

Regina v Shajah Hussain, Ashley Peter Fields (AKA Lane), Tariq Antonio Harrison, Fadil Gashi, Lir Kurti, Fatjon Kolaj

No: 201107053 A8

201204236 A8

201200654 A8

201200369 A8

201200114 A8

201107194 A8

Court of Appeal Criminal Division

21 September 2012

[2012] EWCA Crim 2093

2012 WL 4808715

Before: Lord Justice Pitchford Mr Justice Bean Mr Justice Underhill

Friday, 21 September 2012

Representation

Mr P Marshall appeared on behalf of the Appellant, Hussain.

Mr D Benjamin appeared on behalf of the Applicant, Fields.

Miss S Lawrence appeared on behalf of the Appellant, Harrison.

Mr P Panesar appeared on behalf of the Appellant, Gashi.

Miss A Khan appeared on behalf of the Appellant, Kurti.

Mr M Graffius appeared on behalf of the Appellant, Kolaj.

Judgment

Mr Justice Bean:

1 These appeals and application concern the kidnap and torture of a garage proprietor called Sukjinder Seyan. Four of the appellants pleaded guilty to offences of conspiracy to kidnap, conspiracy to commit false imprisonment, conspiracy to blackmail, and causing grievous bodily harm with intent. Hussain and Fields were convicted after trials (in Fields' case a retrial) of the offences of conspiracy to kidnap and commit false imprisonment, but not of the offence of

violence. Hussain and Fields were also convicted of, and the others pleaded guilty to, conspiracy to blackmail. We grant leave to appeal against sentence in Fields' case, which has only recently reached this Court. The others already have leave from the single judge.

2 On 6 January 2011, Hussain asked Harrison if he could meet the other kidnapers and a meeting took place that evening between the accused. On 7 January Harrison, Gashi, Kolaj, Kurti and Fields were in the vicinity of Mr Seyan's garage. It is plain that a kidnap that day was planned, but Mr Seyan used a different car to leave work from that which it was expected he would use, and he was not intercepted. That night Hussain and Harrison were in contact. A text message was sent in which Harrison said they would try again the next day, which indeed they did.

3 On 8 January Mr Seyan went to work as usual. Towards the end of the day he was in the company of Rahman, who was a friend of his, and other work colleagues. Unknown to Mr Seyan, Rahman was in constant telephone contact with Harrison, Hussain and Kolaj. Rahman asked the victim if they could go for a test drive in a car together. They went out to do so.

4 While the victim was outside the premises he was approached by Kurti, Gashi and Harrison. He was shown what appeared to be a police warrant card and was told that he should go with them. When he refused to get in their car, as directed, they began to treat him roughly, forced him into the car, restrained him, and told him that they wanted £350,000 from his safe. He told them he had no money. The car was driven to a stronghold in Ilford. He was slapped and threatened, but he maintained he did not have any money.

5 During the course of the evening Mr Seyan's family became worried about his disappearance. What they did not know was that at the stronghold he was being tortured by Harrison, Kurti, Kolaj and Gashi. A blanket was pulled over the victim's head and boiling water was poured over his leg. He screamed in pain and they laughed. He was later bound with tape at his ankles, wrists and forearms. Some of the tape was applied to the burnt area of his leg. He was again burned with boiling water over his legs and thighs. He was jumped on and kept overnight in great pain.

6 The next morning Mr Seyan suggested that his wife be approached and asked to pay £50,000. A telephone call was made to Mr Seyan in which a ransom of that sum was requested. Her husband was allowed to speak to her. He confirmed he was still alive and that he had been burned with boiling water.

7 Mrs Seyan telephoned the police. A specialist kidnap unit was deployed. Telephone calls between Mrs Seyan and the kidnapers were recorded on tape. A girlfriend of the victim, Ms Akhtar, was also contacted by the defendants and asked for money. Meanwhile the victim was being burned with boiling water yet again, once on his left arm and finally on his back. Ms Akhtar managed to raise £7,000 and was told by the kidnapers that she would be notified of a suitable location.

8 Hussain was not present at the stronghold and did not take part in the torture, but he was in regular contact with Harrison. He was given Ms Akhtar's phone number and contacted her. The police traced Harrison's mobile phone number to him. Police were then able to stage an armed intervention and fortunately rescued the victim. He was visibly traumatised.

9 His injuries from this dreadful episode consist of burns over five per cent of his body surface. He required skin grafts. He will have scarring for the rest of his life. The psychological impact on him has been enormous and not surprisingly he has contemplated leaving the country.

10 The case was first listed in the Crown Court on 3rd June 2011. Harrison and Gashi pleaded guilty to all four counts. Kolaj pleaded guilty on that date to the first three counts only, that is all except causing grievous bodily harm with intent, which was count 4. Kurti pleaded guilty on all counts a few weeks later, that is on 15 July. Kolaj finally pleaded guilty to count 4 on 18 October 2011.

11 Hussain and Fields stood their trial before HHJ Ainley and a jury at the Crown Court at Croydon and following a trial which lasted some four weeks, Hussain was convicted on counts 1 and 2. The jury disagreed in his case on count 3 whereupon he pleaded guilty to count 3. As we have said, he had not been charged on count 4.

12 The jury disagreed altogether in the case of Fields. He was retried this year along with

another defendant, Rahman, who is not an appellant before us today. Fields was convicted by the jury at the retrial.

13 All the men were at the time aged between 20 and 24. Kurti was the youngest, Gashi was the eldest. None of them had any previous convictions of any significance, with the exception of Harrison who had, at the time of the offence, only been very recently released from the custodial period of a four-year sentence for robbery.

14 The sentences imposed by the judge were concurrent sentences: in the case of Harrison totalling 13 years and four months, representing a starting point (had there been a trial) of 20 years, with full credit for the early plea of guilty. In the cases of Gashi and Kurti, the judge took a starting point of 18 years, resulting in sentences of 12 years. He did not deprive Kurti of the full discount on account of the relatively modest delay in his pleas of guilty.

15 In the case of Kolaj the judge gave a full discount on counts 1 and 2, but a discount limited to 25 per cent on count 4. He took the same starting point as he had for Gashi and Kurti, namely 18 years. The result for Kolaj was a sentence of 13 and a half years on count 4 with concurrent sentences of 12 years on counts 1 and 2. Counsel for Kolaj does not, and could not, complain of the 25 per cent discount in his case on count 4.

16 Hussain, following his trial, received a sentence of 15 years. Fields, following his trial, received a sentence of ten years.

17 In every case there were shorter concurrent sentences for the conspiracy to blackmail; shorter not least because the maximum sentence for that offence permitted by Parliament is one of 14 years. These were in the case of Hussain ten years, in the case of Harrison and Gashi eight years and in the case of Kurti, Kolaj and Fields seven years.

18 When the learned judge came to sentence his attention was drawn to the two decisions of this court in *R v Stephens [2011] 1 Cr App R (S) 5* page 27 and *R v Ahmed [2011] Cr App R (S) 35* page 217. He observed that they are not easily reconciled. Stephens was a case involving a highly sophisticated kidnap for ransom with very large sums demanded and paid, although the money was frozen. It was a major professional conspiracy involving up to 20 conspirators, located in many countries. There was enormous psychological impact on the victim, but no torture. Hallett LJ, giving the judgment of this court, observed that all kidnap cases are highly fact-specific and that an 18-year starting point was at the top end of the range for offences of this kind when no physical harm is caused.

19 In Ahmed a 16-year-old boy had been kidnapped by six men, detained for five hours and, as in the present case, had scolding water poured over his leg. He also had one leg burned with a hot iron. This court held that the appropriate starting point for the offender who had played the greatest part was 16 years.

20 Since the learned judge in the present case sentenced the offenders other than Fields and Rahman, this court has given further guidance in the case of *R v DS [2012] EWCA Crim 1470*, in a judgment delivered by the Vice President, Hughes LJ. That was another case of kidnap of a 14-year-old boy for ransom. The period of detention was about the same as in the present case, 36 hours, and the boy was tortured, though a little less severely than Mr Seyan in the present case. The Vice President said that for cases of this kind a 14-year to 16-year starting point is generally appropriate.

21 Mr Smart for the Crown has drawn our attention today to a further decision of this court in *R v Hang [2012] 1 Cr App R (S) 91*. That was another case of kidnap for ransom, but of a student. He too was tortured, again a little less severely than Mr Seyan in the present case. The detention was for six days. This court held that a starting point of 18 years was appropriate.

22 We consider that an important factor in the present case concerning all the appellants, other than Harrison, is that they were either of previous good character, or so nearly of previous good character that the judge treated them as such.

23 Taking the four cases we have cited into account, the last two of which were not available to Judge Ainley in 2011, we conclude that in the case of Harrison the appropriate starting point would have been one of 18 years. Giving him credit for his plea, as the judge did, we quash the concurrent sentences on him of 13 years and 4 months and substitute sentences of 12 years.

24 In the cases of Gashi and Kurti, the appropriate starting point, reflecting their previous good character, would have been 16 years. We quash the concurrent sentences of 12 years and substitute 10 years and 8 months in the case of each of them.

25 In the case of Kolaj, we take the same starting point of 16 years. Applying the same discount of 25% as the learned judge did on count 4 because of the late plea, we substitute a sentence of 12 years on that count, and concurrent sentences of 10 years and 8 months on counts 1 and 2.

26 In Hussain's case he was, as the judge found, not party to the torture, but he was a planner and organiser. He had helped set up the meeting of the conspirators. He was party to the negotiations. He pretended to be doing his best to get the victim released, but was not doing so. He knew what was going on throughout. Mr Marshall argues that Hussain's sentence can now, in the light of the judge's sentencing of Rahman to eight years, be seen to reflect an unfair disparity. He submitted that Rahman had been convicted essentially of the same offence as Hussain.

27 We are unable to accept that submission. The judge had presided over the trial of Hussain and Fields in 2011 and the trial of Fields and Rahman in 2012. He was very well positioned to assess the relative culpability of all the defendants and specifically those three who were not involved in the torture. He said in sentencing Rahman:

- i. " ... I do not believe you were an organiser in this, but you betrayed your own friend... You would have known... what his likely fate was going to be...
- ii. Your involvement was limited, however, to that betrayal ..."

28 We think that the difference between the sentences on Hussain, Fields and Rahman was one which the judge was fully entitled to make. But in the light of the authorities and of the reduction we are making to the sentences on the appellants already mentioned we propose in Hussain's case also to make a modest reduction, which will be to 13 years' imprisonment.

29 Fields was a conspirator at the early stage of the enterprise, that is to say the abortive staking out of Mr Seyan in his garage on 7 January. He was involved and knew what was going on, but he was not one of the people who carried through the kidnap. In his case the judge imposed a sentence of ten years. We shall reduce that to eight years.

30 Counsel have not suggested that anything would be achieved by reducing the shorter concurrent sentences on count 3 on any of the appellants. We make no adjustment to them,.

31 All the appeals are therefore allowed, to the limited extent which we have set out.

Crown copyright

© 2016 Sweet & Maxwell