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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 2 April 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE SWEENEY

and

MR JUSTICE WARBY

REGINA

- v -

JUNIOR MAMPUYA
APIO GOMES

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Mr J Durr appeared on behalf of the Appellant Junior Mampuya

Mr A Thompson appeared on behalf of the Appellant Apio Gomes

J U D G M E N T

LORD JUSTICE SIMON:

1. On 23 July 2018, following a trial in the Crown Court at Norwich before Her Honour Judge Bacon QC and a jury, the appellants were convicted on three counts of wounding with intent to cause grievous bodily harm, contrary to section 18 of the Offences against the Person Act 1861.
2. On 4 October 2018 they were sentenced by the trial judge to the same terms of imprisonment: on count 1, where the victim was Ahmed Ibrahim, eighteen years' imprisonment; on count 2, where the victim was Rabeah Rashid, nine years' imprisonment concurrent; and on count 3, where the victim was Goran Karim, nine years' imprisonment concurrent. The total sentence was, therefore, one of eighteen years' imprisonment for each appellant.
3. The appellants appeal against those sentences with the leave of the single judge.
4. At about 9.30pm on 25 October 2017, Amanj Wali approached his car which was parked on St Peters Plain in Great Yarmouth. He saw a man on a BMX bike (Gomes) next to it and thought that the bike had hit his car. Mr Wali challenged Gomes who immediately became aggressive. Mr Wali looked around his car and, seeing no damage, said "Okay". Gomes was not prepared to let the matter rest. He shouted and gestured at Mr Wali, indicating that he wanted a fight. He then used his mobile phone to call Mampuya, who subsequently joined him. At this point, Mr Wali had called his friend, Goran Karim, who arrived with some others. Mampuya handed Gomes a small knife. He had a knife himself. As Mr Wali's group walked off down a side street, the appellants went after them and stabbed the three victims of counts 1, 2 and 3. They then made off and returned to their nearby accommodation on St Peter's Road, at which they were later arrested.
5. Ahmed Ibrahim (the victim on count 1) sustained two stab wounds to the back, on each side

of the thoracic spine, which caused him to suffer a right-sided pneumothorax (collapsed lung) and blood in his chest cavity. He was admitted to the surgical ward at the James Paget Hospital, where a chest drain was inserted and the lung re-expanded. The chest drain remained in place for six days and he remained an inpatient for seven days. The treating accident and emergency consultant expected him to make a full functional recovery from his injuries, although pain might be expected for a number of months and he would have permanent scars at the site of the wounds and the chest drain.

6. Rabe Rashid (the victim of count 2) sustained three stab wounds. The first was a 1.5cm long skin-deep wound to the centre of the back. The second was a skin and muscle-deep 3cm wound to the right arm, with a blood clot in the wound and bruising around it. The third was a skin-deep 2.5cm wound to the front right side of his upper chest. These wounds were cleaned with saline and closed with steristrips. He was discharged after having anti-tetanus and antibiotic injections and was given painkillers. As the sentencing judge was to observe, there was no internal injury in his case, although this was a matter of chance, given the number and location of the wounds.

7. Goran Karim (the victim in count 3) sustained five knife wounds: the first, a 4cm laceration to the back (the posterior aspect right scapula); the second, a 1cm laceration to the thoracic lumbar region; the third, a 4cm laceration to the left hand area; and the fourth and fifth wounds, further injuries to the left hand which the judge considered were likely to have been caused when he tried to protect himself from further injury. He, too, was treated in hospital, in his case with intravenous fluids, antibiotics, an anti-tetanus injection, oxygen and painkillers. In his case too, the judge observed that it was fortunate that he had no internal injuries in view of the injuries to his back.

8. In interview, Mampuya denied any involvement in what occurred. Gomes said that he punched someone, but did not have a knife.

9. Mampuya was aged 22 at the date of sentence. He was of previous good character.

10. Gomes was aged 21 at the date of sentence. He was treated as being of previous good character.

11. Pre-sentence reports were prepared in respect of both appellants. Mampuya maintained his account before the jury. He denied that he had possession of a knife. In the view of the author of the report, it was a matter of concern that he had not taken responsibility for the use of a knife, nor given any meaningful account of his thinking and attitudes about the use of weapons. The author of the report considered that he posed a high risk of serious harm to the public. It was acknowledged that there was no pattern of violent offending. The proposal was an immediate custodial sentence.

12. Gomes was recorded as continuing to deny the offences, particularly the use of a knife. His denial of the offences and the lack of genuine victim empathy indicated that he, too, took limited responsibility for the offences. The absence of any pattern of violent offending made the accurate assessment of imminence of harm more problematic. However, he was assessed as posing a high risk of harm to the public. Custody in his case was also inevitable.

13. Each of the victims made statements in August 2018 – nine months after the commission of the offences. They were of Kurdish origin. Ahmed Ibrahim's statement described how he had been left feeling in fear and mistrustful of strangers, to the extent that he no longer went out as he did before. He had been afraid that there might be problems from others in the appellants'

community. He had had cause to contact his general practitioner several times since the attack. He came from Iraq, a country ripped apart by war. He had felt safe here until this incident brought back to mind all the violence that he had seen in his own country.

14. Rabeah Rashid's statement recorded the continuing effect of the attack on him. He had had to stop working in his part-owned kebab shop because of his continuing fear, which had begun to transfer to a fear of his customers. He becomes angry at himself at his own feelings of fear and wants to regain his confidence, but does not know how to do so. He said "I was just trying to calm the situation".

15. Goran Karim's statement also described the very serious way in which the attack affected him – his fear of going out on his own, his anxiety and wakefulness, which are not improving.

16. In passing sentence the judge noted that both appellants continued to deny responsibility for stabbing their three victims. Neither appellant had any previous convictions in the United Kingdom during the limited period that they had lived her. They would be sentenced on the basis that neither had any previous convictions in any jurisdiction.

17. The offences were committed against three men during the hours of darkness, when each of the victim was stabbed repeatedly by either one or both of the appellants acting together in a joint enterprise throughout.

18. Both appellants had come to live in this country recently – Gomes in early 2016 and Mampuya in June 2017. They had come to improve their lives and find work. Their three victims came to the United Kingdom as refugees, seeking to escape the strife of war in their native Iraq. They, too, were looking for better lives. They had begun to enjoy life in a peaceful

way, away from the sort of concerns for their personal safety that the indiscriminate violence and chaos of war had rendered commonplace in their homeland.

19. The brutish violence inflicted by the appellants changed all of that. The stabbings occurred for no better reason than that Gomes felt aggrieved at the suggestion that he had damaged a car belonging to Amanj Wali. Despite Mr Wali immediately retracting his accusation and adding an apology for his mistake, Gomes sought to engage him in a fight. The victims tried to get the appellants to leave, telling them that they did not want trouble. However, Gomes was so offended by Mr Wali's short-lived and soon-corrected allegation that he would not go. Instead, he summoned his friend Mampuya to bring knives to the scene so that he could exact his own retribution on Mr Wali and his friends. Mampuya was a willing armorer for Gomes and brought the knives that he asked for. Both of them hid knives in and under the clothing that they wore and carried, until they went after their victims. They stabbed each one of the three repeatedly and in quick succession. Each of the victims received more than one stab wound and each sustained at least one stab wound to the back.

20. This had all happened in a residential area during the hours of darkness, when others were present. People had been shocked at what they had witnessed and had been left to cope with the injured men in the aftermath.

21. The appellants made off, quickly and separately. Mampuya disposed of at least one knife. Gomes had put items of clothing that they had worn in his washing machine which was through a washing cycle by the time the police came to arrest them not much later that evening. His reason for the prompt attention to his laundry was plainly to remove any incriminating blood from the victims on those garments. In their subsequent police interviews both appellants told lies.

22. The judge referred to the CCTV footage which this court has also seen. She described it as showing Gomes behaving aggressively and Mampuya there to support him. It showed Mampuya passing a knife to Gomes before the stabbings, Gomes holding a knife after the stabbing and, as he returned to his address, Mampuya engaged in disposing of at least one of the knives.

23. The judge noted that both appellants contested the case. The victims' poor English was relied on by the appellants to try to construct a defence that others had been responsible for what each knew he had done.

24. The judge took count 1 as the lead offence. Ahmed Ibrahim suffered the worst injury. The judge was satisfied that both appellants stabbed him. Although all three men were stabbed within seconds of each other, he was the last of the victims to be stabbed. She then described his injuries and the effect on him both at the time and subsequently. She categorised this crime by reference to the Sentencing Council guidelines on assault for section 18 offences. It was an offence of greater harm, since Mr Ibrahim suffered two stab wounds, including a wound which penetrated into his lung and caused very serious injury. It was an offence of higher culpability, because each of the appellants used a knife to inflict the wounds to his back. There was some premeditation in that the knives were requested by Gomes and supplied by Mampuya. The judge rejected the argument that there was anything in the way of provocation from Mr Ibrahim or anyone else in his group which prompted the appellant's actions. The crime was committed on a street, in a residential area after dark, where other people were present. It caused distress to those who were there.

25. The appellants had attempted to, and were partly successful in, disposing of evidence. These were all aggravating features, as was the ongoing effect of their violence upon Mr

Ibrahim months after that night. Their lack of previous convictions served to mitigate.

26. The starting point was a term of twelve years' imprisonment, with a range of nine to sixteen years, after a trial, where an offender had no previous convictions.

27. In respect of count 2, Rabeah Rashid was a slightly older man who had come upon the scene and tried to persuade Gomes to leave. He was attacked first. His description of the person who stabbed him suggested it was Mampuya, but this was a joint enterprise and there would be no distinction between the appellants in terms of sentence, not least because Gomes had asked Mampuya to bring the knives and thereby at least encouraged Mampuya to act in the way he did. The count fell within the greater harm category because it was a repeated assault upon Mr Rashid, albeit the injuries were not as severe as that suffered by Mr Ibrahim. It was also a higher culpability case because there was the use of at least one knife.

28. In respect of count 3, Goran Karim sustained five inflicted injuries when he was attacked. This crime, too, fell within the greater harm category. It was a repeated assault upon him, too. Although his injuries were less serious than those of Mr Ibrahim, this was a higher culpability offence, where either one or both of the appellants used a knife repeatedly and by doing so demonstrated an intention to commit more serious harm than that suffered. The same aggravating features applied as in the preceding counts, as did the starting point and sentencing range.

29. The judge noted that the use of knives in the course of violence to inflict serious injuries and on occasions death was a matter of grave national concern. The appellants' willingness to use knives against the three victims in a town in Norfolk which had given them the opportunity of a better life would be marked with long sentences. The appellants seemed to present a significant

risk to the public of serious harm by the commission of further such offences. The sentence to be imposed at the appellants' ages might reduce that risk, and so determinate sentences were imposed in each case.

30. Their comparative youth, the fact that neither had any relevant previous convictions and such positive features advanced in mitigation were borne in mind. Account was taken of totality and the sentence on count 1 was aggregated to eighteen years' imprisonment for each appellant, with a concurrent term of nine years' imprisonment on each of counts 2 and 3.

31. For the appellants, Mr Durr for Mampuya and Mr Thompson for Gomes advanced similar arguments. Their first point was that the sentence on count 1 of eighteen years' imprisonment was too long as a matter of totality. They developed that in their second submission: that in reaching the sentence, the judge wrongly categorised the offences charged as counts 2 and 3 as offences of greater harm. Mr Durr submitted that the offences charged under counts 2 and 3 were category 2 offences because the injuries were less serious; and that it was necessary to look at the potency of the harm caused and the fact that the attack lasted about one minutes. He added that Mampuya was using his time in prison usefully and was currently engaged in an Open University course.

32. Mr Thompson, for Gomes, submitted that the sentence on count 1 should have been within the category range of nine to sixteen years' imprisonment, and that the assaults fell short of the high level of harm that was often found in section 18 assaults, particularly in relation to counts 2 and 3.

33. On any view of the matter, these were very serious offences. The motive, if such it can be described, seems to have been to punish the victims for some perceived slight to Gomes, who

was pumped up by a wholly unjustified and inflated self-regard. The appellants armed themselves with knives, pursued their victims and stabbed them repeatedly in the back. The judge was right in her view that this type of knife crime is a matter of national concern. She was fully entitled to treat count 1 as the lead offence and to weight the sentencing on that count to take into account the overall offending.

34. There can be no complaint that count 1 was a category 1 offence, with a starting point of twelve years' custody and a range of nine to sixteen years. The offences on counts 2 and 3 were serious offences. They were offences of higher culpability because knives were used; but we are doubtful that they were properly categorised as category 1 offences. This is because, although there were repeated assaults, the attack was not sustained, and the harm that was caused was not the most serious harm, despite the intent.

35. However, the submission that counts 2 and 3 were in fact category 2 offences is of limited assistance, since the starting point for a category 2 section 18 assault is a term of six years' custody, and a range of five to nine years. The judge passed sentences of nine years' imprisonment on each of counts 2 and 3, but ordered them to run concurrently with each other and with the sentence passed on count 1.

36. The judge was in a good position to assess the seriousness of these crimes, having presided over the trial. Knives were brought to the scene, which was a significant aggravating circumstance, and they were used to stab three victims in the back, causing the injuries we have described. The victims were in no position to defend themselves from what was a vicious and cowardly knife attack which, as the judge noted, might have justified an extended sentence, had it not been for the appellants' relative youth. It was a joint attack; it was an attack at night; and it took place in front of bystanders.

37. Although we accept that the sentence on count 1 was a stiff sentence and one that was towards the top of the range of appropriate sentences, we are not persuaded that the sentence was manifestly excessive. The sentence on count 1 by itself would have justified a sentence of fourteen years' imprisonment; and an increase of four years to take into account the offending on counts 2 and 3 justified a necessary increase to that sentence.

38. For these reasons, the appeals are dismissed.