisting the suicide of his father. He was detained and placed in a cell. He was shortly afterwards arrested on suspicious of murder.

9. The Defendant is recorded as appearing visibly shaken and withdrawn. He was in shock, emotional and tearful. The custody notes indicate that he told the Police that he felt suicidal prior to arriving at the station. He was seen by the health team who recorded that he was now fine ie, he was no longer feeling suicidal. He was nonetheless put on suicide watch. It is apparent from the notes that he did not however in fact receive his normal medication for another 3 days. He was clearly upset.

10. He was interviewed on four occasions over the ensuing two days for a total of fractionally over 6 hours. He was cautioned in the ordinary way, and it is quite plain from the video recording of the interview that he fully understood the caution and its implications. He was attended by a solicitor. He answered all questions fully. When he was released following the interview process he was described as emotional, but not suicidal. He was provided with grief counselling advice and it was suggested that he be monitored for possible psychiatric assistance.

11. In the course of the interviews he gave a detailed account of his conduct. The bare gist of his evidence was that his father had, for a very long period of time, lost the will to live. His father had been pressuring him over many months to assist him to die. The Defendant had been reluctant but eventually he agreed that he would help his father. The Defendant is a pharmacist and had access to the controlled drug Oramorph, which in a sufficient dose is lethal. He mixed a very high dose of the drug in a fruit smoothie and he gave it to his father to drink. His father took about a minute or two to finish the drink. His father then got into bed. Father and son said their goodbyes. His father very shortly afterwards, fell asleep. The Defendant left the room and came back later and administered insulin through an injection. He had obtained both drugs from the pharmacy where he works as a locum pharmacist. At the end he sat with his father and then he left the room and went to bed and the following day went to work in an attempt to create a picture of normality. He returned home after work and then phoned the emergency services. He did not tell his wife or family about his intention to assist his father. He had attempted to keep his actions secret because he did not wish to get into trouble, and he also did not wish to implicate his family in any way in what he was doing.

12. Subsequently, the Defendant was charged with murder and in the alternative assisted suicide and with theft (of the drugs from the pharmacy). He pleaded guilty to the charge of assisted suicide and to theft, but not guilty to the charge of murder.

13. It is common ground in this trial that *because* of the plea of guilty to the offence of assisting suicide, the issues of fact arising are limited. A person who pleads guilty to assisting suicide agrees that he or she does an act which was intentionally designed to lead in some measure to the death of another person. At the commencement of the trial I identified, in written directions to the jury, the issues that the jury would be

required to focus upon. I agreed the text with counsel in advance. Paragraphs [23]-[26] of those directions were in the following terms:

> "23. This is therefore an unusual case. There are two main issues about the facts that you will have to form a conclusion about. These are as follows.
>
> 24. First, did the Defendant's father know at the time that he took the smoothie that it would kill him? If the answer to that question is 'no', the Defendant will be guilty of murder and you need not go on to consider the second question.
>
> 25. The second question is this, if the Defendant's father did know that consuming the smoothie would kill him did he consume the smoothie voluntarily (with or without assistance from his son) or did his son force him to drink it against his wishes? If the father consumed the smoothie voluntarily then the Defendant is not guilty of murder. If however you are sure that the father was forced to drink the smoothie then the Defendant is guilty of murder.
>
> 26. All of the counsel in this case and I agree that these are key questions for you to decide. We are also agreed that it will help you focus upon the essence of the case if they are identified for you at this very early stage."

14. The Prosecution has tendered in excess of 20 witnesses of fact. The Prosecution has also tendered expert forensic evidence as to the cause and circumstances of death. The full interview of the Defendant, exceeding 6 hours in total, has also been played to the jury.

15. Ms Natasha Wong QC, for the Defendant, has submitted that this court is extremely well placed to see the full extent of the evidence of the case and to form a considered view as to whether, or not, there is a case to be answered. She submits that upon the basis of the evidence relied upon by the Prosecution that this does not come remotely close to meeting the threshold whereby it should be left to the jury.

B The request for clarification of the Prosecution case

16. On 9th November 2017, towards the end of the Prosecution case when all of the live witness evidence had been completed which could bear upon the primary facts, and reflecting my own concerns about the nature of the Prosecution case, I asked the Prosecution to assist the court by: identifying each fact relied upon; spelling out the inference that the Prosecution said the jury could properly draw from each such fact; specifying whether and how each fact/inference relied upon was consistent with the offence of assisted suicide and/or murder; and in particular identifying any fact/inference that the Prosecution contended was only consistent with murder. The rationale behind this exercise was to isolate those fact which the Prosecution put forward as the core or essence of their case, in other words to identify the "*real"* issues in the case, going forward

17. In response, on 13th November 2013, having had over three days to consider the position, the Prosecution produced a schedule identifying each fact relied upon, and

the inference said to be capable of being drawn from this fact and where it indicated only murder, or murder and assisted suicide and if the latter whether it was more consistent with murder or assisted suicide. In the light of this Ms Wong QC indicated that she would be making a submission of no case to answer.

18. I heard detailed oral argument on 14th November 2017.

C The basic principles of law

19. I turn now to the principles to be applied. There is no material dispute between the parties as to the law.

20. Rule 25.9(e) of the Criminal Procedure Rule provides:

> "… on the defendant's application or on its own initiative, the court-
>
> May direct the jury to acquit on the ground that the prosecution evidence is insufficient for any reasonable court to properly convict, but
>
> Must not do so unless the prosecutor has had an opportunity to make representations"

21. The CPR does not alter the classic articulation of the principles to be applied as set out in *R v Galbraith* 73 Cr.App.R.124, which are in the following terms:

> "(1) if there is no evidence that the crime has been committed by the defendant there is no difficulty-the judge will stop the case.
>
> (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
>
> (a) where the judge concludes that the prosecution evidence taken at its highest is such that a jury properly directed could not properly convict on it, it is his duty on a submission being made to stop the case.
>
> (b) where however the prosecution evidence is such that its strength or weakness depends on a view to be taken of a witness' reliability, or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which the jury could properly come to the conclusion that the defendant is guilty, the judge should allow the matter to be tried by the jury".

22. Some assistance on the approach to be adopted in cases involving circumstantial evidence is found in the judgment of the Court of Appeal in *R v Saqib Jabber* [2006] EWCA Crim 2694 ("*Jabber*") at paragraph [21]:

> "The correct approach is to ask whether a reasonable jury, properly directed, would be entitled to draw an adverse inference. To draw an adverse inference from a combination of factual circumstances necessarily does involve the rejection of all realistic possibilities consistent with innocence. But that is not the same as saying that anyone considering those circumstances would be bound to reach the same conclusion. That is not an appropriate test for a judge to apply on the submission of no case. The correct test is the conventional test of what a reasonable jury would be entitled to conclude.".

23. In *Younis Masih v The Queen* [2015] EWCA Crim 477 ("*Masih*") the Court of Appeal, addressing a case of circumstantial evidence, cited *Jabber* with approval. At paragraph [3] the Court framed the approach (and the "*ultimate question for the trial judge*") in the following terms:

> "Could a reasonable jury, properly directed, conclude so that it is sure that a defendant is guilty? It is agreed that in a circumstantial case it is a necessary step in the analysis of the evidence and its effect to ask: Could a reasonable jury, properly directed, exclude all realistic possibilities consistent with the defendant's innocence?"

24. Pitchford LJ went on to provide further guidance as to how a judge should apply the test:

> "Matter of assessment and weight of the evidence are for the jury and not for the judge. Since the judge is concerned with the sufficiency of evidence and not with the ultimate decision the question is not whether all juries or any particular jury or the judge would draw the inference of guilt but whether a reasonable jury could draw the inference of guilt"

25. The test as thus articulated seeks to take account of the directions that a Judge will routinely give to a jury in cases involving circumstantial evidence, namely (and I simplify) that they should not speculate and they should consider whether they can be sure of guilt taking into account plausible alternative explanations for the conduct in question.

26. An important consideration in the present case is that the Defendant has pleaded guilty to assisting suicide. His defence is, in essence, that he did assist a suicide, but he did not commit a murder. He says therefore that the facts are consistent with assisted suicide but not with murder. Ms Wong QC argues that before a properly directed jury could convict of murder they would have to exclude assisted suicide.

27. Section 2 of the Suicide Act 1961 provides that "if *on the trial of an indictment for murder…. of a person it is proved that a deceased person committed suicide, and the accused committed an offence under subsection (1) in relation to that suicide, the jury may find the accused guilty of the offence under subsection (1)*". The Defendant has pleaded guilty to the offence of assisting his father's suicide. He accepts that he did acts which assisted his father to die. He accepts that in performing these acts of assistance he intended that his father would die. He also accepts that there is thus a causative link between his actions and the death. But he says that ultimately the decision to die and the action taken to ensure that outcome, were decisions and actions taken voluntarily by his father. It follows that the admitted conduct in this case goes part of the way towards establishing murder but not all of the way.

28. Reflecting the unusual features of this case the Prosecution argue that: "I*n this case the jury have a binary decision which is not the normal one of guilty or not guilty; in this case the binary decision for the jury is guilty of murder or guilty of assisted suicide (to which the defendant has already pleaded guilty*)"

29. Ms Wong QC for the Defendant says that this is fundamentally flawed and detracts from one of the most established and basic principles of criminal law; namely that the jury's function is to try the defendant according to the evidence in respect of the charge on the indictment i.e. murder, and upon which the defendant is put in their charge at the outset of the trial.

30. Nothing in this case ultimately turns upon the point. In one sense I see the force of the Prosecution stance. In this case the defence is that the offence of assisted suicide was committed, but not murder. The choice for the jury is in this sense binary. And as a matter of practicality, evidence that undermines or strengthens the conclusion in favour of one offence might well impact upon the other. I do not accept that the relationship is as automatically and directly reflexive as the Prosecution contend, but nonetheless in most cases if the evidence (say) favours murder by its nature it will, directly or indirectly, disfavour a conclusion of assisted suicide, and *vice versa*. This is not a statement of hard and fast principle but merely a reflection of the nature of the evidence in the unusual circumstances of this case.

31. Various phrases have been used in case law to describe a case that meets the no-case threshold. All cases turn on their own facts, but these phrases still give an indication of where the line is to be drawn. In *Galbraith* the expression "inherent weakness or vagueness" was used. The expression "*inherently weak and tenuous"* is another such phrase: see for example Blackstone Criminal Practice (2017) paragraph D16.58 page 1813. It is nonetheless apparent that the threshold, for allowing a case to proceed to a jury, is relatively low. A judge should not lightly withdraw a case from a jury.

D The types of evidence in the case

32. The present case concerns a "*closed room death*", where there are no independent witnesses to describe the events that occurred. There will ordinarily only be two types of direct evidence which bear upon the actual death, that of the Defendant (in Police interview and/or in court) and *ex post* forensic evidence as to the cause and circumstances of death. Apart from this the evidence will usually be circumstantial.

33. The circumstantial evidence will address the following sorts of issue:

- Whether the deceased expressed a desire to die, over what period and with what frequency and whether it was a fixed and certain intention?
- Whether the desire was expressed only to the Defendant or whether it was also expressed to third parties who can therefore corroborate the Defendants evidence?
- Whether the deceased invited only the Defendant to assist or whether it was an invitation also expressed to others, and if not the reasons for this.
- Whether any alleged expression of a desire to die is explained by plausible background facts such as illness or other external circumstances?
- Whether the Defendant had a close or distant relationship with the deceased?
- Whether the Defendant acted on the spur of the moment or only after deliberation and whether the Defendant took steps to dissuade the deceased from his intention to die?
- Whether the Defendant had a motive for seeing the deceased dead (*other than* compassion), such as a financial stake in the deceased's estate or malice (for instance because the deceased was a particularly violent and abusive parent or partner)?
- Whether the Defendant acted alone or whether he acted with the knowledge and support (or otherwise) of others. And if he acted alone what the reasons for this were?

34. The evidence might also include events occurring *after* the death such as: whether the Defendant sought to conceal the death as natural and the steps taken to perpetuate that falsehood; whether the Defendant confessed to the conduct in question, and the circumstances surround that confession.

35. This list of issues is not intended to be exhaustive. Nonetheless, it is a fair reflection of the evidential issues arising in the present case.

36. I turn now to consider the evidence. I start with the circumstantial evidence and then deal with the direct evidence. This is because the circumstantial evidence is important context to the direct evidence.

E The circumstantial evidence in the present case

37. The Prosecution case, as set out in its Schedule, and as elaborated upon by Mr Boyce QC orally, was that the circumstantial evidence was overwhelmingly indicative only of murder. It was not equivocal ie capable of supporting assisted suicide *as well*. The Prosecution schedule identifies 22 items of fact and inference. There is a great deal of overlap between these different items. They address (broadly) the following matters:

(i) the absence of evidence about a settled intention on the part of the deceased to die; (ii) the absence of any good reason why the father should wish to die; (iii) the failure of the Defendant to provide medical or other assistance to his father; (iv) the pre-planning involved which focused upon the acquisition of the Oramorph; (v) the acts of concealment which involves the telling of lies and the circumstances surrounding the confession; (vi) motive.

38. I propose now to summarise the evidence on these issues. This evidence derives from the Prosecution witnesses. Importantly, it is not said by the Prosecution that any witness was untruthful. Before a jury each witness would be described as honest and, *prima facie*, to be believed.

(a) The intentions of the deceased and the expression of a settled intention to die

39. A major part of Mr Boyce's submissions was that the evidence of the Defendant in Police interview that his father had for a very long period of time (running to years) been stating that he wished to die was *self-serving* and uncorroborated. This was a central plank in the Prosecution submissions. I therefore start with the evidence relating to the intentions of the deceased.

40. The Defendant's evidence in interview was that his father had grown weary of life following the death of his wife, whom he doted upon, in 2003, and the death of his dog whom he also adored in 2010. He was in deteriorating health. He had suffered a serious brain injury following a violent robbery at his home in Zambia in 2006. He had serious knee problems which had not been cured by surgery on one knee in India and which left him suspicious of doctors and not wanting repeat surgery on his other knee. He had extreme difficulty in walking and with mobility generally. He had, more recently, become increasingly short of breath and was suffering from incontinence which he found distressing and humiliating. He was a firm believer in the afterlife. He had repeatedly and insistently beseeched and asked the Defendant for assistance to die. He generally articulated this in Gujarati. He spoke of wanting to go to heaven to see his wife and dog; he wanted to go upstairs; he had had enough of life. He had communicated this to the Defendant at Christmas 2014 and asked for help then or just after in 2014. Over the circa 6 months leading up to August 2015, during which time the father had been living with the Defendant and his family, he had become increasingly persistent and insistent. His father was not a particularly religious man but he believed in the afterlife and would watch religious programmes on television. He asked almost every day for help. He said to the Defendant that he should get him some "*Dawa*", which is Gujarati for medicine, to send him to sleep. He had had a good life; now was a good time to go to see his wife.

41. I reject the Prosecution submission that this account is uncorroborated. On the contrary it was the clearly expressed evidence of the two witnesses who were best qualified to give evidence on this point, namely the two other children of the deceased who had close contact with him over the years. These Prosecution witnesses spoke of their father's misery at losing his wife and dog and his increasing physical frailty and incapacity and his persistent, long expressed, desire to die. He had long ago lost the will to live. They explained that the Defendant, Bipin Desai, was the father's favourite son; that Bipin looked after his father's affairs; that Bipin was the effective head of the family and always looked after the best interests of the family; that Bipin paid for

his father's travel and health care; and that it was *only* Bipin that the father would confide in.

42. Mr Hemant Desai, the other son of the deceased, gave evidence for the Prosecution. With the concurrence of Ms Wong QC, for the Defendant, his witness statement was led by in effect being read to the jury. There was no challenge to its truth. In his statement he said that his father would "*always*" say things like "*I wish God would take me*". The relevant part of his statement was as follows:

> "After the operation he had a balance problem, he was meant to walk with a walker but he didn't like to and I think this made his confidence go. Despite this I would describe my dad as generally fit. My dad was never happy once mum had gone; he was 'existing' but not actually living. He wasn't the same person and would always say things like '*I wish God would take me'*.
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> Whilst he was living with me I had a full-time maid looking after him. He was only really content when the dog would come and sit with him. Although we bought him books and subscribed to the Indian channels, he would not read the books or watch television. He would sit all day and wouldn't say anything - there was no conversation. His routine would mainly be eating and then sleeping.
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> Whilst he was living with me he would sometimes go and stay with my sister Kalpana. She also lived in Harare; she doesn't live far so he would go to hers now and again. For example, about two years ago I travelled to England for my daughter's graduation so dad stayed with Kalpana then.
>
> We decided my Dad should go to the United Kingdom as his passport was expiring. We felt that it would be easier to get a new one if he was based in the UK rather than Zimbabwe as he only has a month left on it so we were limited with where he could travel to.
>
> Saturday morning (around 09:08 UK time as it was 10:08 in Zimbabwe) my brother Bipin called me whilst I was at work. I cannot remember the whole conversation as I was in shock but in essence he told me that he had assisted my father's death and he was going to hand himself in. Bipin was crying and just saying he was sorry. I asked why he had done this and he told me our Dad had asked him to. I couldn't believe what had happened, I said I hoped he was going to the station with a lawyer and then he was gone. It was a two minute phone call. Bipin did not specify how he had helped Dad just said that he had helped him.

> I'm not aware of any issues that my brother or dad had either individually or with each other. Dad was always closer to Bipin, and we would say that Bipin was his favourite."

43. In oral evidence he elaborated. He said that his father was closest to Bipin, the Defendant, who was his eldest son and was his "*favourite*". The Defendant paid for everything including his medical treatment including his father's travel and care. The father had "*full faith in Bipin*". Dad confided in Bipin. He said that in a call with the Defendant on Saturday morning 28th 2015 August Bipin was crying and he said he was "*sorry*" and that dad had asked him to help. In relation to his father's life history he confirmed the sequence of events described by the Defendant in interview including the history of bereavements and injuries. The father had lost confidence after the violent attack in 2006. Since he could not live by himself and look after himself he led a largely nomadic existence travelling between his children and family in Zimbabwe, India and the UK (when he would stay with the Defendant). After the death of his wife ("*mothers' loss was a major blow to him*") and dog, "*he had no one anymore*". He did not like going to see doctors; the family had to force him to do so. He would say "*I'm all right leave me alone*". He never asked to see a doctor about depression.

44. Mrs Kalpana Vyas, the daughter of the deceased, also gave evidence. She said that the fathers desire to die was "*not an uncommon topic of conversation*" with him. Her statement was also in effect read by the Prosecution before she was cross examined. She stated:

> "Some time ago whilst my father was living alone in Zambia after my mother had passed away my father's home was attacked by criminals he was pulled from his bed and he cracked his head on the floor, following that he began to suffer with short term memory loss. He was struggling to cope alone and my uncle suggested that Dad came to live in Zimbabwe which he did and he moved in with my brother Hemant.
>
> Dad never really got over the passing away of mom and he spent his life sitting eating and sleeping.
>
> My father first had problems in 2006, when he was assaulted at his home while living alone in Kabwe, Zambia. He was found unconscious in the morning after having been attacked in his home by criminals, he was discovered in that condition by a domestic worker. My uncle took him to the local hospital for immediate treatment. But he was seriously physically harmed on his head and this led to him coming to Harare, Zimbabwe for further medical treatment.
>
> He was operated in Harare by a surgeon, Dr. AUCHTOLONIE for internal haemorrhage on his brain. Subsequently, over the following months his mobility was affected, started to lose his balance and had to use a walking stick.

> He returned to Zambia after this to carry on with his life there. However in 2008 he had a fall and received futher medical treatment in Zambia. His mobility was getting worse, it affected his balance and had to use a Zimmer frame to walk. In 2010 he went to India for a knee replacement operation which was not very successful. This did not improve his condition satisfactorily.
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> After that I felt he was depressed, he suffered mood swings, and always mentioned how he missed my mother and his dog, Rocky both of whom had already passed away, he was not however to the best of my knowledge diagnosed as being depressed. I visited my father in India during April 2011 to see how he was coping after his knee surgery. In my opinion he was not coping well following the operations and as a result, he returned to Harare subsequently. Whilst in Harare my father stayed predominantly with my brother Hemand DESAI and his family, although he would visit my home and stay over periodically. I last saw my father in November 2013 prior to his departure to India.
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> My father always missed my mum after her passing and he did not seem at all happy. He lived between Zimbabwe, India and the UK during the last few years. He was depressed and seemed to have lost his dignity having to depend on others for his physical well being. He no longer had his own home and as a result was never settled.
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> My father told me, on several occasions how unhappy he was. I used to visit him at my brother's home, here in Harare, where he would sit alone in his veranda and talk about how he wished god would now take him up. This would be in Gujarati, our language. On the occasions he came to stay with me at my home, here too he would talk about this. He mentioned that he was fed up with life and talked on how he wanted god to take him up. On more than one occasion he would say this in Gujarati, as he communicated best this that language. I could not say how many times he say these things about how unhappy he was and wishing that God would take him up nor am I able to recall specific dates or occasions, I can say it was not an un-common topic of conversation."

45. In oral evidence she said that her father was a man of few words. He never got over his wife's death. He "*spent his life eating and sleeping*". Bipin was the eldest son and was "*very close"* to his father throughout his life. The father would confide in Bipin. He would not confide in the same way with Mrs Vyas. Bipin was trustworthy and always honourable. Although the father visited the UK quite a lot he did not in truth want to live there because it was "*too cold and wet*". In the UK he was isolated from his life in Zambia and Zimbabwe. When Rocky the pet dog died the father was "*really devastated*", almost as devastated as when he had lost his wife. As to an incident which caused the Defendant and the deceased to have to travel back to India in

April/May 2015 this was related to an attempt by the deceased's brother to take control of land belonging in part to the deceased. The Defendant had to go back to India to instruct lawyers to sort the problem out, which he did. The father was very upset by this: He said "*How can my brother do this to me*".

46. Mrs Marilyn Harding also gave evidence. She had been employed in the pharmacy that the Defendant owned. She gave evidence that on between 5-7 occasion in the past, when the Defendant's father visited the UK, he would be brought into work by the Defendant. She formed the view that the father was "*fed up with life*". She clarified that this was not something that the Defendant had said to her. It was her own independently formed conclusion after seeing the father on a number of occasions. She was aware of the father's history and his loss of his wife and pet. In fact, she painted a picture of "Rocky" the dog for the father in an attempt to cheer him up.

47. The Defendant gave evidence in his police interview that his father had also told his son, Nikhil, that he wanted to go upstairs and that his son had made a joke of it, referring to the stairs in the house. Nikhil was not called or summonsed to give evidence.

(b) The reasons behind the desire to die

48. Next, I consider whether the father's wishes are credible against the background facts. On this there is consistency as between the Defendant and the Prosecution witnesses. The Defendant explained about his father's deterioration starting with the death of his wife, the robbery leading to the brain injury, the knee injuries and unsuccessful surgery, the loss of his dog, the ever-decreasing frailty and mobility, and the increasing breathlessness and incontinence.

49. All of this was fully corroborated by other Prosecution witnesses. The father's frailty and incapacity in 2015 was also corroborated by independent witnesses who saw the father during 2015. The Prosecution case is that the father was not suffering from a terminal illness and did not have a formal diagnosis for depression. Both are true. But they do not grapple with the overwhelming weight of the evidence which was simply that this was a man who, at 85 years of age, had long ago lost the will to live and was insistent that he should die. Ms Wong QC put it thus: "*You do not have to have a terminal illness to wish to depart from this life*".

50. On this point the evidence was overwhelmingly one directional. There is no evidence at all to contradict the evidence given by the Prosecution witnesses.

(c) The provision of care by the Defendant to his father

51. Next, I consider the state of evidence which addresses the Prosecution submission, as articulated in their schedule in the following way: "*Character – evidence of defendant's caring, compassionate nature from numerous witnesses and evidence from Allingham deceased was here for treatment. In stark contrast to complete lack of any medical treatment or assistance provided to deceased*".

52. I have some difficulty in following this point, even though it formed an important part of the Prosecution case. The argument is that the Defendant's evidence in interview

that his actions amounted to an act of mercy and compassion to put his "*father out of his misery*" is contradicted by a "*complete lack of medical treatment or assistance*". This it is then, it is argued points only to murder. In oral argument Mr Boyce QC accepted that there was extensive evidence that the Defendant showed considerable care and compassion towards his work colleagues and others, but he said that this did not extend to his family and his father.

53. What is the evidence on this? I can summarise it in the following way.

54. First, the Defendant paid for all of the father's medical and health treatment and travel whilst his father was living away from the UK in Zambia, Zimbabwe and India. The Defendant would take care of his fathers care regardless of the distance between them.

55. Second, when the father came to the UK he came with a full supply of medicines obtained in India for his diabetes. He had a large supply left at the time of his death.

56. Third, the Defendant paid for the adaptation of his house by constructing a downstairs shower room with sit down facilities. The builder (Mr Paul Cranstone) gave evidence about this in court. He said that he was asked to construct a "*temporary bathroom*". But Bipin had told him that his father's stay would not be temporary but was a "*long holiday*". The facility installed had all proper plumbing and electrics. It was a fully functional bathroom with a nice shower unit. It could last for years. Mr Ernie Rama (another builder) also gave evidence that he was instructed to prepare to build a similar facility in one of the Defendant's London homes for the Defendant's father if he should visit there.

57. Fourth, the Defendant purchased the mobility walker that his father used to get around. It was unclear whether this was acquired before or after the father arrived in the UK but it was clear that the Defendant acquired this for him.

58. Fifth, numerous independent witnesses spoke about the excellent and loving relationship between father and son. For example Ms Marilyn Harding was a work associate of the Defendant who on multiple occasion witnessed them together. She said in evidence: "*He adored his father. He made it his mission in life to make him as happy as he could. He was always very close to his father*".

59. Sixth, there is the evidence of the siblings that I have already referred to who both said that the Defendant was close to his father and was the favourite son.

60. I should mention the main items of evidence that are referred to in the Prosecution schedule and which it is said evidence this wholesale want of care. With great respect they do not add up to anything at all:

    i) The Prosecution refer to an incident when the father was, it is alleged, left alone at home. On 25th May 2015, according to a text message between the Defendant and his son he and Dipti went out to dinner and stayed away overnight. This was originally in the Schedule said to be evidence only of murder, but in oral argument it was acknowledged this was equivocal and could be evidence also of assisted suicide but was more indicative of murder than assisted suicide. Mr Boyce QC does not advance any case on motive. He says however that this shows a wholesale want of care which indicates murder.

Apart from this text message no other evidence was tendered about this incident and whether Nikhil (the son) stayed with the father or whether the other son was there, or whether some other care arrangement was put in place, and the text does in fact show that the "*night out*" for husband and wife was with the *blessing* of the father. The text says: "*Son we are in Mumbai junction, before you ask your grandad is in Dockenfield. He has had a good lunch and dinner, also he said for us to go.*" The suggestion that this is evidence of murder is untenable.

ii) The Prosecution also rely upon a text exchange between the Defendant and his wife, dated 11th June 2015, in which Mrs Desai says that the father wished to eat with the Defendant and his wife but she had told him that the Defendant was going to be late. But father still wished to eat together. The Defendant was at work at the time of the text (16:43 hrs). He replied: "*No just give him his food at 6.45. Don't ask just warm it up*". This, says the Prosecution is evidence pointing only to murder. Again, I simply fail to see the point.

iii) The Prosecution also rely upon the fact that in April/May 2015 the father was well enough to travel to India and back, some weeks later, along with the Defendant. This was to seek to resolve the property dispute between the father and his brother. They say this indicates murder because the farther was fit enough to travel and therefore was not suffering any debilitating illness. I have already addressed this. It is no part of the Defence case that the father was suffering terminal illness or could not, with considerable aid and assistance, travel. In fact this incident shows that the Defendant would go out of his way to assist his father in all aspects of his life.

iv) The Prosecution also rely upon the evidence of Mrs Frances Cranstone who gave evidence about two matters. She was a work colleague of the Defendant. The first matter was that the Defendant had said to her, when the father first arrived in the UK, that he was "*hard work"* for Dipti. This, it might well be considered, was a statement of the obvious but hardly suggestive of a lack of care or compassion. Mr and Mrs Desai were, according to all the uncontradicted evidence, happy to welome the father to their home even though they knew full well that he would be "hard work". In her oral evidence she explained in any event that this was a "*flippant*" response given by the Defendant. Yet the Prosecution still contend that this is evidence of murder. The second piece of evidence relied upon was her conclusion that there was friction between the Defendant and his father. This was attributed to the fact that when his father arrived in the UK the issue of the Indian property dispute had not been properly resolved and the Defendant had to sort it out. In oral evidence Mrs Cranstone explained that when she used the expression "*friction*" she was referring to the friction that existed between the two sides of the family. She was not referring to any personal hostility as between father and son. But in any event the undisputed facts about this are that the Defendant <u>did</u> go to India in April and May 2015 and he did at some personal cost and inconvenience sort out the problem for his father. I do not understand how this can be relevant to anything, let alone murder or assisted suicide. The dispute was sorted out in about May 2015 so it can hardly have been a motive for murder months later, in August. If anything, it shows that the Defendant

took pains to look after his father and would do so at considerable cost to himself.

v) Next the prosecution referred to Mr Cranstone (the builder and Mrs Cranstone's husband) who mentioned in his evidence that he had on one occasion seen the father watching religious television, which it was said is indicative of murder. I do not understand the point. To the extent that it is relevant it is consistent with the evidence of the family members who said that the father believed in the afterlife and wanted to go to heaven to see his wife.

vi) The Prosecution schedule on lack of care makes the following point: "Deceased was seen by GP in 2000 and referred to an ophthalmologist in 2005. He was not seen again and no appointments were made." The inference to be drawn is that the Defendant failed to take the deceased to the GP in the UK for 12 years. Yet, the uncontradicted evidence is that during those 12 years the deceased was in Zambia, Zimbabwe and in India and the last time he had spent any length of time in the UK was over five years previously. But in any event during the period when he was out of the UK the Defendant still paid for the fathers care. Mr Boyce QC in oral argument did not pursue this point but accepted that the only period of time that was relevant was the circa 6 months when the father was in the UK.

61. In short the Prosecution case that the Defendant was caring and compassionate to everyone but his father is starkly at odds with the overwhelming weight of the evidence. Moreover, the independent Prosecution evidence strongly support and corroborates the Defendants account in Police interview. The evidence strongly supports a conclusion of assisted suicide.

(d) Motive

62. I turn next to motive. In his Police interview the Defendant's evidence was that his actions were entirely predicated upon compassion and mercy. The Defendant spoke at great length about his desire to help his father and how he had taken steps a long time before the actual assistance to procure the drugs and how he had over the course of months sought to dissuade his father. He explained, in effect, how the pressure built up so that when his family were away in the week of 25th August 2015 he decided that he would, alone, take the responsibility for assisting his father. He was clear that he did not wish to implicate his immediate or wider family. This was his decision taken as head of the family and as the child closest to his father and responsible for his welfare: Being responsible meant helping his father out of his misery. This was not a spur of the moment event but was long foreshadowed and considered. The event was dramatic and caused considerable anxiety. But the Defendant thought it was the right thing to do. It caused a complex mix of emotions including, sadness and grief but also, once the deed was done, mental numbness. The Prosecution say that this evidence is a pack of lies and, it is argued, there is compelling support from this by reference to the circumstantial evidence which does not in any overarching or general way corroborate the Defendants account about compassion or mercy.

63. This analysis simply does not stack up when measured against the Prosecution's own evidence. This overwhelmingly supports the conclusion that the Defendant was both held in the highest of esteem for his care and compassion at work and in the wider community but also within his family.

64. Mr Boyce QC does not advance any positive case on motive. He says, correctly, that strictly there is no need in law to establish motive. Nonetheless, where a motive for the commission of a crime, such as murder, exists it is evidence the jury can consider as indicative of guilt. And conversely if there is no motive for the commission of a crime then this can equally indicate innocence. In the present case there is no sensible or rational case that can be advanced that the Defendant had a financial motive to kill his father. The Defendant is independently wealthy. The full extent of his wealth was set out in admissions read to the jury. It is substantial. The Defendant had power of attorney over his father's finances and it is not said that he ever used that power to spend his father's money. At its highest his father's wealth was approximately £260,000. This was, *prima facie*, to be divided between 3 children. However much the Defendant stood to inherit, pales into insignificance against the Defendant's personal wealth. Money was not a motive for murder nor for assisting suicide. It is an irrelevance. This, in truth, only leaves compassion.

(e) Steps taken to dissuade the deceased from suicide

65. Next I address the evidence of the Defendant that he sought to dissuade his father from his desire to die. He would tell him to "*buck up*" and to try and live a normal life. He would seek to brush off his father's comments and requests for help to die. This explains why he took so long (many months) to come round to the decision to assist his father. He described in his police interview how he had agreed on Tuesday 25th August that he would, whilst his family were away, finally give in to his father's requests and help him. But he also described his reluctance, even on the Wednesday evening, to actually going ahead and preparing the Oramorph drink. He referred to the build-up of pressure over many months and to his father's relief when he finally agreed to help. No Prosecution witness overheard these conversations but their evidence of the very long-term determination of the father to die, and his loneliness and misery, and his loss of a will to live, and of his belief in the afterlife, and his desire to be reunited with his wife, all support the Defendant's account.

(f) Planning

66. I turn next to planning. There is no doubt that there was considerable pre-planning. Mr Desai explained in his Police interview how he procured the Oramorph and the insulin and, in fact, how he stole them from the pharmacy, ie he took them away without the consent of the owner. He explained how he stored them at home in a cupboard in his attic office hidden behind stationary so that they would not be found. He explained how he already knew, because of his profession, what the therapeutic effects of the drugs would be if and when administered. He knew that the dose of Oramorph that he had available would be lethal; and he knew that insulin could be used to hasten a death that was inevitable. He explained that that he planned on the Tuesday to assist his father on the Wednesday and then to go to work on the Thursday taking the syringe and bottle with him to be disposed of via the dispensary bins. He would act normally and call the police on Thursday evening. In this interview he actually volunteered to the Police information about precisely where he had hidden

the syringe and empty Oramorph bottle. He told them in which of the dispensing bins they were to be found. He had put the bottle in one and the syringe in other. The Prosecution argue that planning is only consistent with murder. I disagree. It is, self-evidently, also consistent with assisted suicide. In fact there is an inconsistency in the Prosecution case since they accept in the schedule that certain factors going to concealment (such as disposal of the bottle and the syringe, lies to paramedics police and family, and the subsequent confession to police) are all capable of supporting a conclusion of assisted suicide. Yet at the same time they argue that the procurement of the controlled drug and its concealment from the family prior to death go to planning which is only indicative of murder. Common sense indicates that this simply cannot be correct, and most certainly not on the facts of this case.

67. There is one area of dispute over the facts relating to planning which I should refer to. Mr Desai in his interview had difficulty recalling precisely when he acquired the Oramorph. He thought it was May 2015. He was not sure. In fact, subsequent inquires show that it was most likely acquired on 20th February 2015, which is two days before the Defendant and his wife went to India to collect the father and bring him back to the UK. Mr Boyce QC argued that this showed that there was an intent to kill the father even before he had landed in the UK and before the Defendant had any chance to assess his condition and his wishes. This was only indicative of murder and could not be explained by assisted suicide.

68. At the end of the Prosecution case there remained a number of factual uncertainties about this particular issue, not least because the Defendants ability, during the interviews with Police, to recall exact details and dates in the time line was not always precise. I am far from convinced that the precise sequence events has been fully established. Although I do not base my judgment on my view of the Defendant in interview I do set out later in this ruling certain observations about that interview. It is entirely possible given the obvious stress and distress that the Defendant was under when he answered questions that he was not in every minute particular accurate and when he says that he could not be sure of dates he was being truthful. Nonetheless it seems to me that I should test the Prosecution case by assuming that its version of events, which is most adverse to the Defendant is correct. This is that the Defendant contemplated the possibility of assisting his father to die in February 2015, and not in May. As to this, and I have already recorded: (i) the evidence is that the father expressed his desire to die over the course of many years and that this was known to the Defendant and that he was more specific in relation to the Defendant himself from late 2014 onwards; (ii) the Defendant delayed acting for five months if the Prosecution is correct; (iii) in the intervening period he instructed builders to make bathrooms in his properties for his father; and (iv) during that period (in April and May) he went to India at personal and financial cost to himself to sort out his father's legal dispute with his brother. On the worst case scenario in my judgment when this issue about dates is considered standing alone, but most certainly when the remainder of the uncontradicted evidence is taken into account, it does not even close to altering the overall complexion of this case.

(g) Lies

69. Finally. I turn to lies. The Prosecution accepts that the covering up of the offence and the making and perpetuation of lies and the subsequent confession are all in principle capable of supporting a case of both assisted suicide and murder ie they are equivocal.

Mr Boyce QC says however that on balance the lying is more indicative of murder than assisted suicide, but it is not said that it goes only to murder. In my view the balance of the evidence strongly points towards assisted suicide. But since it is common ground that it is equivocal the fact of lies cannot amount to evidence that a jury could be sure of as indicating murder; and most certainly not when the evidence is considered in the round. There is one contested issue of fact relating to lies. Mr Desai says that he went to the Police because of mounting anxiety and the desire to come clean and because of the pressure from his wife, Dipti. The Prosecution say that it was because the Coroner had told him that a post mortem was inevitable and that he the Defendant decided that he needed to get his version of events in first. I shall assume, against the Defendant, in order to test the argument, that he was pushed rather than jumped voluntarily. If this is so then this still does not undermine the conclusion that the Defendant's conduct is consistent with his defence ie assisted suicide.

F The direct evidence

70. I turn now to consider the direct evidence in the present case.

71. The first piece of direct evidence arises from the expert forensic evidence. This confirms that death was due to the ingestion of the Oramorph. This is a sweet, pleasant-tasting drug. There was no evidence of force or a struggle. There was for instance no evidence of bruising upon the lips or spillage of the smoothie such as might have occurred had the deceased been attempting to avoid being forced to drink the lethal concoction. This evidence is consistent with the defence of assisted suicide.

72. Second, there is the Defendant's own evidence as to what occurred during the Police interviews. On the 28th August 2015 the Defendant, his wife and sons entered Guildford Police Station. The Defendant was then interviewed upon 4 occasions between 29th August and 31st, August. The Defendant gave full and comprehensive answers to the questions posed during these interviews. These interviews lasted, respectively, 1 hour 19 minutes, 1 hour and 50 minutes, 1 hour and 55 minutes and 37 minutes, a total fractionally in excess of 6 hours. During those 6 hours the police officer's questions were professional, focussed and thorough. No stone was left unturned and unexplored. He was questioned in immense detail about the events occurring. He answered every question fully. He was, as is normal in Police interviews, tested repeatedly on the consistency of his account and on the fine, granular, detail.

73. Mr Boyce made extensive observations about the interviews. But he had two overarching points which he contended had to be borne in mind when considering the Defendant's answers.

74. First, he said that those answers were in stark contrast to the other Prosecution evidence which did not reveal any settled intention to die, or any terminal illness, or any formal diagnosis of depression and which was characterised by the Defendant not providing a scintilla of help or assistance to the father over the period in question. Second, the Defendant was a "*practised and accomplished liar*".

75. I can deal with the first point quickly because this is a reference to the circumstantial evidence. Contrary to the Prosecution case its <u>own</u> evidence overwhelmingly

supports the Defendants case. I have already referred to it. This is why Ms Wong QC gratefully accepted all of it, lock stock and barrel, without demur during the trial almost as if it was Defendant's own evidence. The short point is that, applying the Prosecution approach, when one measures the Defendant's interview evidence with the surrounding uncontradicted Prosecution evidence they are in critical respects consistent.

76. As to the second point, it is common ground that the Defendant is a man of impeccable prior good character. He would on any view be entitled to all limbs of the good character direction. A quite remarkable feature of this case was that all of the competent Prosecution witnesses spoke of the Defendant as a man of the utmost honesty, integrity and professionalism. He was a family man, a man who helped out his local community, a man trusted by many people in Farnham who would seek him out in the pharmacy specifically to obtain his advice and assistance on personal matters. The jury would be told that all of this was to be taken into account in his favour when deciding whether his account to the Police was true and it should be taken as positively supporting a conclusion of truth. The jury would also know that the Defendant admitted to lying and to attempts at concealment in his Police interviews. This is not therefore a typical case where prior bad character can be advanced as evidencing a propensity to lie. I accept of course that the Defendant lied and this is a factor to be taken into account. But, as a matter of logic, it simply does not carry with it the overwhelming weight that the Prosecution contend for, and which they say shows that the entire interview was a pack of lies by an accomplished liar.

77. Although I do not base my ruling upon it, my conclusion about the Defendant's interview is that the 6 hours of video recording depict a man in a state of shock and deep emotion who did his very best to provide full and accurate answers. He simply told it as it was.

Conclusion

78. I will now summarise my conclusions and set out my decision.

79. First, the direct evidence in this case provides no support for the Prosecution case; to the contrary it unequivocally supports the Defence position that this is assisted suicide but not murder. It is based in part upon the Defendant's own account of what happened. The exercise of attaching due probative weight to such evidence, in a closed room death case, must be approached with considerable caution. Issues of credibility are classic jury questions. The importance I attach to this evidence must therefore be tempered very considerably by assessment of the extent to which it is supported or contradicted by the other Prosecution evidence.

80. Second, the quite striking feature of this case is that, essentially without exception, the 20 and more witnesses called by the Prosecution supported the Defendant's case in relation to key factual matters.

81. Third, there is no significant differences or disputes between the Prosecution witnesses. The cumulative weight of their evidence is powerful and one directional. All of these witnesses have been treated as witnesses of truth and having given their evidence in good faith.

82. Fourth, contrary to the Prosecution case, there is no *single* piece of evidence which can be pointed to by the Prosecution which unequivocally indicates murder ie is not also consistent or materially more consistent with assisted suicide.

83. Fifth, when those parts of the evidence upon which the Prosecution does place particular weight are measured individually and collectively (but in isolation from the rest of the evidence in the case) they do not in my judgment come remotely close to amounting to a body of evidence upon which any reasonable jury properly directed could convict of murder.

84. Sixth, when all of the evidence in the case is considered in the round it powerfully points to assisted suicide.

85. Seventh, when applying the test on an application to dismiss I have therefore formed the conclusion that no reasonable jury properly directed could form the conclusion to the requisite standard that this was murder. Put another way a verdict of guilty on the unusual facts of this case would not just be unreasonable it would be perverse and irrational.

86. I conclude by addressing a point advanced strongly by Mr Boyce QC. He reminded me that in March 2017, on a defence application to dismiss, I had ruled that the matter had to go to trial. He said that the view I formed then was correct and nothing had changed, save only that the evidence had got worse for the Defendant because the Prosecution now had the actual dates on which the drugs were acquired. He said that it would be wrong to depart from my earlier ruling. In fact in my judgment on that occasion I made two observations. First I stated that the Prosecution could face an uphill battle to win the case. Second, I stated that my conclusion was without prejudice to a half time submission. I was even then struck by the weakness of the Prosecution case but considered that it was important to see how the actual evidence played out in court. I was also struck by the fact that there was outstanding uncertainty as to the actual cause of death and whether it could have been attributable to the insulin injection. I have now sat through the Prosecution case. This has been remarkable for the way in which it sounded at all times like a strong defence case. When I view the evidence in the round having now listened to it I do not consider this to be a marginal case at all. It is clear cut.

87. In these circumstances I am duty bound to find that there is no case to answer and I will accordingly direct the jury to find the Defendant not guilty upon the count of murder.