IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202202244/A2

[2022] EWCA Crim 1730

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 20 December 2022

Before:

LORD JUSTICE WILLIAM DAVIS
MRS JUSTICE McGOWAN DBE
THE RECORDER OF SHEFFIELD
HIS HONOUR JUDGE JEREMY RICHARDSON KC
(Sitting as a Judge of the CACD)

REX
V
ZBIGNIEW SOJ

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MR R WRIGHT KC appeared on behalf of the Appellant
MR M McKONE KC appeared on behalf of the Crown

J U D G M E N T
(Approved)

THE RECORDER OF SHEFFIELD:

Introduction

1. This is an appeal against sentence brought with the leave of the single judge.

2. The appellant is Zbigniew Soj. He is aged 24 years. He pleaded guilty to murder and attempted murder on 30 March 2022 in the Crown Court at Bradford before His Honour Judge Jonathan Rose. He was sentenced on 17 June 2022 by the same judge. The sentence for murder (count 1) was imprisonment for life with a minimum term of 31 years less 205 days. The sentence for attempted murder (count 2) was a concurrent term of 14 years' imprisonment. The judge aggregated the sentence on count 1 to reflect overall criminality.

3. The sole issue in this appeal is whether the principle of totality was adequately reflected in the minimum term set by the judge. The judge allowed the appellant the maximum permissible credit for his guilty plea. Mr Richard Wright KC on behalf of the appellant has argued the sentence is manifestly excessive. The contention is the notional minimum term selected by the judge was far too high, and the resulting minimum term was in consequence much higher than was warranted in all the circumstances of the case. Mr Mark McKone KC on behalf of the prosecution has argued the minimum term is entirely within the range open to the judge given the extremely serious nature of this case.

4. There can be no doubt the very serious features of this case embrace the following:

   (1) The appellant set out to kill two women. He succeeded with one woman, and a very meaningful attempt was made to kill the other.
   (2) There was a clear sexual element to the killing of the deceased in the murder.

   The task of fixing the minimum term was far from straightforward.

The Facts

5. On 21 November 2021 the appellant murdered Borbala Benko (count 1) and attempted to murder Klaudia Rogozinska (count 2) in their separate flats at the Discovery Centre in Sherbourne Road, Bradford, where the appellant also lived. This was multi-occupied bedsit accommodation run by a Christian charity. He committed these brutal acts between 2.46 am and 4.38 am.

6. The events of the night can be split into four distinct parts. First, the appellant drinking during the night before; second, the murder of Miss Benko in her bedsit when she was stabbed to death and sexually molested; third, the attempted murder of Miss Rogozinska in her bedsit when she was stabbed brutally; and fourth, the conduct of the appellant thereafter.

7. It appears a man named Karol Szura and the appellant had spent part of the previous evening with each other. The appellant drank beer and vodka. At some stage the appellant watched a violent horror video.

8. A neighbour of the deceased, Adnan Mohammadi, fell asleep in his flat at the Discovery Centre at about 2.30 am. He was awakened by shouting, screaming and what sounded like the noise of people running around. The noise lasted for about 10 minutes.

9. The evidence disclosed the following. The appellant had first entered the bedsit of Miss Benko and murdered her. He also sexually abused her, as we shall come to explain. After killing her he went to the bedsit of Miss Rogozinska who was aged 21 years. She had a practice whereby she did not lock the door of her flat. She awakened to find the appellant standing over her and attacking her with a knife. She tried to fight him off.

10. At 4.38 am, when the appellant had left her for a short while, Miss Rogozinska managed to call 999. She asked for an ambulance to attend. She said she had been stabbed multiple times, including in her chest, and was bleeding heavily. At this time she was in her bedroom. Whilst she was on the telephone the appellant came back into her room. Miss Rogozinska was heard to scream and shout, "Please, no". She also spoke in Polish. She told the appellant that she was calling an ambulance and not the police. The appellant, also speaking in Polish, said, "I just want to tell you what happened. I've been suffering from depression for many years. I got fucking pissed and this happened. Do you know why? Because I'm jealous that other people can have normal lives and I can't." He also said: "I didn't mean to kill. You are all fucking great. I got smashed and I guess some demons got to me."

11. The police went to the address. Having attended to Miss Rogozinska, police officers entered the attic room to find the dead and naked body of Miss Benko. She was aged 24 at the time of her death. Her body had a number of stab wounds and was smeared with blood. Her legs were open. There was blood on the outside of the door and door frame, also on the walls near the staircase of her flat. A kitchen knife was found covered in blood on the outside steps of the building. The blade was about 4 inches long.

12. The forensic medical evidence revealed she weighed 78 kilograms. There were at least 40 sharp force injuries to her body, including stab wounds and incised wounds. Due to the sheer number of wounds it was not possible to correlate the track of each internal stab wound.

13. Miss Benko had been stabbed in her upper back - the track went between the ribs and into the chest cavity. She had been stabbed twice to the upper chest and three times to the mid-chest. She had been stabbed to both breasts. There was a cluster of 19 stab wounds over the pubis, most of which went into her abdomen. Many of the abdominal wounds entered the abdominal cavity, one of which penetrated the aorta, the main artery of the body. Stab wounds pierced the liver, right lung, bladder, uterus and vagina.

14. It is right to observe that whilst other stab wounds did not penetrate major vessels, they would have contributed to the blood loss. Miss Benko died as a result of the effects of catastrophic blood loss. There was bone damage to a rib and vertebrae indicating at least moderate force was used and in some cases severe force.

15. The forensic scientific evidence about the distribution of blood staining indicated Miss Benko was stabbed in the area near her bed and she sustained at least some of her wounds when she was at least partially upright near to her bed. It was likely the stabbing resulted in her being incapacitated in a sitting posture on or over her bedside table. It was likely the appellant moved Miss Benko onto her back on the floor where he removed her clothing. Damage to the clothing suggested Miss Benko was stabbed before her clothes were removed. The appellant discarded his own t-shirt in her bedroom.

16. Other significant evidence was to the effect that sexual activity had taken place at some stage. Adhesive tape taken from the pubic region of the deceased suggested one of the appellant's body fluids was present on that area. It was not possible to determine what that fluid was. A trace of the appellant's semen was found on an anal swab taken from the deceased. There was blood on the swab. The scientific opinion was this did not necessarily mean that anal intercourse had taken place, as the semen could have been transferred from elsewhere. The findings were however consistent with sexual activity, but the forensic scientist could not determine the specific nature of that activity. Biological matter from the deceased was found on the inside of the appellant's underpants, potentially as a result of sexual activity. This could have included a penetrative act resulting in the external deposition of semen and wiping the pubic area of the deceased.

17. Miss Rogozinska was ABE video interviewed by the police. She said that she was in bed and heard her bedroom door open. She tried to sit up but the appellant jumped towards her and started attacking her. She did not realise that the appellant was attacking her with a knife at that stage. She screamed for help and tried to fight off the appellant. He tried to strangle her and used his hand to keep her mouth shut. He put a pillow over her face, she felt dizzy and thought she lost consciousness. The appellant kept saying that he was sorry. Miss Rogozinska was laid on the floor on her stomach. The appellant tried to pin her head down to the floor. He asked her whether she was dying. He said something to the effect that if he kissed her then that would be enough. This made her feel sick. She was terrified that the appellant wanted to do something. She managed to persuade the appellant to stop attacking her by telling him that she had family and friends who needed her. She then left the bedroom and tried to flee the building but the front door was locked. The only possible inference is the appellant locked it, as her practice had been to keep it unlocked. She returned to her room to get her mobile telephone. The appellant then entered her room carrying a knife. She managed to call the emergency services, and the conversation to which we have already referred took place. After the call to the emergency services the appellant asked why she had called the police. At this point Miss Rogozinska managed to take the knife from the appellant. She tried to stab in self-defence but the knife was not sharp enough. At this point the appellant admitted to Miss Rogozinska he had murdered Miss Benko. He said

he had done it because he was depressed.

18. The injuries to Miss Rogozinska were serious. She needed surgery and remained in hospital for approximately 36 hours. She suffered nine wounds: a 2cm wound to the right breast, a 2cm wound to the right chest wall, two wounds to the right armpit, a 2cm wound over the right shoulder blade, a 3cm wound to the lower back, a wound to the back of the arm, and a 2cm wound to the front of the right arm. Some wounds were sutured, others were the subject of alternative treatment.

19. Miss Rogozinska also suffered a tension pneumothorax (a collapsed lung), causing significant pressure on the heart which was life-threatening as it could have caused a cardiac arrest. She needed an emergency procedure to insert a chest drain. There was a wound and bruising to the lung tissue. She also needed a blood transfusion. She was admitted to the high dependency unit of the hospital.

20. Miss Rogozinska made a good physical recovery following the attack. There was residual scarring which left visible signs on her arms, chest and back, but the wounds otherwise healed without complication.

21. In terms of scientific evidence, the findings of the forensic scientist were in keeping with the appellant causing these injuries whilst she was on the bed before there was scuffling on the floor. Blood distribution suggested Miss Rogozinska had attempted to keep her bedroom door closed. There was evidence that the appellant broke her telephone and threw it out of the window. A kitchen knife used by the appellant had a blade 8.5cm long and 2cm wide at its widest part. There were other knives with her blood upon them. This could be explained by Miss Rogozinska holding those knives.

22. When the police entered the building the appellant was standing on the lavatory and reaching out of the communal bathroom window. He had self-harm wounds to his wrist and abdomen. A laptop covered in blood was found on the grass outside that window. The appellant said a number of things to the police which amounted to a confession, including: "I deserve to die right now. I'm sorry for that, I was drunk. I have become a murderer". The appellant said he would rather die than go to prison. He also said: "She was such a good girl".

23. The appellant was interviewed by the police on two occasions. He made no comment throughout, including when asked about what he had said to the police at the scene.

24. The appellant however gave an account to a psychiatrist. He said he could only remember a small proportion of what he had done. He said he was depressed and drunk and wanted to commit suicide. He said: "A very intrusive thought came into my mind that I needed to end somebody else's life. It was curiosity or jealousy trying to find out what it means to kill someone. I have always had a difficult life. Someone else had a normal life." The appellant told the psychiatrist he had gone downstairs to the kitchen and picked up two knives, one of which he sharpened. He thought he had defecated in the sink. He went upstairs to where the two victims lived in separate rooms. He said he

did not feel anything at the time. He remembered the smell of blood. He had some memory of kissing and hugging the deceased.

25. The psychiatrist asked the appellant if there was any sexual activity or sexual motivation for the offences, to which the appellant replied: "I have a memory that I kissed Bori's left nipple. I thought I had uncovered her chest. I'm not sure if she was struggling. She definitely had clothes on when I went in. I think I moved her t-shirt up and pulled her trousers down. There was no touching of her genitals. I don't remember feeling sexually aroused." The appellant said he was a virgin because he was religious.

The Sentencing Remarks and Analysis by the Judge

26. It is in respect of those facts the judge was required to pass a life sentence for the murder and fix the minimum term to be served before the appellant is permitted to apply for release on licence. The judge was also required to pass sentence for the attempted murder.

27. The judge, in careful and very detailed sentencing remarks, set out the facts and covered the following areas:

    (1) At the outset of his sentencing remarks he correctly identified the principle of totality which was highly relevant to the case.
    (2) Having set out the facts he described the conduct of the appellant as "premeditated, prolonged, extensive and brutal violence".
    (3) The judge set out the devastating consequences for the family of the deceased and the situation for Miss Rogozinska.
    (4) The situation in which the appellant found himself during the killing was described as being "energised" due to an amalgam of factors: mental health difficulties, heavy drinking (which the judge regarded as an aggravating feature) and how the appellant had viewed a violent horror film before the attacks.
    (5) The report of the consultant psychiatrist was covered.

28. It would seem the judge made no formal determination as to whether the case fell within a starting point of 30 years or 25 years as he concluded the circumstances warranted a minimum term for murder of 30 years. He said this:

> "... the conclusion I have come to insofar as the court of murder is concerned is this: whilst I agree with the proposition that your actions that night were not ones which had been given significant thought or planning nor lengthy premeditation, I hesitate to agree that the offending was spontaneous. You clearly deliberated your actions during the time which you were awake after your friends had gone to sleep. You went to the kitchen of this building, I do not understand that to be a

> particularly straightforward matter and you then selected two knives and sharpened one of them before you set out with, I am satisfied, the settled intention to kill one or more people.
>
> Whilst I am sure that you set out with the intention to kill one or more people I cannot be sure that it was also your intention at that point to accompany the killing with sexual activity. I am, however, sure that sexual activity took place, more likely than not after Borbala Benko had been stabbed extensively and repeatedly and was either dead or dying. There are two components to that sexual activity: the violence, the stabbing of the breasts and in the area of the pubis and the genitals; and secondly, the sexual acts including the undressing the deceased, the kissing of the nipple, the emission of bodily fluids and of semen as I have earlier described. In the circumstances, I am satisfied that the act that resulted in the death were accompanied by sexual activity that increased the depravity of the murder.
>
> I do not need to make a decision, therefore, as to whether the taking of the knife to Miss Benko's room means that the case falls within paragraph 4(2) because I am sure that the use of the knife in the premeditated, brutal, sustained and extremely violent stabbing of this young woman who was at the time vulnerable as being asleep in her bed at night accompanied by acts of sexual depravity by a man who was as intoxicated as you undoubtedly were means that I should have in mind for the offence of murder alone a minimum term of 30 years' imprisonment."

29. The judge then turned his attention to the associated crime of attempted murder and sought then to aggregate the two separate matters within the minimum term. He said this:

> "That, however, is not by any means the end of the story for I must also impose a sentence in respect of the attempted murder of Klaudia Rogozinska. The sentencing guidelines for this offence lead me to the conclusion that this case falls into Category B culpability given that it involved premeditation murder with the arming of yourself with a knife and your stated intention to kill one or more people, and the victim suffered serious physical and psychological harm which is level 2 harm. This offence alone would ordinarily have a starting point of 25 years and a range of 20 to 30 years but of course the fact that the two offences on this indictment were committed as part of a single series of events means that the sentences should run concurrently, but in

> accordance with accepted sentencing practice, as your learned counsel has conceded, it is my view that I should aggregate the sentences and take a higher starting point for the sentence on Count 1.
>
> Having regard to the aggravating factors of there being multiple victims and each vulnerable woman in their beds at night and doing all that can be done to avoid double counting, the appropriate sentence in my view would be one of 39 years."

30. The judge then covered the mitigating features of the case, which included the previous exemplary character of the appellant, his absence of previous convictions, and the unresolved mental health issues involving depressive episodes which were being treated. The judge also referred to the various family letters, all of which were in favourable terms. He also mentioned the faith of the appellant. There can be no doubt whatsoever that the judge covered every aspect of the case thoroughly.

31. At the conclusion the judge indicated that these features of mitigation reduced the notional minimum term of 39 years to 36 years. The minimum term was further reduced by five years to take account of the plea.

32. In simple terms, the judge reached these conclusions:

    1. The murder alone would have attracted a minimum term of 30 years following a trial.
    2. The attempted murder would have attracted a sentence of 21 years following a trial and was reduced to 14 years to take account of the guilty plea.
    3. The minimum term following a trial would have been aggregated to 39 years (an increase of nine years had the murder stood alone).
    4. The mitigation reduced the minimum term following a trial to 36 years.
    5. Due to the plea of guilty there was a further reduction of five years to 31 years, less the time on remand.

33. Those were the five basic steps the judge took to achieve his conclusion.

<u>The submissions of the appellant and prosecution</u>

34. Mr Wright KC in his written submissions, which have been most helpfully amplified this morning, made three basic points. First, the judge was perfectly entitled to form the view that the murder alone warranted a starting point of 30 years. He also accepted the judge needed to aggregate the minimum term to reflect appropriate punishment for the associated attempted murder. That was an entirely correct concession for Mr Wright to make; and it was a realistic concession. Second, the contention of Mr Wright was the judge fell into error by significantly adjusting the minimum term to a level which was excessive. Third, as a result the judge failed to give effect to the principle of totality that he correctly identified at the outset of his sentencing remarks.

35. The point is exemplified by the arithmetical analysis of the judge uplifting 30 years by two-thirds of what would have been the sentence for the attempted murder, namely nine years. The appellant would have served nine years for the attempted murder alone.

36. The basic point advanced by Mr Wright was that the judge started far too high, and with all the entirely proper deductions made thereafter, it still resulted in an inevitably too high minimum term. During the course of submissions this morning, Mr Wright emphasised the appellant has acknowledged his guilt for these two offences. He also very properly jettisoned any attempt at arithmetical analysis of the correct route to the result.

37. Mr McKone KC in the Respondent's Notice and in his submissions today argued the judge was entitled to evaluate the case as he did and reach the result he did in terms of the minimum term. He argued the judge was right to commence his analysis at the 30-year marker. He further argued that to increase the minimum term to 39 years (before making the appropriate deductions) was an entirely reasonable decision given the seriousness of the attempted murder alone. The sentence following a trial would have been 21 years, and 14 years following a plea, which he submitted was not excessive given the circumstances. He argued, when standing back, 39 years before the appropriate deductions, was correct. Furthermore, the resulting minimum term of 31 years for the two crimes combined, serious as they were, cannot properly be described as manifestly excessive.

38. During the course of submissions this morning, Mr McKone made three points. First, he recognised this was an extremely difficult exercise for the judge. Secondly, he asserted that both cases were especially grave. In that regard he is entirely right. Third, he argued an uplift of nine years was correct; and the judge had well in mind the principle of totality.

39. We are extremely grateful to both Mr Wright and Mr McKone for the clarity of their submissions.

Discussion

40. There can be no doubt the judge was entitled to commence his task by reference to paragraph 3(2)(e) of schedule 21 of the Sentencing Act 2020 which stems from sections 321 and 322 of the Act. There is no need to set out those well-known provisions. The seriousness of the murder and the associated criminality was plainly particularly high. There was a sexual element to the murder. In this appeal it is conceded that the correct starting point is 30 years. The judge was right to reach that conclusion, albeit it is not entirely clear that he formally reached that conclusion.

41. We reiterate the points which have been made in many decisions of this court stemming from the practical application of the statutory regime:

First: the court must select the appropriate starting point by reference to schedule 21.

Second: It must be noted the court has the power to select a different starting point, but if that is done the reason for doing so must be clearly stated.

Third: The court must then have regard to the non-exhaustive list of statutory mitigating and aggravating features.

Fourth: The statutory regimen must not be applied mechanistically or in any formulaic manner.

Fifth: The judge is entitled to arrive at any minimum term from any starting point.

Sixth: An arithmetical approach to the search for the appropriate minimum term is to be eschewed. That approach can produce unjust results.

42. The court is required to form a judgment – and we do emphasise the need for the exercise of judgment – about the appropriate minimum term which matches and reflects the seriousness of the case taken as a whole. In this appeal the judge was faced with the additional features of having to consider a guilty plea and totality, quite apart from the personal mitigation identified. In relation to totality the court is required to fix a minimum term which aggregates the appropriate minimum term for the murder and a level of uplift to reflect the associated crime which produces a result reflective of all the offending behaviour falling for punishment, which is both just and proportionate. This seems to us to be the appropriate manner in which to apply the Definitive Guideline of the Sentencing Council on *Totality*. This does not embrace an arithmetical formula or a mechanistic approach. It demands the exercise of judgment.

43. We take the view that it is often wise, but not a requirement, to state what would have been the sentences or minimum terms had the individual crimes stood alone. In that way the family of the deceased and the victim in a non-fatal case will be reassured the crime has been appropriately assessed before any judgment is made about the level of adjustment required to reflect overall criminality by reference to the principle of totality.

44. A guilty plea in a murder case may only be reduced by one-sixth or by five years at a maximum, whichever is the less: see page 6 of the Definitive Guideline of the Sentencing Council on *Reduction in Sentence for a Guilty Plea*. The judge correctly identified the appropriate reduction in this appeal as being five years, by reason of the guilty plea of the appellant.

45. The real issue in this appeal is whether all of the correct principles and features of the case which were identified by the judge were adequately reflected in the final figure of the minimum term of 31 years following a guilty plea.

46. It is our view that following a trial, and standing alone given the appropriate starting point was 30 years, and considering the aggravating and mitigating features of the case, a

minimum term of 30 years was appropriate for the murder. Standing alone, following a trial, a sentence of 21 years for attempted murder could not in any way be regarded as excessive. Had it stood alone it would fall to be reduced by one-third to 14 years by reason of the guilty plea. The judge was entitled to uplift the minimum term to reflect the closely associated crime of attempted murder. In this case the judge selected an uplift of nine years. He then discounted that by reason of the mitigating features by a further three years to make 36 years. Then the minimum term was reduced by five years by reason of the guilty plea to murder. This resulted in the judge fixing a minimum term of 31 years. It is argued that was far in excess of what was justified in this serious case.

47. We have stood back to reflect whether, having regard to the principles we have set out, that may be characterised as manifestly excessive. The appellant, whilst affected by alcohol, set out to kill two women. He achieved that vile goal in part by killing one and seriously injuring the other. The murder was allied to sexual behaviour in the way we have described. Both crimes were perpetrated with callous determination and brutality by the use of two knives on defenceless young women in their own homes. The facts we have recited in some detail speak for themselves as to the heightened seriousness of this case.

48. The appellant was however aged 24 years and had no previous convictions. Several spoke of him well, and he had mental health problems which were set out in the psychiatric report before the court. We have well in mind the principle of totality and in consequence we have formed the view that the level of uplift selected by the judge went beyond the outer reaches of that open to him in the circumstances of this case.

49. We can analyse the position very straightforwardly:

    First: The correct minimum term for the murder would have been 30 years, balancing the aggravating and mitigating features by reference to schedule 21.

    Second: The appropriate sentence for attempted murder was 21 years. That fell to be reduced to 14 years due to the guilty plea.

    Third: Those two sentences were appropriate had the individual crimes fallen to be sentenced as single crimes. As it is, they did not.

    Fourth: We feel the judge would have been entitled to reach a minimum term of 35 years, absent any personal mitigation and before credit for plea. We reach that figure by the exercise of judgment, applying the statutory criteria that the minimum term must reflect the seriousness of the criminality taken as a whole. That is the just and proportionate term had there been a trial and absent any personal mitigation. We expressly eschew any arithmetical formula. We have simply exercised judgment based upon the principles and statutory criteria we have set out.

    Fifth: There was personal mitigation which the judge was entitled to take into account in favour of the appellant. He was right to do so and we feel a reduction of three years

was arguably generous, but with which we will not interfere.

Sixth: Accordingly, following a trial the notional minimum term would have been 32 years. Again we regard that as being reflective of the seriousness of this case taken as a whole. At that stage credit for plea must be applied, which is five years. This produces a minimum term of 27 years.

50. We have at that stage stood back and asked whether that properly reflects all the circumstances of the very serious offending of the appellant. We are satisfied that it does. The minimum term should have been 27 years and not 31 years.

Conclusion

51. In the result, as we have explained, the minimum term was in excess of that which was justified in the very serious circumstances of this case. It was manifestly excessive. Accordingly, we reduce the minimum term to 27 years, less 205 days served on remand. We will not alter the sentence for the attempted murder.

52. Accordingly, the sentences as modified are: imprisonment for life on count 1 (murder) with a minimum term of 27 years less 205 days, and a concurrent term of 14 years' imprisonment on count 2 (attempted murder). The minimum term reflects the punitive element for both crimes. The life sentence will protect the public. The judge explained the import of the sentence to the appellant when he was sentenced. We have no need to do so again.

53. To the extent indicated, we allow this appeal.