

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

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

**CRI-2016-057-000606
[2022] NZHC 1387**

THE QUEEN

v

AKASH

Hearing: 14 June 2022

Counsel: G R Kayes and M Djurich for Crown
J-A Kincade QC and A Shendi for Defendant

Judgment: 14 June 2022

SENTENCING REMARKS OF DOWNS J

Solicitors/Counsel:
Crown Solicitor, Manukau.
J-A Kincade QC, Auckland.
A Shendi, Auckland.

Introduction and background

[1] Mr Akash, you appear for sentence for murdering Gurpreet Kaur, your pregnant girlfriend. You were found guilty by a jury at a trial at which I presided. It is common ground you must be imprisoned for life. The contentious issue is the time you must serve before you become eligible for parole. The law calls this a minimum period of imprisonment. This I set today.

[2] Your offending occurred 7 April 2016. You and the victim, Gurpreet Kaur, had been in a relationship for a year or so. You were then 24; she 22. Ms Kaur was between seven and 10 weeks pregnant to you, something she and you both knew.

[3] Your relationship with Ms Kaur was volatile. It was marred by your jealousy, insecurity and suspicions of infidelity. The situation was not helped by Ms Kaur's marriage of convenience to another, whom I call S. Ms Kaur married S in 2014 to help him stay in New Zealand. There is no evidence the relationship with S involved anything more than this.

[4] Before going further, I acknowledge the presence of Ms Kaur's mother and father, and Mr Akash's brother and also a member of the jury.

The offending

[5] I turn to the critical day. You collected Ms Kaur from the Manurewa train station at 8 am, 7 April 2016. You stopped for fuel at a service station in Papakura. Closed-circuit television imagery from the service station showed you striking, or at least attempting to strike, Ms Kaur to the stomach. You then drove to a home in Meremere. You there purchased methamphetamine from someone who regularly supplied you that drug.

[6] Sometime before 12.11 pm that day, you parked the car and killed Ms Kaur with a knife. You stabbed and cut her not fewer than 30 times while she was inside the car. I articulate the injuries because of their relevance to today's exercise:

- (a) You stabbed Ms Kaur to the left breast and twice to the right breast; each alone of those to the right could have caused death.
- (b) You twice stabbed Ms Kaur to the lower chest; each alone could have caused death.
- (c) You twice stabbed Ms Kaur to the abdomen. One of the abdomen wounds could have been fatal.
- (d) You stabbed her three times to the right flank.
- (e) You inflicted five wounds to her left temple, left jaw, left cheek and chin.
- (f) You inflicted six wounds to her neck; one injured the jugular vein. This alone could have been fatal.
- (g) You twice cut Ms Kaur's breasts.
- (h) You inflicted four cutting wounds to her shoulder and armpit.
- (i) You twice cut her left forearm and once cut her right index finger. These injuries were likely caused by Ms Kaur attempting to defend herself.

[7] You dumped Ms Kaur's body down a bank on Hampton Downs Road. You then travelled to a superette where, among other things, you bought a drink. You concealed the bloodstains on your jeans by wrapping your sweatshirt around them. You then travelled to Ōtāhuhu. Along the way you disposed of the knife, your mobile phone and Ms Kaur's phone. You then used Ms Kaur's bank card to withdraw \$230 in cash. You bought and changed into fresh clothes. You then took a taxi to a friend's home. There you concealed the bloody jeans and top. You spent the next three nights there.

Events from arrest

[8] You were arrested 10 April 2016. You were interviewed by Police on video three times. In the first you told them you did not know where Ms Kaur was. You said you left her alive and well on the afternoon of 7 April 2016. You then suggested your brother might have been involved in her disappearance. You maintained both propositions despite contrary evidence being drawn to your attention. That night you took the Police to where you had disposed of Ms Kaur's body.

[9] In a third interview the next day, you admitted to stabbing her twice, but suggested the remainder of her many injuries were self-inflicted. You said she committed suicide.

[10] You were charged with murder 11 April 2016. You pleaded guilty 17 August 2016. Palmer J sentenced you to life imprisonment with a minimum period of 17 years.¹ In 2017, you unsuccessfully challenged that sentence in the Court of Appeal.²

[11] In 2020, you successfully challenged your conviction in that Court. The Court of Appeal concluded a defence of insanity might have been available in relation to Ms Kaur's death and that defence should be explored at trial.³ It was between 8 February and 1 March this year, at the jury trial at which I presided.

Mental health

[12] I now summarise the trial evidence in relation to your mental health. This, I stress, is a high-level summary only:

- (a) In 2012, and while still in India, you spent three days in hospital for mental health difficulties following the death of a cousin with whom you were close.

¹ *R v Akash* [2016] NZHC 2348.

² *Akash v R* [2017] NZCA 122.

³ *Akash v R* [2020] NZCA 590.

- (b) Before coming to New Zealand October 2013, you were prescribed medication because you heard malevolent voices. This you stopped taking some time before the murder.
- (c) Several people, including some close to you, described noticeable changes in your behaviour and appearance from about March 2016 onwards; in other words, in the five or so weeks leading to the murder. For example, you complained about being followed, and about your phone and devices being hacked. You told your brother Ms Kaur had tried to take revenge on you; and had signalled to others following you. You also told him when you stabbed Ms Kaur, she began crying saying she did not want to die.
- (d) Dr Justin Barry-Walsh gave evidence on your behalf. He said you suffer schizophrenia and were experiencing delusions, including hallucinations, at or about the time of the offending. Dr Barry-Walsh said you had a disease of the mind when you killed Ms Kaur. On behalf of the Crown, Dr Peter Dean largely agreed with Dr Barry-Walsh on these aspects.
- (e) Dr Barry-Walsh considered some evidence supported the proposition you did not know killing Ms Kaur was morally wrong. He considered it possible you wrongly believed Ms Kaur was trying to kill you, or part of a conspiracy to kill you, because of your illness. Hence, Dr Barry-Walsh considered an insanity defence may be available. Dr Dean disagreed. Among other things, Dr Dean thought it “curious” you did not raise this with Police and instead, that you repeatedly lied to them about your involvement, and that you concealed evidence.
- (f) Both experts accepted you were a difficult historian. Dr Barry-Walsh acknowledged there were questions about the reliability “of anything” you said. Dr Dean emphasised your many conflicting accounts to Police and health professionals. You did not testify at trial.

[13] The jury rejected your insanity defence—and swiftly—given the length of their deliberation relative to trial.⁴ It is sufficient to observe there was a mountain of evidence you knew killing Ms Kaur was morally wrong. Your actions after killing her speak for themselves; you did not want to be caught because you knew what you had done was very (morally) wrong. That said, it is common ground your mental illness *is* relevant to the length of your minimum period of imprisonment. I return to this topic shortly.

[14] I earlier mentioned methamphetamine. In the months leading to Ms Kaur’s death, you regularly purchased methamphetamine from two dealers. One described you as “pretty hungus”.⁵ He said you were like “desperate” for it.⁶

[15] At trial, the prosecution argued you consumed methamphetamine shortly before the murder. Contrary to the submission on your behalf, I find you did use that drug shortly beforehand. You bought methamphetamine that morning, and you went back to the same dealer looking for more. You told the probation officer who wrote the pre-sentence report in relation to your 2016 sentencing that you used methamphetamine an hour before the killing. Moreover, you appear to have taken methamphetamine when you were under stress. It is reasonable to assume you were under stress at that time.

Victim impact

[16] I have victim impact statements from Ms Kaur’s mother and father, her brother and her cousin. As you know, one was read in court this morning.

[17] Unsurprisingly, Ms Kaur’s parents find it difficult to express just how much their daughter’s murder has affected them. Mrs Kaur says she struggles to do even the “simple things” in life. Mr Singh says his daughter’s death caused him to become mentally unwell, so much so he could not run his businesses. Both found the trial traumatic.

⁴ The jury retired at approximately 10 am, 1 March 2022. At 1.54 pm, they sent a note saying, “we have a decision and are in full agreement”. They delivered a unanimous guilty verdict at 2.13 pm.

⁵ Notes of evidence, p 211, lines 30 and 31.

⁶ Notes of evidence, p 211, line 32.

[18] Ms Kaur's brother and cousin have been significantly affected too. Both struggle to trust others. Ms Kaur's cousin, Ms Dhillon, says her normal life has been taken away. Ms Kaur's brother says he is still haunted by the mortuary images of his sister.

Aggravating factors

[19] Your offending has things that make it more serious than some murders:

- (a) You used a weapon.
- (b) You inflicted extreme violence.
- (c) You failed to seek medical attention for Ms Kaur. Instead, you threw her body down a bank in the hope of hiding it. You also discarded evidence and repeatedly lied to Police. You implied your brother was responsible for the offending.⁷
- (d) Contrary to a submission on your behalf, you also breached Ms Kaur's trust. You and she had been together for about one year. She was pregnant with your child. Ms Kaur was entitled to look to you for protection.
- (e) Ms Kaur was also vulnerable by circumstance: you attacked her while she was in the car sitting right next to you. She had little room to manoeuvre and nowhere to run. She was trapped.

[20] It follows the starting point for your minimum period would be significant even were it not for what I am about to talk about.

⁷ Post-offence conduct is relevant. See *Carroll v R* [2018] NZCA 320 at [8]; *Frost v R* [2008] NZCA 406 at [40]; *Te Awa v R* [2014] NZCA 615 at [38]; *Kumar v R* [2016] NZCA 329, (2016) 28 CRNZ 32; and *Robertson v R* [2016] NZCA 99 at [82].

An especially bad murder

[21] The law says a murder is especially bad if it is committed “with a high level of brutality, cruelty, depravity, or callousness”.⁸ Your murder of Ms Kaur unquestionably meets this test. You do not argue otherwise. You inflicted no fewer than 30 wounds. These I do not repeat other than to note any of six could have been fatal. You twice stabbed Ms Kaur twice to the abdomen, knowing she was pregnant. Your attack was frenzied and sustained. And, as I said earlier, Ms Kaur was trapped. In 2016 the Court of Appeal described your violence as “barbaric”.⁹ As trial Judge, I endorse that description.

[22] An especially bad murder requires a minimum period of at least 17 years’ imprisonment unless such a period would be manifestly unjust.¹⁰

[23] The law requires me to consider other cases in determining the starting point of your minimum period. Ideally, I would first determine what this would be without reference to the especially bad murder provision.¹¹ There are conceptual difficulties in doing so, because the most similar cases are caught by that provision. But, as I said earlier, the minimum period would be significant even without it. And, the many cases referred to me suggest the starting point should be not less than 18 years’ imprisonment.¹² Expressed another way, a minimum period of 18 years is easily reached. You used brutal, cruel and callous violence in murdering your pregnant girlfriend.

[24] This is the same starting point as that endorsed by the Court of Appeal in 2017. The facts remain exactly as they were then, save for what is now known about your mental health.¹³

⁸ Sentencing Act 2002, s 104(1)(e).

⁹ *Akash v R* [2017] NZCA 122 at [21].

¹⁰ Sentencing Act 2002, s 104.

¹¹ *R v Williams* [2005] 2 NZLR 506 (CA) at [52]; and *R v Harrison* [2016] NZCA 381, [2016] 3 NZLR 602 at [41] and [42].

¹² See *R v Gottermeyer* [2014] NZCA 205, the many cases cited therein at [80] and [81]; *Beazley v R* [2020] NZCA 65; *R v Mareikura* [2014] NZHC 3244; and *R v Yad-Elohim* [2018] NZHC 2494.

¹³ Albeit, the Court of Appeal appears to have been told there were 29 wounds, not 30.

[25] Ms Kincade QC says your mental health should affect both the starting point and discounts for mitigating features.¹⁴ I consider the better approach is to address your mental health as a mitigating factor, albeit in a holistic way, at that juncture. It makes the analysis clearer, and easier to articulate.

[26] So, I begin with 18 years as the minimum period and now assess what deductions, if any, should be made for things that make your offending less serious.

Mitigating factors

[27] The prosecution argues your mental health was “only a contributory factor to [your] offending”. It highlights your use of methamphetamine, including before the offending; the volatility of your relationship with Ms Kaur; and your tendency for suspicion and jealousy. It says any deduction from the 18-year starting point for your mental health should be not more than two years.

[28] You argue your mental illness contributed significantly to the offending and should result in a 20 percent reduction, or approximately three years and seven months.

[29] On this topic, I am helped by post-trial reports of Dr Dean and Dr Barry-Walsh. Dr Dean says because you were unwell, it is likely you were heightened emotionally at the time of the killing, and vulnerable to “persecutory misinterpretation of events”. Dr Dean considers your psychosis was likely exacerbated by methamphetamine. Dr Barry-Walsh says “there is good evidence of a nexus” between your ill mental health and the offending, and an “indirect nexus” between the two also. Dr Barry-Walsh considers your mental illness contributed substantially to the offending. He appears to place less weight on the influence of methamphetamine and your latent tendencies, such as jealousy. I thank both experts for their assistance, here and at trial.

[30] The trial evidence revealed you as optimistic about your future with Ms Kaur, but also as jealous and insecure before your mental health materially deteriorated. I give some examples:

¹⁴ Citing *R v Shailer* [2017] NZCA 38, [2017] 2 NZLR 629 at [45] and [46].

- (a) In November 2015, you contacted Ms Kaur's father by telephone and text message. You said S, her legal husband, was of bad character as he did drugs and was involved with a gang. Nothing suggests this was true.
- (b) In or about January 2016, you asked one of your methamphetamine dealers to find S and threaten or "bash" him.¹⁵ You offered to pay the dealer \$1,200 for doing this.
- (c) In the early hours of 8 February 2016, you made Ms Kaur get up and turn on a light in her home to prove she was there, and not elsewhere in the company of another man.
- (d) Text messages on 7, 8, 20, 21, 23 and 24 February 2016 provide further evidence of your jealousy and insecurity in relation to Ms Kaur.

[31] You told the probation officer in relation to your 2016 sentencing you were suspicious of Ms Kaur's fidelity in the weeks before the offending. Doubtless, your illness aggravated this. However, your mental health noticeably deteriorated after the examples I have cited (from about March 2016). Furthermore, your relationship with Ms Kaur presented as unhealthy insofar as you and she spent much of your time alone, behind closed doors. As I said earlier, the relationship was volatile.

[32] Your methamphetamine use must not be overlooked either. You took that drug in the weeks leading to the murder and shortly before its commission. Its consumption played *some* role in the offending. I cannot be more specific; the drug's precise influence is impossible to determine.

[33] Your mental illness does not satisfactorily explain your many Police lies, or the steps you took to avoid detection.

[34] It follows I consider the correct position lies somewhere *between* that advanced by you and the prosecution. Your ill mental health had an appreciable role in the

¹⁵ Notes of evidence, pp 223 and 250.

offending, but not quite to the extent you contend. I would deduct three years from the 18-year starting point in acknowledgement of its influence on your offending, including its more general effects on your wellbeing at that time. In reaching this figure, I have, of course, considered case law.¹⁶ I repeat the obvious, each case turns on its facts.

[35] Ms Kincade argues the discount should also encompass your potential difficulties within prison. The extensive medical records referred to at trial reveal careful medical attention in a custodial context, and compulsory treatment remains possible under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Another factor is relevant here. It is common ground your illness is proving difficult to treat; that methamphetamine consumption would increase risk; so too, your entry of another close relationship on release. Public safety is a legitimate consideration here. I confine the discount to three years.

[36] I make no discount for the fact you are a foreign national (and likely to be deported). You came to New Zealand in 2013 on a student visa. You have studied and worked here. You have good English.¹⁷ And, your brother lives here.

[37] Ms Kincade argues I should deduct a total of 15 percent because of your age, lack of criminal record, and remorse. This contention must be analysed within the especially bad murder framework. The Court of Appeal has repeatedly said these factors, and ones like them, typically have little purchase in this context.¹⁸ Your age (24) and lack of criminal record underscore the role played by your ill mental health in the offending; they do not justify additional discount. Nothing exceptional emerges in relation to either.

[38] Your alleged remorse is difficult to assess. Dr Barry-Walsh says exactly this, albeit he also says you have consistently reported a high level of remorse for

¹⁶ *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369; *Beazley v R* [2020] NZCA 65; *R v Yad-Elohim* [2018] NZHC 2494; *R v Gottermeyer* [2014] NZCA 205, *R v Mareikura* [2014] NZHC 3244; *Dawood v R* [2013] NZCA 381; *R v Singh* [2014] NZHC 1246 and *R v Tu* [2016] NZHC 1780.

¹⁷ The interpreter was released early at trial as he was not needed.

¹⁸ *Hamidzadeh v R* [2012] NZCA 550, [2013] 1 NZLR 369 at [86]–[89]. Recent examples include *Smith v R* [2021] NZCA 318 at [44] and [54]; *Momoisea v R* [2019] NZCA 528 at [31]; and *Christison v R* [2017] NZCA 168 at [29]–[32].

Ms Kaur's death. You told the probation officer who wrote your recent pre-sentence report that you wished to relay that you are sorry and that you are struggling to deal with Ms Kaur's loss—something apparently underscored by the fact you now suffer depression.¹⁹ However, the same pre-sentence report says you maintain your innocence. By this, I assume you were saying that you believe you should have been found not guilty by reason of insanity. I repeat: there was a mountain of evidence you knew killing Ms Kaur was morally wrong.

[39] I accept you have exhibited some remorse. Again, your depression may well reflect that. However, I am not persuaded anything sufficiently exceptional exists here to warrant additional discount. Again, discounts in this context operate differently from those outside the especially bad murder provision.²⁰ Moreover, your defence of insanity was rejected at trial, and the offending occurred six years ago. Ms Kaur's family had to re-live events by virtue of the 2022 trial. They and other members of the family found this traumatic.

Manifestly unjust?

[40] This means the minimum period would be 15 years. The question then becomes: would imposition of the presumptive minimum of 17 years be manifestly unjust?

[41] Reasonable minds could disagree here. On the one hand, you committed a truly awful murder of a person entitled to look to you for protection. You used barbaric violence in doing so, and then you dumped Ms Kaur's body. Moreover, the law says I may not lightly depart from the especially bad murder provision. On the other hand, you were mentally ill at the time, and this influenced your offending. Your age and otherwise clean record underscore this feature.

[42] On balance, I am persuaded a 17-year minimum period would be manifestly unjust. A 15-year minimum period emphasises the role played by your mental health in the offending, while also acknowledging its brutal, cruel and callous nature.

¹⁹ Dr Dean says this "is not causally related to the offending (other than being an emotional consequence of [Ms Kaur's] death".

²⁰ See fn 18.

Result

[43] Mr Akash please stand.

[44] For murdering Gurpreet Kaur, I sentence you to imprisonment for life. I impose a minimum period of 15 years' imprisonment.

[45] Please stand down.

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Downs J