

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CRI-2016-009-12679
[2018] NZHC 3281**

THE QUEEN

v

FRANCESCA KORORIA BORELL

Hearing: 12 December 2018

Appearances: B Hawes and C J Boshier for Crown
P J Shamy, K Cook and O Jarvis for Defendant

Judgment: 12 December 2018

SENTENCING REMARKS OF MANDER J

[1] Ms Borell, I will ask you to stand at the end of my sentencing remarks. Francesca Borell, you are for sentence this afternoon for the murder of Hardeep Singh.

Three strikes warning

[2] Before I proceed to impose sentence, I am required under the Sentencing Act to give you what is described as the “three strikes warning”.

[3] Because of your conviction on the charge of murder, you are now subject to the three strikes law. I am required to give you a warning of the consequences of being convicted for another serious violent offence. You will also be provided with a written notice which contains a list of these serious violent offences.

[4] The warning is this. If you are convicted of any one or more serious violent offence other than murder committed after this warning and if a Judge imposes a sentence of imprisonment, then you will serve that sentence without parole or early release. If you are convicted of murder committed after this warning, then you must be sentenced to life imprisonment without parole unless it would be manifestly unjust to do so. In that event, the Judge must sentence you to a minimum term of imprisonment. I turn now to the sentence.

Sentencing

[5] It is necessary that I record the basis upon which I sentence you for Mr Singh's murder. The circumstances are of relatively narrow compass.

[6] You and Mr Singh had been in a relationship for some months and were living together at an address in Cashmere that he was housesitting for an associate. On Christmas morning 2016, you and Mr Singh had an argument which resulted in you leaving the house and going for a drive. When you returned, Mr Singh was no longer there. You rang him and arranged to meet him at a car park near the summit of the Port Hills. While there, a friend of Mr Singh's arrived. A proposal that the friend come back to the Cashmere address was the source of further friction between yourself and Mr Singh. The friend left and both you and Mr Singh returned to the house.

[7] At the address, you continued to argue with Mr Singh. You told him that you were going to leave him. It is clear that emotions were high between the two of you, and when Mr Singh prevented you from leaving by blocking your path you became very angry. You went to the kitchen and uplifted a large kitchen knife. You told the police that you threw the knife at Mr Singh, but I consider that to be unlikely.

[8] I sentence you on the basis that you used the knife to inflict a single blow to Mr Singh's chest. The stab wound penetrated Mr Singh's heart and caused significant internal bleeding.

[9] You rang emergency services in an attempt to assist Mr Singh. The recorded emergency call captured your very distressed state. By the time emergency services

arrived, Mr Singh was unconscious. While he was able to be resuscitated and underwent emergency surgery, he died two days later.

[10] When interviewed by the police you said that on Christmas Day you had been feeling sad and depressed at not having your daughter with you and that you had resorted to drinking alcohol early that morning. You had argued with Mr Singh throughout the day.

Victim impact statements

[11] I have received a victim impact statement prepared by Mr Singh's family which you have heard read out by Ms Stokes on their behalf this afternoon. The family refer to Hardeep as a much loved son, brother, grandson, cousin, uncle and friend, who is greatly missed.

[12] Hardeep was only 26 years of age when he died. He was a young man who had his life before him. He came to this country to further his training and the professional qualifications he had obtained in India, to make a better life for himself, and to provide long-term support for his parents. They have understandably been particularly affected by the loss of their son, and their emotional and physical wellbeing has declined dramatically as a result.

[13] I acknowledge the grief and sense of devastation that has been caused to Mr Singh's family as a result of Hardeep's sudden and violent death. In no way can the sentence which I am required to impose on you mitigate or ease their pain.

Personal circumstances

[14] Ms Borell, you are aged 24 years. You are the mother of a four-year-old daughter who is in the care of her grandmother. You have no previous convictions and therefore present as a first offender. However, as you acknowledged to the pre-sentence report writer, you have a history of abusing alcohol and, by the time of this offending, you had demonstrated a deepening tendency to resort to violence.

[15] When speaking with the report writer, you referred to having been the victim of severe domestic violence at the hands of your daughter's father, you say this is why you resort to violence at time of stress in your personal relationships with others. You consider that was the case with Mr Singh, who you admit you attempted to manipulate that morning by packing your bag and threatening to leave. You describe instigating violence as a "self-protective measure".

[16] These occasions of conflict are said to arise from episodes of shouting and abusive behaviour which escalate to violence when you feel wronged or vulnerable, and is no doubt aggravated by your use of alcohol and your self-reported use of drugs. Notwithstanding your drinking behaviours at the time of this offending, you held a job and you are noted as being a hard worker.

Life imprisonment and minimum term

[17] It is not contested that I must sentence you to life imprisonment.¹ When such a sentence is imposed, I am required to impose a minimum period of imprisonment which may not be less than 10 years.² The minimum term imposed must be one which is necessary to hold you to account for the harm that you have done, to denounce your conduct, to deter, and to protect the community.

[18] I do not consider there are aggravating features beyond those inherent in the crime of murder itself. Mr Hawes has referred to the use of the weapon and the devastation caused to Mr Singh's family. Sadly, both are factors that are almost inevitably present when the crime of murder is committed. Your lethal assault on Mr Singh involved the infliction of a single fatal wound in the heat of an argument after you had armed yourself with a knife. Only a moderate amount of force was required, yet the consequences were catastrophic.

[19] There are two concerns that arise in sentencing you today. The first is that despite your lack of prior offending, as you have recognised yourself, violence and alcohol had become a way of life for you. You are assessed as being at a medium risk

¹ Sentencing Act 2002, s 102.

² Section 103.

of reoffending, which would escalate to high should you enter into an intimate relationship where alcohol and cannabis were present. Because of the nature of the offending for which you have shown yourself capable, you pose a high risk of harm to others, particularly to those with whom you may have a personal relationship, intimate or otherwise. That is said to escalate to a very high risk, again, if alcohol and/or cannabis are present.

[20] The second concern is an apparent lack of insight into the damage you have caused. Notwithstanding your evident remorse immediately after having stabbed Mr Singh and your attempts to assist him, you exhibited to the pre-sentence report writer what was described as a “detachment towards the victim and his whanau”. Your focus seems to be on yourself rather than remorse for your victim and his family. However, I acknowledge the apology that you have tendered and the remorse you have expressed through your counsel. I also acknowledge the fact that you have offered to engage in restorative justice, although, that seems unlikely having regard to the nature of the offence but, moreover, the practicalities that would involve in making arrangements with Mr Singh’s family in India.

[21] In setting the appropriate minimum period of imprisonment, I have had regard to the approach taken in other cases where the circumstances of the offending have been similar to yours.³ Notwithstanding the reservations I have expressed, I am satisfied that a minimum period of imprisonment of 10 years is a sufficient term. The sentence, of course, is one of life imprisonment. That means you will be detained for life, or until such point as the Parole Board concludes you no longer represent an undue risk to the community, having served that minimum 10 year period of imprisonment. If you are released into the community, you may be recalled to prison if your behaviour warrants that course.

[22] Ms Borell, it is apparent, if only from the fact that until the present offending you had not been convicted for any prior offending, that you are capable of leading a full and constructive life. Alcohol and a now manifest propensity to resort to violence

³ *Gempton v R* [2011] NZCA 349; *R v Ham* HC Rotorua CRI-2009-069-1181, 20 October 2010; *R v Ballantyne* [2016] NZHC 1681; *R v Browne* [2017] NZHC 2389; *R v Mataki* [2016] NZHC 600; *R v Millar* HC Auckland CRI-2010-090-5044, 21 June 2011; *R v Tauariki* HC Auckland CRI-2010-092-011776, 29 November 2011.

at times of stress present as significant hurdles for you to have to overcome. It is important you take the opportunity to engage in programmes that address your alcohol and drug issues. It appears you have the potential to gain much from cultural programmes and from interventions that will assist you to manage the issues that lie behind your anger and violence. If you do not address those difficulties there is the very real risk that you will remain in prison for a considerable period beyond the minimum term I have imposed.

Sentence

[23] Ms Borell, would you now please stand.

[24] Ms Borell, you are sentenced to life imprisonment for murder, and I direct that you are to serve a minimum period of imprisonment of 10 years.

[25] You may stand down.

Solicitors:
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