

MOHAMMAD HAMIDZADEH

v

THE QUEEN

Court: Elias CJ, William Young and Chambers JJ

Counsel: P J Davey for Applicant
M D Downs for Crown

Judgment: 16 April 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant pleaded guilty to murder. He was sentenced to life imprisonment and the sentencing Judge imposed a minimum period of imprisonment (MPI) of 12 and half years.¹ Both the applicant and the Solicitor-General appealed to the Court of Appeal – the applicant against the life term and the Solicitor-General against the length of the MPI. The applicant’s appeal was dismissed but the Solicitor-General’s appeal was allowed with the Court of Appeal imposing an MPI of 15 and half years.² The applicant now seeks leave to appeal.

¹ *R v Hamidzadeh* HC Auckland CRI-2010-004-19352, 25 August 2011.

² *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369.

[2] The victim had been having an affair with the applicant's estranged wife and the murder occurred after this was discovered by the applicant. The defendant stabbed the victim while he was asleep using two knives and inflicting 17 stab wounds. He also inflicted a further 42 wounds. The victim initially survived this attack. He sought assistance from the applicant's wife. Emergency assistance was not summoned for over an hour, a delay which, as the Court of Appeal pointed out, did not reflect well on the applicant.

[3] The applicant and his wife are refugees from Iran who arrived in New Zealand in 2009. The victim was also an Iranian refugee. It seems that the applicant did not adjust to New Zealand life as well as his wife. He was isolated, had suffered an adjustment disorder as a result of the separation and was angered to learn that his wife and the victim were having an affair, something he discovered by the use of a listening device which he had placed in the apartment in which he, his wife and the victim were staying. There was a high level of deliberation in what followed and the Court of Appeal concluded that there was no evidence that he had lost self-control before the murder.

[4] The case thus involved a number of factors, some aggravating and some actually or arguably mitigating. The applicant's murderous assault on the victim was extremely violent and brutal, the victim was entirely vulnerable (because he was asleep), there had been some deliberation and the conduct of the applicant in the aftermath of the assault (while the victim was still alive) was unmeritorious. On the other hand, the applicant was plainly at a low ebb emotionally and distressed and angered by the discovery that his wife and the victim were having an affair. As well he pleaded guilty. In addressing these considerations, the courts below had to operate within the framework provided by the Sentencing Act 2002 in ss 102 (as to the limited circumstances when a finite sentence may be imposed for murder) and 104 (as to the fixing of an MPI).

[5] Given the circumstances associated with the murder, the Court of Appeal saw no scope under s 102 for departing from a life sentence and concluded that the case warranted the 17 year MPI specified by s 104 for the most serious murders. To this extent the approach of the Court of Appeal matched that of the sentencing Judge.

Indeed given the circumstances of the case and the terms of s 104, these conclusions were practically inevitable. But, parting company with the sentencing Judge, the Court of Appeal considered that it had not been open to her to depart as substantially as she had from the 17 year period contemplated by s 104. It saw a more modest reduction, of 18 months, as appropriate to allow for, and necessitated by, the plea of guilty. The primary difference between the Court of Appeal and the sentencing Judge was in relation to what, if any, allowance should be made for the applicant's low emotional ebb and his claim of provocation.

[6] Despite the way in which the applicant's submissions are couched, we see no scope for substantial dispute about the way in which the Court of Appeal analysed the law relating to sentencing for murder as it now stands following the repeal of the defence of provocation. In particular, that Court acknowledged that provocation could be a factor in assessing culpability and therefore as to whether a life sentence is manifestly unjust and as to the imposition of an MPI. In substance the applicant's complaint is to the application by the Court of Appeal of its analysis of the law to the facts of the case.

[7] In the circumstances of the case as a whole and allowing for the terms of ss 102 and 104, it was open to the Court of Appeal to conclude that the mitigatory effect of the conduct of the deceased was of limited moment. We see no appearance of a miscarriage of justice and no point of general or public importance as would warrant a second appeal.

[8] The application for leave to appeal should be dismissed.

Solicitors:
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