

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CRI-2022-092-005132
[2024] NZHC 1253**

THE KING

v

**MANANBIR SINGH
SARWAN SINGH
MANDEEP SHARMA
NAVNEET SINGH**

Hearing: 20 May 2024

Counsel: HD Benson-Pope and SJ Cox for Crown
RM Mansfield KC for Defendant Mananbir Singh
SR Lack for Defendant Sarwan Singh
HCW Redwood for Defendant Mandeep Sharma
OWL Troon for Defendant Navneet Singh

Judgment: 20 May 2024

SENTENCING NOTES OF DOWNS J

Solicitors/Counsel:
Crown Solicitor, Manukau.
RM Mansfield KC, Auckland.
SR Lack, Auckland.
HCW Redwood, Auckland.
OWL Troon, Auckland.

Charges

[1] Mananbir Singh, you are for sentence on one charge: the manslaughter of Jashandeep Singh. Navneet Singh, Sarwan Singh and Mandeep Sharma, each of you is for sentence for being an accessory after the fact to the intentional or deliberate infliction of grievous bodily harm upon Jashandeep Singh.

[2] All of you were found guilty by a jury earlier this year. Mananbir Singh, you were found not guilty of Jashandeep's murder. I was, of course, the trial Judge.

[3] Because of the commonality of surname, I use first names only from this point.

Acknowledgements

[4] I begin by again acknowledging the presence of family and friends, and the difficult circumstances in which we meet.

[5] I acknowledge Mr Gurgit Singh's victim impact statement, which was read to the court this morning, and also that of Ms Karen D'Souza and her presence here today. I record the obvious: Jashandeep's death has caused profound harm.

[6] It is important to be clear about this: the sentences that I impose today are not measures of Jashandeep's life. Nor, indeed, could any sentence capture the loss caused by the criminal taking of someone's life.

The facts

[7] I turn to the facts.

[8] Mananbir, you were in business with Jashandeep. For reasons that remain unclear, despite a trial, your relationship broke down in late 2020 or early 2021. You separated your business interests and maintained infrequent contact thereafter.

[9] On the evening of Saturday, 14 May 2022, Jashandeep hosted a small gathering to celebrate a friend obtaining residency. Jashandeep was drinking. Mananbir, you and the other defendants were in the city, socialising. You were drinking too.

[10] At 12.44 on the morning of Sunday, 15 May 2022, Jashandeep called you, Mananbir. His call was the first of a series of communications by him to you. He was angry and abusive in those communications. He threatened you. I find he referred at least once to shooting you. However, I also find you were not fearful of Jashandeep. Indeed, you welcomed a confrontation with him that morning. At 1.15 that morning, you sent a text message to him saying, essentially, you would finish or end this today.¹ You deleted that message from your phone. Your position is that message referred to calling Police. I have no doubt that claim is untrue.

[11] Jashandeep left his home at or about the time of your message to him. A neighbour heard a disturbance in connection with his departure and called Police.

[12] Jashandeep headed toward your home with two other men from the gathering, and on the way he collected three other men.

[13] Mananbir, you and the other defendants left the city to return home, knowing Jashandeep was on his way. You did so at approximately 1.31 that morning. When you were near to your home, you called Police. You said Jashandeep was coming and had threatened to kill you. You asked Police to attend.

[14] At trial, the Crown described this call as an “insurance policy”. It said you were not frightened at the prospect of Jashandeep’s arrival; rather you wanted to camouflage any violence that you might use when Jashandeep arrived by being on record as having called Police.

[15] I accept as correct the Crown’s characterisation of that call. First, the call was played repeatedly at trial. You did not sound in the slightest frightened, which probably explains why the call taker did not take you seriously, or at least one of the reasons she did not take you seriously. Second, the evidence reveals your group had begun collecting weapons before you made that call. Third, shortly after you made that call, you called Jashandeep. You deleted evidence of that call from your phone. Fourth, had you been truly concerned for your safety, you could have stayed away rather than returning home, or gone to the Police in person.

¹ Translated, the message said, “This today. Finally I will do it.”

[16] Jashandeep and the other men arrived at your home at approximately 1.53 that morning. You and the other defendants had already collected weapons. You had also been to the neighbours to ask for help.

[17] The car in which Jashandeep was a passenger drove past your home. You had a weapon. Whether it was a golf club, a softball bat or some other long, metal implement, is of no moment. Plainly, it was not the rubber or plastic item that you claimed it to be at trial.

[18] You held the weapon above your head. You chased the car holding it in that manner. You were well in front of the other defendants. Jashandeep got out of the car. As he did, or very shortly thereafter, you struck him to the head with the weapon that you had.

[19] Jashandeep was unarmed. So too everyone in that car, albeit there was a shovel therein ordinarily used for work.

[20] As a result of your blow to the head, Jashandeep fell to the ground, unconscious. He never regained consciousness. He died in hospital 8 June 2022, in consequence of injuries to his brain.

[21] A fight immediately erupted between your group and Jashandeep's group. One member of his group became particularly agitated. Fortunately, Police came swiftly.

[22] This introduces the remaining defendants. Sarwan and Navneet, when Police arrived, you hid weapons. Sarwan, you also changed your clothing. All four defendants—that is, all four of you—discussed what should be done with the potentially incriminating footage from the closed-circuit television system at the home. You decided to disconnect the unit. Mandeep, you disconnected it. Mandeep, you then put the unit inside the washing machine, where it was later found by Police. Someone deleted the footage. Whether this was done by you, Mananbir, or you, Sarwan, or both of you acting in concert, is not clear. What is clear is that at least you, Sarwan, and you, Navneet, reached an understanding with Mananbir that Police would

be told a significant lie: that Jashandeep had been struck by someone in his own group; a lie you, Mananbir, Sarwan and Navneet offered to Police.

[23] Before the closed-circuit television was disconnected, the four of you can be seen discussing events in the lounge. The blow that killed Jashandeep was re-enacted. That re-enactment portrayed a powerful blow to the head.²

[24] Sarwan, Navneet and Mandeep: all of you tried to flee New Zealand in the wake of the offending.

[25] Mananbir, I return to you. You testified. You claimed you had a rubber or plastic item only that morning. That was untrue. You said you did not strike Jashandeep, and the blow was delivered by your brother, Sarwan. Those assertions were also untrue. Unsurprisingly, the jury rejected your evidence in relation to both. An eyewitness familiar with you and Sarwan was clear that you, not Sarwan, hit Jashandeep. The closed-circuit television showed you well ahead of the others when Jashandeep's car arrived, holding a weapon above your head. And, of course, the animosity lay between Jashandeep and you, not Jashandeep and another.

[26] You advanced an alternative defence that your blow to Jashandeep's head reflected self-defence (or defence of another). The jury rejected this contention as well. In his written submissions filed in advance of this hearing, and in his helpful submissions this morning, Mr Mansfield KC has characterised your offending as excessive self-defence. I do not accept the submission. Moreover, I do not accept the factual premises upon which the submission is based.

[27] As I have explained, you welcomed a confrontation with Jashandeep. The two of you encouraged each other to just that, albeit I accept Jashandeep initiated the sequence. You made it clear to him in a text message you wanted to finish this today. You were overheard saying the same thing in one of your telephone calls between the two of you.³ Like Jashandeep, you were intoxicated. You and the other defendants gathered weapons in anticipation of his arrival, and you returned home to meet

² The pathologist's evidence about level of force was confined. Dr Stables said "sufficient" force was required to cause: (a) Jashandeep to fall to the ground; and (b) a fracture to the skull.

³ Placed on speakerphone by Jashandeep.

Jashandeep. You called Jashandeep shortly before he arrived, and you deleted that call from your phone. It follows you did not find yourself in a situation where you had no choice but to use force. Rather, you viewed Jashandeep's arrival as an opportunity to settle whatever remained in issue between the two of you.

[28] Having said all of that, I record the obvious: Jashandeep came to your home, Mananbir, with the other men, in the early hours of the morning, intent on a confrontation with you. Like you, he had been drinking. He was angry. I infer Jashandeep was prepared to use violence if he thought it necessary to make whatever point he wished to convey. This, necessarily, influences the sentence that I shall impose today.

[29] My assessment of the facts as trial Judge means that the many cases cited by the Crown—and by Mr Mansfield on your behalf, Mananbir—do not properly capture your offending.⁴ Those identified by the Crown disclose, overall, somewhat more serious instances of manslaughter. Those identified by Mr Mansfield disclose, overall, less serious instances of manslaughter. Therein lies the challenge of the exercise for me today.

Starting points

[30] Now, those remarks recognise the crime of manslaughter can be committed many ways, which explains why it attracts no specific sentencing guideline.

[31] Mananbir, your offending is more serious than some manslaughter cases because: (a) you used a weapon; (b) you struck a (forceful blow) to the head; and (c) you did so with an element of premeditation. By which I mean you knew Jashandeep was coming. You returned for the purpose of meeting him. You armed yourself. And that blow to his head was also pre-emptive.

⁴ *R v Young* [2012] NZHC 1460; *R v Kapea* HC Hamilton CRI-2009-019-10579, 22 February 2011; *R v Hunt* [2016] NZHC 881; *R v Pou* [2021] NZHC 2519; *R v Duff* HC Rotorua CRI-2009-063-6473, 9 December 2010; *R v Tito* [2015] NZHC 2969; *R v Reddy* HC Auckland CRI-2008-044-9035, 4 February 2011; *Duncan v R* [2013] NZCA 354; *Murray v R* [2013] NZCA 177; *Wang v R* [2014] NZCA 251; *R v Harnwell* [2021] NZHC 3409; *R v Rakete* [2013] NZHC 1230; *Sheed v R* [2023] NZCA 488; and *R v Gardner* [2021] NZHC 3174.

[32] If approached by reference to the framework for the deliberate infliction of grievous bodily harm, another thing makes your offending more serious: the awful outcome—death. I consider this framework apt. That you did not intend to cause death, or to cause an injury known to be likely to cause death, is not inconsistent with you intending to cause grievous bodily harm. Again, you struck powerfully to the head, using a weapon. Moreover, the conviction of your co-defendants required the jury to be sure you intended grievous bodily harm when you struck the fatal blow.

[33] All of this means your offending is firmly within band two of a grievous bodily harm decision called *R v Taueki*.⁵ But, as I have foreshadowed, Jashandeep's conduct is also relevant. The law says if an offender has been provoked to use serious violence, that may justify a lower sentence. I am satisfied this principle is engaged because of the facts.

[34] The Crown says your starting point should be nine years' imprisonment. Mr Mansfield contends it should be only half of that: four-and-a-half years. I have already said the cases identified by the Crown concern somewhat more serious instances of manslaughter, and those identified by Mr Mansfield less serious instances. I adopt a starting point of six-and-a-half years' imprisonment. This recognises all the factors I have discussed including, necessarily, Jashandeep's conduct.

Other offending

[35] I turn to the other offending.

[36] The Crown advances a starting point of imprisonment for one year in relation to the three of you. Sarwan and Mandeep, you acknowledge a starting point of this order is apt. Navneet, you argue for a slightly lower starting point of nine months' imprisonment. I am not persuaded a distinction should be made between you and the other defendants, Navneet. You were part of the discussion as to what should happen with the potentially incriminating footage. You hid weapons. You also offered the fabrication that a member of Jashandeep's group struck him, rather than Mananbir. I, therefore, adopt a one-year starting point for each of the three of you.

⁵ *R v Taueki* [2005] NZCA 174, [2005] 3 NZLR 372 (CA).

Mitigating features

[37] This brings me to things which potentially make the offending less serious.

[38] Mananbir, you are 28 years old. You are not married. You do not have children. Materially, you are a first offender.

[39] You came here, from India, in 2014. You came to study, then worked. Since coming here, you have lived a productive and law-abiding life. You have tendered no fewer than 25-character references, including one from your mother that reached me this morning. These suggest you are a hardworking member of the community, for whom violence is out of character. You seek a 20 percent reduction accordingly.

[40] I accept a meaningful reduction is required in recognition of your good character, and the likelihood of your rehabilitation. However, 20 percent would be too great, especially given the nature and gravity of the offending. I allow 15 percent.

[41] Mananbir, you were on electronically monitored bail from 29 August 2022 until 15 March 2024. Your bail was without incident. I deduct six, rather than the nine months sought, again having regard to the nature and gravity of what you did.

[42] Sarwan, I turn to you. You and Mananbir are very close. Like your brother, you are a first offender. You came here in 2017.

[43] You seek a 10 percent discount for good character. You have been on electronically monitored bail for one year and 10 months. You seek a reduction “of at least 10 months” for this feature. That level of discount is too high having regard to the nature and gravity of your offending, and broader imperatives of denunciation and deterrence. I deduct six months, which produces a nominal sentence of six months’ imprisonment.

[44] Sarwan, you seek a sentence of supervision. A sentence of that nature would not be adequate to reflect the seriousness of what you did; a prison sentence is typically imposed for offending of this type. It bears repeating you attempted to help your

brother avoid criminal responsibility for deliberately causing someone grievous bodily harm, an incident you witnessed.

[45] You told the person who wrote your pre-sentence report that you and the other defendants did nothing wrong. You are mistaken about that. What you did was criminal. But, given your offending was not more serious, and given the mitigating features that Mr Lack has identified on your behalf, I am satisfied home detention is an appropriate response rather than prison.

[46] Mandeep, you told the person who wrote your pre-sentence report that “in India, if someone is abusive on the phone, they are asking for a fight”. You are 25. You came to New Zealand in 2017 to further your education. You have been here unlawfully since early 2020. A deportation order was served on you 16 May 2022. I gather you will be deported as soon as you are released from custody.

[47] Mandeep, you had not committed any offence before this one. However, since committing it, but before trial, you were convicted of providing a false statement to Police and obtaining by deception. You have been in custody since the middle of 2022. You have completed courses there and worked in the prison laundry and kitchen.

[48] Mandeep, you seek a discount of up to 10 percent for your rehabilitative progress. You acknowledge the likelihood of a sentence of approximately 11 months’ imprisonment, which would result in your immediate, or near immediate, release and deportation.

[49] Navneet, you are a little older than the other defendants; you are 32. You have been in New Zealand for approximately 14 years. You are married, without children. You are a first offender as well. You had meaningful employment before this offending. You have spent nine months and one week on electronically monitored bail. Electronic monitoring was then removed, and your 24-hour curfew relaxed to a 12-hour one. In almost two years of bail conditions, there have been no breaches.

[50] You seek a discount of up to 10 percent for good character, an additional 10 percent for rehabilitative efforts, and not less than a four-month discount for your time on electronically monitored bail.

[51] Navneet, I deduct one month for good character and rehabilitative efforts, and a further three months for your time on electronically monitored bail. Both discounts are constrained by the nature and gravity of your offending. This produces a nominal sentence of eight months' imprisonment. As with Sarwan, however, I consider home detention an appropriate response. For completeness, a sentence of community detention would not be an adequate response for your offending. It follows the recommendation of the pre-sentence report is, frankly, unrealistic.

Sentences

[52] This brings me to the sentences. Now please stand, all four of you. I begin with those for the accessories.

[53] Sarwan, your nominal sentence is six months' imprisonment, but as I have said, home detention is appropriate. You have spent 23 days in custody. Courts sometimes halve notional prison terms when calculating the length of a sentence of home detention. Ultimately, however, a sentence must turn on the facts, not a formula. The facts of your case require a meaningful sentence given the seriousness of what you did. This explains your four-month sentence of home detention.

[54] Mandeep, for being an accessory after the fact, I impose a term of 11 months' imprisonment. This, as I said, should result in your immediate, or near immediate, release and deportation from this country.

[55] Navneet, your nominal sentence is eight months' imprisonment, again albeit home detention appropriate. You were in custody for 26 days and you are suffering a major depressive disorder. Given this mix, I impose a five-month term of home detention.

[56] This leaves you, Mananbir. For the manslaughter of Jashandeep Singh, your sentence is five years' imprisonment. The Crown had sought a minimum period of

imprisonment but abandoned that application today. It was right to do so, particularly given the fact you are a first offender.

[57] Stand down all of you.

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Downs J