Neutral Citation Number: [2022] EWCA Crim 954

Case No: 202103356 A4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CHESTER CROWN COURT
HHJ LEEMING
T20217056

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 July 2022

Before :

LADY JUSTICE THIRLWALL
MRS JUSTICE LAMBERT
and
MR JUSTICE RITCHIE

- -

Between :

DAVID MOTTRAM	**Appellant**
- and -	
REGINA	**Respondent**

- -
- -

Benjamin Myers QC (instructed by Oakes Partnership) for the **Appellant**
Nick Johnson QC (instructed by CPS) for the **Respondent**

Hearing dates: 25 March 2022

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email, release to the National Archives. The date and time for hand-down is deemed to be 10:30am on 12 July 2022.

Mrs Justice Lambert:

1. On 23 September 2021 at the Crown Court at Chester, the Appellant was convicted of the murder of Samantha Heap. On 27 September he was sentenced to life imprisonment. The judge set the minimum term before consideration of release by the Parole Board at 30 years imprisonment. He appeals his sentence with leave of the single judge.

The Facts

2. Samantha Heap was aged 45 when she was killed. She and the Appellant were neighbours in a Supported Living Scheme in Congleton in Cheshire for adults with mental health issues. Support workers would assist the eleven tenants with their daily routines, social skills, and any medication. Staff were not usually on site after 4:30pm or at weekends.

3. Ms. Heap was, by all reports, quite independent. She was pleasant and polite. She took daily medication for schizophrenia and depression. She used a walking stick or frame when outside. She had a key to her flat, the spare being kept in the office. She had a good relationship with other tenants and so far as the staff were aware there were no issues between her and the Appellant.

4. The Appellant was aged 47 at the date of the killing. He had a diagnosis of Asperger's syndrome. He was independent in his medication and in all of his daily needs like shopping and cleaning. He was reported to be somewhat reserved but was mostly pleasant and polite.

5. On 2 March 2021, the day of the killing, staff conducted a welfare check on the Appellant at lunchtime. He told staff that he was fine and did not need anything. Later on the same day at around 4pm Ms. Heap telephoned through her regular order to the local fast food restaurant. At 4:30pm, she waved goodbye to her support worker which was not unusual. The takeaway food was delivered to her flat shortly after 5pm and she was described by the delivery driver to have been her normal, happy self and appeared uninjured. This was the last time Ms. Heap was seen alive.

6. By his own admission, the Appellant went to Ms. Heap's flat not long after 5pm. He was to reveal later that he had tricked his way in by telling Ms. Heap that he had lost his key. At 10:27pm the Appellant called Crisis Line. He asked the call handler to call 999 for the police, saying he had killed Samantha Heap. He said that he had strangled her and that his fingerprints would be on her throat. He said that he was a psychopath and that he did not want to live in the community anymore and so he had killed Ms. Heap in order to go to prison. He said he was not trying to cover his tracks but was confessing to the crime. He said he had spent a while upstairs in her flat and had not called the Crisis Line earlier in the evening as he was "*mad and bad*".

7. Police officers arrived at the Appellant's flat shortly after 11pm. The Appellant told them that he had Asperger's syndrome and autism. He repeated that he had killed Ms. Heap by strangling her with his hands wrapped around her throat. He said that he had killed her because he did not like her and because he no longer wished to live in the community. He said that he wished he had killed her a long time ago. He described having planned the killing and that he felt nothing, no remorse or empathy, and that he

must be evil. He said that he had been up there (in her flat) for hours so she would be dead by the time the police went in. The killing had been no accident and he had known what he was doing.

8. The Appellant had placed a bag containing handwritten letters dated between 27th January and 26th February 2021 in the hallway of his flat. The Appellant had written: "*I am a psychopath but I've never harmed or killed anybody although I've had fantasies and still do of harming and killing people (not everybody) from when I was a child…I was born evil or evil minded or both…I would rather spend the rest of my life in prison…if I ever go to prison I must never be released to live in the community because I will kill certain people."* He wrote that he wanted to be remembered by as many people as possible and quoted Oscar Wilde: if there is one thing worse than people talking about you, it's when people don't talk about you at all.

9. The Appellant was arrested for murder at 11:15pm.

10. Ms. Heap's body was found by police officers upon entering her flat. She was lying on her back on the floor. A wooden unit was on top of her head and upper body. Her upper clothing had been pulled up, exposing her breasts, and her trousers were on back to front. A television remote control had been placed inside her underwear against her right groin. The scene was heavily blood stained and littered with broken glass and broken furniture. DNA from the Appellant was shown to be present in bloodstained swabs which were taken from the right side of Ms. Heap's neck, consistent with manual strangulation. Samantha Heap's DNA profile was found on blood on a broken kitchen knife. Other blood stained weapons included another knife and a bent fork. There was dilute blood staining on the right side of the bathroom sink, which was consistent with the Appellant having washed his bloodstained hands. A piece of white flex was found in the Appellant's flat, but no cellular material was obtained from it. Jeans were found in the Appellant's bedroom which bore heavy blood staining in the crotch area from which DNA from at least two individuals, the majority of the DNA was consistent with Samantha Heap.

11. The Appellant was interviewed by the police on four occasions on 3rd and 4th March. He largely answered "no comment" to the questions.

12. The post mortem examination revealed that Ms. Heap had been subjected to a brutal and sustained attack. There were 14 areas of sharp force injury to the head and neck, involving three stab wounds and multiple incised wounds. 35 areas of blunt force injury were identified, comprising multiple bruising, abrasions and lacerations to the face, head, and neck. There was a band of purple bruising around the neck with a linear pattern within it which could have come from a ligature. There were 15 further areas of bruising and abrasion to the chest and abdomen, including to the chest and breast area. There were further bruises and abrasions to both arms and legs. Some of the sharp force and blunt force injuries to both of her hands were consistent with defensive injuries. There were multiple fractures to the front of the ribs on both sides, 4 fractured ribs on the right side and 5 on the left. The cause of death was given as strangulation (either manual or ligature).

13. Between his arrest and trial, the Appellant was assessed by psychiatrists and a psychologist. Much of what was explored during the various interviews concerned his motivation for the killing.

14. The Appellant was first seen by a psychiatrist instructed by his defence team, Professor Rix, on 23rd April. He told Professor Rix that: "*Sam deserved it, but she was not the most deserving target. I wouldn't care if she was pretty but she was ugly, she looked like a shark. I had thought about it for years. The reason why I did not mention her name was because, if you've read my letters, I am too much of a coward. What I did was an act of kindness, she had no quality of life, she was a selfish bitch. I did her a favour, I'm not sorry for her. She can rot in hell for all I care. ….. She wasn't the only one I wanted to dispose of.* He went on to say that*: "To me it feels normal, right, natural like making a cup of tea…I am sorry for the crime I have done. I am not sorry for her at all as it is personal. We've been neighbours for 16½ years. She used to pester me for sex, she would not take no for an answer. I am not saying she is an evil person, but she is not a good person. I am not sorry for her at all, but I am sorry for her friends and family. To me it does not feel wrong, it feels normal to me. I thought I would have more remorse. I am just sorry for the situation I am in now*,"

15. The defence instructed a clinical psychologist, Dr David Ruthenberg. Referring to Ms. Heap, the Appellant told Dr Ruthenberg: "*She had no quality of life. She was not an evil person, she was not nice. She didn't deserve to die. She exposed her breasts to me and touched my private parts…that was a long time ago now. Ever since I told her I was not interested in her, she started banging and making a noise upstairs and gave me bad looks. She also said that if I did not give her what she wanted she'd report me to the police and say I raped her. I should have slept with her. It would have been a one off and she would have left me alone. … she was not evil, not like my sister. She* [that is, his sister] *deserves to die. She's evil…She was an easy target and my sister lives a long way away…. Probably if I had the chance [I would kill my sister].. She's evil. She deserves to die*." He went on to say that he had planned the murder and that he had seen it through. He said that he had drunk two cans of beer to help him do it.

16. He told Dr Ruthenberg that "*The whole thing felt unreal. It felt surreal. I was on a high. Afterwards I felt freedom, I wondered around her flat with the lights out pretending it was mine. I know it was wrong but it does not feel wrong. I then did things which were not planned: I urinated on her, lifted up her top to show her breasts because she exposed herself to me and put her remote in her knickers. …. Not sure if I put her trousers on wrong and stuff. He said, I am a fantasist, I think of myself becoming famous. But I am sick of my thoughts, it is full of violence and anger and death. Sometimes I think of raping women but never children. I want some peace. I watch movies all the time about psychopaths, I think I am a psychopath. I feel like one of them. I can impersonate them.*

17. The Appellant was assessed by a consultant forensic psychiatrist on behalf of the Prosecution, Dr John Crosby. The Appellant told Dr Crosby that he was hoping to receive a conviction for manslaughter and wanted to go to hospital, which he considered his entitlement as he needed to be looked after. He said Ms. Heap was an easier option but he would rather have killed others such as his sister. He said she had invited him inside the flat and he had lied, telling her he had been locked out. He had taken her keys after she was dead. He said it had been hard taking someone's life. It had taken him about 5 minutes. We observe that, given the extent of the injuries to Ms. Heap's body and the state of the room, this timing was obviously untrue, or at least grossly inaccurate.

18. At trial, the Appellant pleaded guilty to manslaughter but not guilty to murder on the grounds of diminished responsibility. The issue for the jury was whether the Appellant's diagnosis on the autism spectrum substantially impaired his ability to form a rational judgement and if so whether it was a significant cause of the killing. The jury rejected his defence and the Appellant was convicted of murder.

Sentencing Remarks

19. One of the issues which the sentencing judge had to resolve was the appropriate starting point for setting the minimum term under Schedule 21 Sentencing Act 2020.

20. The Crown's position was that the court would be entitled to find that the murder fell within paragraph 3(2)(e) of Schedule 21 as it was a "*murder involving sexual or sadistic conduct*." On that basis the provisional starting point before assessing aggravating and mitigating features would be one of 30 years. Paragraph 3 reads as follows:

> 3. (1) If –
>
> > (a) the case does not fall within paragraph 2(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
> >
> > (b) the offender was aged 18 or over when the offence was committed, the appropriate starting point, in determining the minimum term, is 30 years
>
> (2) Cases that (if not falling within paragraph 2(1) would normally fall within sub-paragraph (1)(a) include –
>
> > (a) …the murder of a police officer or a prison officer in the course of his or her duty
> >
> > (b) a murder involving the use of a firearm
> >
> > (c) a murder done for gain…
> >
> > (d) a murder intended to obstruct or interfere with the course of justice
> >
> > (e) a murder involving sexual or sadistic conduct
> >
> > (f) the murder of two or more persons
> >
> > (g) a murder that is aggravated by racial hostility or by hostility related to sexual orientation,
> >
> > (h) a murder that is aggravated by hostility related to disability or transgender identity….
> >
> > (i) a murder falling within paragraph 2(2) committed by an offender who was aged under 21 when the offence was committed.

21. The Crown relied upon the condition of the body when found by the police and what the Appellant had said to the psychiatrists when interviewed.

22. Alternatively, the Crown submitted that the sentencing judge would be entitled to conclude that paragraph 4 of Schedule 21 was engaged because the Appellant had taken a weapon to the scene and that he had used that weapon in committing the murder. On this basis the provisional starting point before consideration of aggravating and mitigating factors would be one of 25 years. Paragraph 4 reads as follows (to the extent relevant) –

    4.(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to –

        (a) commit any offence, or

        (b) have it available to use as a weapon,

    And used that knife or other weapon in committing the murder.

23. The Crown conceded that there was insufficient evidence to conclude that the Appellant had taken a knife to the scene however it submitted that the court would be entitled to find that the Appellant had taken the length of white flex to the scene and had used it as a ligature to strangle Ms. Heap.

24. Mr Myers QC, who represented the Appellant at trial as he did before us, argued at the sentencing hearing that there was insufficient evidence to find to the criminal standard that either paragraph 3 or paragraph 4 of Schedule 21 were engaged. His arguments below substantially mirror those before us and we set them out in outline form only at this stage. He submitted that: there was insufficient evidence for the court to be sure that the murder had been committed for a sexual purpose; there was no forensic or physical evidence of sexual assault and no evidence that the Appellant had (as at one point he had claimed) urinated upon the body. Mr Myers accepted that the arrangement of the clothing (involving exposure of the breasts) and the placing of a TV remote next to the skin of the groin (but not in the vagina) were "*strange and unpleasant*" but emphasized that there was no evidence that this interference with the body had preceded the killing, the Appellant himself having explained that it had taken place after Ms. Heap was dead.

25. Mr Myers also submitted that paragraph 4 of Schedule 21 was not engaged, there was no evidence that he had taken the flex to the Appellant's flat, rather than him finding it there. More importantly he highlighted the evidence which pointed against the ligature having been used to strangle Ms. Heap: the flex had not been cleaned and yet it carried no cellular material from either the Appellant or from his victim.

26. In comprehensive sentencing remarks, the judge made a number of findings relevant to the appropriate starting point for the minimum term.

27. He found that he was sure to the criminal standard that the Appellant's intention in killing Ms. Heap was "*a longstanding one in your quest for notoriety and your misguided desire to be remembered. Killing Samantha was one way you thought you could be sure of getting the notoriety you craved and she was an easy target living just above you and on her own. Killing your sister, killing one of the support workers you had taken against, two people on the list of certain people you had expressed a desire to kill would have proved more difficult for you to achieve."*

28. He found that the murder involved sexual conduct. He noted that, whilst there was no forensic evidence that penile or digital penetration of the vagina took place, such conduct "*could not of course be excluded*". He referred also to the arrangement of Ms. Heap's clothing and the placing of the TV remote inside her clothing and next to her groin. He referred to what the Appellant had told Dr Ruthenberg that, although not planned, he had urinated on Ms. Heap and had lifted up her top to show her breasts because she had exposed herself to him and that he had put "her remote in her vagina." The judge noted that "*parts of what you told Dr Ruthenberg are borne out by the evidence*." The judge stated that "*I make it clear that I am sure this murder was accompanied by sexual conduct [that] increased the ordeal of the victim and the depravity of the killing.*"

29. The sentencing judge also concluded that he was satisfied to the criminal standard that the Appellant had taken a length of flex to Ms. Heap's flat and that he was sure that he had used the flex to strangle her. He found that the Appellant had then removed the flex from the scene after being sure that Ms. Heap was dead.

30. Having concluded that the murder involved sexual conduct, the judge adopted a starting point for the minimum term of 30 years. He considered that the aggravating factors included: a significant degree of planning and premeditation; Ms. Heap's vulnerability (mental and also physical by reason of her poor mobility); her physical suffering before death; the location and timing of the offence and that the Appellant had taken alcohol for "dutch courage." The judge considered that those aggravating factors were however balanced by the mitigating factors which included the Appellant's mental health, his absence of previous convictions and that he was more likely to find imprisonment difficult than someone who does not have autism. This led the judge to imposing a minimum term of 30 years before consideration of release by the Parole Board.

The Issues on Appeal

31. There are two grounds of appeal. First, that the judge was wrong to conclude that the murder involved sexual conduct and in taking a 30 year starting point for the minimum term. Second, and alternatively, that the judge had been wrong to find that the Appellant had taken a length of flex to the scene and/or that the flex had been used to strangle Ms. Heap. Mr Myers' submission before us is that the correct starting point was one of 15 years, although he accepted in argument that, if such a starting point was adopted, then the surrounding circumstances of the death and aftermath would justify a very significant increase from that starting point.

32. We deal with each ground of appeal in turn.

Ground One: murder involving sexual or sadistic conduct

33. Central to the Appellant's submissions before us was the judge's conclusion that the Appellant's intention in killing Ms. Heap had been his long-standing quest for notoriety and that Ms. Heap had become the target of a planned and pre-meditated killing, only because she was the "*easier target*" when compared with others. Mr Myers submitted that it followed from this finding that the judge must also have concluded that any sexual conduct by the Appellant was spontaneous and unplanned and that there had been no element of sexual motivation in the commission of the offence. In his oral submissions before us Mr Myers did not go so far as to suggest that this was

determinative of the issue of whether the murder fell within sub-paragraph (2)(e) but he drew our attention to the other provisions within sub-paragraph (2), a number of which appeared to relate (or at least associate) the seriousness of the killing with its purpose. Viewed in the context of the sub-paragraph as a whole therefore, Mr Myers submitted that the absence of a sexual purpose or motivation for the killing was a very strong factor militating against the murder falling within sub-paragraph (2)(e).

34. There were two other factors upon which Mr Myers relied. First, the Appellant had told the psychiatrists that he had interfered with the clothing after the killing had taken place. Although the sequence of events cannot be known with any precision, Mr Myers reminded us that the Appellant had stayed in Ms. Heap's flat for some hours after the murder. He had arrived at the flat at about 5pm yet only contacted the Crisis Line more than 5 hours later. He also submitted that the Appellant's comments to the psychiatrists after the killing should be treated with scepticism. Dr Rothenberg to whom the Appellant had spoken in most detail about his sexual history with the victim had advised caution in accepting that account on the basis that the Appellant may have been prone to "negative confabulation." By this he meant that the Appellant might have (sub-consciously) made up certain parts of the history of the relationship in order to give it, in his own terms, a spurious justification.

35. Mr Johnson drew our attention to *R v Daniel Walker* [2007] EWCA 2631 where at [26] the court had considered the phrase "murder involving sexual or sadistic conduct" as "*intended to cover circumstances where the acts which resulted in the death of the victim were sexual in nature or accompanied by sexual activity that increased the ordeal of the victim or the depravity of the murder or both."* He submitted that what was needed for the engagement of sub-paragraph 3 was a sufficient connection between the sexual conduct and the murder. Whether the conduct preceded, was coincident with, or came after the murder was not determinative one way or the other. The question is whether the conduct and death were sufficiently proximate, rather than two separate distinct acts. He submitted that, viewed in the context of the statements by the Appellant after the event, the judge was correct to find that sexual degradation and sexual humiliation were integral to the motivation for the killing.

Decision on Ground One:

36. Although this was a particularly brutal and savage killing it has never been suggested that sub-paragraph (2) (e) is engaged on the basis that the murder involved sadistic conduct. The question for us in this appeal therefore is solely whether the judge was entitled to conclude on the material available to him that the "murder involved sexual conduct."

37. Both counsel referred us to *Walker*, a case in which apparently consensual sexual activity had preceded the murder. Both counsel relied upon the statement of the court at [26] in that case for different purposes: Mr Myers to support his proposition that, on the facts of this appeal, the sexual conduct had taken place after the killing, Mr Johnson in support of his proposition that the depravity of the murder was increased by the sexual conduct.

38. With respect to both counsel, we do not find such a dissection and application of the statement of the court in *Walker* to be particularly helpful. Hallett LJ remarked in *AG Ref No 68/2013*; *R v Nelson* at [22] that it would be wrong to elevate that statement into

an "*all-encompassing definition of what constitutes a murder involving sexual activity*." We agree. The factual circumstances in which the question of the engagement of sub-paragraph 3 will arise are infinitely varied. The purpose of, and motivation for, the killing; the nature of the sexual conduct; whether the conduct was planned and the timing of the sexual conduct relative to the death may all be relevant factors in answering this question but, as Hallett LJ stated in *Nelson* each case will turn on its own facts. What the court is examining in considering whether the starting point for the minimum term should be 30 years is whether "*the seriousness of the offence… is particularly high*" on the basis that it "*involves sexual conduct*." That question is bound to be fact specific.

39. We start with our conclusion on the issue of "sexual conduct." In this case it involved the exposure of the victim's breasts, the removal and replacement of her trousers the wrong way round and the placing of the TV remote control inside her underwear against the skin of her groin. The Appellant referred to having urinated upon the body, although we accept that this could not be confirmed forensically one way or the other. Additionally, and significantly in this case, Ms. Heap's blood and DNA was found to be present on the crotch of the Appellant's trousers. This is very strong evidence that at some point when Ms. Heap was still bleeding, the Appellant had sat astride her. Given all of these features, it seems to us to be unarguable but that the conduct relied upon by the Crown amounted to "sexual conduct." Indeed, Mr Myers did not seriously suggest otherwise. The acts referred to were clearly sexual and clearly intended by the Appellant to humiliate sexually and degrade his victim.

40. Nor are we persuaded that the judge was wrong in his conclusion that this murder "involved sexual conduct" for the purposes of Schedule 21 paragraph 3(2)(e). The judge found that the Appellant's intention in killing Ms. Heap was to satisfy his quest for notoriety, but it does not follow from this finding that the judge was excluding from the motivation the Appellant's wish to humiliate and degrade Ms. Heap sexually

41. The judge set out the context of the killing in detail. The Appellant does not dispute that this was a pre-meditated killing which involved a considerable degree of planning; planning both in the selection of victim, the timing of the killing (after the staff had left for the day) and the use of trickery to gain access to the victim's flat. The letters left by the Appellant and his statements made to the psychiatrists include numerous references to the Appellant's account of his sexual history with Ms. Heap. Those references included Ms. Heap having exposed her breasts to him and her having touched his "private parts." They included her having reacted badly to his refusing her sexual advances by giving him "bad looks" and having threatened to report him to the police for rape. He told Dr Crosby that she was a pervert who had groped him on and off, for years. The Appellant told Dr Ruthenberg that he had had thoughts about raping women, but never children.

42. This context is important. It is relevant to the motivation for the killing and the sexual conduct which accompanied it. The judge was entitled to, and in our view correct to, also take into account that the context provided overwhelming evidence of the Appellant's long-standing sexual hostility towards Ms. Heap and thoughts of sexual violence towards women generally. We find it particularly striking that one of the features of his sexual conduct was the exposure of Ms. Heap's breasts just as he alleged, she had done in his presence in the past. The Appellant also alleged that she had touched

his "private parts." By straddling her body, the Appellant would have brought his groin area into close contact with Ms. Heap.

43. Further, there was evidence, identified by the judge, that the sexual conduct had taken place before Ms. Heap's death. The judge recorded that the TV unit had been dropped or placed or forced over her body as she lay dying. In these circumstances, the exposure of the breasts, the removal of the trousers and the placing of the remote inside her trousers must have taken place before her death which, as the judge found, increased the ordeal of the killing. Although the Appellant remained in the victim's flat for around 5 or so hours before calling the emergency services, he explained this delay by wanting to ensure that Ms. Heap was dead and beyond help before the ambulance arrived. It does not therefore follow that Ms. Heap had died shortly after the Appellant's arrival at the flat. Indeed, the extent of the damage to the flat and the number of injuries to Ms. Heap provide strong evidence that his attack was as lengthy as it was brutal. The presence of Ms. Heap's blood on the crotch of his trousers indicates that Ms. Heap was still bleeding when he sat astride her body, or at very least, that her blood was still wet. For these reasons, we are sure that the sexual conduct was committed before Ms. Heap's death. In his sentencing remarks, the judge made clear that the murder was accompanied by and involved sexual conduct which increased the ordeal of the victim and depravity of the killing and we are satisfied that he was entitled to reach that conclusion. We have no doubt that part of the motivation for this murder was a desire to humiliate sexually and degrade Ms. Heap.

44. We find no error in the judge's approach. He was, in our judgement, entitled to find that this murder involved sexual conduct and to adopt a starting point for the minimum term of 30 years.

Alternative Grounds of Appeal

45. Given our conclusion at [44] above it is not necessary for us to go on to consider the further grounds of appeal and we do not do so. This appeal is dismissed.