Neutral Citation Number: [2020] EWCA Crim 843

Case No: 201801923 and linked cases

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT LEEDS
His Honour Judge Marson QC
T2017 7269

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 03/07/2020

Before :

LORD JUSTICE HADDON-CAVE
MR JUSTICE SPENCER
and
THE RECORDER OF LONDON, HH JUDGE LUCRAFT QC
(sitting as an additional judge of the Court of Appeal, Criminal Division)

- -

Between :

AMERE SINGH DHALIWAL **Appellants**
IRFAN AHMED
MOHAMMED KAMMER
ZAHID HASSAN
MOHAMMED RISWAN ASLAM
ABDUL REHMAN
RAJ SINGH BARSRAN
NAHMAN MOHAMMED

- and –

THE QUEEN **Respondent**

Mr Michael Duck QC (instructed by **the Registrar**) for all Appellants save Raj Singh Barsran
Mr David Bradshaw (instructed by **the Registrar**) for Raj Singh Barsran
Mr Richard Wright QC and Mrs Kate Batty (instructed by the Crown Prosecution Service) for the Respondent

Hearing date: 19 June 2020

Approved Judgment

REPORTING RESTRICTIONS NO LONGER APPLY
The order under s.4(2) Contempt of Court Act 1981 was discharged on 5th August 2020.

Mr Justice Spencer:

Introduction

1. In this case, the court has to decide whether a serious irregularity caused by a juror conducting his own research into a defendant's background undermines the fairness of the trial and the safety of the convictions of eight defendants in a long running high profile trial of serious sexual offences committed against young girls.

2. The trial took place at Leeds Crown Court between January and April 2018 and lasted 54 days. Eight of the defendants were convicted. Two defendants were acquitted altogether. It emerged on 11th April 2018, well into the jury's retirement, that one of the jurors had conducted research on the internet and discovered that the defendant Raj Singh Barsran had been to prison for assault. The jury knew from his own evidence in the trial that he had been to prison, but they did not know the nature of the offence he had committed (a non-sexual assault). The juror was discharged. The trial judge, HHJ Marson QC, refused the defence application to discharge the whole jury. He also refused an application to discharge the jury from returning verdicts on the three counts which Raj Barsran faced.

3. Earlier in the trial, on 7th March 2018, there had been an issue as to whether the same juror could continue to serve when he volunteered that he was finding the trial particularly stressful and that it was affecting the way he was looking at Asian males. The judge conducted an appropriate enquiry and was satisfied that the juror could properly continue to serve. The judge at that stage rejected the defence application to discharge the juror.

4. After the trial there was a police investigation into the conduct of the juror, John Sayles. In the course of that investigation, it was discovered that Mr Sayles had not been frank with the trial judge in disclosing the extent of his research. In fact, he had specifically searched on the internet against the name of the defendant Raj Singh Barsran. Other evidence in relation to Mr Sayles' activities also emerged.

5. Mr Sayles was prosecuted. He pleaded guilty to an offence under section 20A of the Juries Act 1974 and on 16th March 2020 received a sentence of 4 months' imprisonment suspended for 2 years.

6. All eight defendants have appealed against their convictions on the grounds of this jury irregularity. Some advanced other grounds of appeal as well on which the single judge refused leave. Those grounds have not been renewed. On the principal ground, the single judge referred the applications for leave to the Full Court, directing that all seven defendants other than Raj Barsran should be represented by the same counsel, Mr Michael Duck QC, who represented the principal defendant at trial, Amere Singh Dhaliwal. Raj Barsran has been represented by his trial counsel Mr David Bradshaw. The Crown were represented by trial counsel Mr Richard Wright QC and Mrs Kate Batty. We are grateful to all counsel for their very clear and focused written and oral submissions.

7. Amere Dhaliwal was also granted leave by the single judge to appeal against his sentence of life imprisonment with a minimum term of 18 years.

8. We heard the case on 19th June 2020 and reserved judgment. In view of the undoubted jury irregularity which resulted in the prosecution and conviction of the juror concerned, we grant all the appellants leave to appeal against conviction.

Overview

9. This was the first of two trials involving a total of 28 defendants arising from a police investigation into serious sexual offences committed against young girls in the Huddersfield area between 2004 and 2011. In this trial, the jury heard evidence from 13 young women who had been abused as children by the defendants. Some of the victims had been as young as 11 or 12 years of age when the abuse began. All were vulnerable because of family and other circumstances. The prosecution case was that the defendants were part of a grooming gang which targeted and trafficked the girls for sexual abuse. They were plied with alcohol and drugs. They were raped and sexually abused in cars, car parks, houses, a snooker centre, a takeaway, in the park and in other places. There was vaginal and oral rape, ejaculation and a lack of contraception. One girl became pregnant and had a termination.

Amere Singh Dhaliwal

10. The principal defendant was Amere Singh Dhaliwal. He was charged on 57 counts of the indictment and was alleged to have offended against 11 of the girls who gave evidence. The prosecution case was that he was a prolific sex offender who was at the very heart of the wider group of men who participated in the abuse of these children. He targeted vulnerable girls, showered them with attention and plied them with drink and drugs. Having used them for his own sexual pleasure he effectively pimped them out to other men at organised parties where sex with young girls was the order of the day.

11. Amere Dhaliwal was convicted by the jury on 54 counts: 2 vaginal rapes, 3 specimen vaginal rapes, 5 oral rapes, 8 specimen oral rapes (including one of a girl under 13), 4 multiple occasion oral rapes involving at least 38 occasions (including at least two involving girls under 13,) one assault by penetration, 3 sexual assaults, 5 offences of inciting sexual activity including intercourse, 13 offences of trafficking for sexual exploitation, 3 offences of indecent images, 1 offence of inciting child prostitution, 3 offences of supplying ecstasy and 1 racially aggravated assault.

12. In respect of the offences of rape, assault by penetration, and rape of a child under 13 he was sentenced to imprisonment for life with a minimum term of 18 years. There were concurrent sentences for the other offences ranging from 3 years to 10 years.

Irfan Ahmed

13. Irfan Ahmed faced 8 counts on the indictment involving 4 girls. The prosecution case was that often his role was to transport the girls to parties or drive them to locations where they could be sexually abused. He was involved in grooming the girls, befriending them and persuading them to go along with the sexual activity demanded of them.

14. He was convicted by the jury on three counts only: sexual activity with a child (count 52) and trafficking for sexual exploitation (counts 82 and 83). His total sentence was 8 years imprisonment. He was acquitted by the jury on the other five counts.

Zahid Hassan

15. Zahid Hassan was charged on 20 counts involving 7 girls. The prosecution case was that he was responsible for raping and abusing the girls and helped to groom them and traffick them so other men could have sex with them. He was convicted on 14 counts including rape, rape of a child under 13, attempted rape, racially aggravated assault, trafficking for sexual exploitation, abduction of a child and supplying a controlled drug of class A. His total sentence was 18 years imprisonment. He was acquitted by the jury on the remaining 6 counts.

Mohammed Kammer

16. Mohammed Kammer was charged on only two counts, each alleging the rape of a separate girl. He was convicted on both counts. His sentence was 16 years imprisonment.

Mohammed Risman Aslam

17. Mohamed Risman Aslam was charged with two counts of rape, both against the same girl. He was convicted on both counts. His sentence was 15 years imprisonment.

Abdul Rehman

18. Abdul Rehman was charged on 6 counts involving 4 girls, alleging rape and the supply of drugs, assault, and trafficking for sexual exploitation. He was convicted on four counts. His sentence was 16 years imprisonment. The jury acquitted him on the other two counts.

Raj Singh Barsran

19. Raj Singh Barsran was the defendant whose previous conviction for assault was discovered improperly by the errant juror. He was charged on three counts involving two girls. He was convicted on all three counts. Counts 33 and 58 were offences of sexual assault. Count 54 was an offence of rape. His total sentence was 17 years imprisonment for the rape, with concurrent sentences of 3 years and 4 years for the sexual assaults.

Nahman Mohammed

20. Nahman Mohammed was charged on 3 counts in relation to 2 girls. He was convicted on all 3 counts: 2 offences of rape and 1 of trafficking for sexual exploitation. His total sentence was 15 years imprisonment.

21. Two further defendants were acquitted altogether. One faced a single count of rape. The other faced three counts of trafficking for sexual exploitation, all alleged to relate to a single night.

The Trial

22. The trial began on 8th January 2018. On any view, it was a distressing case for all concerned, but in particular for the jury. The nature of the evidence and the seriousness of the allegations imposed a heavy emotional burden on the jury listening to such evidence day after day. For the most part, the defences advanced involved challenges to the credibility of the complainants.

23. Focusing on the defendant Raj Barsran, the most serious allegation he faced was count 54, the rape of a girl at his home. In interview he denied any intercourse with the girl. At trial he admitted having sex with her but alleged it was with her consent. The prosecution case was that she was so intoxicated and drugged that she did not have the capacity to consent. On the other counts he faced, counts 33 and 58, alleging sexual assault on two other girls on separate occasions, his defence was that it never happened.

The first application to discharge the juror, 7th March 2018

24. The first matter of complaint in the appeal is the refusal of the judge to discharge the juror in question on 7th March 2018. By now the trial was into its third month. Five defendants had already given evidence. The sixth defendant, Abdul Rehman, was about to start his evidence. That Wednesday morning the judge informed counsel that one of the jurors had spoken to the usher (Zoe) expressing some concern about the pressures of the case. Very properly the usher made a note of what the juror told her. The note read as follows:

> "Has two girls himself. Been into work, asked for counselling. 'Affecting the way looking at Asians'. Wanting to know how much discuss. Knows not to mention names. Spoke to Pam assist at work. Spoke to other jurors about feeling different. Looking at taxis to see who's in the back. Walked past high school thinking who could be next."

25. Leading the submissions to the judge on behalf of the defence, Mr Duck expressed particular concern that the juror was "looking at Asians in a different way". It was one thing to express concern about feeling under pressure in a case such as this, but it seemed to be affecting the way he was thinking about members of the Asian community. Mr Duck submitted that there could be no confidence the juror was capable of remaining faithful to his oath.

26. Another counsel invited the judge to make further enquiry of the jury as to what this juror had said to the other jurors about "feeling different". The judge acceded to that request. He directed that the juror be kept separate and that he be asked to expand upon what he had said about feeling different.

27. Again, the usher made a note of what the juror said in answer to that question. Her note read:

> "Juror said to all jurors felt different in the way he looked at Asian males. Actually looking in cars to see if there are females with them. Other jurors agreed felt same but didn't want

> counselling. He felt more tired, going to bed earlier. Juror's temper more snapping. Juror said I know it's not right as at the moment still innocent. Juror has Asian work friends. Had a 30 minute assessment. Advised has counselling. Hasn't spoke to anyone with details. "

28. Mr Duck addressed the judge. He said this second note increased his concerns. He posed the rhetorical question: would someone who knew nothing about the case and glanced at the dock, having heard the content of these notes, take the view that the defendants were going to receive a fair trial at the hands of this juror, bearing in mind the reservations and prejudices he had expressed? The answer, he said, was plainly "no". He submitted that the juror should be discharged forthwith and there should then be consideration of the impact on the rest of the jury.

29. Having heard submissions from other defence counsel the judge decided to have the juror in question brought into court, in the absence of the defendants but in the presence of one counsel for the prosecution and one for the defence, to establish whether the juror felt able to abide by his oath. A record of what was said would be available, and if necessary, counsel could listen to the recording of the proceedings. That is the procedure which was followed. It is not suggested that the judge was in any way in error in conducting this enquiry.

30. Addressing the juror, the judge reminded him that he had emphasized at the outset of the case how important it was for the jury to judge the case according to the evidence and only the evidence heard in the court room and nothing else, putting aside prejudice or emotions. The judge said he was anxious to know whether, having regard to the matters the juror had raised, he felt able to give the case the impartial consideration it needed, putting aside all the extraneous matters he had raised. The judge asked the direct question:

> "Do you feel that you will be able to judge the case fairly in accordance with the evidence or do you have reservations about whether you will be able to do that?"

The juror replied:

> "As I said on day one I will judge upon the evidence that I have got in front of me and from what Mr Duck, Mr Wright and everybody else has put forward."

The juror explained that he worked for the Yorkshire Ambulance Service. He was struggling emotionally with the case. He had two young girls himself. He had been distressed last week when the parents of one of the girls came into court. It was not what was being said by the defendants or the girls, it was more the parents' side that affected him. He added:

> "These young men are all innocent… Mr Wright has got to prove to us that something's happened. Mr Duck has basically put his side… and we have got to be 100 per cent sure that what they are saying is actually what's happened…."

He assured the judge that he retained an open mind and could judge the case fairly on the evidence putting aside all the other considerations. The juror asked the judge how much information he could divulge if he now went for counselling. The judge told him firmly: "none"

31. The judge heard further submissions once the content of these exchanges with the juror had been conveyed to all counsel. There were submissions by the defence that the juror should be discharged. The judge gave his ruling. He said that having seen and heard the juror he was entirely satisfied that the juror was able to continue to serve and to give the case appropriate consideration concentrating only on the evidence he had heard in court. The judge said he was satisfied at present that the juror had an open mind about it. That was perfectly obvious. The judge said that in the exchanges there had been "sufficient guarantees to exclude any objectively justified or legitimate doubts as to his impartiality". The judge was satisfied there was no risk of bias. He was satisfied that the juror could concentrate on the evidence putting aside any extraneous matters and come to verdicts in accordance with his oath. The application to discharge the juror was refused and it followed that any application to discharge the whole jury was also refused.

32. The investigation of this matter had necessarily taken up the whole of the morning. The defendant Abdul Rehman was due to give evidence that afternoon, but the judge took the view that it would fairer to start his evidence next morning. The judge had the jury back into court. He told them:

> "…You will know that one of your number has raised some concerns and it is those that we have been applying our minds to during the course of the morning and we have been doing it anxiously and carefully and that is why we have not been able to start until now. I am very much aware of the pressures put upon people such as yourselves who come to try long cases, particularly cases of this type. As I said to you at the beginning of the case the important thing is that first of all you decide your verdicts only on the evidence that you hear in this courtroom and not on anything else at all and that you keep open minds about the case until you have heard all the evidence and I have had speeches from advocates and I have summed the case up to you and sent you out to consider your verdicts.
>
> At the beginning of the case you all took an oath to do it and I appreciate it is not easy and having made enquiries I am satisfied at the moment that we can continue with all twelve of you but I do want to emphasise to you that if any of you feel unable to decide the case on the evidence and in accordance with the oath which you took to try the case according to the evidence then you must let me know that in a discreet note, all right?"

33. We shall return to the submissions made to us by Mr Duck on behalf of the appellants in relation to the judge's decision not to discharge the juror on 7th March. In short, Mr Duck maintains the submission he made to the judge at the time: the juror should have been discharged. Mr Duck submits that subsequent events, and the juror's conduct in

relation to earlier events as revealed by the police investigation, vindicate his original submission.

The evidence of Raj Barsran

34. The trial continued with the defendant Abdul Rehman giving evidence the following day. On Friday 9th March, the defendant Raj Barsran gave evidence. In the course of examination-in-chief, he volunteered the fact that he had served a period of imprisonment. We are told by his counsel Mr Bradshaw, and of course accept, that this was not something which it was expected the defendant would mention in his evidence. Raj Barsran had previous convictions for offences of dishonesty, violence and the supply of drugs. In particular, in 2013 he was sentenced to a total of 6 years 9 months' imprisonment for an offence of section 18 wounding with intent to do grievous bodily harm. It involved setting his dog onto the victim resulting in very serious injury.

35. The context in which Raj Barsran volunteered the fact of his prison sentence was to explain why he had lied to the police in interview in denying that he had intercourse with the girl he was alleged to have raped. He said that part of the reason for lying was that he had only recently been released from prison and he was afraid that if he admitted having sex with the girl he would be remanded in custody.

36. It appears that there was no further questioning of Raj Barsran, in cross-examination or in re-examination, about the evidence he had given of being in prison. It was, however, a matter which naturally troubled the Crown in particular. Mr Wright explained to us his concern as to how this disclosure might best be managed in fairness to the defendant. He suggested to Mr Bradshaw that perhaps a form of words could be found that would remove the obvious risk of suspicion on the part of the jury that his time in prison might relate to sexual offending. That offer was rejected by the defence for their own tactical reasons.

Directions of law in the split summing up, 14th March

37. On 14th March the judge embarked upon the first part of his split summing up, giving the jury directions of law. His oral directions were supplemented by very full written directions. No issue was or could be taken with those directions. They were exemplary and a model of their kind in their clarity.

38. One of the matters addressed in the directions of law was (where appropriate) the character of each of the defendants. Some of the defendants had introduced in evidence details of their previous convictions. There was an obvious contrast in the case of Raj Barsran. The judge could therefore give no character direction as such in relation to Raj Barsran. Instead the judge addressed the issue of his being in prison as part of the direction on lies. In explaining this to the jury the judge said:

> "… A defendant may lie for many reasons and they may possibly be innocent reasons in the sense that they do not denote guilt, for example, out of panic or confusion or to protect someone else. He says that he has just got out of prison, that he lied in panic and because his father was ill and he was afraid of being remanded. If you think that there is or may be

> an innocent explanation for that lie, then you will take no notice of it… You must not speculate why he was in prison and you must not assume that he is guilty of any offence or that he is not telling the truth just because he'd been to prison. The only reason you know about that is because he said that was part of the reason why he lied."

Raj Barsran's closing speech, 20th March

39. Counsel's closing speeches for the Crown and for the 10 defendants occupied a full week. Mr Bradshaw made his closing speech on behalf of Raj Barsran on the morning of Tuesday 20th March. During the break immediately after his speech the jury sent a note in the following terms:

> "Your Honour, the jury would like to know why we are not to know why Raj was previously in prison when we know about others?"

40. Understandably, Mr Bradshaw cannot now recall precisely what he had said in his closing speech about Raj Barsran being in prison but it is a reasonable inference that Mr Bradshaw must at least have adverted to it by reminding the jury not to speculate about why he was in prison and not to hold it against him, in accordance with the judge's direction of law which the jury had been given a week earlier.

41. Mr Wright explained to us that, following this question from the jury, there was a further suggestion by the Crown that perhaps some appropriate formula could be found to dispel the risk of prejudice. However, and unsurprisingly, that was not taken up as a realistic option given that the evidence was now complete. Theoretically, it would have been open to the judge to permit an additional formal admission to be agreed and put before the jury at least to reassure them that he had not been in prison for any sexual offence. The defence did not want that to be done.

42. We have no transcript of the answer the judge in fact gave to the jury's question, but it is clear from the court log that the appropriate direction was canvassed with and agreed by counsel. The direction must have been to the effect that, as they had been told earlier, they must not speculate as to why he had been in prison.

The judge sums up the case against Raj Barsran, 21st March

43. The judge began his summing up of the facts on the afternoon of 20th March. He dealt with the evidence in relation to each of the victims as it affected the relevant defendants, count by count. Alongside the evidence of the victim he reminded the jury of the evidence of the relevant defendant and the issues which arose. On 21st March, the judge reached the evidence on the most serious of the three counts alleged against Raj Barsran, count 54, the rape of a girl at his home in respect of which he had lied in interview. The judge reminded the jury of Raj Barsran's evidence including his acceptance that he had lied to the police. Very fairly, however, the judge did not mention again the fact of his having been in prison. He simply reminded the jury that the defendant had said his father was ill and he had panicked.

The juror's internet searches, 22nd March

44. Although this was not disclosed by the juror when he was eventually discharged on 11th April, we now know from the subsequent police investigation, including analysis of the juror's phone, that early the following morning, 22nd March, the juror made internet searches against the name Raj Singh Barsran. Identical Google searches were made at 07.09 and 07.11 against the name "raj singh barsan". We note that his last name was spelt incorrectly but no doubt it would have led to the correct name "Barsran". There was a further search an hour later at 08.14 against the same name with the addition of the date 2013. That was the date of the section 18 offence and would no doubt have been revealed in the searches an hour earlier.

45. Mr Wright explained to us in his oral submissions that the only press report relating to Raj Barsran's record which could have been accessed through this search was a report of the case in which he set a dog on the victim. That has not been challenged. We note from the transcript that the same information seems to have been discovered by counsel at trial by conducting a Google search. Thus, the only information the juror could have obtained in this way related to an offence of assault. We shall return to the significance of this.

46. We observe and recognise that this was a serious breach of the juror's duties, directly in contravention of the judge's clear and repeated warnings to jurors day after day against conducting any research. We also emphasise that this improper internet research by the juror was not something that was known at the time of the events that unfolded on the 11th April to which we shall shortly turn.

47. We note that on Thursday 22nd March, the day the juror carried out his improper research, the jury were unable to continue their deliberations because the judge was unwell. The jury were brought into court and another judge, standing in for Judge Marson, explained the position and sent the jury away until the following Monday, 26th March.

48. On Monday 26th March, although Judge Marson was recovered and ready to continue his summing-up, one of the jurors had fallen ill. This was the week leading up to Easter. The juror did not recover in time for the case to continue before the Easter break. The upshot was that the judge could not resume his summing-up until after the Easter break, on Tuesday 3rd April.

49. On Wednesday 4th April, the judge completed his summing up and the jury retired to commence their deliberations. They continued their deliberations for the remainder of that week and resumed on Monday 9th April.

The events of 11th April and the discharge of the juror

50. The central events on which this appeal turns developed on Wednesday 11th April, by which time the jury had been deliberating for some 20 hours over a period of 5 days. No majority direction had been given; indeed, the judge indicated to counsel that he was not minded to give a majority direction that week,

51. On the morning of Wednesday 11th April, the jury retired at 10 am to continue their deliberations. An hour later the judge was alerted by the usher (now jury bailiff), Zoe,

that one of the jurors had told her that another juror had researched Raj Barsran's "previous". The judge directed that the female juror who reported this (whom we shall refer to as MH) should be separated from the other jurors. The remaining jurors were told to stop their deliberations. The jury bailiff had told MH that she must put it in writing for the judge, but MH had been reluctant to do so. The jury bailiff therefore wrote down herself what MH had told her.

52. The jury bailiff's note read as follows:

> "Juror 10 said another juror has researched Raj about previous and said he had been harassing people. I said I would have to tell judge. She refused and then said she's made it all up and she doesn't want others to know it's come from her. The juror was separated when telling me the information but then went back into deliberation room when I said I would have to tell judge."

53. Shortly after the jury bailiff had passed this first note to the judge the jury "buzzed" and when she went to the jury room MH handed her a note she had written herself. The note read:

> "Dear Zoe, it was admitted that what I said I said to you was said for attention rather than truthful statement and judging by previous experience, I actually believe that. Sorry to waste your time, let's leave it. Now we just want to argue to the end and be done with it as soon as possible. <u>And the counts involving that person were decided before anything was said</u>. Didn't mean to stir anything up, just wanted your advice on what to do if it were true. " (emphasis added)

54. The judge was initially minded to discharge the female juror, MH, because it appeared that she was admitting making it all up. However, in the event it turned out there had been some confusion and what the female juror, MH, had meant to convey was that she thought that the <u>other</u> juror who had revealed Raj's "previous" had made it up.

55. There was a practical difficulty in dealing with this very delicate situation in that Raj Barsran's counsel, Mr Bradshaw, was not present at court that day having been released by the judge. In fact, he was abroad. Although his junior was covering for him the judge was concerned that the full implications of this revelation by the juror could not properly be resolved until Mr Bradshaw himself was available the following day or the day after that. Mr Duck and Mr Wright also happened to be absent that day having been released, although their respective juniors were present.

56. The judge invited counsel's submissions on the course he should follow. Having given counsel time to discuss the position between themselves, the judge was informed that the collective view of the defence was that the material presently available was ambiguous. They invited the judge to conduct his "habitually thorough

and sensitive enquiry" encompassing both the "informant" juror and the "accused" juror.

57. The judge agreed first to have the female juror, MH, into court. As before (on 7th March) this was done in the absence of the defendants but in the presence of one counsel for the Crown and one counsel on behalf of all the defendants.

58. The judge explained to the female juror, MH, that he had seen what she had said in her note and asked for clarification. MH explained that she thought the juror in question (who had made the disclosure) had said it to seek attention for himself. She was not sure whether he really had researched it. The judge then asked:

> "Q: So you are saying the other juror admitted to others… that he had made some researches about Raj?...
>
> MH: Yes. He did say a couple of days ago that he made researches about Raj.
>
> Judge: Right. The next thing then is was that whilst you were all in the jury room together?
>
> MH: It was."

That concluded the investigation with the juror

59. Counsel were all informed of what had taken place. The judge asked for counsel's submissions on what should happen next. The judge indicated that he was minded to enquire of the other 11 jurors whether they agreed that it was correct that a couple of days ago, in the presence of all the other jurors, one of them had said he had made some researches into one of the defendants. He proposed to have the 11 jurors into court and give each of them a piece of paper on which they could simply write "I agree" or "I disagree".

60. That is the course which was followed. The 11 jurors (excluding MH) were brought into court. The judge apologised that their deliberations had been interrupted but there was a matter he needed to raise with them. He said:

> "There is a suggestion that a couple of days ago in the jury room, in the presence of all of you, one of you indicated that you had made researches into one of the defendants. Each of you has in front of your piece of paper with your jury number on. I simply want… each of you to write on it and fold it up, either 'I agree' or 'I disagree'…. If you didn't hear anything like that said just put 'I didn't hear'. It is difficult to think that you wouldn't hear it if it had been said in the presence of all of you but… just put 'I agree', 'I disagree' or if you feel more comfortable, 'I didn't hear any such thing'".

The jurors left court and did as the judge asked. As they were leaving court the errant juror (who was the last to leave) asked the judge if he could "have a word". The judge told him to write it in a note.

61. The judge collated the jurors' responses and read each of them to counsel: "Disagree". "I disagree (didn't hear)." "It was unclear, not explicit." "Didn't hear anything." "Agree." "Didn't hear." "I agree. I heard this from another jury member but not from the person alleged to have done so." "I agree. Not about research but about wording of a word in relation to a charge – administer, administer/supply." "I disagree.". "I disagree". The note from the final juror read "It was me who said it".

62. We should explain that the reference in one juror's response to the wording "administer/supply" in one of the charges was reflected in a note the jury sent the following day, 12th April, when they had resumed their deliberations. It related to count 57. The jury were seeking clarification of the difference between "administering" and "supplying". Count 57 charged the defendant Amere Dhaliwal with administering a substance with intent.

63. On behalf of the appellants, it is submitted that the variety and inconsistency of responses from the jurors to the judge's question is remarkable and a matter of concern. We shall return to that submission.

64. In the light of the admission by the juror in his note, that it was he who had carried out the improper research, the judge directed that he be kept separate from the other jurors. The judge wanted to establish from the juror exactly what he had said to the other jurors. The judge required him to set this out in a note. The note written by the juror read:

> "Basically I was on Facebook, Facebook page for predators exposed popped up. Top of it was about Manchester Evening Mail child trafficking. When I looked through it realised it was names in this case and other men. Next to Raj name said previous done for assault. Then another day juror said 'oh, I wonder what he's done' and I said 'oh think it's assault'. That's as far as I went."

65. There was some preliminary discussion with counsel as to the impact of this on the further conduct of the trial and the likelihood of applications by the defence to discharge the jury. It was common ground that the juror in question should be discharged. The judge had him brought into court. Addressing the juror the judge said:

> "As you will appreciate this is all very unfortunate. In spite of the repeated warnings I gave about the researches. I am going to discharge you from any further participation in the trial."

After the juror had withdrawn the judge said to prosecuting counsel that someone should give consideration to a further enquiry into the juror's conduct because a criminal offence may have been committed. The judge was careful to ensure that the notes the juror had made during the trial were removed from the jury room.

66. The judge then discussed with counsel what should happen next. The remaining 11 jurors had been told to stop deliberating. The judge pointed out that according to the note from the female juror, MH, the jury had already reached a decision on the defendant Raj Barsran. He therefore suggested that, for the time being, the jury could be permitted to continue their deliberations generally but should be told not to

deliberate further about the case of the defendant Raj Barsran. The judge gave counsel time to consider this over the lunch break.

67. The consensus was that this was a sensible and appropriate course of action. At 2.15pm The judge had the jury brought into court and addressed them as follows:

> "I have just lost count of the number of times I have said no researches and this is what happens, you see. I just want to say, it was absolutely right that this was brought to my attention. Absolutely right, so that I can deal with it, and I have dealt with it. I have discharged that gentleman from any further participation in this trial. I emphasise to you again, these verdicts are reached only on the evidence that you have heard in this courtroom, and you can put out of your minds anything else. Now, so far as Raj Singh Barsran is concerned, the situation is this: I just don't want you to consider any charges in relation to him at the moment. I don't want to know whether you've reached verdicts or haven't reached verdicts at this stage. Just don't consider the charges against him. Continue your deliberations in relation to other defendants if you would, based on all the evidence that you've heard in this courtroom. Are you all sure that you can do that? Well, that's very helpful. I'll invite you to retire till 4 pm anyway… Thank you for your patience and thank you for bringing it to my attention. It's absolutely important that it was."

68. There could be no full legal argument that afternoon in relation to discharging the jury generally, or in relation specifically to the defendant Raj Barsran, in the absence of his counsel, Mr Bradshaw. The judge sent the jury home overnight. They had sent a note with a question about a discrepancy they had spotted between the date of the offences in counts 84 and 85 (relating to the defendant Abdul Rehman) and dates in the agreed facts. The judge said he would deal with their question in the morning.

69. The jury continued their deliberations throughout the next day, Thursday 12th April, after the judge had answered their question. It was later that day that the jury sent a further note with the question we have already mentioned seeking clarification of the difference between "administering" and "supplying" in relation to count 57.

<u>First ruling on discharging the jury (all defendants), 13th April</u>

70. On Friday 13th April, the jury were not sitting, by longstanding arrangement. Mr Bradshaw and Mr Duck were present at court and the judge heard defence applications to discharge the jury. Mr Bradshaw submitted that the jury should in any event be discharged from returning verdicts on the defendant Raj Barsran. There had plainly been an irregularity in that the jury had been given information about him which was not part of the trial that was potentially prejudicial. The judge pointed out that the note from the female juror MH indicated the jury had already reached verdicts in his case before the improper disclosure was made. Mr Bradshaw urged caution in relation to this indication. It was impossible to investigate the precise state of the jury's deliberations. No verdicts had actually been returned. They could change their mind.

71. Mr Duck submitted on behalf of the defendant Amere Dhaliwal that the jury should be discharged altogether. He reminded the judge of the earlier concerns in relation to this same juror. It was impossible to know the nature and extent of the research he had undertaken, or what he had said to the other jurors about it. No reliance could be placed on his word in view of the way in which he had breached his duties as a juror. He submitted that the problem could not be cured. The whole jury was inevitably tarnished.

72. The judge gave his ruling. Having set out the history of the matter he said:

> " Mr Duck submits that this may have had a knock-on effect in relation to his defendant and also in relation to others on the basis that the juror has been present for a number of weeks since I first saw him and that he has of course been present for a number of days whilst the jury had been considering their verdicts. I am entirely satisfied that there is no information before me which would possibly justify a conclusion that any of the other jurors have been tainted in any way in relation to any of the defendants on any of the charges and the application to discharge the jury in relation to all the defendants is refused."

73. In relation to the defendant Raj Barsran the judge said he was unable at that stage to come to a firm conclusion. Before making an informed decision he thought it might be necessary to put a number of questions to the jury. He provided counsel with a draft for their consideration. The questions were designed to elicit whether the jury had in fact reached verdicts in relation to Raj Barsran before the judge had told them to put aside his case; if so whether they had reached those verdicts before they had been told about his conviction for assault; whether any of the verdicts changed as a result of that information; and whether the fact that he had a conviction for assault formed any part of their consideration of any charge against him. The judge left counsel to consider over the weekend the possibility of making these enquiries of the jury.

74. There were written submissions from counsel over the weekend urging the judge not to take this course. Both prosecution and defence agreed that it would not be appropriate. It would involve impermissible enquiries as to the jury's deliberations which were prohibited by law.

Second ruling on discharging the jury (Raj Barsran), 16th April

75. Wisely, the judge acknowledged this consensus when the court sat again on Monday 16th April and no such questions were asked of the jury. Mr Bradshaw maintained his submission that the jury should be discharged from returning verdicts in the case of Raj Barsran. The judge gave a further ruling. He said:

> "…The simple fact is that the defendant himself in evidence told the jury that he had been to prison… The fact that he had been to prison obviously means that the jury know that he committed some offence which was serious enough to warrant imprisonment. In my… written directions which the jury still have I made it clear to them that the fact that he had been to prison and the fact that they did not know anything else about that was irrelevant to the decisions which they have to make.

> I do not in any way condone what the discharged juror did but at least this removes any question of any speculation that he might have been in custody for either an offence of dishonesty or an offence of a sexual nature. The note which I received from the juror [i.e. MH] setting out these matters appears to have been wholly accurate. There is no reason to think that anything contained in that note was inaccurate. That was the indication that the jury had reached verdicts in relation to Raj Singh Barsran before the information was revealed to him. From what I have been able to glean and observe from the jury, in my judgment there is no reason to doubt that the remaining jurors have any difficulty in remaining loyal to their oaths and the legal directions which I gave them. I am satisfied on the information before me that the defendant can have a fair trial and that this information cannot have affected materially any conclusions reached by the other members of the jury and the application to discharge the jury in relation to Raj Singh Barsran is refused."

76. When the jury came into court the judge addressed them as follows:

> "... Now in a moment I'm going to ask the jury bailiffs to be re-sworn and for you to retire to continue to try to reach unanimous verdicts. So far as Raj Singh Barsran is concerned, when it comes to… you delivering your verdicts I will take verdicts from you in relation to him, all right."

77. Later that morning, the judge received a note from the jury which made it clear that it was now appropriate to give a majority direction. No verdicts were taken but the foreman of the jury confirmed that they had not reached unanimous verdicts on all counts. The judge gave the majority direction. The jury continued deliberating for the rest of the day.

78. On the morning of the following day, Tuesday 17th April, the jury indicated that they had reached verdicts on all defendants on all counts. The verdicts were duly delivered. As explained at the start of this judgment, there were mixed verdicts in relation to several of the defendants and two defendants were acquitted altogether.

The police investigation of the juror's misconduct

79. The police conducted a thorough investigation into the juror's misconduct. He was interviewed under caution on 30th May 2018, with his solicitor present. He said that he thought it was sometime in February 2018 that he had seen something on Facebook about Asian men and child trafficking, from the Manchester Evening Express (presumably he meant the Manchester Evening News). He said he was dyslexic and had "skip-read" it. There was a list of some 20 names of people up for trial. One of the names stuck in his mind, and a reference to an alleged assault. He recognised the name as one of the defendants in the trial and "came straight off it and didn't read no more".

80. He said that in the jury deliberation room they were sitting around a big oval table, all talking in little groups, and "…someone had said 'I wonder what… said defendant has done?' Me brain switched off and I just went 'alleged assault' and I went 'oh sorry, I

shouldn't have said that'… I think somebody just said 'let's park it there and move on' and that was it. And I think it was two days later when the said person writ the note to the judge.'" He told the police that by this time the counts against the defendant in question were "concluded". He told police that he had been seeing a counsellor during the trial but he had made it clear to the counsellor that he was not allowed to discuss any details of the trial.

81. On 14th June 2018 the female juror, MH, made a witness statement to the police. It included the following passage:

> "During the trial there were 98 counts in total for the 10 defendants that we were required to make decisions on. The majority of these were straightforward and we made decisions on these within a couple of days. However, during the last week of jury deliberations we were struggling to make decisions on around 8 or 9 counts. In particular, we were struggling to make a decision on Raj Barsran. I think that we had already made a decision on Raj, but he came up in conversation as he was linked to one of the other counts. This was when one juror, I have forgotten who it was, said something along the lines of what a shame we don't know why he was in prison before (referring to Raj). This is when John said something like, 'I know why he was in prison'. John was addressing the whole of the table at this point as we were all sat in our allocated seats. As a result of this I don't know who exactly but someone responded to him and asked John why Raj had been in prison. John responded with something like, 'he was harassing or attacking two women', something along those lines. John was going to give more information but [X] stopped him from saying anything else, telling him that he should not be giving us this sort of information. Subsequently nothing more was discussed and we continued discussing the remaining counts."

She said that this information about Raj Barsran had been disclosed by the juror on Tuesday 10th April, the day before she informed the usher about it.

82. The police had recovered the errant juror's mobile phone when he was arrested. When eventually the material downloaded from the phone was analysed, the police discovered the Google searches made by the juror on the morning of 22nd March 2018 against the name Raj Singh Barsran.

83. The police also discovered "chats" on Facebook Messenger between the juror and someone called "Jazza Gaz", starting on 9th January 2018 which coincided with the beginning of his jury service. The conversation was instigated by Jazza Gaz. It appears that he too had been summoned for jury service at same court and had recognised the juror as someone who worked for the ambulance service. The "chats" continued sporadically over a period of several days. Jazza Gaz expressed his relief at not having been selected for the jury in this case; he had seen on Facebook that it was grooming young girls: "I would hate to be on a case like that, dirty bastards". He had hated being at court for two days and hoped the juror would "get off it soon". The juror described the case as "12 Asian with kids involved" and "98 charges". Jazza Gaz said: "I'd hate that, sick bastards… It would churn my stomach, horrid creatures."

84. The "chat" resumed briefly on 12th March 2018, with Jazza Gaz asking whether the juror was still on the same case. The juror replied, "yes, about 3 to 4 weeks left". He agreed with Jazza's suggestion that it must feel like an eternity.

85. In the light of the material discovered on his phone, the juror was interviewed again by the police on 2nd August 2019 with his solicitor present. The police put to him the Google searches made against the name Raj Singh Basran and the "chats" with Jazza Gaz on Facebook Messenger. The juror elected to make no comment.

86. The juror was prosecuted. He pleaded guilty to an offence contrary s.20A of the Juries Act 1974 of conducting research whilst a member of a jury, relating to the internet searches he had made on 22nd March. He was sentenced by the Recorder of Leeds on 16th March 2020. We have been provided with a note of the judge's sentencing remarks. The judge observed that during the course of his jury service the juror had committed a serious criminal offence by conducting research on a defendant he had been entrusted to try. The trial that lasted more than 14 weeks. The trial was an ordeal for all involved. It was acknowledged that the juror had immediately admitted to the judge that he had carried out research. But he had played down his responsibility when interviewed by the police in May 2018 suggesting, untruthfully, that he had come across the information inadvertently. The lies he had told in that interview had resulted in the delay in the case coming to court because the police had to seize and interrogate six further digital devices to identify the extent of his research. Although a custodial sentence was inevitable, there was powerful personal mitigation which enabled the judge to suspend the sentence.

The legal principles

87. The relevant legal principles in a case of jury misconduct of this kind were recently considered by this court in *R v KK* [2019] EWCA Crim 1634; [2020] 1 Cr. App. R. 29. The factual situation in that case was remarkably similar to the present case. Eight defendants were on trial for historic sexual offences against vulnerable young females in the Oxford area. On the 78th day of the trial, after the jury had retired, a juror discovered on the internet that one of the defendants (NK) had a previous conviction for which he had served nine years' imprisonment. After hearing submissions, the judge discharged the juror in question and discharged the remaining jurors from returning verdicts relating to the defendant NK. The other defendants appealed against conviction contending that the jury should have been discharged altogether because the judge's investigations, and his subsequent directions to the jury, were inadequate. This court dismissed the appeals, holding that the judge's decision not to discharge the jury was a proper one and had not given rise to unfairness or to a perception of unfairness.

88. Giving the judgment of the court, Davis LJ reviewed the law relating to jury irregularity at [69] – [81]. At the outset of that analysis he said:

> "70. Where a jury irregularity is identified, the overarching consideration is one of fairness.
>
> 71. Furthermore, where (as in the present case) questions of apparent bias are raised with regard to whether a jury can properly and fairly be allowed to continue to act and to return verdicts the required approach

> is objective. Counsel before us were agreed that the test enunciated in cases such as *Porter v Magill* [2001] UKHL 67; [2002] 2 A.C.357 applies: which put shortly is, in determining an issue of apparent bias, whether the fair-minded and independent observer, having considered the relevant facts, would conclude there was a real possibility, or risk, that the tribunal in question was biased.
>
> 72. The forms in which jury irregularities may manifest themselves are, of course, many and varied. Regrettably, in modern times unauthorised research by jurors, particularly on the internet, has featured quite prominently, notwithstanding the specific instruction prohibiting such a practice which is routinely given to jurors…."

89. Davis LJ went on to consider a number of decisions of this court in which the principles have been developed in relation to unauthorised internet research by a juror. Such conduct infringes two core principles: that of open justice and that of both prosecution and defence having a fair opportunity to address all material being considered by a jury when reaching their verdict. It has been stressed that the collective responsibility of the jury for their own conduct must be regarded as an integral part of the trial itself.

90. Davis LJ referred to a particular passage of the judgment of this court given by Moore-Bick LJ in *R v McDonnell* [2010] EWCA Crim 2352; [2011] 1 Cr App R 28 (p.347), which is apposite in the present case too:

> "27. It might be said that, where there is any uncertainty about what the jury may have investigated, they should be discharged because there is a risk that they may have discovered something that might redound to the disadvantage of the accused. However, if that were correct, and if the mere use of the internet to obtain information relating to the case were for that reason sufficient ground for discharging the jury, it would follow that whenever there was evidence that one member had made enquiries of the internet it would be necessary to discharge the whole jury, even if those researchers had not been communicated to others and even if there was no reason to think the jury as a whole had relied on what had been discovered. Yet that was not the approach taken in *Thompson*, since the court in not dissimilar circumstances held that no further investigation of the use of the internet was required and that the conviction was not unsafe.
>
> 28. Apart from a firm direction to decide the case by reference to the evidence alone, we do not think that any further steps were called for. The fact that some members of the jury had carried out private researches, contrary to the judge's express directions, is undoubtedly troubling, but it is not by itself a reason to discharge the jury, unless either there are grounds for thinking that they have acquired information that might have led them to reach a verdict otherwise than on the evidence in the case, or there are grounds for thinking that one or more of them might disregard a clear warning from the judge not to repeat the process. We do not think that either was the case here."

91. The court in *McDonnell* also emphasised, at [29], the need for a trial judge not to act on the basis of speculation and to have a "firm basis" for drawing the relevant conclusion.

92. In *KK* it was necessary for the court to consider whether, in investigating and dealing with the irregularity, the judge had properly followed the seven sequential steps set out at paragraph 26M.7 of the relevant Practice Direction. That is not an issue in the present case.

93. It is relevant to note that there is one very important distinction on the facts between the present case and the situation in *KK*. In the present case, the jury knew from the evidence that Raj Barsran had been in prison. In *KK*, by contrast, the conviction of the defendant NK which had resulted in a sentence of nine years' imprisonment had (designedly) not been the subject of any evidence adduced at the trial. It was for that reason that the trial judge discharged the jury from returning verdicts in the case of NK, a decision which this court, on appeal, described as "plainly right".

Counsel's submissions in the appeal

94. On behalf of the seven appellants he now represents, Mr Duck submitted that the whole jury should have been discharged when the juror's improper research came to light. He submitted that the juror's serious misconduct in that regard had to be viewed in the light of the earlier views he had expressed in relation to looking at Asian males in a different way. He had demonstrated a hostile animus towards males of Asian origin. Having assured the judge that he remained impartial and would be faithful to his oath the juror had disobeyed the judge's repeated warnings against conducting any research. On his own admission in the note he wrote to the judge, he had looked at a Facebook page for "predators". He had lied to the police in interview about the information he had obtained. He had specifically researched the name Raj Singh Barsran. He must have known the impact of revealing this information to his fellow jurors. He had shown himself to be manipulative and devious. He had remained on the jury for over a month between the first application to discharge him and the discovery of his improper research.

95. Mr Duck submitted that it was impossible for the court to be confident that the juror had not discovered and shared more information prejudicial to the defendants. He disputed that this was mere speculation. He submitted that the circumstances as a whole provided a reasonable basis for this evidential inference. Although the juror claimed only to have disclosed that Raj Barsran's prison sentence was for assault, this was at odds with the information provided by the female juror, MH, in her original disclosure to the judge, where she had spoken of his "harassing people". In her witness statement made some weeks after the trial she said the information given by the juror was something along the lines of "harassing or attacking two women".

96. Mr Duck submitted that it was strange and concerning that the jurors gave such mixed and contradictory answers to the judge's question whether they had heard what the juror said, bearing in mind it was said in the presence of all of them, as the female juror MH confirmed at the time and in her witness statement. Neither she nor her fellow jurors had reported the matter straightaway as they should have done.

97. As for the suggestion that the jury had already reached verdicts on Raj Barsran before the improper disclosure was made, Mr Duck submitted that this was not reliable information. Although the female juror, MH, said this in her note to the judge at the time it was contradicted by her witness statement. There she only said "I think we had already made a decision on Raj".

98. Mr Duck emphasised that, although the improper disclosure related only to one defendant, it infected the case as a whole and therefore all the defendants he now represented. For example, the principal defendant, Amere Dhaliwal, was a close friend and associate of Raj Barsran. Significant alleged offending had taken place at Raj Barsran's home. There was therefore a risk of wider prejudice, particularly when coupled with the juror's established antipathy towards Asian males. Not only was that disclosed when the first application to discharge was made on 7th March. It was also evident from the Facebook Messenger "chats" which showed a willingness to engage in improper exchanges with a man who was expressing prejudice against Asian males based simply on the fact of the allegations.

99. On behalf of Raj Barsran, Mr Bradshaw adopted Mr Duck's submissions. He focused on the unreliability of anything the juror himself had said about the information he had obtained or the disclosure he had made to his fellow jurors. The court could not now believe a word the juror said. It was impossible to be confident that the jury had in fact reached verdicts on Raj Barsran before the improper disclosure was made. That disclosure was a very serious irregularity in the trial of Raj Barsran. The jury should have been discharged from returning verdicts in his case.

100. On behalf of the Crown, Mr Wright submitted that the two jury issues, 7th March and 11th April, were quite separate. Although the second was plainly a jury irregularity, the first was a matter of jury management. They were not connected. Mr Wright submitted that Mr Duck's analysis of events was entirely speculative and unsupported by any evidence. Mr Wright emphasised the chronology leading to the juror's improper internet search, which came shortly after the jury's question about Raj Barsran's prison sentence following Mr Bradshaw's closing speech, and immediately after the judge's summing-up of the case for and against Raj Barsran. He submitted there was no reason to doubt the accuracy of the information provided contemporaneously by the female juror, MH, that the jury had reached decisions on the counts faced by Raj Barsran before the improper disclosure was made.

101. Mr Wright pointed out that the issue on the main count faced by Raj Barsran, the rape, was a narrow one. The fact of intercourse was admitted. The only issue was consent. He submitted that it was difficult to see how knowledge that the prison sentence was for assault could impact on that issue. If anything it was to the appellant's advantage in that at least it dispelled any suspicion that he had been in prison for previous sexual offending.

102. In relation to the information in MH's witness statement that the jury were considering the case of another defendant when the improper disclosure was made, on a count to which Raj Barsran was linked, Mr Wright explained that this must have been the defendant Irfan Ahmed who was charged on count 53 with taking an indecent photograph of a child on the occasion when Raj Barsran committed the rape (count 54). We note that in the event Irfan Ahmed was acquitted on that count.

103. Mr Wright submitted that Raj Barsran and the other appellants had been convicted by the jury on overwhelming evidence. The improper disclosure could not have affected their decisions. The judge dealt with the jury problems impeccably. The care with which the jury considered the case was demonstrated by the fact that there were mixed verdicts for several defendants and two defendants were acquitted altogether.

Discussion and conclusion

104. We have given all these submissions very careful consideration. We have reached the clear and firm conclusion that, despite the undoubted jury irregularity, the trial was fair and all these convictions are safe. Our reasons are as follows.

105. There was no basis on which to discharge the juror when the first application was made on 7th March. The judge conducted a proper investigation after the juror raised his concerns about the stress of the trial and the way it was causing him to look differently at Asian males. The very fact the juror disclosed this concern provided some reassurance, at that stage, that he was acutely conscious of his responsibility as a juror. From the answers the juror gave when questioned by the judge it was plain that there was no justification to discharge him. As the judge put it, those exchanges provided sufficient guarantees to exclude any objectively justified legitimate doubts as to his impartiality.

106. Although the second episode disclosed on 11th April was separate and distinct, we accept that it must be viewed against the background of the first incident on 7th March. However, there is no evidence and no reason to infer that prior to the improper disclosure the juror made to his fellow jurors on 10th April he had revealed any other information about any defendant or about the case which he had improperly obtained in breach of the judge's instructions. As was emphasised in *McDonnell*, the court must not act upon speculation and would require a "firm basis" for drawing any such conclusion.

107. The phone evidence discovered in the police investigation shows that the juror researched Raj Barsran's background on 22nd March, the day after his case had been summed up and two days after the jury's question immediately following Mr Bradshaw's closing speech. The jury knew from Raj Barsran's own evidence that he had been in prison. They were naturally curious to know why. With hindsight, it would have been better had the defence taken up the Crown's suggestion of a formal admission, in neutral terms, that he had not been in prison for a sexual offence or for an offence of dishonesty. That would probably have assuaged the jury's curiosity. For tactical reasons, the defence chose not to take that course.

108. From the timings, the plain inference must be that the juror conducted his improper research into Raj Barsran directly in response to the lack of a satisfactory answer (as he perceived it) to the question the jury had asked. That is not in any way to excuse the juror's misconduct. It was a very serious breach of his duty and a criminal offence. The juror would or should have known this from the obligatory warnings the judge gave at the start of the trial and from the leaflet the jurors would have been given at the start of the trial "Your Legal Responsibilities as a Juror".

109. We have to assess the impact of this improper disclosure on the jury as a whole and on the safety of these convictions.

110 The first question is: what was actually said by the juror in imparting this information to his fellow jurors? The information given by the female juror MH at the time (as recorded in the jury bailiff's note, see [52] above) was that he had "researched Raj about previous and said he had been harassing people". In her witness statement made some 6 weeks later she recalled that it was "something like, he was harassing or attacking two women, something along those lines". We know that in fact the internet searches which the juror made on 22nd March could only have revealed the serious s.18 assault he had committed in 2013 involving setting a dog onto the victim. There was no offence of harassing people. Although any explanation given by the juror himself must be treated with great caution in view of the lies exposed in the police investigation, what the juror said in the note he wrote at the time at the judge's request (see [64] above) was: "…Next to Raj's name said previous done for assault. Then another day juror said 'oh, I wonder what he's done' and I said 'oh, I think it's assault'. That's as far as it went." This was also broadly the account he gave in his first police interview. We are satisfied that the disclosure the juror made to his fellow jurors, arising from his internet search on 22nd March, was that Raj Singh Barsran had been in prison for assault.

111. Whatever the juror in fact said about Raj Barsran's previous offending, there is also the issue of whether all the jurors heard it. There were mixed responses from the jury to the judge's enquiry whether they had heard "one of you indicate that you had made researches into one of the defendants" (see [60] above). Only two of the jurors said unequivocally they had heard it. Five said unequivocally they had not heard it. However, the female juror, MH, said to the judge when questioned in court, and in her witness statement, that the juror made the disclosure in the presence of all the jurors when they were sitting in their allocated seats around the table in the jury room.

112. Much has been made in counsel's submissions of this apparent conflict, but we do not find it at all surprising that the jurors gave different responses. The jury deliberations were no doubt a dynamic process, with people talking at the same time and to each other around the table. There is no reason to suppose or assume that when the juror made the disclosure everyone else was silent, hanging on his every word. We think it likely, as confirmed in MH's witness statement, that those who heard it realised it should not have been said and moved on. She said in her witness statement (see [81]above): "…John was going to give more information but [X] stopped him from saying anything else, telling him that he should not be giving us this sort of information. Subsequently nothing more was discussed and we continued discussing the remaining counts." In these circumstances, it is hardly surprising that their responses to the judge's question were so varied. We also note that in his first police interview this is the picture painted by the juror himself (see [80] above), although we must be cautious in accepting any account of his.

113. The second question is: what was the likely impact of the disclosure on the jury's deliberations? We consider first the position of Raj Barsran who was potentially the most affected. The jury knew he had been to prison. They knew, therefore, that he must have committed an offence serious enough to warrant imprisonment. The present case was therefore fundamentally different from the situation in *KK* where the jury were made aware improperly of a defendant's conviction and lengthy prison sentence during their retirement when no reference at all had been made to this in the evidence. Plainly the jury in *KK* had to be discharged from returning verdicts in the

case of that defendant. In the present case, as the judge observed in his ruling, from the juror's improper disclosure the jury discovered (if they heard it at all) that he had not been to prison for sexual offending or for dishonesty. That was the sort of offending which, potentially, could have been prejudicial to Raj Barsran's case. There is no suggestion that the juror disclosed any detail of the offence of assault or the length of the sentence imposed.

114. It is important to remember that the issue on the most serious charge Raj Barsran faced (count 54, rape) was consent. It is difficult to see how the knowledge that he had previously been to prison for assault could have affected the resolution of that issue. The prosecution case was that the complainant was incapable of consenting because she was insensible through drink and drugs, not that she was subjected to violence. In any event, despite the juror's improper disclosure, the jury still had the judge's very firm direction of law (in writing) not to speculate about why he had been in prison and that the sole relevance of the evidence was as part of his explanation for lying to the police in interview. That direction would have been reinforced by the answer the judge gave to the jury's subsequent question on 20th March (see [42] above).

115. There is a further important point. The female juror, MH, said in the note she wrote herself to the judge (see [53] above) that: "… the counts involving that person were decided before anything was said". That can only have been a reference to the defendant Raj Barsran. That is certainly how counsel and the judge interpreted it, hence the agreed instruction to the jury (pending the application to discharge the jury) that they should continue their deliberations in relation to all the other defendants but should not consider the charges against Raj Barsran for the time being. It is pointed out on behalf of the appellants that in her witness statement MH says only that "she thinks" they had already made a decision on Raj Barsran. However, it seems to us that what she said unequivocally at the time in her note to the judge is likely to be accurate and reliable. We also observe that in her witness statement she goes on to explain that even though they had made a decision on Raj Barsran himself, he later "…came up in conversation because he was linked to one of the other counts". This fits with the fact that there was indeed a link with another count (count 53) which charged Irfan Ahmed with taking an indecent photograph of a child on the same occasion as the rape by Raj Barsran (at his home) in count 54. We also note that Irfan Ahmed was acquitted on that count, which dispels any notion of prejudice to him arising from the wrongful disclosure.

116. There is one final point to consider in relation to the question of whether the jury had already reached verdicts on Raj Barsran before the improper disclosure occurred. Following his ruling on 16th April refusing the application to discharge the jury in relation to Raj Barsran, the judge simply told the jury that when it came to delivering their verdicts he would take verdicts in relation to Raj Barsran (see [76] above). He did not tell them, for example, that they were now permitted to continue their deliberations in relation to Raj Barsran as well as all the other defendants. Mr Bradshaw raised this omission in his grounds of appeal, although he did not press it in oral argument. We are satisfied that it affords no ground of appeal. The fact is that no objection was raised by counsel to the direction the judge gave, probably because it was plain to everyone that the jury had indeed reached verdicts on Raj Barsran before the improper disclosure was made. The verdicts the jury ultimately returned were

verdicts of the eleven who remained. They had to deliver 98 verdicts in total. Whether or not there was any further extensive deliberation on the counts faced by Raj Barsran after the judge's direction on 16th April, the jury of eleven must at least have confirmed any earlier decision and confirmed that they were sure of his guilt on all three counts.

117. For all these reasons we are satisfied that the improper disclosure could not have impacted on the jury's verdicts in relation to Raj Singh Barsran.

118. We turn briefly to consider the impact of the improper disclosure on the other appellants. We have already mentioned the position of Irfan Ahmed arising from his association with Raj Barsran in count 53. Plainly he was not prejudiced in any way because he was acquitted. As we understood Mr Duck's submissions, the only other appellant said specifically to have been prejudiced by the improper disclosure was Amere Dhaliwal, the principal defendant in the case whom Mr Duck represented at trial. It is said, in effect, that because there was a close association between Raj Barsran and Amere Dhaliwal, there was prejudice to both of them from the improper disclosure. They were close friends. Amere Dhaliwal's spent a great deal of time at Raj Barsran's home. Parties at which offending had occurred had taken place at Raj Barsran's home. Anything which tarnished Raj Barsran's character in the eyes of the jury would also inevitably have tarnished Amere Dhaliwal too. We cannot accept that submission. Knowledge of the offence for which Raj Barsran had been to prison (assault), as distinct from the fact he had been to prison at all (which the jury knew) could not conceivably have affected the jury's assessment of Amere Dhaliwal, particularly in view of the wealth of strong evidence against him.

119. Accordingly we are satisfied that the improper disclosure could not have impacted on the jury's verdicts on the other appellants either.

120. So far we have referred only to the impact of the improper disclosure on the other jurors. The wider complaint on behalf of all the appellants is that the juror who was ultimately discharged has now been demonstrated to be dishonest and manipulative and, it is said, to have harboured antipathy and prejudice towards Asian males over many weeks of the trial before he was discharged. It is said that the Facebook Messenger "chat" exchanges with Jazza Gaz at the very start of the trial in January show that he was not abiding by the judge's instructions not to discuss the case and was going along with Jazza Gaz's racially prejudiced comments about Asian males, prejudging the case and the defendants. Mr Duck submitted that it is impossible to be confident that the juror's own prejudice did not infect the rest of the jury and the discussions and deliberations before and after retirement to which he was a party. The juror had deliberately sought out information detrimental to the interests of Raj Barsran and consequently detrimental to the interests of all the other defendants.

121. We think the significance of the "chat" exchanges has been exaggerated, not least because the juror did not himself initiate the conversations and did not himself express racist views or prejudice, or express an unwillingness to try the case fairly. He should not have been discussing the case at all, even in the general way he did, but we do not think that this evidence demonstrates bias or unfitness to have served as a juror in the case.

122. It is important (albeit obvious) to remember that the verdicts eventually returned by the jury were the verdicts of the eleven jurors who remained. They were not the verdicts of the juror who had been discharged. The question is, therefore, whether the remaining jurors could have been infected by any prejudice or bias on the part of the juror who was discharged, giving rise to unfairness or the perception of unfairness, such that the judge should have discharged the whole jury.

123. Having reviewed carefully the whole history of the trial and all the material before us, we are quite satisfied that the judge's decision not to discharge the jury, generally or in relation only to Raj Barsran, has not, viewed objectively, given rise to unfairness or a perception of unfairness. We are quite satisfied that the fair-minded observer, having considered the relevant facts as we have set them out, would not conclude that there was a real possibility, or risk, that the jury which convicted all these appellants was biased. We are satisfied that all the convictions are safe.

124. In reaching this conclusion we bear in mind the evident care with which the jury approached their task. We have referred already to several of the notes they sent to the judge, picking up small points of detail in relation to the indictment and the agreed facts. One such note was sent on Tuesday 3rd April, their first day back after the Easter break and the further enforced absence the week before through the illness of the judge and then a juror. Having answered their question, the judge observed to counsel "Well no-one can say that the two week break almost in the summing up has caused them to forget".

125. The care and diligence with which the jury approached their deliberations is also demonstrated by the fact that there were mixed verdicts in relation to several defendants and two defendants were acquitted altogether. No doubt, as Mr Duck pointed out, there were some counts on which the evidence was so weak that acquittals were bound to follow, but that was certainly not the position across the board. We have no doubt that this was a conscientious and discerning jury.

126. There is no complaint about the summing up, which we are sure was immensely helpful to the jury in focusing their attention on the key evidence and the key issues. The judge's direction of law were impeccable. His summary of the evidence was not only fair and accurate but masterly.

127. The appellants were convicted on overwhelming evidence. We have no doubt that all these convictions are safe. The appeals against conviction are dismissed.

Appeal against sentence, Amere Singh Dhaliwal

128. We turn to Amere Singh Dhaliwal's appeal against sentence. As explained at the outset of this judgment, he was sentenced to imprisonment for life, with a minimum term of 18 years, equivalent to a determinate sentence of 36 years. The grounds of appeal are: first that the judge had insufficient information to justify the conclusion that the appellant was a dangerous offender liable to a sentence under the relevant provisions of sections 225-229 of the Criminal Justice Act 2003; second, that the custodial term of 18 years was manifestly excessive; third, that the appellant's sentence was wholly disproportionate to the sentences imposed upon relevant co-defendants.

129. In granting leave the single judge said that had the issues been limited to whether the appellant was a dangerous offender and whether a life sentence was justified he would not have given leave. He gave leave so that the appellant could argue that his minimum term should have been shorter.

130. On behalf of the appellant Mr Duck pursues both limbs of the appeal. He submits that it was not necessary to impose a life sentence or to find the appellant dangerous, and he submits that the minimum term, representing a determinate sentence of 18 years, was manifestly excessive.

131. In passing the sentence the judge said:

> "You are now 35 years old and were convicted by the jury of 54 counts, involving the abuse of 11 girls. They break down as follows; 2 vaginal rape, 3 specimen vaginal rapes, 5 oral rapes, 8 specimen oral rapes including one under 13, 4 multiple occasion oral rapes involving at least 38 occasions, including at least 2 under 13. One assault by penetration, 3 sexual assaults, 5 inciting sexual activity, including intercourse, 13 trafficking for sexual exploitation, 3 indecent images, 1 inciting child prostitution, 3 supplying ecstasy and 1 racially aggravated assault.
>
> It is clear to me from all the evidence I have heard that you were one of the leaders of this grooming gang. Your nickname Pretos pervades every DVD interview. Not only did you commit countless sexual offences against young girls, but you also introduced other men into this gang in order that they could abuse these girls. On many occasions you trafficked girls so that they could be sexually abused by others, on occasions in your presence and on occasions with you video recording on your phone what was taking place, for distribution to others. You incited sexual activity including intercourse and incited child prostitution. You supplied drugs and alcohol in order to groom and then render young girls vulnerable to sexual abuse by you and others. You threatened them, you used violence and you repeatedly raped children and on one occasion in a truth or dare game in the presence of others, inserted a bottle into a girl's vagina. It was a very significant campaign of rape and other sexual abuse. Children's lives have been ruined and families profoundly affected by seeing their children, over months and years, out of control, having been groomed by you and other members of your gang. As the jury found, you were involved in active abuse over a period of years. Your treatment of these girls was inhuman, you treated them as commodities to be passed around for your own sexual gratification and the gratification of others. The extent and gravity of your offending far exceeds anything which I have previously encountered. As the pre-sentence report states: 'In the commission of the offences Mr Dhaliwal displayed manipulative, predatory and risk-taking behaviour and exerting power and control over young girls. He befriended young females and established an emotional connection with the object of sexual abuse. The victims were plied with drugs and alcohol, passed around his friends and raped by a number of men. They

would also be forced to engage in sexual activity out of fear of reprisals.'

I have listened with care to everything which Mr Duck QC said on your behalf, but there is only one matter of mitigation which is the fact that you have no similar previous convictions and have not previously served a custodial sentence. Your previous character, in these circumstances, however, carries little weight. I am mindful of the effect that this sentence will have upon others close to you, especially your wife and children. I have read the letter from your wife. As with all defendants I have borne in mind the length of time since these offences were committed. That, in itself, is little mitigation because these are just the sort of offences against children who have been groomed which very often are not revealed for years. What each defendant has done in the meantime is, of course, relevant. In your case I have borne in mind that, save for the jury's conviction in relation to the 2014 assault in this case, you have turned your life around. You are married with children and 5 years ago you converted to the Sikh religion which you have followed since.

Turning now to the question of dangerousness; in making that assessment I have considered the circumstances of this offending and everything I know about you. I note from the pre-sentence report that you continue to maintain your innocence and the report states 'In the commission of these offences he displayed controlling behaviour and the victims describe him as having a violent temper. His lack of acceptance for his offending and his views on why he has been brought before the Court, demonstrates a lack of awareness of consequences and an inability to recognise and solve problems….. Until Mr Dhaliwal accepts responsibility for his offending and engages in interventions to address his offending behaviour, then he will pose a high risk of harm to female children'. With those sentiments I entirely agree. I acknowledge that the report states that statistically you are assessed as a low risk of future general offending and a medium risk of future serious reoffending. The assessment of the author of the report, however, is that you pose a high risk of harm to young females, namely, a risk of sexual exploitation, rape and sexual assaults. Of course, I accept that these offences were committed a number of years ago and have not been repeated since you married and had children. I have reminded myself of the references regarding your character which were put before the jury. It is submitted that I should not conclude that you are dangerous. Having listened to the harrowing evidence in this case over many weeks, the prolonged period over which this offending took place, the gravity of it and the extent of it, drives me to the sure conclusion that, in your case, there is a significant risk of serious harm from the commission by you of further specified offences. It follows, therefore, that I must pass upon you either an extended sentence of imprisonment or a life sentence.

> At the moment it is clear that there is little offending behaviour work which can be done in order to diminish the risk you pose. There is no reliable estimate of the length of time for which you will remain a danger. An extended sentence of imprisonment is not appropriate. Furthermore, I consider that the totality of your offending is such as to justify the imposition of a sentence of imprisonment for life"

132. The judge then announced the individual sentences. On each of the 19 counts of rape, the 3 counts of rape of a child under 13, and the single count of assault by penetration there were concurrent sentences of life imprisonment. On the remaining counts there were concurrent sentences of imprisonment ranging from 3 years to 10 years. It is unnecessary to give any further breakdown. The judge said that if he had passed a determinate sentence of imprisonment reflecting the totality of the appellant's offending that sentence would have been 36 years. Accordingly the minimum term the appellant was required to serve before he was eligible for release in accordance with section 82A of the Powers of Criminal Courts (Sentencing) act 2000 was 18 years less time already spent in custody (53 days).

133. In his oral submissions, Mr Duck emphasised that the last of the appellant's offences were committed in 2008. In the ten years since then he had turned his life around. He was now married with children. He had embraced the Sikh faith. He had committed no further offences of a similar nature. Mr Duck submitted that the appellant's failure to admit his guilt, despite having been convicted by the jury, could not provide sufficient evidence of future risk when set against the passage of nearly a decade without such re-offending. If a finding of dangerousness was justified, Mr Duck submitted that a very lengthy determinate sentence would have been sufficient to protect the public.

134. We are unable to accept these submissions. As the judge's sentencing remarks demonstrate, there was not merely ample but overwhelming evidence and information to justify the conclusion that there was a significant risk of serious harm to the public from the commission by the appellant of further specified offences, and that the appellant was therefore a dangerous offender. The judge was then required to consider whether a sentence of life imprisonment was necessary to protect the public, rather than an extended sentence or a determinate sentence. For the reasons explained, the judge was fully entitled to conclude that a life sentence was necessary. Furthermore, as the judge explained, the totality of the appellant's offending was so serious as to justify a discretionary sentence of life imprisonment in any event.

135. As to the notional determinate sentence of 36 years, no-one was better placed than Judge Marson to assess the seriousness of the appellant's offending, the harm it had caused, and the appellant's culpability, having presided over this trial for 14 weeks. No-one was better placed to assess the respective roles and comparative seriousness of the offending by each of the defendants. Pre-eminently in the case of this appellant, the number of rapes, the number of separate victims, and all the aggravating features identified by the judge in his sentencing remarks made this an exceptionally serious case of its kind calling for condign punishment.

136 It was entirely appropriate and unsurprising that this appellant should have received a far longer sentence than any of his co-accused. He fell to be sentenced for 54 offences. The next most prolific offender was Zahid Hassan who received a sentence

of 18 years imprisonment, but he was convicted on only 8 counts of rape or attempted rape as against 22 in the case of the appellant, and only 14 counts in total as against 54 in the case of the appellant which included four specimen counts representing 38 oral rapes.

137. We are satisfied that no question of disparity arises. The appellant was the ringleader and sentenced as such. The totality of his offending was so serious that a notional sentence of 36 years was fully justified.

138. Accordingly the appellant's sentence was neither wrong in principle nor manifestly excessive, and the appeal against sentence is dismissed.

Postscript

139. Finally, we wish to pay tribute to the exemplary way in which Judge Marson dealt with difficult issues of jury management and the investigation of a serious jury irregularity in this case. Complex, lengthy and highly emotionally charged cases such as this call for great resilience, patience and sound judgment. Judge Marson demonstrated all those qualities to the full.