Neutral Citation No. [2022] EWCA Crim 1594

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/00632/B2 & 2022/01121/B2

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 29th November 2022

B e f o r e:

LORD JUSTICE DINGEMANS

MR JUSTICE PEPPERALL

THE RECORDER OF LIVERPOOL
(His Honour Judge Menary KC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

FRANCESCO RAJI
MOHAMMED AL-JAF

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Mr R Scarmardella KC appeared on behalf of the Appellant Francesco Raji
Mr M Rhind KC appeared on behalf of the Appellant Mohammed Al-Jaf

Mr A Haslam KC appeared on behalf of the Crown

J U D G M E N T

Tuesday 29th November 2022

LORD JUSTICE DINGEMANS:

Background

1. The appellants, Francesco Raji, who was born on 19th May 2002 and is aged 20, and Mohammed Al-Jaf, who was born on 1st January 2001 and is now aged 21 years, appeal against sentence by leave of the single judge.

2. On 22nd December 2021, following a trial in the Crown Court at Manchester before Sweeney J and a jury, the appellant Raji (then aged 19) was convicted of the murder of John Soyoye (count 1) and of violent disorder (count 2); and the appellant Al-Jaf (then aged 20) was convicted of the manslaughter of John Soyoye (count 1A) and of violent disorder (count 2).

3. On 28th January 2022, Raji was sentenced on count 1 to detention for life, with a minimum term of 21 years (less time spent on remand), and on count 2 to three years' detention, to be served concurrently.

4. There was a delay for the sentencing of Al-Jaf because of the need to obtain reports. On 18th March 2022, he was sentenced on count 1A to an extended sentence of 19 years, comprising a custodial sentence of 16 years and an extended licence period of three years, and on count 2 to a concurrent term of three years' detention in a young offender institution.

5. The first ground of appeal against sentence on behalf of Raji is that the judge failed to reflect his role as a secondary party. Reference is made in particular to the role played by the co-defendant Tchipenda and to the sentence that was imposed upon him. The second ground of appeal is that the judge ought to have given a more substantial discount for Raji's age. The

Crown submits that the judge was right to make the findings that he did as to responsibility and that the judge gave a proper discount for his age.

6. The grounds of appeal against sentence in the case of Al-Jaf are: first, that the judge was wrong to find that he was a dangerous offender and therefore wrong to impose an extended sentence; secondly, that the judge was wrong to increase the starting point of 12 years for the culpability B unlawful act manslaughter under the guidelines, when balancing the aggravating and mitigating factors, to a sentence of 16 years; and thirdly, that the judge should not have taken the starting point of 12 years, because it was a culpability C offence.

7. It was noted on behalf of Al-Jaf that the co-defendants' sentences had not been increased to reflect aggravating features which were common to both. The Crown submits that the judge was right to find that Al-Jaf was dangerous and also right to reflect the serious aggravating factors in the case. It was noted that the starting points under Schedule 21 to the Sentencing Act 2020 for those convicted of murder already included some of those aggravating features, and so there was a permissible difference in approach between Al-Jaf being sentenced for manslaughter, and the approach taken to those being sentenced for murder.

8. As the Grounds of Appeal make reference to the sentences of co-defendants, it is necessary to record that other co-defendants were sentenced as follows: Christopher Semedo, who was convicted of count 1 (murder) and who pleaded guilty to count 2 (violent disorder), was sentenced to imprisonment for life, with a minimum term of 24 years on count 1; Nelson Correia, who was convicted of count 1 and who pleaded guilty to count 2, was sentenced to imprisonment for life, with a minimum term of 23 years and six months on count 1; Ismael Correia, who was convicted of count 1 and who pleaded guilty to count 2, was sentenced to custody for life, with a minimum term of 20 years and six months on count 1; Brent

Tchipenda, who was convicted of counts 1 and 2, was sentenced to custody for life, with a minimum term of 21 years on count 1; Octavio Antonio, who was convicted of count 1 and who pleaded guilty to count 2, was sentenced to custody for life, with a minimum term of 20 years on count 1; and Defendant A, who was convicted of counts 1 and 2, was ordered to be detained at His Majesty's pleasure, with a minimum term of 16 years. All of the sentences were less days spent on remand.

9. The Crown Court had made an order under section 45 of the Youth Justice and Criminal Evidence Act 1999 and section 4(2) of the Contempt of Court Act 1981 in respect of Defendant A, which continues until he is aged 18. The order continues.

The relevant factual circumstances

10. The judge set out his findings of fact in the sentencing remarks. There is no challenge to those findings of fact, or to the conclusions that the judge went on to draw from them. We have therefore adopted those findings of fact for these appeals against sentence.

11. The judge, who had presided over the trial, said that he was sure of the following facts. On the mid-afternoon of 5th November 2020 (nearly two years ago), Joseph Raji, who was the 16 year old brother of the appellant Francesco Raji, and the co-defendant Semedo, who were both members of the RTD Gang in Manchester, were in the Piccadilly Gardens area of Manchester when they were chased by members of another gang, the Forty Gang. Semedo got away, but Joseph Raji was caught, taken to the ground, punched, kicked and stabbed in the leg, for which he needed hospital treatment. John Soyoye (the deceased) filmed aspects of the attack and not long afterwards the film was posted on social media.

12. In consequence there was a "call to arms" amongst members of the RTD Gang and others who, to a greater or lesser extent, were affiliated to the gang. The purpose was to carry out a

revenge, armed attack on the Forty Gang in their territory in Moston, Manchester, with John Soyoye being the principal target. A number who responded to the call to arms, save for Al-Jaf, knew that the Forty Gang would be armed, and thus it was necessary for them and the other members of the RTD Gang to be armed. The judge found as a fact that Francesco Raji wanted revenge for his brother. Given that he had been criticised for running away, Semedo was also motivated by an intention to restore his standing within the gang.

13. Tchipenda, who was also a member of the RTD Gang, had armed himself with a machete. They all caught a tram from Oldham to Moston. Others, who had armed themselves with knifes and other weapons, joined them along the way.

14. At around 6.20 pm the RTD Gang, having arrived at Moston, came across a young man who was wearing a mask and who looked like John Soyoye. Once they had satisfied themselves that he was not John Soyoye, they allowed him to move on.

15. In the interim, another person had telephoned one of the defendants, who lived not far away, and persuaded him to join them. At around 6.28 pm that other person left his home armed with a knife. He shared the same knowledge and intention as the other members of the RTD Gang. They all met up in Broadhurst Park in Moston. At about 6.54 pm John Soyoye and seven other members of the Forty Gang were caught on CCTV in Birchenall Street in Moston going towards Kenyon Lane. John Soyoye was armed with a knife and the other seven variously with knives, a baseball bat, pipes, bars and a stick or pole.

16. Shortly before 7 pm (about an hour after they got off the tram), the RTD Gang was in Moston Lane, approaching the junction with Kenyon Lane, when they spotted the Forty Gang. There was video footage which shows what happened next. Cars had to take evasive action. Those at the front of the RTD Gang immediately began to draw their weapons and to

run towards the Forty Group. Those behind in the RTD Gang mostly ran to catch up and similarly took out their weapons. Tchipenda and John Soyoye began to swing their machetes at each other and each was injured in the process. Other actions took place. During the course of this attack, the Forty Gang realised that they were outnumbered and ran off along Penn Street. John Soyoye and three others from the Forty Gang ran off across the adjacent car park, across Ebsworth Street and into Birchenall Street. There was a blind spot on the CCTV which featured significantly in the course of the trial.

17. John Soyoye was slowed by his injuries which had been inflicted in the first clash. He was followed on the far side of the car park by members of the RTD Gang. Francesco Raji was the first person to attack John Soyoye, who had by that stage lost his weapon. The others then joined in.

18. The prosecution case at trial had been advanced on the basis of an intention to cause grievous bodily harm. By the end of the trial, the judge was sure that there had been an intention to kill.

19. The judge set out the sequence of events. Francesco Raji had overtaken others in the blind spot, and he was the first to emerge. He was seen to jump in the air and to strike Soyoye from behind. Ismael Correia, who had a machete, proceeded along the road to cut off the route of John Soyoye, who backed off towards the fencing. The appellant Raji advanced again and struck him a number of times to the head and upper body. Others carried knives. There was an initial attack by a combination of the defendants, which caused John Soyoye to collapse to the ground. Others, including Al-Jaf, took a step backwards, after which Raji looked down towards John Soyoye and then kicked him. Al-Jaf struck him for a third time with a metal pole which he had picked up earlier from one of the Forty Gang who had run away. Others joined in the attack. The attack, whilst Soyoye was lying on the pavement,

lasted for around 21 seconds. The attack in total lasted around 28 seconds.

20. John Soyoye died at the scene. The subsequent post-mortem examination showed that he had been stabbed 15 times to varying depths up to 12 centimetres, and that the cause of death was multiple stab wounds which the pathologist thought were caused by knives, rather than machetes. There were a number of significant injuries. The pathologist was not able to specify the order in which the wounds had been inflicted, or who had inflicted which wound.

The sentence

21. When sentencing, the judge said that this was a case in which there was no significant difference in culpability between the principals and secondary parties involved in the murder. The judge noted that he had heard evidence from Semedo, Nelson and Ismael Correia and Al-Jaf. The judge agreed that the violent disorder was to be seen as part of the facts in relation to the murder and he therefore imposed a concurrent sentence.

22. The judge recorded that Raji was aged 18½ at the time of the offences and had one caution when he was aged 16 for possession of a bladed article. The judge had read the testimonials. The judge stated that he was to be sentenced to custody for life. The judge said that there was insufficient evidence to prove that Raji was a member of the RTD Gang, but that he was living with other members of the gang and closely affiliated with it. The judge found that it was a revenge attack and that Raji had instructed four members of the gang travelling with him to go from Manchester to Moston, and that it was he who, albeit unarmed, went ahead of others in the blind spot and was the first to instigate the fatal attack on John Soyoye. The judge found that the motive was to encourage or to assist others to kill John Soyoye. The judge took a starting point of 25 years' custody, said that the mitigating factors outweighed the aggravating factors, and therefore imposed a sentence of custody for life, with a minimum term of 21 years (less days spent on remand).

23. The judge said that Al-Jaf was the last of the group of 13 to arrive in Kenyon Lane. The Forty Gang soon realised that they were outnumbered and began to retreat. In the course of that, Al-Jaf threw a bottle or can at them. That was not an act in self-defence. Soyoye had been injured and had dropped his machete. He was then chased. The judge found that Al-Jaf was in the middle of the chasing pack and armed himself with a pole that one of the Forty Gang had dropped when making their escape. The judge said that nine of the 13 were directly involved in the fatal attack. During the first seven seconds of the attack, Al-Jaf had struck out twice at John Soyoye with the pole. He took a step backwards when Soyoye collapsed, before he moved in again and struck him for a third time with the pole, after which he peeled away from the attack.

24. There was considerable psychiatric evidence about Al-Jaf's post traumatic stress disorder, but the judge found that there was no mitigating connection between the PTSD and what had been done by Al-Jaf. Al-Jaf had not tried to stop or dissuade any of the other eight from the continuation of the attack. Rather, he had intentionally encouraged or assisted the attack on John Soyoye overall and had intended that harm falling just short of grievous bodily harm would be caused. The judge found that there was a high risk of death, which should have been obvious to Al-Jaf. The judge commented that at some time Al-Jaf had his head in his hands and said that that was not the product of any general remorse for what had happened to John Soyoye. Following the fatal attack, Al-Jaf had taken part in recordings which were intended to send a message to others in relation to what had happened to John Soyoye.

25. The judge found that this was an offence of high culpability, with a starting point of 12 years' custody. The offence was aggravated by the fact that Al-Jaf was on bail and in breach of a curfew, and by later convictions for offences for which he was on bail. He had taken

cannabis. There was planning and premeditation, the use of a weapon, and John Soyoye was unable to defend himself, albeit that he had been a significant participant in the previous violent disorder. The significant mitigating feature was age and lack of maturity.

26. The balance of aggravating features and mitigating features had led to an increase from 12 years to 16 years' custody. The judge also said that it was that balance together with the necessary avoidance of any unfair disparity with the minimum terms of the other defendants which had resulted in the disparity. Particular emphasis is placed on what the judge had said in relation to that.

27. So far as dangerousness was concerned, the judge said:

> "Against the background of my findings of fact and the detailed reasoning and conclusions from the author of the pre-sentence report, I have no hesitation in concluding that you are a dangerous offender and in the exercise of my discretion an extended sentence is required."

Accordingly, the sentence imposed was an extended sentence of 19 years, comprising a custodial term of 16 years and an extended licence period of three years.

Mr Raji's appeal against sentence

28. As to the submission that the judge failed to reflect Raji's role as a secondary party and failed to give sufficient credit for the fact that the intention to kill, which must have been present, was formed late, that he had hung back from the first attack and had a lesser role than the co-accused Tchipenda, the answer, in our judgment, is that the respective roles were fact-specific matters for the assessment of the judge. True it is that Tchipenda was armed with a machete and inflicted serious injuries on the deceased. In *R v Semesu* [2021] EWCA Crim 513 this court commented on what is the appropriate difference in relation to a primary and a

secondary party. It is plain from *R v Owusu* [2022] EWCA Crim 1352 at [32] that the assessment of culpability for primary and secondary parties will always be fact specific. Indeed, that was common ground at the hearing of the appeal.

29. In our judgment, the judge gave compelling reasons for not distinguishing between the primary and secondary parties in this case so far as Raji was concerned. They included the fact that Raji was motivated by a desire for revenge; that he had recruited Defendant A; that he had, on the judge's findings, instructed four members of the gang to travel to Moston; and that he was the first to attack in what was the final and fatal assault. In those circumstances, the judge was entitled not to draw a distinction between primary and secondary parties.

30. As to the issue of discount for age, it is common ground that turning 18 is not a cliff edge. It is apparent that the judge gave careful consideration to the issue of a discount for age, and indeed took into account the testimonials submitted on behalf of Raji. In our judgment, there was nothing to show that the discount given by the judge in this was case was impermissibly low or as a consequence that the sentence imposed on Raji was manifestly excessive. For all those reasons we dismiss his appeal against sentence.

Mr Al-Jaf's appeal against sentence

31. We deal first with the issue of dangerousness. In our judgment, the judge was best to make the finding that Al-Jaf was dangerous. He had conducted the trial and he had heard the evidence of Al-Jaf and indeed of various other co-defendants. He made an assessment that was based on the evidence. It is right that Al-Jaf will serve a substantial period of time in custody and will be a lot older and more mature when he is released. It is also however right to note that Al-Jaf had a previous conviction for carrying a knife; that he was affiliated with gang violence; and that he had shown a tendency to use substantial violence in the course of the attack on John Soyoye. In our judgment, there is nothing that would permit us to upset

the finding of dangerousness made by the judge.

32. As to the issue of the length of the sentence, the sentencing guidelines in relation to unlawful act manslaughter provide for category C culpability, with a starting point of six years' custody and a range up to nine years. Category B culpability is where death was caused in the course of an unlawful act, which involved an intention by the offender to cause harm falling just short of grievous bodily harm. The judge found that that was the situation in relation to Al-Jaf. He took into account the fact that Al-Jaf had hit the deceased with a metal pole three times in the course of an attack, and that at least five others had used knives. In our judgment, that was a perfectly proper finding to make.

33. It is then said that those factors which had led the judge to find that this was higher culpability were then effectively double counted in relation to the increase from 12 to 16 years.

34. In our judgment, that is not a fair analysis of the judge's sentencing remarks. What the judge did was to use various factors, including that there were weapons used to the knowledge of Al-Jaf at the final event, to find what his intention was. The use of the factors later on was in relation to other statutory aggravating factors. The judge is required to consider statutory aggravating factors. In this case they included previous convictions and the commission of an offence whilst on bail and indeed an offence in breach of curfew requirements. Other aggravating factors included the persistence of violence, the use of a weapon, and being part of a group or gang. They had to be balanced against the mitigating factors.

35. It is right that the sentences of the co-defendants who had been convicted of murder had not been increased from the starting points to reflect aggravating features common to both.

This, however, was because the starting points taken under Schedule 21 to the Sentencing Act 2020 for those convicted of murder already included those aggravating features. It would not have been permissible then to double count those factors. However, the situation under the sentencing guideline for unlawful act manslaughter is different. We can see no error in the judge's approach to those factors.

36. As to the increase from 12 to 16 years, we have considered whether or not that was impermissible. In our judgment, it is impossible to say that that was manifestly excessive or that it involved any error in approach, given the findings of fact that the judge had made. The judge, who had conducted the trial, had seen and heard Al-Jaf give evidence. We therefore dismiss Al-Jaf's appeal against sentence.

Conclusion

37. For all these reasons both appeals against sentence are dismissed.
