Neutral Citation Number: [2020] EWCA Crim 766

Case No: 2019 03209 & 03307

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT LEEDS
MR JUSTICE SPENCER
2018 7629

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/06/2020

Before:

LORD JUSTICE HOLROYDE
MRS JUSTICE WHIPPLE DBE
and
THE RECORDER OF LONDON, HH JUDGE LUCRAFT QC
(sitting as a Judge of the Court of Appeal, Criminal Division)

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Between:

THE QUEEN	**Applicant**
- and -	
SHAHID MOHAMMED	**Defendant**

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- -

Miss S Whitehouse QC (instructed by **Crown Prosecution Service**) for **HM Attorney General and for the Director of Public Prosecutions**
Mr A Lakha QC and Mr Nicholas Worsley (instructed by **Yasmin and Shaid Solicitors**) for the **Defendant**

Hearing dates: 11 June 2020

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Approved Judgment

Lord Justice Holroyde:

1. In the early hours of 12 May 2002 Shahid Mohammed ("the defendant"), and others, deliberately set fire to a house in which eleven members of the Chisti family were sleeping. Seven members of the family, including five children aged 13, 10, 7, 2 and 6 months respectively, were trapped and died inside the house. An eighth in desperation jumped from the building, sustaining severe injuries from which she died a few days later. The three adults who survived suffered severe burns and the effects of smoke inhalation. On 6 August 2019 the defendant was convicted of eight offences of murder and of conspiracy to commit arson with intent to endanger life. The following day he was sentenced by the trial judge, Spencer J, to life imprisonment with a minimum term of 23 years for each of the offences of murder, with a determinate sentence of 14 years' imprisonment for the arson offence. Her Majesty's Attorney General believed the length of the minimum term to be unduly lenient, and so applied pursuant to section 36 of the Criminal Justice Act 1988 for leave to refer the sentencing to this court so that it may be reviewed. The defendant contended that the minimum term was too long and that a period of about three years during which he was in custody in Pakistan, awaiting extradition, should count towards his sentence. His application for leave to appeal against sentence was referred to the full court by the Registrar. At the conclusion of the hearing we granted leave to refer, quashed the sentences imposed for murder as unduly lenient, and substituted sentences of life imprisonment with a minimum term of 27 years less the 312 days which the defendant had spent remanded in custody in this country. We indicated that we would give our reasons in writing. This we now do.

2. The court was concerned with issues relating to the length of the minimum term. There was of course no appeal against the sentences of life imprisonment, which are fixed by law in all cases of murder. It is nonetheless important to emphasise at the outset that, whatever conclusion was reached as to the appropriate length of the minimum term, the total sentence remained one of life imprisonment. Whether the defendant will be released at the end of his minimum term, or at any time thereafter, will be a matter for the Parole Board to decide many years in the future. If and when the defendant is released, he will remain subject to the conditions of his licence for the remainder of his life and, if he breaches those conditions or reoffends, he may be recalled to prison to continue serving his sentence.

3. It is sufficient for present purposes to summarise the relevant facts. For convenience only, and meaning no disrespect, we shall for the most part refer to people by their last names only.

4. The defendant was aged 19 years 10 months at the time of the murders. He had previous convictions in 1997 for possessing a bladed article, in 2000 for taking a vehicle without consent and in 2001 for driving whilst disqualified. He has older brothers and a younger sister, Shahida.

5. Shahida had formed a relationship with a young man, Saud. Her family disapproved of that relationship. The defendant and his older brothers kidnapped Saud, drove him to the moors and beat him badly. They were arrested. Initially, no action was taken in relation to that incident. The defendant's brothers were later prosecuted. By that time, however, the defendant had fled to Pakistan.

6. Shahida and Saud moved away from their home area. The defendant and his brothers tried to find them. They thought that Saud's friend Ateeq, a member of the Chihti family, would know where they had gone, and went to see him. They spoke to Ateeq's mother and brother, who said they did not know where Saud was. The defendant and his brothers made threats as to the consequences if that turned out not to be true.

7. Shahida and Saud were located in Newcastle-upon-Tyne. The defendant, his brother Zahid, Shaied Iqbal and others went there armed with weapons, and compelled Shahida to return with them. The circumstances of that incident gave rise to criminal charges. The seriousness of it can be gauged by the fact that Iqbal was later sentenced to 21 months imprisonment on his guilty plea to an offence of affray. The defendant however avoided trial, because he later absconded.

8. The defendant and his brothers then discovered, from checking a mobile phone which they had taken in Newcastle-upon-Tyne, that Ateeq had been in communication with Saud. They threatened Ateeq that they were "coming for him". For several months, Ateeq lived in fear of their reprisals. That desire for revenge was the motive for the arson attack on 12 May 2002.

9. Ateeq learned that Iqbal was engaged in a relationship with a young woman of which his family would disapprove. Ateeq reported that relationship to his father, who passed it on to Iqbal's father. This enraged Iqbal, and provided a further motive in his case.

10. The arson attack was carefully planned. The defendant, Iqbal and others had armed themselves with at least four petrol bombs and a canister containing at least two litres of petrol. Considerable thought had gone into the construction of the petrol bombs: the bottles which were used were not only filled with petrol but also weighted with metal to make sure that they would smash through the double-glazed windows at which they were thrown. On arrival at the scene, a check was made to ensure that the lights were off and that the occupiers were in their beds.

11. The fire was started by use of the petrol bombs. But in addition, the petrol from the canister was poured through the letter box into the hallway at the foot of the stairs, and ignited. The defendant knew the layout of the house, and it was obvious that when the staircase caught fire everyone upstairs would be trapped.

12. The plight of those who woke to find themselves trapped in a burning house scarcely bears thinking about. The eight victims of murder died in a dreadful way. The three who survived suffered not only serious physical injury but also severe psychological harm. A statement by one of the survivors, speaking for them all, describes their anguish, their nightmares, their depression and their need for counselling over many years. In addition to their suffering, members of the wider family and friends of the deceased have also been affected by the murders.

13. On 12 May 2002 the defendant, aware that the police wanted to speak to him, presented himself at a police station. In interviews under caution he made no comment. He was bailed by the police, and quickly took the opportunity to travel to Pakistan.

14. In July 2003, in the defendant's absence, Iqbal and two others were tried before Andrew Smith J and a jury. All three were convicted of the arson offence. Iqbal was

convicted of the offences of murder and sentenced to life imprisonment. He was aged 25 at the time of the murders. His minimum term was specified as 22 years: we shall say more about that shortly. The other defendants were convicted of the alternative offences of manslaughter, and were each sentenced to imprisonment for a total of 18 years.

15. The defendant remained in Pakistan for many years. He married and had children. His extradition was requested in March 2013. He was arrested by the Pakistani authorities in January 2015. Lengthy extradition proceedings, contested by the defendant at every stage, ensued. It was not until 3 October 2018 that he was returned to this country. In July 2019, after a total of 1,350 days in custody in Pakistan and 312 days remanded in custody in England, he stood trial before Spencer J and a jury, and was convicted and sentenced as we have already stated.

16. Before considering the sentence which Spencer J imposed, it is necessary to summarise important changes in the law and practice relating to the setting of the minimum term which must be served by an offender convicted of murder.

17. At the time of these offences, it was the practice for the trial judge to write a report to the Home Secretary recommending a minimum period which should be served before the convicted murder was considered for release. The Home Secretary would consider the judge's view and any view expressed by the Lord Chief Justice, and would then determine the minimum period, which would be notified to the offender.

18. On 25 November 2002 the House of Lords held in *R (Anderson) v Secretary of State for the Home Department* [2003] 1 AC 837 that it should be a judge, not a member of the Executive who determined the minimum period to be served. After that decision, trial judges continued to make recommendations pending the introduction of new provisions, but the Secretary of State did not make any further determinations.

19. New statutory provisions were then made, with effect from 18 December 2003, by the Criminal Justice Act 2003. Leaving to one side cases in which the judge considers that the offender should never be released, the effect of section 269 of that Act is that the judge in a murder case must specify as the minimum term to be served that part of the sentence which the court considers appropriate taking into account the seriousness of the offence (or of the combination of the offence and any offences associated with it) and the effect of any direction which the court would have given under section 240 (crediting periods of remand in custody) if it had sentenced the offender to a term of imprisonment. In considering the seriousness of the offence, the court must consider the general principles set out in schedule 21, which specifies differing starting points depending on the nature of the case and sets out non-exhaustive lists of aggravating and mitigating factors which may require an adjustment upwards or downwards from the appropriate starting point.

20. In order to ensure that a murderer whose offence was committed before 18 December 2003 did not receive a more severe sentence than would have been applicable at the time of the offence, schedule 22 to the Act contains transitional provisions catering for different situations. In a case such as this, the relevant provisions are in paragraph 10, the effect of which is that the court may not specify a minimum term which in the opinion of the court is greater than that which the Secretary of State would have been likely to notify under the practice followed before December 2002.

21. Those provisions were the subject of detailed consideration by the Court of Appeal in *Sullivan* [2005] 1 Cr App R 3. The court was assisted by a wealth of material relating to sentencing practice. It noted that the records show that it was in relation to sentences at the top of the range for the most serious crimes that the minimum term notified by the Secretary of State could differ significantly from the terms recommended by judges. The guidance given in that case is now encapsulated in Criminal Practice Direction VII part N, which indicates that the best guide to what would have been the practice of the Secretary of State is a letter sent to judges by the Lord Chief Justice, Lord Bingham, on 10 February 1997. This letter indicated that for an "unexceptional" murder the period to be served should be 14 years. It went on to indicate mitigating factors, including youth, which might reduce that term, and factors which would be likely to require a more severe sentence. These included evidence of a planned or revenge killing; the killing of a child; multiple killings; and the use of firearms or other dangerous weapons. Lord Bingham said that whilst a recommendation of more than, say, 30 years would be very rare indeed, there should not be any upper limit and some crimes would certainly call for terms "very well in excess of the norm".

22. Reference was also made in *Sullivan* to a Practice Statement issued by Lord Woolf CJ on 31 May 2002, in which it was said that a term of 20 years and upwards could be appropriate in an especially grave case, examples of which included the murder of a young child.

23. It will be apparent, even from that brief summary, that the transitional provisions require the trial judge to undertake a difficult task. The judge must decide what minimum term the Secretary of State – who would not be bound to accept any judicial recommendation - would have been likely to have notified at the material time, even if the Secretary of State would not in fact have given any notification at all, because the former practice had been suspended.

24. In Iqbal's case, the trial judge Andrew Smith J had written to the Secretary of State recommending a minimum term of 22 years. Because of the changes made by the 2003 Act, the Secretary of State did not make any decision, and Iqbal was not notified of any minimum term. Different paragraphs of the transitional provisions were applicable to Iqbal's case. These had the effect that the case was referred to the High Court for a minimum term to be specified, and came again before Andrew Smith J. There was no further hearing, but Andrew Smith J considered written submissions on behalf of Iqbal and gave a detailed judgment which can be found at [2007] EWHC 516 (QB). He indicated that he was satisfied that Iqbal had intended to kill, but accepted that that intention may only have been formed at a late stage of the criminal enterprise, when the petrol was poured through the letter box. He held that if there had been no recommendation by the trial judge, and no transitional provisions, Iqbal's minimum term in accordance with schedule 21 to the 2003 Act would have been 35 years. However, he reduced that to 30 years to take into account the recommendation he had made as trial judge.

25. Andrew Smith J then considered the effect of the transitional provisions. He accepted that the Secretary of State had made clear that in the most serious cases, he tended to select a higher figure than that recommended by the judiciary. In considering whether the Secretary of State would have done so in Iqbal's case, Andrew Smith J said he had been assisted by a schedule which Iqbal's counsel had prepared, showing the minimum terms recommended and notified in a number of previous cases extracted

from a Ministry of Justice database. He referred to three offenders named in that schedule, who had been sentenced for causing multiple deaths – though not as many as eight deaths – by arson. He recognised that complete and reliable information was "elusive", but concluded that the schedule showed that in cases of multiple murders by arson the Secretary of State appeared to have adopted judicial recommendations which were broadly in line with his own recommendation in Iqbal's case. He noted that in many of the cases in which the Secretary of State had notified a much longer term than had been recommended by the trial judge, the crimes had involved sexual or sadistic offending, in particular against children. In those circumstances he concluded that in Iqbal's case, "the transitional provisions make a substantial difference to the minimum term", and he specified a term of 22 years.

26. The Attorney General at that time regarded the minimum term us unduly lenient and wished to apply for leave to refer it to this court. He was not however able to do so, because in the particular circumstances of Iqbal's case the recommendation of the minimum term did not fall within the scope of the relevant statutory provisions.

27. We can now return to Spencer J's sentencing decision. We pay tribute to the obvious care and thoroughness with which he approached a very difficult task. He reminded himself that he should first determine the appropriate minimum term in accordance with schedule 21, and should then consider whether that was longer than the period likely to have been notified by the Secretary of State under the previous practice.

28. In the first stage of that process, Spencer J noted that under paragraph 5 of schedule 21, the starting point would be 30 years in a case involving two or more murders. Here, there were eight. There were in addition serious aggravating features: the significant degree of planning and premeditation; the vulnerability of the young victims; the horrific physical and mental suffering endured by all eight victims; the fact that the defendant was at the time on bail for serious offences of violence, and also subject to a community order; and the fact that he absconded and evaded justice for 16 years, thus increasing the distress of the bereaved. The judge rejected the suggested mitigation that there was an intent to cause grievous bodily harm, rather than to kill: he was sure that Mohammed intended to kill Ateeq at least. He added that in any event, death was such an inevitable consequence of setting fire to the house that an intention only to cause really serious injury could provide no mitigation. The only potential mitigating factor was the defendant's comparatively young age and the fact that he was the youngest of the four offenders, though the judge was satisfied that he was not immature. There was no mitigation in his personal circumstances: the defendant had for years in Pakistan enjoyed a family life of the kind which he had denied his victims, and he had shown no real remorse.

29. The judge concluded that the appropriate minimum term, had the murders been committed after the 2003 Act came into force, would have been 38 years. He noted that Andrew Smith J, but for the constraint imposed upon him by the transitional provisions, would have imposed a minimum term of 35 years in Iqbal's case.

30. At the second stage of the necessary process, Spencer J was satisfied that in accordance with Lord Bingham's letter of 10 February 1997, this would have been treated as a very serious case, with a number of the features mentioned by Lord Bingham as likely to call for a more severe sentence. He referred to the recommendation in Iqbal's case and to the schedule of cases which Andrew Smith J had considered. He concluded:

> "I am not persuaded that there is any reason to take a significantly different view from Mr Justice Andrew Smith as to the likely period the Secretary of State would have notified - 22 years. However, in my opinion, it is likely that your period would have been a year longer in order to reflect that you were on bail twice over when you committed these murders and had absconded and evaded justice for many years. Those factors would have more than outweighed the difference in age. In my view, your minimum term must therefore be set at 23 years. That does not, in my view, result in any unfair disparity. A minimum term of only 23 years is, of course, very significantly less than it would have been had the offences been committed 18 months later when the 2003 Act had come into force, but that anomaly cannot be avoided however unsatisfactory it may seem."

31. The judge went on to consider the statutory provisions in respect of the period of time which the defendant had spent in custody in Pakistan awaiting extradition. He concluded that he had a discretion whether to make any reduction in the minimum term to reflect all or any part of that period, and in the exercise of that discretion he declined to allow any credit. Thus the minimum term of 23 years fell to be reduced only by the 312 days of remand in custody in this country, in respect of which the defendant was entitled to credit.

32. We consider first the application to refer the sentencing to this court as unduly lenient. In that application, Miss Whitehouse QC appeared on behalf of the Attorney General. She appeared on behalf of the Director of Public Prosecutions in responding to the defendant's application for leave to appeal against sentence.

33. Miss Whitehouse submitted that the minimum term specified by Spencer J was unduly lenient, principally because the judge erred in deciding what term the Secretary of State would have been likely to have notified under the previous system. She submitted that the judge failed to have due regard to the observations of Lord Bingham (quoted at [21] above) as to some crimes calling for terms very well in excess of the norm. He also failed to have due regard to a Practice Direction [2004] 1 WLR 1874, following a letter to judges by Lord Woolf CJ, in which it was said that

> "the only area where the Secretary of State tended to differ from the guidance set out in Lord Bingham's letter and the Practice Statement of 27th July 2000 was in relation to the gravest murders. In cases involving multiple or serial murders, where there are aggravating circumstances and no compelling mitigating factors, the Secretary of State has set minimum terms at a level considerably higher than judicial recommendation. In such cases the minimum terms have generally fallen between 30 years and whole life."

34. Miss Whitehouse submitted that Andrew Smith J had similarly failed to have due regard to those matters and had specified a minimum term which was unduly lenient. Spencer J had therefore fallen into error in thinking he should not depart substantially from the minimum term set in Iqbal's case. Relying on *Saliuka* [2014] EWCA Crim 1907, Miss Whitehouse submits that Spencer J should have imposed the minimum term he felt appropriate in the defendant's case, without regard to the minimum term in Iqbal's case. There were aggravating features of the defendant's case which were not present in Iqbal's case and so justified a more severe sentence.

35. Miss Whitehouse supported her submissions by reference to a schedule which had been prepared for the purposes of this application, using data from the National Archive. This schedule listed cases in which a minimum term of 30 years or more had been set by the trial judge, by the Secretary of State or by the High Court on review. She submitted that the schedule shows that the Secretary of State did notify terms of 30 years or more in cases involving premeditation, multiple deaths and, especially, the deaths of several children. She argued that a term of such length would have been notified in this case, and in Iqbal's case.

36. On behalf of the defendant, Mr Lakha QC submitted that neither Spencer J nor Andrew Smith J fell into the errors which Miss Whitehouse suggested. He referred to the schedule which was considered by Andrew Smith J. He relied on the fact that, whilst it did include some cases of multiple deaths being caused by arson, it did not include any case in which a minimum term of 30 years or more was imposed. As to the schedule prepared by the Attorney General's office, he pointed out that in a period of not less than 5 years between 1997 and 2002 there were only 22 cases in which a minimum term of 30 years or more was imposed, and none of them was a case of multiple deaths caused by arson. This material, he submitted, confirmed that Andrew Smith J was correct in his view as to the appropriate minimum term in Iqbal's case and Spencer J correct in Mohammed's case.

37. Turning to the application for leave to appeal against sentence, Mr Lakha submitted first that the judge wrongly ascribed greater culpability to the defendant than to Iqbal, when Iqbal had been the principal instigator of the offending and had shown great callousness towards the victims. Other than the absconding, the aggravating features which Spencer J identified in the defendant's case were also present in Iqbal's case: Iqbal too was on bail at the time of the murders.

38. Secondly, Mr Lakha submitted that insufficient weight was given to the defendant's young age and the fact that he was younger than all the other offenders. Iqbal, as we have said, was 25; the other two were 23 and 22 respectively. The difference in age was significant, such that the defendant's minimum term should have been less than Iqbal's. Moreover, the defendant had not been involved in acquiring the petrol or making the bombs and had come into the offending at a later stage than Iqbal. Andrew Smith J had been in the best position to determine what minimum period would probably have been notified by the Secretary of State. In all those circumstances, the defendant's minimum term should have been less than Iqbal's.

39. Thirdly, he submitted that in relation to the period of time in custody in Pakistan, the judge double-counted: he treated the absconding to Pakistan as an aggravating feature, and he declined to allow any credit for the period in custody in Pakistan awaiting extradition. As section 269 of the 2003 Act now stands, following amendments, the court in determining the appropriate minimum term must take into account the effect of section 240ZA. Section 240ZA provides that each day when an offender was remanded in custody shall count towards his sentence. That provision applies to any days specified under section 243, which applies to a fixed-term prisoner who was tried after being extradited to the UK and had been kept in custody whilst awaiting his extradition. Mr Lakha accepted that section 243 applies to fixed-term prisoners and does not refer to those serving life sentences, but submitted that there is no good reason to treat the latter differently. Accordingly, he submits, Spencer J was required to give full credit for the period which the defendant spent in custody in Pakistan, and the minimum term should have been reduced by 1,350 days.

40. In the alternative, if - contrary to his submission - the judge had any discretion as to whether to give credit for the period spent in custody in Pakistan, Mr Lakha submitted that the judge should have exercised that discretion by giving credit for the whole or part of that period, because the defendant should not be penalised for exercising his legal rights in Pakistan. He pointed to the absence of any extradition treaty between this country and Pakistan, and took issue with an assertion made by a police officer that the defendant had deliberately delayed the proceedings in Pakistan. He submitted that even if the defendant had not contested extradition, the nature and pace of the necessary proceedings was such that he would have spent a significant time in custody before being returned to the UK; and the conditions in which he was held in Pakistan were very harsh. The effect of the judge's decision, he submitted, was to increase the defendant's time in custody by more than three years.

41. In her submissions in response, Miss Whitehouse raised an issue as to whether a judge specifying the minimum term in a murder case is required to deduct any days spent on remand in custody. She suggested that the effect of the statutory provisions, in particular section 269 of the 2003 Act, is that any reduction is a matter of discretion.

42. We are grateful to counsel, and to those behind them, for their assistance in this complex case. Having reflected on their submissions, we reached the following conclusions. We address first the Attorney General's application.

43. We have already commended the care and thoroughness with which both Spencer J and Andrew Smith J dealt with difficult sentencing processes. We have hesitated to differ from the views taken by those experienced judges, each of whom had heard the relevant evidence at trial. We are however satisfied that each of them fell into error in one important respect, namely in deciding what minimum term would probably have been notified by the Secretary of State.

44. We can well understand why Andrew Smith J felt that the schedule which was placed before him provided support for the minimum term which he had recommended following Iqbal's trial. But as he recognised, complete and reliable information was elusive. Cases of murder in which multiple deaths are caused by an arson attack are fortunately rare. Each of the three cases on which Mr Lakha particularly relies (two in 1998 and the third in 2000), involved fewer deaths this case. In each of those three, moreover, the fire was started with petrol poured through a letter box into the house in which the victims lived. Those cases therefore lacked features which in our view make this defendant's case even more serious: the use of petrol bombs; the level of planning and premeditation; and the number of persons killed and injured. The use of one or more petrol bombs, as opposed to an accelerant such as petrol, is a grave aggravating feature, for obvious reasons. Arson attacks generally involve at least some planning, but a high level of planning and premeditation is apparent in this case because of the frankly sinister feature of weighting the petrol bombs with metal. It is scant mitigation for the defendant to say that he personally did not make the bombs: that was the nature of the joint enterprise in which he willingly joined. The toll of eight persons, including five children, being killed, and three others sustaining very serious physical and psychological harm, makes this case substantially more serious than any of those listed in the schedule. In those circumstances, whilst the schedule of other cases decided on different facts might have provided Andrew Smith J with some assistance in seeing a broad picture of levels of sentencing in less serious cases, there was a limit to how far it could help him in answering the crucial question as to

what minimum term the Secretary of State would have been likely to notify in the grave circumstances of this case.

45. We think it important to repeat that Lord Bingham's indication (see [21] above) of cases in which a sentence more severe than the norm included those in which there was evidence of a planned or revenge killing; the killing of a child; multiple killings; and the use of firearms or other dangerous weapons. Any one of those features was sufficient to elevate the case above the normal level of sentencing. All of them were present in this case. In addition, whilst Mr Lakha was correct to point out that none of the cases listed in the schedule relied on by Miss Whitehouse involved an arson attack, it does not follow that minimum terms of 30 years or more would only ever be notified in cases involving sexual or sadistic acts: that conclusion cannot be drawn in the absence from both schedules of any case of murder by arson which was as serious as this.

46. We think it important, furthermore, to keep in mind the direction given by Lord Woolf, to which we have referred at [33] above. Lord Woolf's reference to a case of "multiple … murders, where there are aggravating circumstances and no compelling mitigating factors" clearly applied to Iqbal, as it does to this defendant. On that basis, and with all respect to Andrew Smith J, we conclude that if the Secretary of State had made a decision in Iqbal's case, he would have been likely to notify a minimum term which was much longer than 22 years.

47. It must also be remembered that Andrew Smith J made his decision on the basis that Iqbal may have formed an intention to kill only at a late stage, when petrol was poured through the letter box. That was an assessment he was entitled to make, though for our part we would have attached more weight to the fact that the offenders went to the house armed with both firebombs and petrol, from which it can in our view be inferred that it was always intended to use both. But be that as it may, Spencer J was not bound to take the same view, and was entitled to reach the different conclusion to which we have referred at [28] above.

48. It follows from what we have said so far that with great respect to Spencer J, he fell into error in thinking that there was no reason for him to take a significantly different view from that which Andrew Smith J had taken. But for that error, we are confident that he would have specified a significantly longer minimum term. No unfair disparity would be involved in passing a longer sentence in such circumstances.

49. We conclude that, but for the defendant's comparatively young age, the Secretary of State would have been likely to have notified a minimum term of or about 30 years in this case. That is because of the number of victims and the grave features of the offending to which we have referred. We underline the use of both the petrol bombs and the petrol poured as an accelerant into the area near the foot of the stairs, because in our view the fact that the offenders had equipped themselves with both is a very clear indication of the gravity of the crime they planned and carried out. Making a generous allowance for the facts that the defendant was 19 at the time, and the youngest of the offenders, and for such other mitigation as can be found, we conclude that the minimum term which would have been likely to be specified by the Secretary of State in his case would not have been less than 27 years. The term of 23 years specified by the judge was unduly lenient.

50. We turn to the application for leave to appeal against sentence. Spencer J had heard all the evidence at trial. He was fully aware of all relevant features of Iqbal's case. In

our judgment, he was entitled to conclude, for the reasons he gave, that the defendant's culpability was greater than Iqbal's. Iqbal had certainly shown a callous disregard of his victims, but so too had the defendant. Only limited weight can be given to the difference in their respective ages: the defendant was a young adult, not immature for his age, and Iqbal was only in his mid-twenties. We are therefore unable to accept the first and second grounds of appeal. In any event, in the light of what we have said above, a comparison with Iqbal's case cannot assist this defendant.

51. As to the third ground of appeal, we take the view that there is a short answer to it, which makes it unnecessary - and therefore inappropriate - for us to express any views about the much wider issue raised by Miss Whitehouse. Whatever may be the position when a judge specifies the minimum term to be served for a murder committed after 18 December 2003, this is not such a case. The judge was required at stage 1 of the necessary process to consider what minimum term would be specified under schedule 21, but the detail of his decision would only be relevant to this appeal if stage 1 had resulted in a minimum term which did not exceed the term which the Secretary of State would have notified. Plainly, that was not the case. The focus therefore shifts to what decision the Secretary of State would have been likely to have made, looking at the case as at the time of the offence. That decision would have had regard to the recommendation of the trial judge; and as the law stood at the date of the offence, any credit for time spent in custody abroad awaiting extradition was a matter for the judge's discretion. The Secretary of State would not have been obliged to take the same view as the trial judge. The issue for the sentencing judge, at stage 2 of the process required by the transitional provisions, is whether the minimum term notified by the Secretary of State would probably have made some allowance for time in custody abroad, and would therefore have been shorter than it would otherwise have been.

52. Mr Lakha's principal submission, that Spencer J had no discretion in this respect and was required to give full credit for the whole period spent in custody in Pakistan, is in our view contrary to the approach required by the transitional provisions. It would also produce anomalous results. It would mean that if the judge thought it likely that the Secretary of State would not have made any allowance for the time in custody abroad, the judge would nonetheless have to reduce the term which the Secretary of State would have been likely to have notified. If on the other hand the judge thought that the Secretary of State would probably have made an allowance for the whole of the period in custody abroad, the judge would nonetheless have had to deduct the same period again when specifying the minimum term. Either way, the judge would not be following the approach required by the transitional provisions. We are therefore satisfied that Spencer J was correct to approach this issue on the basis that he had a discretion as to whether he should give credit for all or any of the period in custody in Pakistan.

53. As to the exercise of that discretion, we see no reason to think that a judge sentencing at that time, or the Secretary of State considering that judge's recommendation, would have been any more willing to exercise it in the defendant's favour than was Spencer J. It is of course correct that the defendant was entitled to exercise his legal rights in Pakistan; but he was under no compulsion to do so. However bad the conditions in which he was held, he could have avoided them by returning to the UK at any time in the preceding 16 years or by immediately agreeing to extradition when arrested. In

those circumstances, it is not possible for the defendant to make any successful challenge to Spencer J's decision.

54. We add for completeness that we do not accept that Spencer J fell into the error of double counting. The defendant's absconding from bail, and remaining out of the jurisdiction, was an aggravating feature regardless of whether extradition proceedings were necessary to secure his return to this country.

55. In those circumstances, there was no ground on which it could be argued that the minimum term of 23 years was wrong in principle or manifestly excessive in length. We would therefore have refused the application for leave to appeal against sentence even if we had reached a different conclusion on the Attorney General's application.

56. It was for those reasons that we reached the decisions which we announced at the conclusion of the hearing.