



JUDICIARY OF
ENGLAND AND WALES

R
-v-
HARUN RASHID
-and-
MOHAMMED ABDUL KUDDUS
-and-
RS TAKEAWAY LIMITED T/A THE ROYAL SPICE
Manchester Crown Court
Sentencing Remarks of Mrs Justice Yip DBE
7 November 2018

[Note: Reporting restrictions apply in relation to the identity of the witness who was the victim's friend involved in the placing of the takeaway order.]

1. Harun Rashid and Mohammed Abdul Kuddus, you were found guilty of the manslaughter of Megan Lee and I must sentence each of you for that offence. In addition, both of you and the company, RS Takeaway Limited t/a The Royal Spice, must be sentenced for offences relating to the failure to discharge duties under the Health and Safety at Work Act 1974 and European Union Food Safety Regulations. You, Mohammed Abdul Kuddus, pleaded guilty to those offences, as did the company. In your case, Harun Rashid, the jury found you guilty.
2. Megan Lee was just 15 years old when she died as a result of an anaphylactic reaction to peanuts in a takeaway meal supplied by The Royal Spice in Oswaldtwistle. Megan had been tested for allergies when she was younger and displayed a reaction to a mixed nut panel, which included peanut. Her family also suspected an allergy to prawns. She therefore avoided eating nuts and prawns. On 30 December 2016, she and her friend decided to have a takeaway meal. They ordered from The Royal Spice, using the Just Eat website. The two 15-year-old girls were responsible enough to highlight Megan's food allergies when placing the order. Sadly, the same responsibility was not evident at your end. The Royal Spice had no systems or processes to manage allergen control. The menu contained no information about allergens. No record was kept of the ingredients used in dishes. In short, it appears that no one at the takeaway had any way of knowing what allergens were in the food supplied. The reference to nuts and prawns on the order for Megan was completely ignored. Samples taken after Megan's death revealed that there had been peanut in the seekh kebab, onion bhaaji and naan bread in the order. (Although for some purposes tree nuts and peanuts are treated as separate categories of allergens, it was accepted on your behalf that the natural meaning of nuts included peanuts and that fits with the basis on which Megan had been tested for allergy to a range of nuts.) Megan had an allergic reaction to the food, and despite the very best efforts of her mother to resuscitate her and the subsequent attention of skilled medical teams, she died on 1 January 2017.

3. When officers from Trading Standards and the local authority's Food Standards team visited The Royal Spice after Megan's death, they found dirty conditions and a general failure to comply with appropriate standards. Counts 1 and 2 reflect those findings. The officers found quite a lot of mouse droppings. Chopping boards being used in food preparation were filthy and unfit for use. It was clear that neither the premises or cooking utensils were being kept appropriately clean. This general lack of hygiene posed a risk to public health. Further, it was clear that those handling food were not sufficiently trained. The environmental health officers were sufficiently concerned that they issued an emergency prohibition order, requiring the immediate closure of the business. That was subsequently confirmed by the Magistrates' Court.
4. We have today heard the very moving statement of Megan's parents, Gemma and Adam. The medical staff noted their dignity and courage while attempts were made to save Megan's life and as it became apparent she would not survive. They have displayed the same dignity and courage throughout the court process. They do not seek retribution but want their story to serve as a warning to others in the food industry so that other families will not be forced to experience the indescribable loss that they have suffered.
5. The trial naturally focused on Megan's death and the subsequent investigation. We heard very little about her life, although the evidence at trial hinted at the girl she was. Her parents have rightly supplied some further detail. She balanced quality time with her family and friends with studying during the Christmas break so that she would do well in her mock GCSE exams. She took her asthma in her stride and made little fuss about her allergies. She had made her family proud throughout her short life and would have continued to do so. She had everything to live for. No sentence I impose can begin to reflect the loss of Megan's life. Nothing I say today can in any way reduce the pain felt by all those who were close to Megan.
6. You have each expressed genuine remorse that Megan died as a result of eating food you served. You are both fathers. You have tried to put yourselves into the parents' shoes but recognise it is impossible to truly imagine their suffering.
7. Of course, you did not mean to kill Megan. The Prosecution said to the jury that you are not bad men. I agree. Neither of you actually foresaw the death of anyone. It never occurred to you that you would be responsible for the death of a young girl. Quite simply, you never gave the risk of a customer dying because of an allergy a moment's thought. You must now live with the guilt of what you have done and the suffering you have caused to Megan's family and to your own families. All of this is a tragedy that could so easily have been avoided had you exercised the proper care to be expected of those who serve food to the public.
8. When I sentence you, Mr Rashid and Mr Kuddus, I will impose a sentence on each of you on Count 3 (the manslaughter charge) that reflects the totality of your individual offending. I will pass concurrent sentences on Counts 1 and 2 so that they will run at the same time and will not add to the overall length of the sentences you must serve.
9. I have regard to the new Manslaughter Definitive Guideline issued by the Sentencing Council which came into effect last week. As I indicated when adjourning the case for sentence, the fact that I am sentencing you after rather than before 1 November has made no practical difference to the sentence I impose. The Guideline reflects the authorities to which I would have had to have regard in any event had the sentencing hearing taken place before last Thursday.
10. So far as Counts 1 and 2 are concerned, I have regard to the Definitive Guideline for Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences. I have the need to consider the totality of the sentence firmly in mind and

will avoid double counting culpability for conduct that underpins more than one charge.

11. The manslaughter guidelines recognise that the harm caused by the offending will inevitably be of the utmost seriousness, involving as it must do the loss of life. The starting point, therefore, is the culpability of the offender's conduct. In assessing your culpability, I must look at each of you separately as there are some important differences.
12. Harun Rashid, you were the original owner of The Royal Spice when it opened in 2009. Up until the time of Megan's death, you remained registered on the Trading Standards database as the person in charge of the business and you were the food business operator according to the records held by the local authority's food safety team. You had entered into the contract with Just Eat. In 2015, Mr Kuddus was registered as an additional owner, but you remained a party to the contract. Despite your denials, the jury found that you were the manager of the business at the time and that you had control over how it was run. You maintained that Mr Kuddus took over in 2015 and that you did not help with the running of the business at all after that. The jury rejected this and the evidence was clear that you did retain substantial responsibility in the business at the time of Megan's death. Had you intended to surrender your control of the business to Mr Kuddus, you ought to have ensured that the relevant authorities knew that. They would then have been able to check that he was a suitable person to run a food business and that he had the necessary information to enable him to do so safely.
13. As the person registered, it was you who received correspondence from the authorities. You admit that you had received the Safer Food Better Business pack supplied by the Food Standards Agency and the letter sent by the local authority in December 2014, which contained important information about changes to the rules relating to allergen labelling and marking. When giving evidence, you confirmed that you knew about food allergies; you knew they could be serious and that people with nut allergies could die if exposed to nuts. You said that when Mr Kuddus became involved in 2015, the business just carried on as it had previously. You did not tell Mr Kuddus anything about his responsibilities as an owner.
14. On the night in question, you were, as the jury found, on duty as the manager. You were also undertaking deliveries. You took Megan's order from the Just Eat terminal. You read it. You saw the comment "Nuts; prawns". Although you initially did all you could to assist the enquiry into Megan's death, you have not always been entirely truthful about your responsibility. You have not always given the same account. However, you told the officers who came to investigate that "the girl said no nuts and prawns". Despite having seen that request, you did nothing about it. You did not draw it to the chefs' attention. You delivered the food. You handed the food to the girls and you spent a little while chatting to the friend's father, yet you said nothing to indicate that you had not checked whether it contained nuts or prawns.
15. You told the jury you did not take the comment seriously because it did not refer to an allergy. However, when the father rang to complain that there had apparently been a reaction to the seekh kebab despite the allergy request, you expressed no surprise that the comment had related to allergies. You took it upon yourself to deal with that complaint without any reference to Mr Kuddus, further demonstrating your central role in the business. You went back to the house. I accept that you did so out of concern for the girl. However, once there, rather than attempting to find out what was in the seekh kebab, you denied that it could have anything in it that would cause a reaction. In saying that, I do accept that you were reassured that Megan was now better. You did not report the allergy complaint to Mr Kuddus or to the head chef.

You took no steps after the complaint was made to review how customer allergies were dealt with. Even when faced with a report of an allergic reaction to food you had delivered in response to an order you had taken, you apparently gave no thought to your responsibilities around allergen control.

16. I take the view that your culpability was greater than that of Mr Kuddus. You had set up the business and so were responsible for how it was run. When Mr Kuddus became involved it was business as usual. You were the person responsible as far as the authorities were concerned. You had received specific information about allergies. While you share responsibility for how the business operated and the conditions found on inspection, you additionally must take responsibility for not responding properly to Megan's order. You had the advantage of seeing that order. You therefore had the opportunity to do something about it. Your negligence goes beyond failing to put proper systems and processes in place and also includes your failure to deal with Megan's order properly.
17. I deal with you, Mr Kuddus, on the basis that you did not in fact know of what was written on Megan's order. You were acting as the tandoori chef that evening. You made the peshwari naan bread. While that contained a substantial amount of peanut, there is no evidence that the comment on Megan's order was seen by you or communicated to you by anyone else. Your culpability comes from your role as owner of the business and your failure to introduce any systems or processes to deal with allergen control. By their verdict, the jury found that you did not take reasonable steps to avoid your business serving food containing allergens to customers with declared food allergies.
18. You had worked in food businesses for a long time. You had been a chef at The Royal Spice since it opened in 2009. The Safer Food Better Business pack was kept by the till, so you had access to the information in it. As the owner, you needed to acquaint yourself with what was in the pack and to understand your responsibilities. If you failed to do so, you have only yourself to blame. The difficulties you have with English do not afford an excuse. You were able to set up and register a limited company through which to run the business. You apparently complied with your legal obligations around that, no doubt seeking advice and translations as required.
19. You knew you were taking on responsibility for the business in 2015. Indeed, it is to your credit that you pleaded guilty to Counts 1 and 2 and in doing so accepted responsibility for the company's breaches, including those which led to Megan's death.
20. In assessing the culpability of each of you, I do bear in mind that, unlike some cases that come before the courts, there is no evidence that your breaches were motivated by greed or any desire to save costs. It seems to me that you had simply given no proper thought to what was required to safely supply food to the public, and in particular to deal with allergy requests. This is not a case where you foresaw a risk of death but decided to run that risk for the sake of profit. Nor is this a case in which there had been previous warnings or complaints. Last year, the Court of Appeal considered a superficially similar case of manslaughter arising out of a death due to an allergic reaction to peanuts in a takeaway meal (see *R v Zaman* [2018] 1 Cr. App. R. (S.) 26). However, a close analysis of the facts of that case reveals important distinctions and I take the view that the culpability of each of you is significantly less than that of the defendant Zaman.
21. Despite representations made to the contrary either way, I take the view that this case falls within Category C (that is medium culpability) within the manslaughter sentencing guidelines. The Prosecution invited me to say that this was a Category B case on the basis that you showed a blatant disregard for a very high risk of death. It

is true that neither of you paid any attention to the risk, but this is not a case where it can be said you wilfully shut your eyes to the obvious. Two years on from Megan's death, the risks associated with food allergies have gained a prominence that they did not have at the time. It may well be that a restaurateur who takes no action to manage allergens today would be regarded as blatantly disregarding a high risk. Looking back to December 2016 and at what each of you did, I do not think it is fair to categorise your conduct in that way. On the other hand, Megan's death did not arise out of a lapse in an otherwise satisfactory standard of care. Each of you failed to meet the standard to be expected of competent restaurateurs. Counts 1 and 2 demonstrate that your failings went much wider than the way in which Megan's order was handled. Although I do draw some distinction between you, the starting point for each of you is that this is a case of medium culpability.

22. I deal with Counts 1 and 2 briefly because I am imposing concurrent sentences for the individual defendants and because of the reality of the company's financial position. So far as the individual defendants are concerned, I think it unnecessary to descend into the detail of the guidelines for these offences, although I have considered them carefully. I will take a starting point of 6 months' imprisonment on Count 1 and 4 months on Count 2. The company's culpability would be regarded as high within the guidelines. Considerations in relation to harm have to take account of Megan's death and the general level of risk created. In reality, the disposal in relation to the corporate defendant is restricted by the lack of money or assets within the company.
23. Mr Kuddus, you are 41 years old and are a man of good character with no previous convictions. Mr Rashid, you are 38 years old. You were treated as being of good character during the trial although it then came to light that you had a previous conviction for battery. That conviction is now spent and is of a wholly different nature, so I do not regard it as an aggravating factor. For each of you, I take into account your good character as part of the personal mitigation available to you. I accept that you both cooperated in the investigation as much as you were able to. In your case Mr Kuddus that was carried through into your acceptance of responsibility in the position of owner. Mr Rashid, you later attempted to minimise your responsibility, claiming to be no more than the delivery driver. However, that came at a later stage and after you had provided real assistance to officers investigating Megan's death. I give you both credit for that. I accept that you have each displayed real remorse for Megan's death. You will each find the custodial sentence which I must impose upon you hard. Your families will also suffer. I take all this into account, together with all that has been said on your behalf.
24. In your case, Mr Kuddus, you are entitled to some credit for the pleas you entered to Counts 1 and 2 on the day of trial, and which you had indicated somewhat earlier. Although you did not plead guilty to the more serious charge, I take the view that I should reflect your acceptance of some criminality by way of some reduction in the overall sentence, which I impose on Count 3. I also think it right to acknowledge that Mr Rashid's actions on the night compounded the negligent failure to have any systems or processes, for which you share responsibility. I make it clear that, in saying that, I am not uplifting Mr Rashid's sentence but rather am viewing this as additional mitigation open to Mr Kuddus.
25. I have concluded that immediate custodial sentences for each of you are unavoidable. In Mr Rashid's case, that is acknowledged. On behalf of Mr Kuddus, I am urged to consider the possibility of suspending the sentence. However, I am of the view that appropriate punishment can only be achieved by immediate custody. In the case of each of you, I will impose the shortest sentence I reasonably can, having regard to the guidelines. In doing so, I recognise that it might be thought that the sentences do not

reflect the value of the life lost. The truth is that no sentence the court could impose could truly do so. It is important that the message is heard that those who fail to take proper care in the supply of food to the public will face significant custodial sentences if a death results. Like Mr and Mrs Lee, I hope that this tragic case adds to the growing awareness in the food industry of what can happen if allergies are not taken seriously. Those who fail to heed the warnings and who continue to flout food safety regulations may find the courts taking a harsher view in the future.

26. Dealing with the ancillary orders I am asked to make, I am not satisfied that the facts of this case call for me to make a Director's Disqualification Order against either of you.
27. In considering the application for hygiene prohibition orders under section 7(4)(b) of the Food safety and Hygiene (England) Regulations 2013 I have considered the case of *R v Crestdane Ltd* [2012] EWCA Crim 958 and the guidance set out there carefully. I am conscious that making the orders sought will place a significant restriction on you. It is suggested on your behalf that the punitive effect would be disproportionate. I note that there are no relevant previous convictions nor a history of repeated breaches or prior warnings. Were I considering only whether it was necessary to impose these orders as part of the punishment for the offences, I would conclude that it was not. As the Court of Appeal made clear, deterrence is always an important consideration. However, the custodial sentences in this case will send out a powerful message to others in the food industry such that deterrence weighs less heavily here. However, the court may impose a prohibition if it "thinks it proper to do so in all the circumstances of the case". Each case must turn on its facts and protection of the public against future risk is an important consideration. Here, each of you have put forward matters in your own defence that raise serious concerns about your current fitness to be involved in management of a food business. For example, Mr Rashid claimed when giving evidence not to know that almond was a nut so that he did not know that foods containing almond would be harmful to someone with a nut allergy. The mitigation put forward on behalf of Mr Kuddus suggests that his poor grasp of English played a part in his lack of understanding of what was required of him and that he really had a limited awareness of his responsibilities as the owner of a food business. The prosecution evidence also paints a picture of a failure to appreciate what is required to operate a food business safely. In those circumstances, I conclude it is proper to make the orders sought in all the circumstances to protect the public from future risk.
28. The orders do not prevent you from working in a food business altogether. They place a restriction on you being involved in a management capacity. Further, I note that an application may be made to this court under Regulation 7(6)(b) for a direction that the order shall cease to have effect. That may be done at any time after six months from the date of the order. To assist with the future consideration of any such application, I record that, had I been satisfied that the defendants had taken steps to remedy the gaps in their knowledge and understanding, for example by undertaking training at an appropriate level for those involved in management of food businesses, I would have regarded the balance as being tipped towards not making any order. Accordingly, while not binding any judge considering an application, for my part I would regard evidence of real remediation as raising a powerful argument for the order to be discharged. I do not impose the order with a view to the defendants never being able to be involved in the management of a food business again. Rather, I think that public safety makes it necessary for there to be an order to manage future risks unless and until the defendants can demonstrate that they have properly acquainted themselves with what is required.

29. For the reasons discussed with Counsel, I am also going to make a Hygiene Prohibition Order in relation to the company, the purpose of which is to cement the assumption being made on all sides that this company should not and will not trade again within the food industry.

The sentence

30. Harun Rashid, the sentence I impose on Count 3, takes account of all your offending, including that represented by Counts 1 and 2. The starting point suggested in Category C of the guidelines for gross negligence manslaughter is one of 4 years. I consider that this reflects your overall culpability including that reflected in Counts 1 and 2. However, I must then adjust that to reflect the mitigating factors available, including your lack of relevant previous convictions; your genuine remorse; cooperation with the investigation and all your personal mitigation. There are no aggravating factors to be set in the balance. I therefore arrive at a sentence of 3 years' imprisonment. There will be concurrent sentences of 6 months on Count 1 and 4 months on Count 2, making a total sentence of 3 years.
31. Mohammed Abdul Kuddus, for the reasons I have explained, your culpability is lower. Even allowing for Counts 1 and 2, I consider the appropriate starting point to be the bottom of the range suggested in Category C. As I indicated, I will give you some credit for the extent to which you accepted responsibility and entered guilty pleas to Counts 1 and 2. The same mitigating factors are available to you and I bear in mind that your negligent conduct was compounded by actions of Mr Rashid on the night which were not within your control. The combination of all these factors together with your personal mitigation allows me to move outside the Category C range, arriving at a sentence on Count 3 of 2 years' imprisonment with concurrent sentences of 5 months on Count 1 and 3 months on Count 2, making a total sentence of 2 years.
32. You will each be required to serve half of your sentence in custody and the remainder on licence. Should you breach the terms of your licence or commit any further offence during the licence period you may be recalled to prison to serve the remainder of your sentence.
33. The position in relation to the company is not easy. Were this company still trading, a substantial financial penalty would be called for. As it is, the reality is that the company now exists only in name and there are no assets to enforce a fine against. There is really no sensible disposal available to the court. I therefore impose a nominal fine of £500 on each count, making a total penalty of £1,000. That penalty bears no relation to the seriousness of the offences, but the reality is that whatever sum I fix upon, it is unlikely to be enforceable. The Hygiene Prohibition Order, which I regard as permanently barring the company from trading in the food industry might be viewed as the real penalty.
34. I make Hygiene Prohibition Orders against both individual defendants and the statutory surcharge applies to each defendant.