



JUDICIARY OF
ENGLAND AND WALES

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-v-

Bipin Desai

Guildford Crown Court

17th November 2017

Sentencing remarks of MR JUSTICE GREEN

(Assisted suicide)

A Introduction

1. Bipin Desai you have pleaded guilty to a count of assisting suicide contrary to the Suicide Act 1961 and to two counts of theft. You were also charged with the murder of your father, Dhirajlal Desai. On 15th November 2017 when the Crown had closed its case on the charge of murder I ruled that there was no case to answer and I directed the jury to return a verdict of not guilty. This leaves me now with the task of sentencing you on the counts of assisting suicide and theft.
2. When sentencing a Judge must only take into account facts that he or she is sure of. Where there is uncertainty on any matter which might be relevant to sentence you are entitled to the benefit of the doubt. One consequence of having sat through the Prosecution case on the murder charge, during which over 20 witnesses were called and over 6 hours of your video recorded interview with the Police was played, is that I now have a clear view of the evidence and of the facts.

B The facts

3. Your father spent most of his adult life in Zambia and in Zimbabwe. His wife, your mother, died in 2003. Your father doted upon your mother and he was bereft by his loss. A few years after he was the victim of a violent robbery in his home in Zambia during which he suffered brain injuries which required surgery. He also suffered from a severe arthritic condition of both knees. Surgery performed in India on one knee proved unsuccessful and left him with significantly impaired mobility. As a result of this experience he did not wish to undergo surgery on his other knee. Following the death of his wife he was increasingly lonely. His solace lay in a pet dog, called Rocky. Upon the death of Rocky in 2010 your father was devastated and he felt that he had no living soul close by to comfort him.
4. It was clear to his children and family that he could not live alone so for the next few years he led a largely nomadic life moving between his children and family in Zimbabwe and, India and in the UK, where he would stay with you and your family.

5. These events accumulated in their impact upon your father's sense of well-being. He felt isolated from all that he had known in his many happy years in Zambia. He began increasingly to say that he was fed up with life. He was a believer in the afterlife and he would say that he "*wished to go upstairs*" and he wanted to go to "*see his wife*". These were not isolated statements. He made his desire to die clear to you, and to your brother and sister.
6. Your brother, Mr Hemant Desai, gave evidence in court and he was clear that your father frequently made these comments to him.
7. Your sister, Mrs Kalpana Vyas, also gave evidence and she told the court that his desire to die was a not uncommon topic of conversation with her.
8. His wish was the firm and settled wish of a man of sound mind, in his 80's who was suffering from an ever increasingly lack of mobility, who was endemically lonely and who was fed up with existence. Evidence was also given in court by third parties who saw you and your father when he was staying with you on the occasions of his visits in the years before 2015. They described him as a man fed up with life.
9. In about 2014 your father went to live with his brother in India. For whatever reason this did not work out and he was unhappy there. The family agreed that the best thing was that your father should move to the UK to live with you and your wife, Dipti, and your two sons. In Zimbabwe when your father was staying with your brother he had a full-time maid to look after him. There was no question of you hiring a maid for your father. You and Dipti were under no illusion that taking your father in would involve hard work, especially for Dipti. You and your wife and sons would provide the care and companionship that was needed.
10. You are viewed as the effective head of the family. You are the eldest son. Your brother and sister gave evidence that you were your father's favourite and that he would confide in you on matters personal to him, in a way that he would not do with them. You took decisions in the best interest of the family. You had long taken responsibility for the well-being of your father. You would, for example, pay for his care and medical treatment even when he was living away from you, outside of the United Kingdom.
11. At some point towards the end of 2014 in your discussions with your father he began to beseech you to help him to die. You are a pharmacist by profession. You had access to drugs and you would know what drugs would be effective to assist him and you later explained to the Police "*put him out of his misery*". He of course knew this. He began to ask you to obtain some "*dawa*" ie medicine, to help him to sleep, as he put it.
12. At some point in 2015, possibly as early as February, you acquired some of the controlled drug Oramorph. This is an opiate which is usually prescribed for terminally ill patients needing palliative care. It is a sweet tasting medicine taken orally. But, crucially, it is lethal if ingested in a sufficient dosage. The evidence, which I accept, is that you were making a routine order for low concentration 300ml Oramorph and you made an error in the computer-generated order form and instead ordered a 30ml dose. The error was, literally, about a nothing, a zero; but the practical effect was that the following day a bottle of 30ml Oramorph was delivered to the pharmacy. The important point is that the 30ml bottle is of a much higher concentration than a 300ml bottle. You took the opportunity to conceal the existence of this mistake from your

colleagues in the pharmacy and you took the bottle home where you hid it. You had in the back of your mind that, should the need ever arise, you would have available to you a drug which you could use to assist your father.

13. Over the course of the next 6 months you, your wife, and your sons cared for your father. He was not a conversationalist and gave largely monosyllabic answers to questions. There is no doubt but that he was hard work. He would, as was now his habitual way of life: eat, sleep and sit. He would often just sit before the television for hours on end, but it seems that he often did not pay much attention to it.
14. During this period you had a downstairs room converted by the construction of a sit-down shower for him to use. You instructed a builder to undertake a similar conversion of a room in a London house that you owned, and which your father might use. At considerable expense and effort, you took him back to India in April and May 2015, to resolve the dispute which had arisen between your father and his brother about property there. Neighbours who saw your father during this period described him as well fed, well dressed and well looked after. Other witnesses who gave evidence in court described you as a man who adored his father and who took it as your mission to care for him.
15. During the trial the Prosecution have sought to argue that absent a terminal illness or a diagnosis of depression this account of your father's state of mind does not make sense. Your father was not a man with a terminal illness and nor had he been formally diagnosed with depression. He was, simply put, a man who had lost the will to live. The general public, regardless of their personal beliefs about life and death, would understand how an 85-year-old man, in rapidly declining health, and in the situation facing your father, could feel that now was the right time for him to go and see his wife in heaven. The plight of your father is not at all in my judgment a difficult one to comprehend.
16. Over this period your father began to experience increasing breathlessness and he started to suffer from incontinence. He felt humiliated and distressed by this. Your father's pleas to you to help him to die became more pressing and more insistent. You generally sought to resist your father's requests for help. You told him to "*buck up*" and to "*try and live a normal life*". You would seek to brush away his requests for help. However, over time you began to come to terms with the fact that you might have to relent and actually to help him. At some point in early August you took some syringes and some insulin away from the pharmacy. You already had the Oramorph. You knew that the Oramorph would depress respiration to the point of death. As an opiate it would send your father into a deep sleep and, in effect, at some point over the ensuing 90 minutes or so he would stop breathing and death would follow. You knew that an injection of insulin administered some time after the opiate would serve to hasten the already inevitable end. You knew, and you believed, that this would be a humane and comfortable way for your father to die.
17. In the week commencing 24th August 2015 your family went away. You were left alone with your father. He beseeched you to help him and now you relented. On Tuesday 25th you agreed with him that the following day, on the Wednesday, you would give him some medicine.
18. It was your plan then to conceal your actions and to present the death as from natural causes. Your plan was to help your father out on the following evening (Wednesday) and then go to work the next day (Thursday) and appear as normal. You would

dispose of the Oramorph bottle and packaging and the syringes and the insulin container in the dispensary at the pharmacy. You would return home that evening and find your father dead and you would then call 999.

19. The next day you prevaricated. In the evening you cooked your father a meal of pasta. But your father kept on asking you for help. You were anxious and reluctant. However, ultimately you went and prepared a fruit smoothie and you poured half of the bottle of Oramorph into the drink. You then sat with your father in front of the television. You were understandably nervous and there were mixed emotions, but you thought that now was the right time to help your father. In your mind that was part of your responsibility as your father's confidante and carer: to perform this final act of assistance, kindness and compassion.
20. This was a lonely decision that you took upon yourself. You did not discuss it with your family. You knew that what you were doing was wrong in the eyes of the law and you could be in trouble for your actions, and you did not wish in any way for your family to be implicated or viewed as complicit.
21. You then sat with your father for about half an hour and then you and he went to his bedroom and you placed the drink on the side table. He sat down, and you explained that this would send him to sleep. You and he said your good byes. He told you that you had been a good son to him. He said: "*thanks for everything you've done for me*". And you told him that you loved him. He took about 2 minutes to finish the drink. He then got into bed and rolled onto his side facing the wall and he almost immediately went to sleep. You were feeling saddened and numbed by what had happened. You went and washed up the glass. You sat down and put the television on. All sorts of thoughts were going through your mind. Your son, Nikhil, sent you texts about a football match and you replied. You went back in to your father and you administered the injection of insulin. You were with him at the end. You stroked his head and said "*love you Dad*" and then you left and went to bed.
22. In the trial it was suggested that your behaviour at this time was that of a cold heart. Over the course of the 6 hours of recorded Police interview you were repeatedly asked about how you were feeling at every stage of the narrative. Anyone who watched that recording would have come to understand just how mixed and torn were the emotions and feelings that both preceded and followed your act of assisting your loved one to die. You spoke of wondering whether you had done the right thing. You spoke of numbness and about sadness at a level of 8 on a scale of 10. You had moments when you felt normal and moments when you were tearful. You had flashbacks to better and happier times during your childhood, with your father and mother. You described in precise, but often agonising, terms just how profoundly complex and conflicting were the emotions of someone in your situation.
23. The following day, Thursday 27th August 2015, you arose and went to work and tried your hardest to act normally. At the end of the day you returned home and called 999. You described a picture, to ambulance, paramedics and police of a natural death. When your family were summonsed back home you also told them that your father had died in his sleep. You explained in your Police interview how you were feeling ever increasingly anxious and upset about this pretence.
24. On Friday 28th August 2015 you had a conversation with the Coroner who told you that there would have to be a *post mortem*.

25. That night, in the early hours, you could not sleep. You were pacing about and Dipti quizzed you about what was wrong. You told that you had helped “*Bapuji*”. When you explained what this meant she was incredulous and angry and told you that you were a “*stupid stupid stupid man*”. The commotion awoke your sons and you told them. Dipti told you in no uncertain terms that you were going to report the incident to the Police and she and the boys would accompany you. In Police interview you said that it was Dipti that persuaded you to go to the Police but that if she had not been so insistent you would have come around to that conclusion yourself, shortly afterwards. You felt that you had to come clean.
26. At just after 10.00 am on Saturday 29th August you walked into Guildford Police Station, tearful and emotional, and told the officer that you wished to confess to assisting a suicide. The health team assessed you and you told them that you were fine. You had felt suicidal, but you no longer felt that way. You were arrested and placed on suicide watch in a cell. You were then subjected to 6 hours of interview over the next two days. You answered all questions put to you.
27. You were charged with murder in late 2016, and in the alternative assisting a suicide and with the theft of the Oramorph, and the insulin. You took these items from the pharmacy without paying for them. They were of relatively nominal value. The wholesale cost of the Oramorph for instance is just under £5.

C The factors relevant to sentence

28. I start by summarising my findings of fact relevant to sentence. There are ten conclusions that I arrive at.
29. First, your acts of assistance were acts of pure compassion and mercy. Second, your father had a firm, settled and informed wish to die. For him being assisted to die was a blessing since it meant he would go to heaven to see his wife and he would be put out of his misery. Third, he had expressed this wish over many years and his insistence that he be helped to die became more urgent and pressing throughout 2015. Fourth, he made this request to you, his eldest son, who had over the course of the years assumed responsibility for his welfare. Fifth, he also made this request to you because you are a pharmacist and could obtain the drugs that he wanted to help him go to “sleep”. Sixth, you were reluctant and although you had planned how you would help him if you had to, you still delayed for many months before finally succumbing to your father’s insistent pressure. Seventh, throughout that period you sought to deter your father from his chosen course of action. Eighth, the eventual act of assistance by you was designed to make death as gentle and comfortable as possible and when you and he said your goodbyes he was grateful to you for this last act of compassion and care. Ninth, following the death you did hand yourself in and confess to police and you did so with the support of your wife and sons. Tenth, you assisted Police with their inquires fully by answering all questions in interview and in fact volunteering information, such as where the empty Oramorph bottle and insulin would be found. You did this even though you were in a state of real shock and deep emotion, as was evident to anyone watching the video recordings of the interviews.
30. In my judgment these ten conclusions confirm that this case sits at the very lowest level of seriousness of cases involving a death.
31. The next point is this: I take into account that you have been wrongly accused of murder. This has been hanging over you and your family for over two years. I am

aware of the actual impact of this upon you. This murder trial was scheduled to commence at the start of June of this year. However, literally on the eve of trial I received a series of psychiatric reports indicating that you had suffered what in old fashioned terminology would be described as a “nervous breakdown” and you were in a state of clinical depression. So severe was your mental state that it was agreed that you were not fit to plead. In other words, you were not at that time able to follow evidence or give instructions. You would not have been in a fit mental state to go into the witness box to give your account of events to the jury. You could not have had a fair trial at that point. It was agreed between all parties and myself that in these circumstances the trial could not go ahead, and it was adjourned to see if you would recover. Medical evidence at the time indicated that with treatment you could be helped, and it was made clear to me by your counsel, Ms Wong QC, that you were keen to give evidence at your trial. In fact, you did recover following treatment. I take into consideration that you, an innocent man, have had this appalling predicament pervading your life for this period of time and that it has taken a deep toll on your mental and physical state.

32. I also take into account the impact that this case has had upon your family. I have both heard and read accounts of the deeply traumatic effect these proceedings and the murder charge has had upon your wife, and your sons, and upon your wider family. I will not go into the personal details but the ripple effects of you having been wrongly charged with murder have been profound and very serious.
33. The next point is that you are a man of impeccable good character. You are now 59 years of age. You have never been in trouble with the law in the past. You have been, and you remain, a pillar of your local community. An extraordinary feature of this trial was that almost as if by rote the Prosecution witnesses would sing your praises from the witness box. The Prosecution witnesses at times sounded as if they were giving character references on your behalf. You are held in high esteem in the community as a man of integrity and honour. I have also read other testimonials to your good character from many different sources. They are all as one.
34. I also take into account that you have spent 368 days on qualifying curfew and 7 days on remand in custody. This is equivalent to 191 days in custody which is a sentence of imprisonment of more than 12 months. For whatever reason this case took a long time to come to court. You were interviewed by the Police in August 2015, but charges were not laid until December 2016. You had by this time already confessed to the assisting suicide and to the theft. You formally pleaded guilty within 4 weeks of charge to the counts of assisting suicide and theft. You pleaded not guilty to murder. You are entitled to full credit for these pleas.
35. I turn next and finally to the fact that Guidance has been given by the Director of Public Prosecution (the DPP) in relation to the considerations that will be taken into account in deciding whether to prosecute a case of assisting a suicide. The latest version of that Guidance is dated October 2014. Guidance was first issued in the light of the judgment of the House of Lords in *R(Purdy) v DPP* [2009] UKHL 45. This reiterated the general law which is that there is no duty to prosecute every offence that is committed. Where an offence is committed under the Suicide Act there is no inevitability that there will always be a prosecution. In fact, there are very few prosecutions indeed. In *R(Nicklinson) v Ministry of Justice* [2014] UKHSC 38 Lord Neuberger pointed out in his judgment that, as of 2014, there had only been one prosecution under section 2 of the Suicide Act which was on extreme facts which

came within a hair breadth of amounting to a gruesome and brutal murder. Between 1998 and 2011 a total of 215 individuals had used the Dignitas service and nobody providing assistance had been prosecuted.

36. The DPP Guidance identifies public interest factors tending in favour of and against prosecution. I do not need to set them out. On the basis of the ten findings that I have made your conduct prima facie falls into the category of cases where there would be no prosecution.
37. The Guidelines emphasise that: “*These lists of public interest factors are not exhaustive and each case must be considered on its own facts and its own merits*”. This is particularly important given, as this case vividly demonstrates, the events giving rise to an act of assistance, particularly in the case of a close family member, may well be highly nuanced and raise a plethora of equivocal considerations.
38. In the present case I am informed that the Crown did consider the application of the Guidelines. But since the Crown came to the conclusion that this was a case of murder (to which assisted suicide can be added as an alternate on the indictment) it was, self-evidently, not a case where the Crown would contemplate exercising its discretion not to prosecute. I do not seek to comment upon or criticise the charging decisions in this case. But I have now sat through the Prosecution case and have formed a judgment on the relevant facts. If these facts had been as evident then as they are to me now I am strongly of the view that there would have been no prosecution. I acknowledge that this is a judgment with the benefit of hindsight and it is not intended as criticism of the Crown. But it leaves you in the position that you have faced charges and punishment where someone else in the same position as you would not have.
39. There is an underlying point of principle here. The House of Lords in *Purdy* required the DPP to provide proper guidance to meet the requirements of the State under Article 8 of the European Convention on Human Rights. The House of Lords held that a person who was in the position of being asked to assist a suicide - such as you were - had a right to know what factors would be likely to lead to a prosecution. Transparency and consistency were necessary to avoid the law being arbitrary, in other words being applied in a discriminatory manner.
40. I turn to the appropriate sentence. I can see no appropriate or sensible basis upon which a sentence of immediate imprisonment is appropriate. Indeed, the logic of the analysis under the DPP’s Guidelines and Article 8 suggests that you should be given an unconditional discharge because this would place you in the position that, it can be said, you were entitled to be in had you been assessed under the Guidelines on the facts as I have found them.
41. Guidance however has been given by the Court of Appeal in *R v Howe* [2014] EWCA Crim 114 on cases under the Suicide Act. That case concerned the first prosecution following the issuance of the DPP Guidelines. The facts were as far removed as they could possibly be from the facts of this case. They involved a defendant who targeted a vulnerable man who was contemplating suicide. The defendant made an especial effort to obtain petrol which he used to douse the victim. He then gave the victim matches to start a fire. The victim did not die but received appalling injuries.
42. The Court in *Howe* emphasised that the offence of assisting a suicide spanned a very wide range of conduct ranging from the borders of cold blooded and brutal murder

right the way across to mercy killing and acts of common humanity. The exercise of determining the appropriate sentence was accordingly a highly fact sensitive one.

43. The Court identified some, non-exhaustive, facts of possible relevance to sentence. In relation to harm a distinction was to be drawn between cases leading to death and cases not leading to death, and in the latter case where the events led to injury what the nature of the injuries were. In relation to culpability a Court should consider such factors as: whether the assistance was premeditated or planned; the degree of persistence of the conduct in question; the extent of the defendant's engagement with the deceased; whether there is evidence of a settled voluntary and informed intention on the part of the deceased to die; whether the deceased solicited support and assistance and whether the defendant sought to resist those requests for help; and any evidence of vulnerability on the part of the deceased and knowledge and exploitation of that vulnerability. The Court acknowledged the existence of the DPP Guidelines and it will follow that the prosecution of the defendant in *Howe* will have been after the Crown had considered the Guidelines in relation to him. On those facts it will not have been a very difficult decision.
44. The Court indicated that following a trial an offence towards the lower end of the scale of seriousness would attract a sentence of about 3 years imprisonment.
45. Ms Wong QC has drawn to my attention various decisions of other courts, including in other jurisdictions, such as Australia, where judges have given sentences which reflect the court's understanding and acknowledgment that even though a defendant's conduct may contribute to a death the actual culpability of a person assisting a suicide may be low. Even in cases where the defendant either attempted to kill the loved one or actually succeeded low sentences including suspended sentences have been handed down: see for example *R v Hough* (1984) 6 Cr. App. R (s) 406; the decision of Hall J in the Supreme Court of New South Wales in Australia in *R v Mathe* [2011] NSWSC 339; the decision of Coldrey J in the Supreme Court of Victoria in Australia in *R v Maxwell* [2003] VSC 278; and the judgment of the Lord Chief Justice, Lord Judge, in *R v Webb* [2011] EWCA Crim 152.
46. I consider that there is a cogent case to be made out, on the most exceptional facts of this case, for an unconditional discharge. But the trend in the case law is that in the least serious cases where a death follows a suspended sentence is appropriate.
47. Given the qualifying time and the credit due for the plea and all of the other circumstances in this case, when I stand back and consider this from the perspective of totality, a short suspended sentence without conditions is appropriate.
48. The thefts are trivial and simply form a part of the fabric of the wider case. The owner of the pharmacy gave evidence in court. He said that you were an honest and truthful and decent man. Manifestly he cared not at all about the loss of a bottle of Oramorph and a small quantity of insulin.

D. Sentence

49. Mr Bipin Desai, would you please stand up: The sentence of this court on the count of assisted suicide is one of 9 months custody suspended for 9 months. There are no conditions to be attached to this. There is no separate sentence for theft.
50. Mr Desai you are free to go and join your family and to start the process of endeavouring to rebuild your life and that of your family.

Thank you.