

Neutral Citation Number: [2019] EWCA Crim 1283

Case No: 201802833/02834 & 201803076

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CENTRAL CRIMINAL COURT
HHJ HILLIARD QC
T20177351

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/07/2019

Before :

LADY JUSTICE HALLETT DBE
MRS JUSTICE MCGOWAN DBE

and

SIR JOHN ROYCE

Between :

Ouissem MEDOUNI
Nafissa KOUIDER

Appellants

- and -

Regina

Respondent

(Transcript of the Handed Down Judgment.
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Mr Richard Horwell QC (instructed by CPS Appeals) for the **Appellant**
Mr Orlando Pownall QC(instructed by Vardags) for the **Respondent**

Hearing date : 23/05/2019

Judgment
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MRS JUSTICE MCGOWAN :

The Issue

1. This appeal against conviction concerns the directions given by the trial judge in answer to a question asked by the jury during their deliberations.

The Background

2. On 24th May 2018 at the Central Criminal Court, following a trial before HHJ Hilliard QC, the Recorder of London, and a jury, both appellants were convicted of the murder of Sophie Lionnet. On 26th June 2018 each was sentenced to life imprisonment and ordered to serve a minimum term of 30 years. Both appellants had earlier pleaded guilty to an offence of doing an act tending or intended to pervert the course of public justice. Each was sentenced to a term of five years and six months on that offence, which was ordered to run concurrently. Ouissem Medouni appeals against his conviction for murder by leave of the single judge. Medouni and Sabrina Kouider both appeal against the minimum term element of the sentence for murder.

The Appeal Against Conviction

3. There is no criticism of the directions provided to the jury nor of the summing up. The sole point is whether the answer provided to the jury question was unbalanced and heavily weighted in favour of the prosecution. It is submitted that the judge should also have reminded the jury of the appellant's evidence. Further it is argued that the judge should have informed the jury that the question was not one of interpretation.

The Evidence

4. Ouissem Medouni, (“**OM**”), known as Sam, and Sabrina Kouider, (“**SK**”), are French nationals. They met in June 2001. They began a relationship, which was often turbulent. They moved to London and lived together, occasionally returning to France. SK had two sons, **K** and **G**. The evidence at the trial was that K's father was a French national called Anthony Francois and that G's father was believed to be a man called Mark Walton.
5. G was born in 2013 and when he was five months old SK rented a flat in Wimbledon Park Road, London. Both boys attended local schools. OM was living at the address with SK and the children, although he was away for periods of time. SK wanted a nanny to help look after the children and after a trial period of two weeks in April 2015, SK employed Sophie Lionnet as a full-time nanny from January 2016.
6. Sophie Lionnet was a quiet and shy young woman. She had completed a vocational training course in childcare. She had been introduced to SK through a friend of SK's brother. She left France a few days after her 20th birthday to take up the employment. The flat was a small two bedroomed garden flat and Sophie Lionnet slept in the same bedroom as the two boys. She appears to have been paid only rarely. She was clearly very badly treated throughout her employment. She was not permitted to eat with the family and by the time of her death she was manifestly emaciated. It was clear that she had suffered significant abuse although the details have never been revealed by

either appellant. It seems her passport was held by one or other or both of the appellants. It has never been found. That may, in part, explain why she stayed.

7. During 2017 SK began to make public allegations against Mark Walton which he has always denied. She had previously complained to Social Services that he had sexually abused her sons and behaved violently towards her. She claimed that he was a paedophile and she used a false Facebook account to post defamatory comments to that effect. In due course she was arrested and accepted a caution for an offence of sending malicious communications. That did not stop her campaign. In August 2017 SK contacted the police and made a complaint that Sophie Lionnet had taken G to meet Mark Walton in May 2017. She alleged that Mark Walton had told G that he was his real father and that he would shoot G's family with a gun. The police did not act upon this complaint; they did not believe that it had any foundation in truth or reality. Mark Walton's evidence was that he had never met Sophie Lionnet. These untrue allegations against Sophie Lionnet appear to have been used to provide some justification for the way in which she was treated.
8. After Sophie Lionnet's death police were to discover a number of notes and draft letters which she had written. It was clear from those notes and letters that she wished to leave but was unable to do so. It was further clear that she was desperate and helpless and incapable of seeking help. During her time in Wimbledon, Sophie Lionnet stayed in touch with her parents, and at first, she described herself as happy and well paid. During the last six months of her life however she said she was bored, that the children were difficult to manage and that she wished to return home. She did not or could not tell her parents the truth about the terrible way she was treated. She was completely overborne by the abuse. The prosecution's case was that Sophie Lionnet was effectively imprisoned in the flat by August 2017. Finally, Sophie Lionnet contacted her mother and asked for money to enable her to return home to France. She never made that journey.
9. It was around this time that "interrogations" of Sophie Lionnet were commenced by the appellants. In the six weeks from August 8th 2017 until her death 18 audio files or recordings were made on a mobile telephone belonging to the appellants of these "interrogations". They were designed to record Sophie Lionnet making a confession. It seems clear that their aim was to create evidence to implicate Mark Walton. The purported confessions were extracted from Sophie Lionnet by violent assaults and by the threat of imprisonment, rape and further violence. The Crown's case at trial was that these interviews were an exercise in control and fear. The recordings of the "interrogations" were played to the jury. It was the prosecution's case that whilst SK was the driving force behind this abuse OM played a significant and contributory role.
10. The last evidence of Sophie Lionnet being seen alive was an audio recording completed shortly before midnight on Monday 18th September 2017. K was told the next day that Sophie had left the flat but in fact she had been murdered. Her body had been concealed, probably in a suitcase and kept somewhere in the flat. The appellants planned to tell anyone who asked that Sophie had left and had returned to France. They decided that they would burn the body.
11. Her body was burned in the back garden on Wednesday the 20th September 2017. The fire was set near to the French doors at the rear of the property because that was out of sight of the neighbours. However, the smoke was apparent and in due course a

neighbour made enquiries at the property. She received no reply and telephoned 999 to report the fact that a fire been burning in the garden for about 3 ½ hours over the course of the afternoon. The fire brigade arrived at the property at about 6:20 PM. The fire was extinguished and as the firefighters examined the fire to ensure that it was out the remains of Sophie Lionnet began to appear.

12. OM returned to the flat and was asked what had been burned and he replied, “it is a sheep”. The police were called, OM was arrested and taken to Wandsworth Police Station. At first the police thought the body which had been burned was that of a child, it was so small. When that was put to OM by the custody sergeant he replied simply, “it’s not a child”. OM was interviewed and said nothing to all questions put to him.
13. A post-mortem forensic examination of the remains was carried out. The precise cause of death has never been determined. Evidence of violent assaults was found on examination. Professor Mangham was able to distinguish between those fractures caused by the heat of the fire after death and those fractures caused in life. He identified that Sophie Lionnet had sustained two different sets of fractures while still alive. He found that her sternum and five left ribs had been fractured between 36 hours and three days prior to her death. He found a fracture to the right mandible which had been caused within hours prior to death, possibly immediately before death but certainly while she was still alive. He was also able to find evidence of bruising to the left arm back and chest, also caused in life.
14. On January 5th 2018 OM provided his first defence statement. He said that Sophie had died accidentally whilst he was trying to extract information from her about Mark Walton. He said Sophie was made to sit in a bath full of water as part of an interrogation. Her head was forced under the water and held there while she was questioned. He said that was repeated on a number of occasions as he continued to press for information using the same methods. He lost his temper and punched her to the face. As a result of this punch her head struck the tiles and she slipped under the water and lost consciousness. He said he then tried to revive her. He said he had not intended to kill her or cause her serious injury. In the alternative he claimed he had lost control.
15. On 12th March 2018 OM contacted the prosecution through his solicitors offering a plea of guilty to manslaughter. That plea was not accepted. On 15th March 2018 he signed a second defence statement. In that he said the first statement was not true, that he had accepted blame only to protect SK. He said that he had gone to bed on the evening of 18th September and was awoken by SK. Sophie was lying in the bath but not breathing, he tried to revive her without success.
16. Both appellants pleaded guilty to the offence of perverting the course of justice by virtue of the roles they played in the attempt to dispose of the body by fire.
17. In evidence each accused blamed the other. OM acknowledged that he was present during the “interrogations”. He accepted playing a role in the “interrogations” with SK but denied using violence himself. He accepted that he had been present when SK assaulted Sophie Lionnet. He accepted that in the days before her death, probably around September 13th, Sophie Lionnet had suffered injuries to her legs and that SK had assaulted her with a cable or flex. He accepted he knew she was so badly injured

that she could not stand or walk properly. He accepted that he knew she needed medical assistance but had not called a doctor or taken her for medical treatment. He also accepted having been present when Sophie Lionnet was in the bath, having her head held under the water in an effort to extract a confession. He agreed he had not sought medical assistance on that occasion either. He said he knew SK had been violent to Sophie Lionnet and might be violent again. He accepted that he could and should have bought Sophie Lionnet a ticket to return to France.

18. OM denied being involved in any of the assaults or the acts of torture leading up to the death. He said he was a “moderating influence” in the interrogations, as could be seen and heard on the recordings. He denied any ill-treatment of Sophie Lionnet, “apart from the interrogations”. He said he had not known what had happened during the night until SK had woken him the next day repeatedly saying, “what have I done?” He then saw Sophie’s body lifeless in the bath. He said he had not been aware of any assaults carried out by SK on Sophie Lionnet that night. When he saw her apparent lifeless body in the bath, he commenced CPR and said he had not called 999 because he didn’t want to stop doing CPR. He said that his actions after the death: being involved in the burning of the body and lying to the police were designed to protect SK in an effort to keep the family together.
19. In simple terms the issue for the jury in his case was to determine the extent of his participation in the events leading up to the death, whether by direct involvement or acting in support of SK.
20. In retirement the jury asked to be reminded of a number of pieces of evidence. On the 23rd May 2018 the jury sent the note which is the subject matter of this appeal. The learned judge observed at page 192E of the transcript of the summing up that the question would require thought and a carefully drafted answer. The Recorder read his proposed direction to the jury to counsel, page 194 of the transcript. It is accepted that counsel had an opportunity to consider the note and to make representations on the answer.

The Jury Question and Directions Given

21. During their deliberations the jury sent this note containing the following question,

“Re Sam (Medouni) and intent, does Sam’s lack of intervention (calling doctors, sending back to France, seeing that Sophie’s physical state had deteriorated) and knowing that Sabrina could cause serious bodily harm be interpreted as intent?”
22. The note was discussed with counsel and the judge answered the question in the following terms,

“The first thing to say is that you are concerned with what a defendant’s intention was at the time when a fatal act or acts of violence were done to Sophie (Lionnet) which caused or contributed significantly to her death, if you are sure that that is proved to have happened, so defendant’s intention at the time when a fatal act of that kind was done. That is the critical moment. That is the first thing to say.

The next thing to say is if you go to paragraph 6 of the typed directions that I gave you, just the first bit there, how do you decide what someone's intention was? The answer is by considering all the circumstances surrounding the deliberate act before, during and after and then drawing such conclusions or inferences as you think proper. So, you would consider anything Mr Medouni did himself at the time of a fatal act or anything that was done by Sabrina (Kouider) that he was party to as part of a common criminal purpose as I have defined that to you. You would be entitled to look at the history, both what was going on immediately before and further back, of how Sophie had been treated previously and anything that Mr Medouni did or did not do in response and you would be entitled to look at how Mr Medouni behaved after any fatal act of violence, so that is what is meant by before, during and after in paragraph six of the written directions.

You take account of all that material and also what Mr Medouni has said about all the events at different times and then, having considered all that material, you draw such inferences or conclusions about his intention as you think right, so what happened in the past is not itself an intention at the critical time, but it is one part of the evidence that you were entitled to look at, along with all the rest of the evidence in order to decide whether the prosecution have proved the necessary intention at the critical time, okay?"

23. Paragraph six of the directions is as follows,

"How do you decide what someone's intention was? The answer is by considering all the circumstances surrounding the deliberate act, before, during and after, and then drawing such conclusions or inferences as you think proper. An intention does not have to be formed long in advance. It can be formed at very short notice or on the spur of the moment. Sometimes an intention can be regretted very soon afterwards."

The Appellant's Submissions

24. Mr Pownall QC submits that that the direction given was not adequate. It was unfairly weighted in favour of the prosecution; it did not provide a necessary reminder of the appellant's evidence and that the jury should not have been left believing that it was a matter of interpretation.
25. He accepts that the submissions made by counsel at the time of the note suggests approval of the proposed direction, or at least, acquiescence. He was not present in court but was consulted by telephone. He did not agree the proposed response but did not pursue the matter. He submits that the real question for this court should be not the attitude of trial counsel but the adequacy of the direction irrespective of agreement or acquiescence at the time.

26. The primary criticism of the direction is that the judge failed to tell the jury that the question was not one of interpretation. They were being asked to determine if the appellant was present at the time of the fatal act, did he encourage the act and what was his intention.
27. Further that he did not remind the jury of the appellant's explanation for his failure to seek medical assistance or send Sophie Lionnet home.
28. Further that although the evidence showed that the appellant was aware that SK had assaulted Sophie Lionnet before he was not aware that she was capable of inflicting really serious injury

Discussion

29. In this case it is accepted that the judge had provided the jury with clear written directions and a route to verdicts. He had summed the evidence up over considerable time with care and in detail. The note asks whether the appellant's failure to intervene in combination with his knowledge of the co-accused's ability to cause serious harm could be "interpreted" as amounting to intention.
30. The judge quite properly told the jury to go back to look at paragraph six of his written directions of law, about which no complaint has or could be made. He directed them that they should look at the appellant's intention at the time the fatal act was done. He directed them that in order to decide what someone's intention was, they should look at all the surrounding circumstances and then reach conclusions or draw inferences. He reminded them to look at the history of how Sophie Lionnet had been treated and what OM had done or not done in response. He reminded them to take account of all the material and in particular, what OM has said about all the events at different times.
31. The judge did not remind the jury of all the relevant evidence on this point. The jury did not ask for such a reminder, they had heard all the evidence summed up to them in some detail. If, nonetheless, they had been reminded of the appellant's explanations for his failure to call for assistance or send Sophie Lionnet home, namely that he did not believe her injuries were so serious as to require medical treatment and that he did not send her home because he wanted to continue the interrogations until she told them everything that had happened, he would have had to remind them of the countervailing arguments. We do not see that such a reminder would have operated to the appellant's advantage.
32. We are totally unpersuaded that the way in which the jury note was answered was in anyway inadequate. It received a careful and thoughtful answer, properly and adequately reminding the jury of the test they should apply.
33. It is not for this court to go behind the words of such a jury question. All a note can establish is, that at the time they ask the question the jury, or some of them, do not know the answer. Nor, is it for this court to conclude that a majority verdict of guilty means that a prosecution case was not "over-whelming".
34. The deceased spent many very unhappy months in the appellants' flat, until she died a violent death, probably, over the night of September 18th. The appellant admitted

participating in the “interrogations” carried out on many occasions before her death. He admitted being aware that SK had assaulted the deceased with a flex to the extent that she had difficulty in standing or walking. He was present in a small flat with a young woman who sustained a number of fractures in the days before her death and who was noticeably emaciated at the time of her death. He participated in an attempt to dispose of her body by concealing it in a suitcase and then setting fire to it in the back garden of the family home. This was a strong and compelling case. There is no basis upon which the conviction in this case could be said to be unsafe.

The Appeals Against Sentence

35. Both appellants argue that the learned judge was wrong to take a starting point of 30 years in setting the minimum term for the offence of murder. They do not argue that the term of 5 ½ years to be served concurrently on count 2 was excessive or wrong in principle.

36. Paragraphs 5(1) and 5(2) of Schedule 21 of the *Criminal Justice Act 2003* provide as follows,

“5(1) If –

(a) *the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and*

...

the appropriate starting point, in determining the minimum term, is 30 years.

...

(e) *a murder involving sexual or sadistic conduct...*”

37. Paragraph 10 provides a non-exhaustive list of potentially aggravating features which includes, mental or physical suffering inflicted on the victim before death and the destruction of the body.

38. On behalf of SK Mr Peart QC submitted that Paragraph 5 of Schedule 21 is aimed to reflect the increased culpability of an accused and should not therefore apply in the case of an accused such as SK who was suffering from a “major mental illness... most likely one of delusional disorder”. He submitted that her irrational but genuine belief that her children were being targeted as potential victims of sexual abuse should reduce the assessment of her culpability. He argues that whilst all the aggravating features identified by the judge might well be present, to some extent, all must be viewed through the lens of her mental illness. Further he submits that there was no, or only scant, evidence of an intention to kill.

39. On behalf of OM Mr Pownall QC submits that the judge selected the wrong starting point, the appropriate point was 15 years from which he accepts there would be an

uplift to reflect the aggravating features of the case. He argues that greater account should have been taken of the absence of clear evidence of an intention to kill, that there was no premeditation, that OM had been beguiled by SK, that OM believed SK's account of the sexual abuse of her children and he was acting in their interests, that there was no evidence of any financial motive behind the extortion of the confessions, that this was not a case involving sadism as there was no evidence of OM gaining pleasure from the torture, that he would serve his sentence in the UK and that if the roles had been reversed a distinction based on gender would have resulted in a female defendant receiving a different minimum term from the male protagonist.

40. The judge identified a number of features of the killing which in his view aggravated the sentence,
- i) The victim was confined for about 10 days before her death. Her passport and her telephone had been taken from her
 - ii) Cruel and relentless interrogations were conducted over that period with the added degradation of their being filmed and recorded
 - iii) About a week before her death there was a serious assault using a flex by one appellant with the knowledge of the other who did nothing to protect her or seek medical assistance
 - iv) In the few days before her death she suffered five broken ribs and a fractured sternum, the consequences would have been obvious
 - v) By the time of her death she was in a dreadful physical and mental state. As a result, she was vulnerable
 - vi) She was tortured on the night before her death by a form of waterboarding. This was carried out in a small flat in which two children were sleeping.
41. In addition, her body was concealed in a suitcase before being set alight in the back garden. In the view of the judge, Count 2, the attempt to dispose of the body was a dreadful desecration and might well have justified an increase above the 30-year starting point.

Medouni's Sentence

42. The judge found that whatever the extent of the influence SK exerted over OM he was an intelligent and well-educated man, who knew that Sophie Lionnet was being assaulted, knew that she needed medical attention and did nothing. He was aware of the bizarre conduct exhibited by SK and not only did nothing to stop it but lied to the authorities to disguise her behaviour. Further, and of vital importance, he played an active role in the interrogation sessions. He could not be said to be under compulsion or coercion, even if he was not the main protagonist.
43. In mitigation the judge considered the absence of previous convictions but reflected that that was not a factor of any great weight in the circumstances of this case. He recognised that SK had started the course of conduct but notwithstanding OM's lack of mental health problems he had gone along with her and eventually was equally involved.

44. The dreadful circumstances of the death were such that whether it had occurred out of an act of frustration as a culmination of the continuing violence or a decision to kill could make little or no difference on the facts of this case.

Koudier's sentence

45. In SK's case, he found that there was no reliable evidence of any sexual abuse of her children. Whilst her mental illness was genuine, he found that she was driven by a desire to exact revenge upon the father of her younger child. She had been described as intelligent, calculating and manipulative and in the judge's view capable of deliberate dishonesty. He found that the intentional and sustained violence and cruelty was based on a desire for revenge which means that the delusions have much less significance than might otherwise be the case in determining culpability. There was psychiatric evidence that the mental disorder from which she suffered did not explain violence or cruelty as a response to those delusional beliefs.
46. The judge treated her as having no previous convictions. As in the case of OM, the absence of premeditation or an established intention to kill could provide little reduction in sentence given the history of violent assaults and the nature of the acts of continuing torture by waterboarding.

Discussion

47. The judge heard all the evidence in the case, he saw the appellants give evidence and, in particular, he heard the recordings of the interrogation sessions. The judge was assisted by reports on both appellants. He was entitled, if not driven to the conclusion that this case involved features which placed it in the category of offence attracting a 30-year starting point. This was the systematic ill-treatment of a young woman leading to her death in appalling circumstances.
48. He gave a thoughtful and careful analysis of all the relevant factors in the case. We are not persuaded that the sentences imposed were either wrong in principle or manifestly excessive
49. For the reasons given the appeals are dismissed.