



Judiciary of England and Wales

[2024] EWCA Crim 1499

APPLICATIONS FOR LEAVE TO APPEAL AGAINST CONVICTION AND AGAINST SENTENCE

Ibrahima Bah

**v
Rex**

SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CRIMINAL DIVISION, ON 4 DECEMBER 2024 (The Lady Chief Justice, Dove and Murray JJ)

1. The applicant sought leave to appeal his conviction following a retrial before Johnson J and a jury at Canterbury Crown Court on 19 February 2024 of a single count of facilitating a breach of UK immigration law and four counts of gross negligence manslaughter. He also sought leave to appeal the sentence imposed on him by Johnson J of 9 years 6 months' detention, comprised of four concurrent sentences of 9 years 6 months' detention in respect of each gross negligence manslaughter offence and a concurrent sentence of 4 years' detention for the immigration offence.

The factual background

2. The applicant, treated as 20 years old at the time of conviction, had travelled from Senegal with the intention of claiming asylum in the UK. Whilst awaiting the opportunity to make the crossing of the Channel in the area near Dunkirk known as "the Jungle", the applicant was approached by a trafficker who offered free passage to the applicant and a friend if he agreed to steer the boat across the Channel. The applicant agreed, not otherwise having the means to make the crossing. The crossing was to occur that evening. The traffickers provided the inflatable boat which was to be used, and put the applicant under some verbal and physical pressure not to break the agreement. [3]-[5]
3. At about 00.30 on 14 December 2022, the boat set off, with around 45 persons on board. Two of the passengers were navigating, using their mobile phones and giving instructions to the applicant, who was steering. After approximately one hour, water started to enter the boat. Panic set in. As a consequence of passengers standing up, the floor of the boat broke, and the boat collapsed in on itself, trapping some of the passengers. At least four passengers died. The survivors were rescued by a nearby fishing boat, the Arcturus, towards which the applicant was able to steer. [6]

The application for leave to appeal against conviction

4. The applicant sought leave to appeal on three grounds: (i) there was a jury irregularity that prevented him from having a fair trial; (ii) the judge was wrong to reject the defence submission at the close of the prosecution case that the applicant had no case to

answer in relation to the manslaughter counts because the prosecution had failed to establish that his acts were a significant (or more than minimal) cause of each death; and (iii) the judge erred by failing to direct the jury that the deceased's voluntary choice to risk death by joining the Channel-crossing was relevant to whether the applicant's acts were a significant (or more than minimal) cause of each death.

5. The Court found that there was no merit in the jury irregularity ground. The alleged irregularity was raised only after the applicant's conviction. The Attorney-General, following an investigation into the alleged irregularity, had decided to take no further action. There was no evidence that, beyond the alleged external misconduct, there was any irregularity in the jury's conduct at trial such as to render the convictions unsafe. [49]
6. The second and third grounds were closely related. The primary question raised by each was whether the deceased's free, voluntary and informed decision to board the boat and embark on the crossing broke the chain of causation, meaning that the applicant was not legally responsible for the four deaths.
7. The key authorities relied upon by the applicant were *R v Kennedy (No 2)* [2007] UKHL 38; [2008] 1 AC 269 (*Kennedy*) and *R v Rebelo (No 1)* [2019] EWCA Crim 633 followed by *R v Rebelo (No 2)* [2021] EWCA Crim 306; [2021] 4 WLR 52 (together *Rebelo*).
8. The Court concluded that it was not arguable that the judge was wrong to refuse the defence submission of no case to answer or that he had erred by failing to give the direction sought by the defence.
9. The judge was entitled to find that both *Kennedy* and *Rebelo* were very different cases from this case. In *Rebelo* and *Kennedy*, the voluntary actions of the deceased were properly regarded as separate and distinct from the acts of the appellant. In this case, there was no separate act by the deceased that broke the chain of causation. Further distinguishing the authorities from this case, in each of *Rebelo* and *Kennedy*, the appellant and the deceased were not acting together. [38]-[41]
10. In this case, whilst the applicant and the deceased were not joint offenders, they were undoubtedly acting "in concert". In other words, they were acting together, with the same aims, in the same, single criminal episode that ended in the deaths. It is a fundamental, uncontroversial principle that where both actors are acting in concert, the free, deliberate and informed decisions of a second person will not normally relieve the first person of criminal responsibility. [38]
11. The application for leave to appeal against conviction was refused.

The application for leave to appeal against the sentence

12. The applicant sought leave to appeal against sentence on the basis that each sentence was manifestly excessive on the following grounds: (i) In relation to the immigration offence, the judge was wrong to assess the harm caused as high, and he therefore adopted too high a starting point for the sentence, resulting in a final sentence that was too long; (ii) The sentences for the manslaughter offences were too long because the judge erred in assessing the applicant's culpability as high and therefore again adopted

too high a starting point for the sentence, he made too large an upward adjustment to reflect that there were four deaths, he failed to give adequate weight to the applicant's young age and his other mitigation, and he did not have adequate regard to the principle of totality to ensure that the overall sentence was just and proportionate. [54]-[57]

13. The Court concluded that these grounds were not arguable.
14. The judge was entitled to conclude that the harm of the immigration offence was high for the reasons he gave. [56]
15. The judge was also entitled to conclude that the applicant's culpability for manslaughter was high. Though primary responsibility for the overall offending lay with the traffickers, the applicant persisted in the conduct which arose in the context of other serious criminality and demonstrated a clear disregard for the high risk of death. [58]
16. Further, the overall reduction made by the judge, incorporating an adjustment for the applicant's youth, reflected adequately the relevant mitigation. The judge also had proper regard to the principle of totality; there is no basis for interference with his assessment that the final sentence was proportionate to the overall offending. [60]-[61]
17. The application for leave to appeal against sentence was refused.

Important note for the press and the public: this summary is provided to assist in understanding the Court of Appeal's decision. It does not form part of the reasons for the decision. The full judgment ([2024] EWCA Crim 1499) is the only authoritative document. The judgment is a public document and is available online at Judgments Archive - Courts and Tribunals/Judiciary: <https://caselaw.nationalarchives.gov.uk/>