Neutral Citation Number: [2021] EWCA Crim 1597

Case No: 2012002963 B4; 202101190 B4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice,
Strand, London, WC2A 2LL

Date: 05/11/2021

Before :

LORD JUSTICE POPPLEWELL
MR JUSTICE DOVE
and
HIS HONOUR JUDGE JOHN POTTER

- -

Between :

R E G I N A

Respondent

- v -

DIANA CRISTEA

Appellant

- -
- -

Eleanor Laws QC and Jonathan Reuben (instructed by Nicholls and Nicholls) appeared on behalf of the **Applicant**

Hearing date : 29 October 2021

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Approved Judgment

Lord Justice Popplewell :

1. These are renewed applications for leave to appeal against conviction and against sentence following refusal by the Single Judge. At the conclusion of the hearing we announced our decision that the applications would be dismissed and that we would give our reasons in a reserved judgment.

2. The applicant, Diana Cristea, is now 20 years old. At the time of the events in question she was aged 17 and about 8 months. Following a trial in the Crown Court at Croydon before Mr Justice William Davis, as he then was, and a jury, she and her co-accused, Joel Osei, were convicted on Count 1 of administering a noxious substance so as to endanger life contrary to s. 23 Offences Against the Person Act 1861; and on Count 4 of murder. The first offence occurred on Thursday 30 May 2019, the victim being a man to whom we shall refer as AB because he is subject to reporting restrictions. The second offence occurred on Saturday 1 June 2019; the victim was of Adrian Murphy. The applicant and Osei were also convicted or pleaded guilty to a number of associated dishonesty offences. The applicant was sentenced to detention at Her Majesty's Pleasure with a minimum term of 16 years less time spent on remand, for the murder, with a concurrent sentence of 30 months detention for the administering noxious substance offence.

3. At the time of the alleged offences, the applicant was in a relationship with the co-accused about which we will say more below. It was the prosecution case that the applicant was a party to a plan for Osei to make contact with homosexual men via the dating app Grindr, arrange to visit their homes, drug them and steal their belongings. The drug used to execute the plan was called scopolamine, which is a poisonous drug derived from a South American plant. It is capable of incapacitating individuals by rendering them unconscious for lengthy periods when administered in very small doses. In Colombia in particular, the drug was said to be popular with robbers and rapists who could slip some of the drug into an unsuspecting victim's drink.

4. On 30 May 2019, Osei made contact with AB via Grindr and they arranged to meet at AB's home in the middle of the day, but contrary to the messages that they had exchanged, Osei did not appear to be interested in having sex with AB. AB went to the lavatory and when he returned the co-accused offered him a drink which he accepted. He woke up many hours later in hospital, having been found unconscious by a neighbour. Subsequent analysis of his hair confirmed that he had scopolamine in his system. Osei left the flat about two hours after he had arrived laden with bags of property worth over £2,000 which he had stolen, together with AB's credit card. He met up with the applicant and together they used AB's credit card to purchase items later that evening. The applicant sold the items stolen by Osei through her account on a website called Shpock.

5. On 1 June 2019, Osei met Adrian Murphy via Grindr. Osei had travelled to stay in a guest house near to the flat in Battersea where Mr Murphy was staying. Osei went alone to the flat at about 1020 pm. He drugged Mr Murphy with scopolamine but this time the dose was fatal. Mr Murphy was discovered dead in the flat three days later when his friend, the owner of the flat returned home from an overseas trip. His bank cards were stolen and used by Osei and the applicant to make purchases. Items stolen from him soon appeared on the Shpock website having been listed on the applicant's seller account.

6. The Prosecution case was that the applicant had assisted and encouraged Osei to meet the men on both occasions with the intention that he drug them with scopolamine and steal their property. On the murder count, it had not been Osei's intention to kill Mr Murphy, but he had intended to render him unconscious, as with AB, and this amounted to really serious harm. The prosecution case was that the applicant shared his intention to use scopolamine and shared his intention that it should cause the really serious harm of incapacitation.

7. Against the applicant the prosecution relied in particular upon the following evidence:

   (1) At the time of these offences, the applicant and Osei had been in a relationship since the previous summer. He was 24; she was 17. Although they did not live together (the applicant lived in a home for vulnerable young adults in Tottenham Hale and Osei lived in a flat nearby, in Seven Sisters), there was evidence to show that they had been besotted with one another and that this continued even after Osei had been charged and remanded in custody (the applicant was charged later).

   (2) On 8 May 2019, Osei followed an internet link to a Daily Mail article about a drug-related robbery in Colombia in which scopolamine had been used to incapacitate a large number of victims. The article named a website from which scopolamine could be bought. At about the time that Osei was looking at the article, some 20 minutes later, he was on the telephone to the applicant for 40 minutes. Within an hour of looking at the article, Osei had placed an order for 5 grams of scopolamine to be delivered from China from the website identified in the article.

   (3) On 10 May, the applicant's own lap-top was used to search for information relating to the harmful effects of contact with scopolamine by reference to it getting into someone's eyes.

   (4) On 16 May, Osei downloaded the gay dating-app 'Grindr'. The scopolamine was delivered on 22nd May. It was sent to Osei's address but addressed to the applicant.

   (5) On Saturday 25 May, the weekend before the drugging of AB, Osei went to a music festival with a friend. He was intending to sell caffeine tablets as drugs. In the event, he was arrested before he could get into the festival. In the course of the day, the applicant sent Osei a number of texts messages, encouraging him to make as much money as he could. After he had been refused entry, she consoled him with the idea of 'Grindr link ups and finesse'. This expression used by the applicant in one of the texts, the prosecution alleged, was a reference to a scam (a 'finesse') by which Osei would link up with gay men on the Grindr app, drug them with scopolamine and then steal from them.

   (6) On Tuesday 28 May, the applicant gave Osei a mobile telephone (with the number ending 5258) which was later used to make contact with the two victims. On the same day, Osei sent the applicant a text message which the prosecution alleged referred to the scopolamine: "Be careful and take the ting from under and wrap it up proper 'cos I don't think I did."

(7) On Thursday 30 May, Osei met the first victim, AB. The applicant was in telephone contact with Osei throughout the encounter whilst Osei was at AB's flat and arranged for a mini-cab to pick up Osei – who by this time had stolen a large amount of property from the now incapacitated AB.

(8) The applicant and Osei met later that afternoon. That evening, they used a bank card belonging to AB. They spent the night together in a hotel. The next day, Friday 31 May, the applicant began advertising AB's property on the internet.

(9) On Saturday 1 June, the applicant and Osei booked a room at a guest house in Battersea, a short walk away from the home of the second victim, Mr Murphy.

(10) Again, while Osei was with Mr. Murphy, the applicant remained in constant telephone contact with Osei.

(11) The following day, the applicant and Osei purchased items on the internet using Mr. Murphy's bank cards and advertised property that had belonged to Mr. Murphy on the applicants account on Shpock.

(12) When, on 10 June, the police asked the applicant about her 5258 telephone, she lied and said that she had thrown the SIM card away some time earlier.

(13) On 19 June, after the applicant and Osei had quarrelled, the applicant made a 999 call to the police in which she said that Osei had given two men scopolamine in order to steal from them and that one of them had died. The police were at this stage unaware that scopolamine had been used to drug either victim, and it was the call which prompted the testing which confirmed that fact.

8. The applicant made no comment in answer to questions in interview. Her case, as set out in her Defence Statement, was that, while she had been involved in the disposal of stolen property, she had not known anything about the use of scopolamine or the intention to steal in advance. She believed that Osei had acquired the stolen property in the course his work as a gay masseur.

9. When Osei gave evidence, he said that he had had nothing to do with the scopolamine. He claimed that the internet activity recovered from his mobile telephone and his lap-top which related to scopolamine had all been the work of a friend of his named 'Taps'. He had attended the two flats as a gay masseur and the property he took away had not been stolen but was his payment for this work. At the end of her cross-examination of Osei, counsel for the applicant, Ms. Laws Q.C., produced a hand-written letter which Osei had given to the applicant telling her to blame everything on Taps. When he was asked about this, Osei capitulated and admitted that he had himself been responsible for administering the scopolamine to both AB and Mr. Murphy (albeit that he had not intended to cause either of them really serious harm). Ms. Laws also asked Osei whether the applicant had known anything about the scopolamine. Osei said that she had not.

10. Following this development the applicant chose not to give evidence.

The Conviction application

11. Ms Laws marshalled her arguments before us under two headings. The first was that the judge misdirected the jury in relation to the knowledge which it was necessary for the applicant to have had about the effect of administering scopolamine, and this had the effect of watering down the direction as to the necessary intent for murder being that that serious harm be caused. The second was that the summing up was unfairly unbalanced in favour of the prosecution. We take each in turn.

Misdirection

12. The Judge gave legal directions to the jury in a split summing up prior to speeches. They were provided in writing with a route to verdict, both of which had been discussed and agreed with counsel. The legal directions contained a clear statement of the ingredients of the offence of murder and made clear that it required the jury to be sure of the applicant's intention that Mr Murphy be caused really serious harm. No criticism is made of them in that respect. This was reflected in the wording of the route to verdict. Ms Laws did not suggest otherwise.

13. In the course of his summing up of the facts, following speeches, the Judge said in relation to the applicant:

> "But there is obviously a crucial additional question [in relation to Mr Murphy] which does not arise in relation to [AB]. That is Ms Cristea's intent. Did she share Mr Osei's intent, assuming he had it, to cause really serious harm? Now obviously she would have to know of the plan, she would have to know that scopolamine was to be used and she would have to know something of the potential effect of scopolamine. And you will have to judge that on all the evidence you have heard".

14. Ms Laws submits that this would have led the jury to think that it would be enough to establish the necessary intent had the applicant merely known *something* of the effects of scopolamine, which might include effects which did not involve the really serious harm of incapacitation but some lesser side effects such as dizziness, drowsiness or the like. It thereby watered down the direction he had given as to the need to show that she intended really serious harm to be caused.

15. We do not think that there was any danger of the jury treating this passage of the summing up in this way. The Judge had not only given the jury a clear and correct direction on the ingredient of intent in the written directions and route to verdict, read out in the first part of the summing up, but as it happened he had repeated it in response to a question from the jury about the difference between murder and manslaughter during retirement. The phrase relied on ("something of the potential effect") occurred immediately after the Judge had told the jury that the question was: "Did she share Mr. Osei's intent, assuming he had it, to cause really serious harm?". In the very next sentence which followed the passage quoted above , the Judge said: "If you are not sure that she shared his intent, assuming he had it, then you would need to consider the count of manslaughter against her". The phrase relied on was sandwiched between two reminders of the need to prove an intention to cause really serious harm, and bracketed by that direction both before, in the legal directions, and after in the response to a jury question. In that context there was no danger that the jury might have thought that they could convict of murder if the applicant only thought that the drug might do no more than cause drowsiness, temporary incapacity or dizziness. In its context, the Judge was obviously not suggesting that it was sufficient if some intention short of really serious

harm be established; he was simply pointing out that the applicant could not be a party to any joint enterprise if she had not known about scopolamine and its effects. It was only if the jury were satisfied that the applicant was a party to such a plan that they could go on and consider her intent.

Unfair imbalance

16. We have read the summing up with care. Taken as a whole it does not seem to us that it can even arguably be said to be unbalanced against the applicant. In a case like this in which a defendant has not answered questions in interview and has not given evidence, it is inevitable that the evidential part of the summing up will focus upon the evidence relied upon by the prosecution. It is no part of the function of the summing up to draw attention to every aspect of the evidence, inculpatory and exculpatory, and nor is it part of its function to repeat the arguments addressed by counsel in final speeches as to what the jury should conclude from the evidence. All that is required is an identification of the case advanced by the defendant and a fair balance which does not give the jury the impression that the judge favours the prosecution case. The Judge achieved both in this case. He reminded the jury on a number of occasions of Osei's evidence that the applicant did not know he was going to use scopolamine, which was the essence of her defence. He reminded them in terms this was her case: "She says 'I only knew what Osei planned to do after the event. I wasn't aware what he was planning to do beforehand.' Nothing the Judge said was capable of giving the impression that he favoured the prosecution case.

17. Ms Laws highlighted seven aspects of the summing up under this heading. The first related to evidence that Osei had been violent towards the applicant. In the written grounds this was put forward as a complaint that the Judge had fallen into error in his rulings on the inadmissibility of material of that nature, which comprised previous convictions of Osei for offences involving violence, police reports of complaints of violence on 1 February and 19 May 2019 made by the applicant, a statement of a care worker recording the applicant complaining of his violence in February 2019, and a statement from a police officer that the applicant said she had been assaulted by Osei about a week prior to the 999 call. The latter was advanced as relevant on the basis that it cast light on the issue whether the applicant's knowledge of the use of scopolamine which the 999 call revealed had been acquired by her before or after the drugging of the victims. The Judge correctly ruled that it could have no relevance to that issue. As to the remainder, matters were overtaken somewhat by the developments in the course of the trial. Osei gave evidence that the applicant had been violent towards him, as a result of which Ms laws was permitted to cross examine him to the effect that he had been violent to her and had reported it to the police, although not as to the detail; and as to certain of his convictions for offences of violence. He accepted this in cross-examination. The jury therefore had the accepted evidence that he had committed offences of violence and that he had been violent to her which she had reported to the police. This was not, however, of substantial importance because it was accepted by the prosecution that this had been a tempestuous relationship, and there was evidence of her being besotted by him which post-dated the assaults. The Judge did not specifically refer to it in the course of his summing up, but he equally did not refer to the content of the other material as showing, as the prosecution alleged, that she was besotted with him. Ms Laws said in her submissions that this was one of her "smaller points". We cannot see that it has any weight.

18. The second aspect relied on is the Judge's treatment at pp38-39 of the transcript of the use the jury might make of the "grindr finesse" text sent to Osei when he failed to get into the festival on Saturday 25 May. The Judge said to the jury that they would have to consider whether they were sure that it showed that the applicant knew what Osei planned to do and was encouraging him in that scam, and if so what it told them about her involvement. That was the indeed relevance of the evidence; the prosecution case was that that the jury could draw those inferences; the defence case was that they could not. The matter was addressed by the judge in a way which was entirely neutral as to how the jury should resolve the issue. Moreover it was followed by a reminder of Osei's exculpatory evidence about it which was that the applicant did not know anything about his plan in relation to a finesse involving Grindr or a gay man; that he hadn't told her because he didn't want to be a burden on her; and that when he called her on his way to AB's flat, he told her he was on his way to give someone a massage. There is nothing in any of this to support an argument of imbalance.

19. Thirdly, a similar point was raised about the following passage which addressed the next question: "..what if you do conclude that she was party to the notion of a scam on [AB] or a gay man? Was she aware that scopolamine was to be used?" The Judge said that that question would require the jury to look back at the matters which went to the initial obtaining of the scopolamine; he referred in that context to the call to her at about the time Osei was looking at the Daily Mail article, and the scopolamine searches on her computer two days later. He said it was for the jury to decide what they made of them and for them to consider their significance, if any. He then referred to Osei's evidence that he kept the scopolamine secret from her. This was entirely balanced and fair. It did not indicate that the judge favoured the evidence which the prosecution relied on, which he reiterated was for them to decide what to make of; and he balanced the evidence for the prosecution on that issue with a reminder of the central piece of evidence the defence relied on. Ms Laws submitted that he did not refer to aspects of the evidence about the searches on her computer upon which the defence relied to support the possibility that they had been made by him rather than her. This however, was a level of detail into which it was not necessary for the Judge to go. He had dealt with the evidence sufficiently and in a neutral fashion. There was no suggestion made to the Judge at the time of his summing up that this was an omission which needed correction.

20. Fourthly, Ms Laws complained of the Judge's failure to refer to the fact that the applicant was in constant contact with Osei, evidence which she said was of importance to neutralise any adverse inference from the timing of calls before during and after the two attacks. The Judge did, however remind the jury that on the day of the festival there were 227 texts between them in the period between 10 and 5 o'clock, which worked out at an average of one every two or three minutes. The jury had heard extensive evidence about the frequency of contact and would have had it well in mind. As to its significance, Ms Laws argument was a forensic one for speeches and the Judge was not bound to repeat it. It seems to us that it was a point of limited force: the contact was relied upon by the prosecution as taking place at critical times in order to support the suggestion that in the calls she would have been told what was going on; the frequency of contact at other times does not make that any less likely. But however that may be, there is no proper ground for criticism of the Judge, who had drawn attention to the frequency of contact on the day of the festival, and did not need to do so more generally.

21. Fifthly there is complaint of the Judge's treatment of the "ting" text which had been sent by Osei to the applicant on 28 May. He dealt with it in two passages. First, having recited the terms of the text, he said:

> "So he was speaking about something he wanted Ms Cristea to do something with. Mr Osei says, 'well yes, I did send that text. I was talking there about some weed or cannabis she had.' You will have to ask, 'Do we accept that explanation is true or may be true?' And if it is then it is of no consequence to your deliberations. If you do not accept that he was telling the truth, and indeed are satisfied that he was not, then you will have to ask what was the ting that it was necessary to be careful about. And you will have to ask whether the only inference you can draw is that 'the ting' was scopolamine. And if you do draw that inference, bearing in mind that it has to be the only rational explanation, well what is the consequence then for Ms Cristea? That is for you to judge."
>
> And a little later:
>
> "There is the reference to 'the ting' I have already reminded you of what Mr Osei says about that; and Ms Laws argues, taken on its own, that is quite insufficient to justify any conclusion that it refers to scopolamine."

22. This was not unbalanced in favour of the prosecution; on the contrary it reminded the jury of the important points which were relied on by the defence. The criticism appears to be based on a contention that in using the phrase 'bearing in mind that it has to be the only rational explanation' the Judge was directing the jury that Osei's evidence that 'ting' was a reference to cannabis was wrong ,and that the only rational explanation was that it was a reference to scopolamine. The contention is a clearly mistaken. He was not telling the jury that the only rational explanation for that text message was that it was a reference to scopolamine. The passages make it clear that it was for the jury to decide whether to accept Osei's explanation, and the Judge specifically drew attention to Ms Laws argument that it was insufficient in itself for any inference to be drawn that it was a reference to scopolamine. The expression "And, if you do draw that inference, bearing in mind that it has to be the only rational explanation" was to emphasise to the jury that they should only draw the inference *if* this was the only rational explanation. This passage echoed his earlier direction on circumstantial evidence, where the Judge had said that the jury could draw proper inferences from the circumstances as "you find them to be and that the only rational explanation for those circumstances is if the relevant Defendant is guilty of the offence. If that is not the only rational explanation, then you find the Defendant not guilty". Furthermore, that passage in the Judge's summing-up was prior to a break, when the Judge asked whether there was anything Counsel wished to say about what he had said so far. Ms Laws did not identify the above passage as containing a misdirection.

23. Sixthly, Ms Laws complained about the effect of the redaction of two passages from the 999 call which recorded her as saying that she was calling because she was scared. The editing was to prevent adverse prejudicial effect on Osei before his violence became relevant to the issues in the case as a result of his evidence in chief. Ms Laws submitted that the redacted passages, suggesting she was calling because she was scared of Osei, were capable of supporting an interpretation that she had only learnt of the use of scopolamine after the victims had been drugged with it. We cannot see that it casts any light on the question one way or another.

24. Finally Ms laws relied upon a conversation between Osei and another woman whilst Osei was in custody on remand, which was said to show that he had a manipulative attitude towards her. Its relevance was marginal at best given that it was no part of her case that she had been acting under duress or had done what was alleged by the prosecution as a result of pressure or manipulation. However that may be, it was simply one aspect of the evidence which the Judge was not obliged to rehearse in full, and his omission to do so was not treated as of any significance at the time, at least not of sufficient significance as to warrant raising it with the Judge.

25. In summary none of these points, or a number of more minor ones raised in the written grounds but not repeated in oral argument, come close to supporting a conclusion that the summing up was unfairly imbalanced or are such as to give rise to any doubt about the safety of the conviction.

26. For these reasons we dismissed the application for leave to appeal against conviction.

Sentence

27. There had been a good deal of evidence at the trial about the very difficult and troubled time the applicant had had as a child. She was of Romanian origin and had grown up in Romania. She had had been raped at the age of 12 by two men who posted images of the sexual assault on social media. Her family had for this reason moved to the UK when she was 14. She was drawn into a drug taking world and her mother was unable to cope with her. She was taken into local authority care in January 2017 when she was 15 and after some unsuccessful placements was sent to a residential unit for sexually exploited and abused children in Lancashire, where she engaged effectively in a psychological therapeutic treatment programme. It was four months after she returned to London that aged 16 she met Osei, and returned to drug use. She was living in a home for vulnerable children when the offences occurred, and not long after the second offence was for a time hospitalised.

28. The Judge had the benefit of a report from a psychologist, Dr Krljes; a report from a psychiatrist, Dr Deshpande; and a pre-sentence report.

29. In the psychiatric report dated 9 March 2021, Dr Deshpande stated that there was not enough information to conclude that the criteria were met for a diagnosis of emotionally unstable personality disorder or dependent personality disorder. She also did not consider that there were enough symptoms at the time of the examination to make a diagnosis of post-traumatic stress disorder; it was likely that the applicant had been adequately treated in her previous placements. However the applicant continued to experience residual symptoms of her depressive illness and was responding adequately to treatment. The applicant had a history of self-harm and had expressed ideas and thoughts of harming herself. She also remained vulnerable to further sexual exploitation and recommendations were provided to assist the applicant should she receive a long custodial sentence.

30. In the psychology report dated 23 March 2021, Dr Krljes stated that there was no indication that the applicant was attempting to present herself in a positive light or manipulate the assessment. She had problems with depression, anxiety, poor self-esteem, post-traumatic stress disorder and problematic personality pattern namely borderline personality disorder. It was likely that the combination of her innate

personality and insecure attachment style in her early childhood resulted in early behavioural problems and gave rise to emotional and interpersonal difficulties later in life. Following her move to the UK, she was particularly vulnerable to sexual exploitation. Although she progressed well during her specialist treatment, upon her discharge she appeared to have returned to her learned coping strategies and quickly entered into a relationship with Osei.

31. In the pre-sentence report, the author stated that the applicant continued to maintain her innocence and was of the view that her explanation was indicative of an attempt to deny and minimise her involvement in the offences. The author considered that it was likely that the applicant's offending was linked to financial gain as well as her emotional investment in Osei and her distorted loyalty to him. She concurred with the conclusion of the psychological assessment that the applicant had a tendency to be psychologically dependant and experienced intense fear of separation within her intimate relationship. She summarised the effect of the other medical evidence in the following terms:

> "With regards to emotional well-being and links to serious harm and offending, there is no indication that Ms Cristea was experiencing significant mental health difficulties when these offences took place but difficulties in identifying her own vulnerabilities, risk taking, appropriate decision making and full regard for the seriousness and consequences are all factors that may have impact on her decision making. In addition, of paramount significance, there is evidence of childhood trauma which no doubt has impacted on her emotionally."

32. The Judge sentenced Osei to life imprisonment with a minimum term of 32 years for the murder of Mr Murphy. In his sentencing remarks in respect of the applicant, the Judge rehearsed the facts of the offending stating that it was clear from the evidence that the applicant was part of the plan almost from the outset. The Judge concluded that she was an active and willing participant in the plan: she expected to gain from it, she knew that scopolamine was being used, knew what it could do and looked after it prior to its initial use on AB. However she was not the instigator or even a joint constructor of the plan. The clearest distinction between the applicant and Osei was their respective ages - at the time of the offences Osei was an adult whereas the applicant was only 17 years old. The Judge was satisfied that due to her personal circumstances and her age, she was more susceptible to the influence of others, particularly those who were older and more criminally experienced. These factors had the effect of reducing her culpability in the case. Having considered the reports the Judge concluded that the clearest assessment of the applicant's position was set out in pre-sentence report in the passage quoted above. The Judge considered that Osei was the dominant partner in their relationship due to the fact that he was older and more experienced. However he did not consider that she was dominated by him to such an extent that she was unable to do what she wanted.

33. In relation to count 4, the Judge noted that although the starting point for Osei was 30 years (because it was a murder for gain), the starting point for her as someone under 18 at the time of the offence was 12 years, irrespective of circumstances. He then observed immediately that the minimum term for the applicant would be greater than that. He referred to the fact that she was only four months shy of her 18th birthday when Mr Murphy was murdered; she played a significant part in the murder, albeit not as significant as Osei. The offence was aggravated by the offence involving AB and because of the significant planning involved. The Judge said that if she had been an

adult of the same age as Osei, the minimum term for her participation would have been in the region of 27 years. As it was, because of her age it would be very very much less than that. He then passed the sentence with a minimum term on Count 4 of 16 years less time spent on remand.

34. The grounds of appeal against sentence are twofold. The first is that the Judge erred in increasing the twelve year minimum term by virtue of the fact that the applicant was almost 18 years old at the time of the murder. The second is that the Judge failed to take adequate account of the mitigating factors which were the applicant's role as a secondary party; the inequality of her relationship with Osei; her lack of intent to kill; her troubled background; her immaturity; her borderline personality disorder and her previous good character. In the light of these factors a minimum term of 16 years was manifestly excessive.

35. The first ground misreads the Judge's remarks. He was not treating the fact that the applicant was nearly 18 as an aggravating factor justifying in itself an increase from the 12 year starting point. He was merely identifying that she was close to the upper age limit of those to whom the lower starting point applied. It was also a precursor to his indication of what his sentence would have been had she been the same age as Osei, which reflected his view as to their relative culpability from the point of view of their participation and roles, before her age and other mitigating factors were taken into account. There is no reason to doubt that he took a 12 year starting point as a result of her age.

36. We do not in any way seek to minimise the trauma involved in the applicant's childhood, nor her personal vulnerability and emotional and mental health problems. They provide very real mitigation. It is a sad fact that but for her relationship with the more dominant Osei she would not have committed these offences. However, even allowing for such mitigation there were a number of features of this offending which justified a significant upward adjustment from the 12 year starting point. This was a murder for gain, which for an adult moves the starting point from 15 years to 30 years. That is an indication that the legislative policy behind the Criminal Justice Act 2003 was to treat such motive as a serious aggravating factor warranting a significant upward adjustment. The applicant was, as the Judge found and was entitled to find on the evidence, party to the plan from the outset and played a significant role. Her assistance was not merely by way of encouragement but involved active participation in furthering the plan by her research, handling the scopolamine (which the Judge found was being referred to as the "ting"), booking taxis and disposing of the stolen goods on Schpok. It was an operation which was carefully planned over a period of a few weeks. The drugging and theft from AB, with its considerable adverse impact on him, testified to in his victim personal statement, was also a serious aggravating feature.

37. In those circumstances, it cannot be said that the minimum term of 16 years was even arguably manifestly excessive. Accordingly the application for leave to appeal against sentence was dismissed.