

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

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

**CRI-2021-009-1470  
[2022] NZHC 1129**

**THE QUEEN**

v

**NIRAJ NILESH PRASAD**

Hearing: 20 May 2022

Appearances: B Hawes and J H Whitcombe for Crown  
J R Rapley QC for Defendant

Judgment: 20 May 2022

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**SENTENCING NOTES OF OSBORNE J**

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[1] Mr Prasad, there are a number of matters I need to discuss before I impose a final sentence. You may remain seated while I am talking and I will indicate towards the end when you need to stand.

[2] Niraj Nilesh Prasad, you appear for sentence today on a charge of murder.<sup>1</sup> On 21 February 2021 you murdered Faiz Ali at his home in Christchurch. The jury found you guilty of that charge.

[3] You also appear today for conviction and sentence for assaulting Nalini Roy, a person whom you were in a family relationship with, on 25 August 2020, a charge to which you pleaded guilty.<sup>2</sup>

[4] Given the gravity of the murder charge, most of my remarks to you will be focused on sentence for murder.

[5] As you have heard counsel discuss, the sentence for murder is life imprisonment, unless such a sentence would be manifestly unjust. In your case, there is no suggestion that such a sentence would be unjust — so life imprisonment will be your sentence. That means you will only ever be released on parole from prison if the Parole Board considers it is safe for you to live within the community. If you are ever released from prison, you could be recalled to serve your life sentence if, at any time, it is brought to the attention of the Parole Board that you are again assessed as being a risk to the community.

[6] The single question for me today in relation to the charge of murder is what minimum period of imprisonment (MPI) you should serve as a condition of that life sentence. The MPI is the period you must spend in prison before parole is even considered a possibility. I emphasise the word *possibility* because even *after* the expiry of the MPI you will only get parole if the Parole Board considers that it is appropriate in terms of the risk you pose.

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<sup>1</sup> Crimes Act 1961, ss 167 and 172.

<sup>2</sup> Crimes Act, s 194A.

[7] In order to determine the MPI appropriate in your case, Mr Prasad, I must consider a number of matters so I first start by summarising what you did on 21 February 2021.

### **The facts**

[8] Your killing of Mr Ali arose out of the way you reacted to the end of your relationship with Ms Roy and the decision of Ms Roy and Mr Ali to have a relationship. You became separated from Ms Roy in August 2020 as a result of your assault upon her for which you will also be convicted today. As a result of that assault you were bailed and had a protection order placed on you.

[9] On the day before the murder, as a result of your taking a photograph of Ms Roy's car outside Mr Ali's home, Mr Ali had a trespass notice delivered to you. Earlier that afternoon you had discussions with your son and you told him in Hindi either that you were going to harm Mr Ali or kill Mr Ali (the Hindi expression being, I accept, ambiguous).

[10] Around 5 pm on 21 February 2021, you armed yourself with a hammer, a machete, and a filleting knife. You also took gloves which you wore while in Mr Ali's apartment. You went to that apartment and gained entry by removing a glass pane in a door. You remained inside for some time before leaving for a period to put petrol in your car. Sometime after 5.20 pm you returned to the apartment and effectively lay in ambush for Mr Ali who arrived home about two hours later. He was on the telephone to Ms Roy as he entered the apartment. Her evidence, which I have no doubt the jury accepted, was that Mr Ali had been talking to her on his drive home and when he reached home the conversation continued with this brief exchange:

He said: I reached home.

She said: Are you safe?

He said: Yes.

She said: Oh you're gonna miss me because I'm not gonna stay there tonight, I'm staying with my son.

He said: Yes I would miss you my wife.

[11] Those were Mr Ali's last words. Ms Roy heard through the telephone some yelling and screaming which led her, having collected her son, to rush to the apartment.

[12] In the meantime, you had been in the apartment with a hammer in your hand, according to your own statement to the police. You commenced an attack on Mr Ali. It must have lasted more than five minutes because it took that time for Ms Roy and your son to reach the apartment. You used both the hammer and the knife. You stabbed Mr Ali at least seven times. You struck Mr Ali in the head with the hammer more than 20 times. He had numerous defence wounds indicating that he was able to survive your attack for some appreciable time while you continued the attack.

[13] The entire right side of Mr Ali's skull was shattered and demolished.

[14] I am left in no doubt from the forensic evidence that your attack began in the hallway through which Mr Ali entered his apartment, the attack causing blood spattering there. The attack continued as Mr Ali struggled into the lounge/bedroom area. It came to its brutal conclusion, in the form of the 21 hammer blows to Mr Ali's head, while he was prone and unable to defend himself on the bed.

[15] Around the time your attack was ending, Ms Roy and your son arrived at the apartment and saw your bloodied, gloved hand on the inside door handle. They understandably ran and then drove to get the police.

[16] Shortly afterwards you left Mr Ali's address, taking the time to smash the windows of his vehicle as you did. As you left the apartment block you had the composure to explain to a neighbour "He was having an affair with my wife" before walking off. You were apprehended by the police shortly afterwards with the hammer and gloves in your car and the machete in your boot. You had left the knife in Mr Ali's apartment.

[17] Later that evening, in your statement to the police, you gave a number of explanations, some of which I need to mention.

[18] First, you said that what you wanted to do that day was to catch Mr Ali and Ms Roy “red handed”, to take a photograph and to present it to your lawyer. I am left in no doubt that was a false explanation and that your true purpose in going to Mr Ali’s apartment with the weapons and the gloves was to confront Mr Ali and/or your wife and to do at least one of them violence.

[19] Secondly, you indicated to the police variously that as Mr Ali entered his apartment talking on the telephone, he was talking about “sex and stuff” and other similar details. I have no doubt that that explanation to the police was false, created to provide a self-serving explanation for your attack on him, and that Ms Roy’s evidence as to the conversation was truthful and accurate. It was not suggested to her in cross-examination that her version of the phone call was inaccurate.

[20] Thirdly, you gave the police a range of explanations as to Mr Ali’s response when he saw you in the apartment — variously you explained that he came at you and kicked you in the stomach, that he “kinda pushed you” and that he “threw a punch at you at first”. I have no doubt that your attack upon him on his arrival in his own apartment, as indicated by the brevity of the telephone discussion at that point, indicates that you attacked him from virtually the moment he entered the hallway. Any modest extent to which Mr Ali was able to fight back was entirely in self-defence of your attack.

[21] I have no doubt that the jury was satisfied that in your attack on Mr Ali in his apartment you consciously intended to kill him.

[22] I also have no doubt that yours was not a case of having “snapped” or being triggered on overhearing an intimate conversation in the apartment. You had gone to the apartment armed with lethal weapons with the intention of doing violence. It is not without significance that your explanation for your assault on Ms Roy six months earlier was that you had “snapped” because you believed Ms Roy was cheating on you. Your attack on Mr Ali was clearly motivated by a determination on your part that Mr Ali and your estranged wife would not enjoy a relationship. Other incidents preceding your February attack point to the intensity and focused determination you had in that regard — a verbal attack on your wife in Mr Ali’s workplace to the hearing

of others, a disregard of your bail conditions and the protection order, a burglary of Mr Ali's home and the theft of items personal to Ms Roy, the photographing of your wife's car at Mr Ali's home, your resentment at the receipt of a trespass notice the day before the attack, your statement to your son, also the day before you murdered Mr Ali, and then the subsequent statement to Mr Ali's neighbour immediately after the murder that he was having an affair with your wife. Most significantly, in all these events, is the way in which you armed yourself with weapons and gloves when you went to confront Mr Ali.

[23] There was significant premeditation, not just on the day of the attack.

[24] I also have no doubt that the frenzied nature of your attack resulted from the extremity of your building anger and jealousy and not from some triggering event in the apartment. Your conduct throughout that day shows your level of control right down to taking the time to smash Mr Ali's car windows and then to take the time to explain to his neighbour that he was having an affair with your wife.

### **Victim impact statements**

[25] Mr Ali was clearly a much-loved man in his prime; a wonderful, caring and gentle man, an honourable man; a man whom we have heard this morning lived out a philosophy of "don't worry, be happy". He was a most generous bastion of financial support, a rock for all those around him and dependent upon him. I acknowledge the cruel loss that each member of his family has suffered.

[26] I also acknowledge, particularly in the case of Ms Roy, the compounded hurt that you have suffered through Mr Prasad's determination to characterise you as someone who has wronged him and to see himself as a victim. I find it unsurprising that in the relatively detailed terms that his apologies were written, no apology is written to you. I honour the bravery of you and Mr Prasad's son in rushing to the apartment that day when Mr Ali was clearly in danger.

[27] I also wish to acknowledge in this public forum the concern and bravery of the women, and I will not embarrass them by naming them here, who, out of concern for their neighbours in the apartment block, went to Mr Ali's apartment to try to assist. I

asked the officer-in-charge to provide each of them with a copy of my sentencing notes. I honour today, too, their bravery.

### **Personal circumstances**

[28] Your personal circumstances, Mr Prasad. I now turn to those. You are now, as I understand it, 39 years of age.

[29] I will only briefly refer to your personal circumstances as I am satisfied, having regard to Court of Appeal authority, that your previous good character cannot justify an alteration to the assessment of whether an MPI of 17 years' imprisonment would be manifestly unjust in this proceeding.<sup>3</sup>

[30] That said, it is the case that until your significant assault on Ms Roy in August 2020, you had consistently through your life displayed good character. You have clearly been the backbone of your family as evidenced by the three references I have received from extended family members.

[31] I have also received and carefully considered a cultural report prepared by Dr Pushpa Wood. As Mr Rapley QC identified, Dr Wood refers to a notion of “shame” arising within the traditional family structure to which you belonged, when a member of the family exercises individual freedom which is not in keeping with the collective involvement and guidance of elders. Mr Rapley suggests that this provides context to how you responded to what he submits was provocation. I will return shortly to the topic of provocation.

[32] In addition to the cultural report I have a brief pre-sentence report from a Probation Officer. It summarises discussions with you which I find mostly not helpful to you. You now state through the probation officer that you have no memory of the act of violence perpetrated against Mr Ali, whereas in your lengthy statement to the police that evening, you related the events in self-serving detail in a way that laid the groundwork for your defence at trial. Also, in your discussion with the officer you dismissed the August 2020 assault on Ms Roy as not a serious incident, “just a slap”,

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<sup>3</sup> *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369 at [86], citing *R v Williams* [2005] 2 NZLR 506 (CA); and *R v Parrish* (2003) 21 CRNZ 571 (CA) at [31].

when you in fact hit her both in the face and the side of the stomach, leading to visible injuries and bleeding, and a visit to both a hospital and a medical centre. Furthermore, you denied harassing your wife or Mr Ali when there is a clear messaging record of such behaviour, as well as your abusive confrontation at Mr Ali's workplace. Finally, you said you could not understand why you received a trespass notice the day before the attack when it was your own visit to the property deliberately to take photographs that led him to take that defensive step of giving you that notice.

[33] The report records you as having "presented as genuinely remorseful".

[34] I have been given copies of two letters you apparently sent to people in March 2022. In one you express regret to your own family who are at one level victims of your offending, but by no means the most central. In the second, you express regret to Mr Ali's family and friends, but you seem to focus on the day of the attack as your single response to the breakup of your marriage. As I have already observed, it is significant to me that not a word of remorse has been expressed to Ms Roy who, with your son, was the person apart from Mr Ali most affected by the attack.

[35] I do not accept the level of regret you have expressed amounts to remorse at a level that should influence your sentence.

### **Provocation**

[36] You have heard Mr Rapley address me on the concept of provocation.

[37] The Court of Appeal has recognised that in appropriate circumstances provocative words or conduct may be taken into account in mitigation of a sentence because they bear on culpability, that is, because they tell us how blameworthy the person involved was.<sup>4</sup> The Court of Appeal has recognised that the Court's assessment of provocation will be very much fact-dependent. The relevant circumstances may include: the nature, duration and gravity of the alleged provocative conduct; the timing of any response by the offender; whether the response was proportionate to the

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<sup>4</sup> *Hamidzadeh v R*, above n 3, at [71].

nature, duration and gravity of the provocation; whether the provocation was or remained an operative cause of the offender's response; and whether the provocative conduct was such as to reduce the offender's culpability in all the circumstances.<sup>5</sup>

[38] When the facts of your attack on Mr Ali are considered, along with the background events leading to the attack and your steps immediately afterwards, there is nothing in the circumstances that existed that came close to being so provocative as to materially affect your culpability. While all cases turn on their own facts, I find a close parallel between your situation and that of the defendant in *R v Momoisea*.<sup>6</sup>

### **The approach to sentencing for murder**

[39] As I have indicated, the law in relation to sentencing for murder is clear cut. Under s 104 of the Sentencing Act 2002, the minimum period of imprisonment must be at least 17 years if there are certain circumstances involved, unless it would be manifestly unjust.

[40] Mr Rapley has accepted on your behalf that s 104 is engaged in your case, at least because of two factors: your unlawful entry into Mr Ali's home and because of the high level of brutality.<sup>7</sup>

[41] I recognise that all murders are in some sense brutal or callous. The brutality of your attack on Mr Ali — an attack on an undefended person, with two weapons, involving the extreme violence ultimately of 21 hammer blows to his head — was at the extreme end of brutality.

[42] These factors mean that under s 104, I must impose the 17-year minimum period unless it would be manifestly unjust to do so.

[43] Is an MPI of 17 years or more justified in the circumstances? I must consider your degree of culpability, as Mr Rapley has explained, and I must measure that

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<sup>5</sup> *Hamidzadeh v R*, above n 3, at [62].

<sup>6</sup> *R v Momoisea* [2018] NZHC 1577; appeal dismissed in *Momoisea v R* [2019] NZCA 528.

<sup>7</sup> Sentencing Act 2002, ss 104(1)(c) and (1)(e).

against the standard range of murders, as well as any aggravating or mitigating circumstances attaching to the offending or to you personally.<sup>8</sup>

[44] As counsel have mentioned, both have previously referred me, and for this sentencing, to a range of cases. I will not discuss them all. There are numerous. For completeness, will footnote the cases I have referred to.<sup>9</sup>

[45] One particular case that stands out is the Court of Appeal's decision in *Christison v R* where a murder with similar features was found to justify a starting point MPI in the range of 18 years to 20 years.<sup>10</sup> In *Christison* the Court found three, rather than two, of the s 104 factors present.

[46] I am satisfied that a starting point of 18 years is appropriate when the culpability in your case is compared to the standard range of murders. I have regard to the policy under s 104 that the presence of one or more of the s 104 factors established means that the murder is sufficiently serious to justify an MPI of at least 17 years.

[47] In terms of your particular offending, it was aggravated by these factors:

- (a) the offence was committed while you were on bail on you pleading guilty for the assault on Ms Roy;<sup>11</sup>
- (b) there were several elements of premeditation in your offending, even though they do not reach the level of a s 104 trigger for premeditation, in that you went to Mr Ali's address armed with weapons and gloves with the intention of harming Mr Ali and you waited in ambush for him for several hours;<sup>12</sup>
- (c) the offending involved unlawful entry into his home;<sup>13</sup> and

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<sup>8</sup> *R v Williams*, above n 3.

<sup>9</sup> *Skilling v R* [2011] NZCA 462; *Thurgood v R* [2012] NZCA 23; *Hamidzadeh v R*, above n 3; *Singh v R* [2019] NZCA 436; and *Vea v R* [2020] NZCA 68.

<sup>10</sup> *Christison v R* [2017] NZCA 168.

<sup>11</sup> Sentencing Act, s 9(1)(c).

<sup>12</sup> Section 9(1)(i).

<sup>13</sup> Sections 9(1)(b) and 104(1)(c).

- (d) the offending involved the use of several weapons with the high level of brutality I have referred to.<sup>14</sup>

[48] Adjusting the 18-year starting point for those factors produces an adjusted starting point of 18 years and six months' imprisonment.

### **Mitigating considerations**

[49] Mr Rapley's principal submissions related to the proposition that your culpability was somewhat diminished by provocative words in the telephone conversation between Mr Ali and Ms Roy. In my discussion of the facts, I have explained to you why there can be no appropriate discount on that ground.

[50] Mr Rapley, in turning to your personal situation, has secondly submitted that your previous good character (by which he must be meaning previous to August 2020) justifies a reduction in your MPI. As I have explained already, a reduction on those grounds will rarely displace the benchmark of 17 years.<sup>15</sup> That said, some discount for prior good character could properly be brought into account in an appropriate case if it reduced a higher level of MPI. In your case, the distinct, earlier offending (on which I am about to enter a conviction) cuts across any credit for previous good character. You will, upon the basis I sentence you on that earlier charge, not have to serve additional time despite the separate offending.

[51] Mr Rapley thirdly submitted that I might properly take into account the report writer's assessment that you are genuinely remorseful. For the reasons I have explained, I do not consider you are entitled to a discount in that regard.

### **Would an MPI of at least 17 years be manifestly unjust?**

[52] I find nothing in the circumstances of your case that would render a sentence of at least 17 years manifestly unjust. There are no powerful mitigating circumstances to lead to such a finding. Mr Rapley has referred to the fact that you will be serving your period of imprisonment in New Zealand but you are not a stranger to

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<sup>14</sup> Sections 9(1)(a) and 104(1)(e).

<sup>15</sup> *R v Williams*, above n 3, at [66]; and *Hamidzadeh v R*, above n 3, at [87]–[88].

New Zealand. You have made New Zealand your home. You will serve your sentence in the place you made your home. The MPI of 18 and a half years will not be manifestly unjust.

**The August 2020 offending – assault on Ms Roy**

[53] You pleaded guilty to the charge of assault on a person in a family relationship.

[54] The facts were that you reacted to Ms Roy telling you that she should leave you. You stood up, hit her once in the face and once on the side of her stomach. You stopped when there was blood coming from her mouth. Her left eye and cheek region began to swell. You took Ms Roy to a medical centre, whereupon she was transferred to hospital for an x-ray. Her diagnosed injuries were significant: swelling to her left eye and cheek, and soreness around her left shoulder and left hip.

[55] Your explanation, as I have said, was that Ms Roy had been cheating on you and would not answer your questions, and you then “snapped”.

[56] The maximum penalty for that offence was two years’ imprisonment. As a first offender, you were entitled to a moderate sentence.

[57] With the sentence that will now be imposed on you in relation to your subsequent murder of Mr Ali, I will impose a sentence of three months’ imprisonment on the assault charge, to be served concurrently with your other sentence.

**Sentence**

[58] Mr Prasad, please stand.

[59] On the charge of murder you are sentenced to life imprisonment.

[60] An MPI of 18 years and six months’ imprisonment is imposed.

[61] On the charge of assault on a person in a family relationship, I convict you and

sentence you to three<sup>16</sup> months' imprisonment. That sentence is to be served concurrently with the murder sentence.

[62] Please stand down.

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**Osborne J**

Solicitors:  
Crown Solicitor, Christchurch

Copy To:  
Mr J R Rapley QC, Barrister, Christchurch

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<sup>16</sup> In delivering the sentence in Court I said "six months" by accident – the correct sentence, as identified at [57] was "three months".