Rex

v

Shahin Darvish-Narenjbon

Sentence

1. S D-N you are 34 years old. You came to the UK from Iran when you were 15 years old and have largely lived here since. In 2008, however, you went to the US, where the first signs of mental illness became apparent and it seems that you were admitted as an in-patient to a psychiatric institution there for some time, after which you returned to this country. There is a history of contact with mental health services after your return. It is, therefore, apparent, that you were aware of your problems, albeit not, perhaps, the full extent of them.

2. In about 2015, your permission to remain in this country had lapsed. Your claim to refugee status was refused, as was permission to remain. Given the situation in Iran, you will not, however, presently be considered for deportation.

3. In 2013 you met Brenda Blainey. She was then in her late seventies. She took a kindly interest in you. Over the following years she treated you as a grandson. She took a keen interest in your academic studies and in your progress through life. Mrs Blainey lived in her own home in Thornton le Dale. There, she provided you with a room of your own to use whenever you wished, and the facilities to study when you spent time there, away from your studies in Leeds.

4. On the morning of 5th January 2022, you killed Branda Blainey in her own home in circumstances of appalling brutality. She was, by then, 88 years old. You had been staying at her home in the preceding days. It is probable that you attacked her when she was on the telephone giving her regular grocery order to the local shop. You have never given, and have, perhaps, never been capable of giving, a full account of what you did. Analysis of the scientific and pathological evidence, however, indicates that you took hold of Mrs Blainey by her neck with sufficient force to cause signs of strangulation and struck her head a number of times,

probably on the floor of the kitchen. This caused fracturing to the rear of her skull. There was, however, a period of survival after the fracturing was sustained. As she lay on her back, you used a kitchen knife to inflict at least two wounds to her neck. Her carotid artery and jugular vein were both severed, as was her windpipe. You struck a further blow with the knife to her chest, inflicting a wound some 8-10 cms in depth, which cut into a rib and her heart.

5. At some point during this assault, you slapped or punched Mrs Blainey to the face and inflicted a further pin-prick cut to her chest, probably with the point of the knife.

6. Having inflicted fatal injury, you then cleaned the knife that you had used, with sufficient thoroughness that it has never been conclusively identified. You then called 999 and reported that you had found Mrs Blainey's body and had seen two cars leaving from outside the house.

7. When you were arrested it was apparent that you were acutely psychotic and not fit to be interviewed. You were charged with the murder of Brenda Blainey.

8. Having been remanded in custody, you were transferred to Rampton secure psychiatric hospital. There you have been, and remain, under the care of Dr Karen D'Silva.

9. Psychiatric reports have been obtained by the prosecution from Dr James Stoddard and by your solicitors from Dr John Kent. Dr D'Silva has also provided an extensive report giving details of your treatment and responses whilst at Rampton.

10. Dr Kent, in his initial report of 22nd February 2022 (Para 3.3) reported that your brother had noted:

    "He presents with recurrent relapses of his condition on an annual basis. Each relapse appears to have been worse than the previous one and he has taken longer to recover. He has probably not been compliant with medication".

11. The Court now has the benefit of the following reports:

Dr Stoddart: 20th May 2022
11th November 2022
23rd January 2023

Dr Kent: 22nd February 2022
25th October 2022

Dr D'Silva: 1st November 2022

12. It is apparent from these reports that you were initially unfit to enter a plea to the indictment. Following treatment at Rampton, your mental health improved to the extent that you could be arraigned on 9th December last year. You then pleaded Not Guilty to Murder, but Guilty to Manslaughter on the grounds of diminished responsibility. In so doing you accepted that the killing was intentional and that you had planned to do it.

13. By then, five of the six reports set out above had been prepared. All three consultant forensic psychiatrists concluded that, at the time of the killing, you were suffering from an abnormality of mental functioning arising from a recognised medical condition, namely schizophrenia, that there was a substantial impairment of your ability to form a rational judgement and that these factors were an explanation for your conduct in killing Brenda Blainey.

14. In those circumstances, the prosecution accepted your plea to Manslaughter. Sentence was adjourned for further consideration of the degree of retained responsibility. Dr Stoddart's report of 23rd January 2023 goes to that issue. On 30th January he gave evidence via CVP by way of explanation of and to supplement his written reports. Dr Kent, who was present in court, also gave his views on particular aspects of matters going to the degree of retained responsibility. His views were expressed through counsel's submissions and after counsel had consulted with him during the hearing. In those circumstances I did not require Dr Kent to confirm what was said on oath.

15. Dr Stoddart's second addendum report (23rd January) includes the following:

Para 2.5:
"If asked directly, I would state that the defendant's level of responsibility retained is low"

Para 2.2:
(In relation to the information given in the 999 call and the cleaning of the knife)
"This is not, in my opinion, inconsistent with what one can see in an acutely psychotic individual"

In Para 2.3 he expressed the view (also held by Drs Kent and D'Silva) that he favoured a S.37/41 disposal over a S.45A disposal for two reasons:

First: that in the event of future release, the defendant would have a named responsible clinician in the community whose duty would be to review him and provide statutory reports to the Ministry of Justice, in addition to the social worker. who would be provide the only oversight pursuant to a release from a S.45A sentence.

Second: that in his clinical experience, patients with schizophrenia under a S.45A regime: "never fully engage with their clinical team whilst in hospital as they are aware, at any time, they can be transferred to prison. This is especially the case with psychological work – which is essential for the defendant to undertake so that a detailed formulation of his index offence is produced. This is a crucial part of his risk assessment and risk management, particularly when he is next in the community"

16. The prosecution, having retained Dr Stoddart, simply proved his various reports and tendered him for further questions.

17. In response to questions from the Court, he said that the principal factor in his assessment of retained responsibility was the severity of mental illness at the time of the killing. Retained responsibility would have been higher if the symptoms were not so florid at the time.

18. He was asked to consider your actions in giving untrue information in the 999 call and in washing the knife. In essence, how did the joint psychiatric opinion that there was a significant diminution in your ability to form a rational judgement (based on your delusional beliefs that you had a reason to kill and authorisation to do so)

square with the apparently non-delusional rationale (desire to avoid responsibility for the killing) behind those actions?

Dr Stoddart said that this could be explained as a symptom of mental illness, in particular paranoia. He said that, although you believed that you were authorised to kill, you also believed that, (to paraphrase his evidence), there were forces ranged against you from which you might still have believed you needed to protect yourself by your actions following the killing.

19. Dr Stoddart was also asked to consider whether evidence of lack of co-operation with drug regimes prescribed for your mental illness should be taken as a factor increasing your degree of retained responsibility. He said that there could be different reasons for any failure to take medication. It might be because your lifestyle became chaotic as your mental health declined: it might be "to test the water" because of dislike of perceived side-effects. He said that, in either situation, by the time you became floridly psychotic, it would be too late for you to appreciate the consequences of non-compliance. Perhaps most importantly he also said that he did not believe that you had decided to stop full compliance in order to precipitate a crisis in your mental health.

20. Dr Kent informed the Court that your medication should have been given in conjunction with other forms of therapeutic support, which were limited at the time of the killing because of the continued effect of Covid. He said that your medication had been reduced shortly before the killing, but not at your behest. He also said that you had made use of help when it was available.

21. In the light of the reports and the clarification provided in evidence, I conclude that, although the Court is not bound by the psychiatric opinion, there is no good reason to depart from the unanimous view of the three consultant psychiatrists that your level of retained responsibility should be assessed as low. I make it very clear to you, and to the family of Brenda Blainey, who listened with such conspicuous care and concern to the evidence given on Monday, that this is not to say that your responsibility is extinguished: it is not. You remain, albeit to a low degree, responsible for the dreadful death of Mrs Blainey and for the grief and suffering that this has caused to her friends and family.

22. That harm, caused by your actions is, as the Sentencing Council Guideline makes clear, inevitably of the utmost seriousness.

23. The starting point for assessing a custodial sentence in a case of lower retained responsibility is 7 years imprisonment. The range is from 3 to 12 years. The width of the range reflects the extent to which factors specific to an individual case may affect the assessment of the appropriate starting point. Having considered the psychiatric evidence I adopt 7 years as the appropriate starting point.

24. There are a number of aggravating factors.

    Brenda Blainey was 88. There is some evidence that she was beginning to suffer from dementia.

    She was killed in her own home.

    You used a knife to kill her.

    The extreme violence used.

    The other factors contended for by the prosecution (breach of trust and acts to conceal the crime) rely on an assessment of mental culpability which I have reflected in my assessment of the appropriate starting point.

25. There are also a number of mitigating features:

    You have no previous convictions

    In the light of Dr Kent's evidence, you have made efforts, if not always successfully, to address your mental health problems.

26. In my judgement the aggravating features significantly outweigh the mitigating features and require an upward adjustment of the starting point to 10 years.

27. You pleaded guilty to Manslaughter at the earliest available opportunity.

28. Before consideration of the issue of dangerousness, this would lead to a sentence of 6 years and 8 months imprisonment.

29. Dangerousness:

Manslaughter is a serious specified offence.

I am satisfied that there is a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences. In making this assessment I do not overlook the specific circumstances involved in your relationship with Mrs Blainey, which are unlikely to be repeated. However, the danger arises from your mental illness, which, if untreated, could, I am satisfied, give rise to significant risk to others occasioned by your delusions of reference and belief.

In particular I have noted the following passages from the second report of Dr Kent (25th October 2022 at Para 9):

- Violence:
  There is a risk of serious harm to the public of homicidal violence when he is acutely psychotic. Although there has been no previous violence he has described homicidal ideas previously as part of his psychosis.
- His condition is lifelong and the risk will remain in the event of further relapses.
- Relapse:
  His condition has been prone to relapse with a number of episodes of florid psychosis. At present he is still unwell although improving. Relapse is likely if his compliance with treatment in future is poor or he drops out of care. Relapse may also occur when facing stressful life events.
- Treatment compliance:
  There is a history of not taking treatments in the community. This is an ongoing risk.

30. It follows that the danger that you pose to the public is both serious and potentially lifelong.

31. I do not, however, consider that this finding justifies the imposition of a sentence of life imprisonment under the provisions of S.285(3) of the Sentencing Act 2020 because of the degree of diminution in your responsibility.

32. S.283 of the Sentencing Act 2020 does not apply.

33. An extended sentence is available, although there is no Pre-Sentence Report as required by S.280(2) of the Sentencing Act 2020.

34. The unanimous opinion of the psychiatrists is that you continue to suffer from a mental disorder. Treatment is available and ongoing at Rampton. You will remain there for the foreseeable future, whether or not the Court imposes a custodial sentence and whether or not such sentence is extended. It is in those circumstances that the Court is required to consider all sentencing options.

35. These include the imposition of a custodial sentence coupled with a S.45A direction. Whether this, or a disposal under S 37/41 of the Mental Health Act 1983 is more appropriate requires an assessment of the need for a penal element in the sentence in the light of your level of retained responsibility, and how the need for public protection in the future is best addressed by the various sentencing options.

36. In Para 14 above I have set out the views of the three psychiatrists as to the merits of a disposal under Section 37 MHA 1983 as opposed to S.45A. Each agrees that a restriction order under S.41 would be appropriate.

37. In his report second supplementary report (23rd January 2023) Dr Stoddart said that under a S. 37/S.41 disposal:

" If he was to become unwell again psychiatrically swift steps can be taken to get him back into a psychiatric hospital swiftly. A hybrid (my note: S.45A) order – assuming that the defendant returns to prison prior to release – only has the probation service involved at the time he is managed in the community; which is not the most appropriate service, considering the complexity of Mr Darvish-Narenjbon's mental disorder".

38. Dr Stoddart said in evidence that psychiatric contact would probably be weekly to start with, although he was not specifically familiar with the practice in Leeds. Dr

Kent indicated that if you were released from Rampton, you would go on a test basis to a medium secure hospital, with either a full time placement or a return to Rampton to follow a period of assessment. If successful, you would progress to a low-security hospital before being considered for return into the community.

39. Dr Kent also indicated that if that occurred, you would initially be seen several times a week under the arrangements presently available in Leeds, although not all such contacts would be by a doctor. That regime would be able to recognise potentially subtle signs of a relapse in your mental health should they occur in a way which could not reasonably be expected of the Probation Service.

40. In response to the specific question as to whether, in his opinion, "the swift steps" referred to in his second addendum would be swift enough, Dr Stoddart said that they would.

41. It is apparent from Dr D'Silva's report that her opinion, as your treating physician, is that it is likely to be several years before treatment would allow for the start of the potential progress outlined by Dr Kent.

42. If a sentence of about 6 years and 8 months imprisonment was imposed, coupled with a S.45A direction, there would be a restriction upon your release which would end after one half, or, if an extended sentence was imposed, two thirds of the custodial element of the sentence. In either event, this seems likely to be sooner than Dr D'Silva presently envisages release from Rampton under the provisions of a S.37/41 disposal.

43. In those circumstances, and given the evidence as to the release provisions under each alternative, it is apparent that a S.37/41 disposal will provide greater and probably longer lasting protection for the public. Given my assessment of your retained responsibility, I am, therefore, satisfied that the appropriate order in your case is one under S.37of the Mental Health Act 1983. I am further satisfied that a bed is and will continue to be available for you at Rampton secure hospital , and accordingly I order that you are admitted to and detained at Rampton high-security hospital.

44. It is the unanimous opinion of the psychiatrists that it is necessary for that order to be coupled with an order under S.41 of the Mental health Act 1983 imposing

restrictions upon your release. I am satisfied that, by reason of the seriousness of your offence, your history of serious relapsing mental illness and the risk to the public of further offences if you are not presently detained, that it is necessary to protect the public by imposing a restriction order under Section 41, and I so order. Because it is impossible to know how long that danger may last, such order must be without limit of time.

45. One consequence of the order that I have made under S.41 is that you may remain in Rampton indefinitely. If you are to be considered for release from Rampton and begin the steps that I have described in Para 37 above, it will be necessary for treatment of your mental health to have succeeded to the extent that each stage in the progress towards possible release into the community can be taken without danger to the public. It is not possible to anticipate the circumstances in which such decisions may be made, but the Court is concerned to ensure that the factors identified by Dr Kent and set out in Para 29 above are at the forefront of any future consideration of risk. I order that a copy of these sentencing remarks be attached to the files that are relevant to your future treatment.

46. Subject to their consent, I further order that a copy of the statement provided by Mrs Blainey's family and uploaded to the DCS at Section T. 1 is placed on those files. The statement contains assertions of deceitful conduct at times when you were not, apparently, floridly unwell. I have not found it necessary to enquire further into those matters, as they are not directly relevant to the sentence exercise. It follows that I make no finding about them. I am, however, satisfied that matters referred to under the heading "Shahin's reliability" should be brought to the attention of the relevant authorities.

47. The prosecution have asked for a Restraining Order to be made in the terms now set out at Section Q9 of the DCS. I consider that such an order is both necessary for the reassurance and protection of Mrs Blainey's family, and proportionate. Although any breach of the order might not lead to criminal penalty, if such breach were to occur, whether it is was wilful or the consequence of continued mental ill health, it would, I consider, give valuable guidance to those who will be responsible for decisions about your future under the terms of the orders that I have made. The order will be without limit of time.

48. Given the nature of the orders I have made, I do not consider it appropriate to order payment of the statutory surcharge.