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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 22023/04298/B3, 2023/04342/B3
[2024] EWCA Crim 956



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 11th June 2024

B e f o r e:

VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE SWEETING

HIS HONOUR JUDGE JOHN LODGE
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

HASSAN TASLEEM
GURDEEP SINGH SANDHU

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr B Tetlow KC appeared on behalf of the Applicant Hassan Tasleem
Mr B Tetlow KC and Mr N Ross appeared on behalf of the Applicant Gurdeep Singh Sandhu

Mr J W Curtis KC and Mr J Bruce appeared on behalf of the Crown

J U D G M E N T
(Approved)

Tuesday 11th June 2024

LORD JUSTICE HOLROYDE:

1. A witness in this case has the protection of an order made on 16th November 2022 pursuant to section 46 of the Youth Justice and Criminal Evidence Act 1999. The order states that no matter relating to that witness shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as being a witness in the proceedings. Without prejudice to the generality of the order, the following matters shall not be included in any publication during her lifetime if their inclusion is likely to have that result: her name; her address; the identity of any place of work; and any still or moving picture of her.

2. That order remains in force. Its full terms, including the name of the witness concerned, will be included in the order of this court on the present applications. Any person wishing to report these proceedings must comply with the order. It will not be necessary for the witness concerned to be mentioned in this judgment, and accordingly this judgment may be reported in full.

3. On 19th January 2023, following a long trial in the Crown Court at Wolverhampton (sitting at Loughborough) before Bennathan J and a jury, the applicants were convicted of offences of murder (count 1), possessing a firearm with intent to endanger life (count 2), and doing acts tending and intended to pervert the course of justice (count 3). They were subsequently sentenced on count 1 to life imprisonment with minimum terms of 30 years (less the number of days which each had served on remand in custody). Their experienced leading and junior counsel found no arguable grounds of appeal against either conviction or sentence.

4. Some months after their convictions, however, a matter emerged, relating to the alleged

conduct of a juror, which has prompted the present applications for extensions of time in which to apply for leave to appeal against conviction. The applications have been referred to the full court by the Registrar.

5. The case comes before us today to consider whether to direct the Criminal Cases Reivew Commission ("CCRC") to investigate the alleged action of the juror, and, if not, to rule upon the applications.

6. Given that the grounds of appeal relate solely to the matter which occurred after the trial, we need say very little about the facts of the case. It suffices for present purposes to note only the following.

7. The charges arose out of the fatal shooting of Mohammed Haroon Zeb in the early hours of 31st January 2021. He was killed by gunfire from a passing car, a Volkswagen Golf bearing false registration plates. It was the prosecution case that this was a carefully planned, drive-by shooting and that it was the latest incident in a long-running and escalating feud between two family groups, to whom we shall refer for convenience as the Cloughton group and the Hussain group. A previous incident had resulted in the conviction of Nabeel Choudhary, who was associated with the Cloughton group, for the murder of a member of the Hussain group.

8. On 21st January 2021, Nabeel Choudhary's application for leave to appeal against conviction was refused. A few hours later his brother, Akeel Hussain (a member of the Cloughton group) was run down and injured by a car. The shooting of Mohammed Haroon Zeb was said to have been carried out in revenge for that assault on Akeel Hussain.

9. In total nine men, all said to be members of or associated with the Choudhary group, stood

trial in connection with the shooting of Mohammed Haroon Zeb. The applicant Tasleem was alleged to have been the principal organiser of the shooting and the man who fired the fatal shots from the front passenger seat of the Volkswagen Golf. The applicant Sandhu was alleged to have been the driver of that car. Two other accused, Choudhary Rashid and Umar Ali, were alleged to have been in the car and to have assisted or encouraged the murder. So, too, was another man, Sikander Ali, who was said to have fled abroad after the shooting and who had therefore not been charged.

10. Five other co-accused were alleged to have assisted or encouraged the murder in various ways. They were: Akarsh Tasleem (the brother of the applicant Tasleem), Akeel Hussain (the man who had been struck by a car, as mentioned in paragraph 8 above), Mohammed Rafiq, Shamraz Ali and Zaine Hussain. It was further alleged that after the shooting they and the applicants had played active parts in disposing of the Volkswagen Golf, and that the applicants and four of their co-accused had moved to a safe house which had been arranged by the applicant Tasleem's girlfriend.

11. At trial the applicant Tasleem admitted being a passenger in the Volkswagen Golf, but denied that he had occupied the front passenger seat and denied knowledge of any plan to use a firearm. He alleged that the absent Sikander Ali had been the gunman.

12. The applicant Sandhu admitted that he was the driver of the car, but denied knowledge of any plan to use a firearm. His case was that he had driven where directed by Tasleem, who was the front seat passenger.

13. Chaudhary Rashid and Umar Ali admitted being in the car, but denied any part in the shooting. We understand that one or both of them also pointed to the applicant Tasleem as being the front seat passenger.

14. The jury retired to consider their verdicts on the afternoon of 10th January 2021. They continued their deliberations on 11th, 12th, 13th and 18th January. They resumed again on 19th January, and that afternoon they returned the guilty verdicts against the applicants to which we have referred. In relation to the other accused, the jury's verdicts were as follows: Choudhary Rashid, Umar Ali, Akrash Tasleem and Zaine Hussain were acquitted of all the charges they faced. Shamraz Ali was found not guilty on count 1, but guilty on count 3. Choudhary Akeel Hussain was acquitted of count 3, but the jury were unable to reach a verdict on count 1. Mohammed Umar Rafiq was acquitted of count 1, but the jury were unable to reach a verdict on count 3. Those two men were retried in late 2023. Hussain was convicted on count 1 of the alternative charge of manslaughter. Rafiq was convicted on count 3.

15. In connection with that retrial, members of Mohammed Haroon Zeb's family attended court. On the morning of 18th September 2023 a police officer, Detective Sergeant Wareham, spoke to three of those family members: Mohammed Aurangzeb, Mohammed Rehman and Mohammed Asim. In a witness statement made later that day, Detective Sergeant Wareham said:

"Whilst providing the general updates to the case and discussing general court etiquette, Mohammed Aurangzeb and Mohammed Asim disclosed to me that Asim was approached in Pepes restaurant, Loughborough by a jury member in the previous murder trial. Asim stated that the jury member had indicated that the jury members were only going to find the shooter and driver guilty, the rest would walk. I asked if he could remember which jury member that was and he said, 'The Asian male, there was only one of them'. I asked when this was and his reply was 'three to four weeks before the case was finished'.

At that stage, I informed them that I would have to disclose this information urgently to trial counsel and left the room."

16. In a second statement made on the same day, Detective Sergeant Wareham added that Superintendent Munro and two other officers had previously spoken to a number of members of Mohammed Haroon Zeb's family, including Mohammed Aurangzeb, on 16th August 2023. He continued:

"Aurangzeb asked if there was a chance that those acquitted could be re-tried for Haroon's murder. It was explained that this would only happen if significant new evidence came to light and that this would be a matter for the CPS to decide on. Nothing further was asked or said in relation to that subject. No disclosures were made to Police about Mohammed Asim being approached in Loughborough by a jury member."

17. It is submitted on behalf of the applicants that their convictions are potentially unsafe because of apparent jury irregularity. Joint written submissions were helpfully prepared by all defence counsel who had appeared below, and these have been developed orally by Mr Tetlow KC on behalf of both applicants, and by Mr Ross on behalf of Sandhu.

18. The court is invited to direct an investigation by the CCRC, pursuant to section 23A of the Criminal Appeal Act 1968. It is submitted that the information presently available is reliable, coming as it does from the family of the deceased Mohammed Haroon Zeb and the police, and being independent of the applicants. It is submitted that, if accurate, the information shows that the jury had reached decisions about the applicants long before the case was concluded – at least before the judge's summing up of the facts, and possibly before counsel's closing speeches had been completed. There is accordingly, it is argued, at least an appearance of bias against the applicants such as to render the convictions unsafe.

19. In developing these arguments, Mr Tetlow has addressed us about the issues which arose in relation to the intent of the gunman (whoever the jury may find the gunman to have been).

He points out that in a number of respects the very limited information presently available is plainly in need of clarification, which he submits is a clear indication of the need for an investigation. He acknowledges that the submissions on behalf of the applicants at present involve an inescapable element of speculation, but points to that as a further reason for an investigation being directed. He acknowledges that the jury were in retirement over a period of days, but points out that they had many defendants and many different counts to consider. He particularly invites the court's attention to a passage in the judgment of this court in *R v Thompson and Others* [2010] EWCA Crim 1623. At [4] of the judgment in that case, in which reference is made to the narrow exceptions to the general rule prohibiting inquiry into jury deliberations, Lord Judge CJ spoke of circumstances in which there had been a complete repudiation of the oath taken by jurors, and continued as follows:

"If there are serious grounds for believing that such a repudiation may have taken place, this court will inquire into it, and may hear, *de bene esse*, evidence, including the evidence of jurors themselves, in order to decide whether it has happened. If it has, the verdict will inevitably be unsafe, and any resulting conviction will be quashed."

20. In support of the applications for extensions of time, Mr Tetlow has helpfully explained that he first learned of Detective Sergeant Wareham's report by a chance conversation with another barrister. From that point onwards, he submits, matters have been progressed appropriately and expeditiously.

21. Mr Curtis KC and Mr Bruce, for the respondent, do not oppose the granting of an extension of time, but submit that the convictions are not unsafe. They point to a number of reasons why they suggest that the court should be very cautious before accepting the report to Detective Sergeant Wareham as a reliable or even truthful account of a conversation with a juror. They point out that no previous mention had been made of the alleged conduct of the

juror concerned, despite the obvious interest of the family of Mohammed Haroon Zeb and despite the background of incidents between the two groupings, which Mr Curtis suggests plainly gave the relatives of Mohammed Haroon Zeb an axe to grind. Mr Curtis further points to the inquiry previously made of Superintendent Munro as to whether there were circumstances in which the not guilty verdicts returned by the jury might be overturned by some form of appeal. Mr Curtis suggests that the family members may have been unhappy with those verdicts.

22. Mr Curtis goes on to submit that the reported comment of the juror is inherently imprecise and unreliable, and at most shows that a single juror spoke improperly about matters discussed between the jury in advance of their formal deliberations. He submits that the court may properly conclude that there are here no substantial grounds for believing that the verdicts may have been rendered unsafe by jury impropriety.

23. Counsel for both sides have very helpfully co-operated in drafting suggested directions which the court could give if persuaded that a CCRC investigation is appropriate.

24. We are grateful to all counsel for their submissions and for their assistance.

25. By section 23A(1) of the Criminal Appeal Act 1968:

"On an appeal against conviction or an application for leave to appeal against conviction, the Court of Appeal may direct the Criminal Cases Review Commission to investigate and report to the Court on any matter if it appears to the Court that —

- (a) in the case of an appeal, the matter is relevant to the determination of the appeal and ought, if possible, to be resolved before the appeal is determined;

- (aa) in the case of an application for leave to appeal, the matter is relevant to the determination of the application and ought, if possible, to be resolved before the application is determined;
- (b) an investigation of the matter by the Commission is likely to result in the Court being able to resolve it; and
- (c) the matter cannot be resolved by the Court without an investigation by the Commission."

26. In considering whether an alleged jury irregularity is relevant to the determination of an appeal or an application for leave to appeal, it is necessary to keep in mind the long-established principle that jury discussions must remain confidential, that no inquiry may be made into jury deliberations, and that evidence as to those deliberations is inadmissible.

27. In *R v Mirza* [2004] 1 AC 1118, the House of Lords confirmed that principle and the two narrow exceptions to it, namely, cases where there has been a complete repudiation by the jury of their oath to try the case according to the evidence for example, if a jury were to reach its verdict by tossing a coin); and cases where extraneous material, not the subject of evidence adduced during the trial, has been introduced into the jury's deliberations.

28. The principle, and those narrow exceptions to it, have been reiterated by this court in *Thompson*, to which reference has already been made, and a number of other cases, including, most recently, *R v Tams (Nicola)* [2024] EWCA Crim 582. As was said in *R v Essa and Others* [2023] EWCA Crim 608 at [32]:

"... it is a necessary and integral part of the jury system that the deliberations of a jury must remain confidential. Without that general rule, the jury system would be seriously undermined. ... The exceptions to the rule are accordingly narrowly defined, and it will only be in the most exceptional circumstances that

this court will direct an inquiry into how a jury's verdict was reached."

Although those principles have been expressed with reference primarily to their formal deliberations after the jury have been sent out to consider their verdicts, it seems to us that in the circumstances of this case a similarly circumspect approach must be adopted.

29. At [6] of the judgment of the court in *Thompson*, Lord Judge CJ also emphasised the collective responsibility of the jury, not only for their verdicts, but also for ensuring that the conduct of each juror is consistent with their oath or affirmation and with the directions of the trial judge. That collective responsibility is now routinely drawn to the attention of jurors, as it was in this case, in two ways: by the provision of a booklet outlining the responsibilities of a juror; and by initial instructions given by trial judges. The Crown Court Compendium contains guidance on the content of such instructions, which should include, amongst other points, the need to try the case only on the evidence; the importance of not discussing the case with anyone outside their own number; and their collective responsibility to ensure that each juror acts in accordance with the oath and the judge's directions, and to bring any concerns to the attention of the trial judge.

30. Having reflected on the submissions of counsel, we have concluded that there is in this case no basis for directing an investigation by the CCRC. First, the reliability of the report made to Detective Sergeant Wareham is called into question by the fact that the matter was not mentioned to the police either during the trial of the applicants and their co-accused, or after the verdicts, or at the meeting with Superintendent Munro and other officers in August 2023, or at any other time before 18th September 2023.

31. Secondly, assuming that the report by members of Mohammed Haroon Zeb's family is

truthful and reliable, it is of course clear that no juror should have had such a conversation with persons who were not themselves members of the jury. But in deciding whether an investigation may be relevant to the determination of these applications, there are at least three reasons why the statement attributed to the juror cannot realistically be viewed as a reliable assertion that all 12 jurors had reached their final decisions as to their verdicts some weeks before they retired to deliberate.

32. The first is that the statement can readily be understood as nothing more than an inappropriate indication by one juror, probably at a stage when the evidence and speeches had been concluded, of his present expectation as to what the eventual verdicts based on the evidence would be. Although, of course, such matters should not be discussed outside the jury room, provisional views can be expressed between jurors amongst themselves in the course of a trial. The circumstances do not provide a basis for thinking that the verdicts later returned were affected by bias or were reached otherwise than in accordance with the evidence and the judge's directions. We note that the statement attributed to the juror is silent as to the offence or offences for which the driver and the front seat passenger were to be convicted, and silent as to the identity of the front seat passenger.

33. The second reason is that the proposition that the juror was accurately reflecting the views of all the other jurors would necessarily have serious implications concerning those other jurors. It would necessarily mean that, despite the instructions they had received about their collective responsibilities, no juror had at any time raised with the judge any concern as to any other juror reaching a verdict otherwise than by considering the evidence which they had heard and by acting in accordance with the judge's directions. Jurors can be expected to obey the judicial directions which they receive. There is no ground for assuming that all 12 jurors were in complete dereliction of that duty.

34. The third reason is that the time spent by the jury considering their verdicts, the mixed verdicts of guilty and not guilty on which they agreed in relation to other accused, and their inability to reach any verdict in respect of two of the accused on particular counts, are inconsistent with the proposition that the jurors had all made up their minds weeks earlier. We take into account the points well made by Mr Tetlow to the effect that the jury had many defendants and many counts to consider, but we also bear in mind that the words attributed to the juror were that the shooter and driver would be found guilty, but "the rest would walk".

35. In those circumstances, whilst we understand the concerns which prompted counsel to make these applications, we are satisfied that there is no justification for taking the exceptional course of directing an investigation into matters discussed between jurors.

36. It follows that if there is to be no investigation by the CCRC, there is no arguable basis for the present grounds of appeal against conviction. As we have indicated, no other ground of appeal has been suggested.

37. We readily accept the explanation as to why these applications were made long after the expiration of the time limit for appealing against conviction. If we had thought there was arguable merit in the grounds of appeal, we would have been willing to grant the necessary extensions of time. As it is, no purpose would be served by extending time, because an appeal against conviction cannot succeed.

38. For those reasons we refuse the applications for an extension of time. The applications for leave to appeal against conviction therefore fall away.

39. Although we are refusing leave, we do so after hearing full argument. We give leave for this judgment to be cited.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
