



JUDICIARY OF
ENGLAND AND WALES

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-v-

NADARAJAH NITHIYAKUMAR

Sentencing remarks of the Honourable Mrs Justice Cutts DBE

At the Central Criminal court in London

On 10th day of December 2020

1. I am to sentence you for the unlawful killing on 26th April 2020 of your 2 young children – Nigish, your son then aged 3 years and Pavinya aged 18 months. You were initially charged with their murder. It is clear on the psychiatric evidence that I have read and heard that you were at the time and indeed still are suffering from a delusional disorder. All psychiatrists are agreed that your responsibility was diminished by reason of that disorder. The prosecution have properly accepted your guilty pleas to manslaughter on that basis. It is for those offences that I sentence you today.
2. This is a tragic case. At the time of the incident you were living with your wife and children in a flat in Ilford. On Sunday 26th April you returned from work at just after 4.30 in the afternoon. Nothing appeared to be amiss. Your employer describes you as a calm and quiet individual. Nothing seemed different that day. On arriving home you had a shower and watched some television. Your wife then had a shower leaving the children in your immediate care. Whilst showering she heard some noises and thought the children were being sick. When she went to see what was happening she was confronted with the sight of her children lying on the bed with injuries to their necks and a great deal of blood. They were later found to have had their throats cut. You were holding a knife. You said to her “I have cut the children off. There was a problem in my work place. I am going to die. Police are looking for me. If they get the children they will spoil them. That is the reason I did this to the children.” You then similarly cut your own throat and stabbed yourself in the chest.
3. Despite intensive efforts by first the police and then the London Ambulance Service Pavinya was pronounced dead at the scene. Nigesh was taken to hospital but sadly died of his injuries at 19.42.

4. You were treated for your physical injuries in hospital. On 7th May 2020 you were discharged. In your subsequent interview with the police you told them that you felt you could not manage yourself as you felt depressed and stressed. Customers in the shop where you worked had upset you. [CCTV at the shop showed that this was not the case]. You had thought about killing yourself. You thought that if you did so your children's lives would be spoilt as they would drink alcohol and smoke cannabis. You had therefore resolved to kill them as well. When you killed them you intended so to do.
5. You were charged and remanded into custody. There you were diagnosed as suffering from a psychotic illness with elements of a mood disorder. You were transferred to The John Howard Centre, a psychiatric hospital, on 27th May and have resided there since. I have read reports from three psychiatrists who have examined you and heard evidence from all three today. Dr Cumming was instructed by your legal representatives, Dr Blackwood, instructed by the Crown and Dr McAnnallen who is your treating clinician and been responsible for your care for the last 6 months.
6. Each reports that your medical records reveal that you had a previous episode of contact with mental health services in 2010 when you saw your GP reporting paranoid beliefs that you were being followed, targeted by Scotland Yard and thought people formed views about your sexuality. You believed rumours had been spread about you in that regard. You saw a psychiatrist at that time and were prescribed anti-psychotic medication but you did not sustain these and did not attend follow up. According to Dr Blackwood that is by reason of your mental condition as opposed to a wilful reluctance to engage with medical professionals. Your delusional beliefs have never gone away. In the opinion of all three psychiatrists you have an enduring mental illness, most likely a delusional disorder, which has been longstanding (of 10 years duration). At the time of the offences that disorder was expressed in terms of paranoid and referential delusions with no insight into your mental illness. In his view these delusions provide an explanation for your acts and omissions at the time of the offences, There appears to be no other narrative that explains the commission of them. Dr Blackwood expresses their view in this way – that this is an unusual case by reason of the purity of the link between your psychosis and offending behaviour. There is nothing else – for example you do not suffer from any personality disorder and there is no evidence of substance misuse.
7. Whilst I acknowledge that your responsibility for the killings of your children has been found to be diminished, the consequences of your actions have been devastating. Two young and innocent children have had their futures and their lives taken from them by their own father. Your wife came out of the shower on what she considered to be a normal day to the most horrific scene imaginable, her babies dead or dying on the bed, you with a knife in your hand. I have read her impact statement in which she describes her children as her life. Nigish was an active and clever boy who had recently started to speak. He was playful and loved to be outside watching the cars and the buses go by. He was sociable and loved going to nursery. He was soon to start school. Her mother describes Pavinya as a blessing and a miracle. She was a little girl who smiled all the time. She had expected great things for her children and deeply mourns their loss. The pain in her victim impact statement is palpable. She does not know how she is going to live without them. Whatever sentence this court passes today she must forever live with their loss.
8. I turn to your sentence. Although all psychiatrists have recommended that you be sentenced to a hospital order pursuant to section 37 of the Mental Health Act 1983 with a restriction under s.41 of the same Act I am not bound to follow their view. It is incumbent on me to consider

all the sentencing powers at my disposal. You killed two small children, intending so to do. A hospital order contains no penal element to the sentence. As was made clear in *R v Edwards and others [2018] EWCA Crim 595* the court must have sound reasons for departing from the usual course of imposing a sentence with a penal element. That must particularly be so with offences as grave as these which, if I were sentencing you for murder, would carry sentences of life imprisonment with a starting point for the minimum term set out in Schedule 21 of the CJA 2003 of 30 years imprisonment.

9. I have regard to the Sentencing Council Guideline for offences of manslaughter by reason of diminished responsibility and first consider the degree of responsibility which, notwithstanding your psychiatric condition, you retained. The psychiatrists are in substantial agreement that whilst you retained some responsibility, hence your guilty pleas to manslaughter, there was substantial impairment of your ability to form rational judgments and the deaths would not have occurred but for your paranoid delusions. You have never been violent to anyone in the past. Your wife describes you as a quiet individual and, before this incident, affectionate to her and the children. She describes you as previously a good father. You have no history of any illegal drug use being relevant in recent years. Substance misuse played no role in the commission of the offences. There is no evidence of any abnormal personality structure or disorder. You voluntarily sought medical help in 2010. In the opinion of all doctors mental illness was the only attributable factor in this case. Balancing all of these factors I accept their evidence that the level of responsibility you retained fell into the lower category within the guideline. In a case of manslaughter harm will always be of the utmost seriousness. Here particularly so as there were two victims.
10. The offences are aggravated by the fact that you killed two young children who were particularly vulnerable by reason of their age. The offences involved the use of a knife and there was a degree of pre-meditation. Your good character and mental condition are mitigating factors.
11. I next consider whether you are dangerous within the meaning of the Criminal Justice Act 2003, that is whether there is a significant risk to members of the public of serious harm occasioned by the commission by you of further offences. In this regard Dr Cumming says that you have clearly been affected by your illness for a number of years. He describes the offences as "highly specific" and there is no evidence that you have presented a risk to others, including those who are also patients in the same hospital. This suggests to him that the risk to others is linked to your mental disorder and the risk is therefore low. Nonetheless he recognises that the public do need protection from you and a restriction order under s.41 is necessary. Management of your illness in his view is the best way to protect the public by the care and treatment of specialist mental health services.
12. Dr Blackwood sees things differently. He describes you as being at an early stage of treatment of your delusional disorder. The delusions continue to operate in that you continue to hold that you were being conspired against. In his view anyone you consider to be involved in the conspiracy against you may theoretically be at risk. This may be a police officer, it may in the future be a child. You continue therefore to be dangerous and will pose such a danger until such times as psychiatric and psychological therapies effect a reduction in your delusional conviction. Your level of dangerousness is therefore solely by reason of your mental disorder and dependent on your response to treatment.
13. I take into account your lack of previous offending, notwithstanding your enduring mental illness. You killed your children because you intended to kill yourself and considered, in your

delusional state, that they would have no good life without you. I accept that the offences were highly specific but I cannot agree that this means that the risk to others is low. Were your condition to go untreated and you found yourself in the same position again the risk of serious harm to specific members of the public would be significant. What is clear is that the reduction in that risk is dependent upon your response to treatment for your mental condition. It is not yet known what that response will be or when and how complete your recovery will be although I note that the psychiatrists observe that, given the entrenched nature of your condition, progress to date has been slow.

14. In accordance with the Sentencing Guideline I go on to consider the possible mental health disposals under the Mental Health Act 1983. I am satisfied on the evidence of all three psychiatrists that you are suffering from a mental disorder of a nature and degree which makes it appropriate for you to be detained in hospital for medical treatment and that appropriate medical treatment is available for you. Dr McAnnallen confirms that a bed is available for you. The criteria for the imposition of a hospital order pursuant to s.37 of the Mental Health Act are thus met.
15. I am also satisfied on the evidence that I have heard that, should I impose a hospital order upon you, a restriction order would be appropriate under s.41 of the Act. Having regard to the nature of your offending and the risk of you committing other offences if at large it would in my view be necessary to make an order to protect the public from serious harm.
16. All three psychiatrists recommend that you be sentenced in this way. I have nonetheless considered whether I should sentence you in accordance with s.45A of the Act. This gives me the power to sentence you to imprisonment but direct that, rather than you being detained in a prison, you should be detained in hospital subject to a restriction under s.41. This would mean that, should your mental condition improve in hospital or you became untreatable, you would be returned to the prison estate. Not only would there then be a penal element to your sentence, your release would be subject to the decision of the Parole Board which has to take a much wider view of the risks to the public than the First Tier Tribunal which would govern your release, if appropriate, from a hospital order.
17. I have already said that these offences are particularly grave and would, were it not for your mental illness, merit substantial sentences of imprisonment. I have however come to the conclusion that such an order is not appropriate in this case for the following reasons:
 - a. Firstly I have decided that your retained responsibility for these offences falls into the lowest category within the guideline.
 - b. It is clear from the psychiatric that you require long term treatment for your mental disorder with input from a number of different disciplines. Your disorder is long standing and entrenched. Hospital has a wider range of treatments available in cases where the risk is clearly linked to mental disorder. In the view of the doctors there is a risk that in prison, without the compulsion of the Mental Health Act it is possible that you may disengage with services and stop treatment. As Dr Blackwood said prison would not have the resources or ability to monitor your mental health in the very careful way that obtains in a secure hospital setting. This would lead to a relapse in your condition and an increase in risk.
 - c. There is no evidence to suggest that but for your mental condition you pose any risk to the public. Successful treatment of that condition such that you could be returned

to the prison estate would also mean that you were no longer dangerous unless and until your mental health difficulties returned. Your management in the community would therefore turn on your response to ongoing treatment. As Dr Blackwood has said, this would mean that the Parole Board would be likely to follow the recommendation of the clinicians and the First Tier Tribunal as to release. The involvement of the Parole Board into the release procedure would not thus materially enhance public safety.

- d. I accept the evidence from the psychiatrists that the regime under s.37/41 would have significant advantages for the protection of the public. As Dr Blackwood has said, if you are detained in hospital under these provisions you will remain so for a number of years or indefinitely if there is no response to treatment and no reduction in the risk you pose to others. As he and Dr McAnallen have both said – should you be considered at any time appropriate for discharge (which it seems to me is not likely to be for some considerable time, if at all) the management of your risk is best achieved with the involvement of the Mental Health First Tier Tribunal to provide a long term framework for ensuring adherence to care in the community. Any deterioration in your mental condition, which is the sole driver of your risk to others, would lead to a prompt recall to hospital. Were I to impose a sentence pursuant to s.45A your probation officer would monitor your risk in the community and recall to prison and subsequent transfer to hospital may take some time. The s.37/41 regime avoids situations in which the risk you may then pose increases or your mental condition worsen because of those delays.

It is possible in law for a s.41 restriction to be absolutely discharged. I am told by Dr McAnallen that this is highly unlikely to occur in your case. The gravity and seriousness of these offences and your complex pathology show that you are a risk to the public if you were to relapse. A s.41 restriction and the ability to recall you to hospital will in all likelihood always be required.

- e. For these reasons I do not consider that a sentence of imprisonment enhances the protection of the public. A restricted hospital order will ensure that any release and aftercare is properly focussed on your mental health condition and, importantly, is supervised by the responsible clinician.
18. For these reasons I have come to the view that the appropriate sentence in your case is to impose a hospital order pursuant to s.37 MHA with a section 41 restriction without limit of time.
 19. The sentence on each of the counts of murder is a hospital order with a s.41 restriction without limit of time to run concurrently. The surcharge will apply.