

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA753/2023
[2025] NZCA 546

BETWEEN KANWARPAL SINGH
 Appellant

AND THE KING
 Respondent

Hearing: 4 September 2025

Court: Thomas, Brewer and Isac JJ

Counsel: G H Vear and C L Forsyth for Appellant
 K B Bell and E P C Duckett for Respondent

Judgment: 16 October 2025 at 10.30 am

JUDGMENT OF THE COURT

- A The application for an extension of time is granted.**
B The application to adduce further evidence is granted.
C The appeal against sentence is dismissed.
-

REASONS OF THE COURT

(Given by Thomas J)

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Introduction

[1] After harassing and threatening his 21-year-old victim over a period of around two years, Kanwarpal Singh, armed with a large knife, waited for her as she returned home from work. She alighted from her bus and started to walk along an alleyway when Mr Singh accosted her and commenced a frenzied attack, stabbing her some 12 times. She died at the scene.

[2] Mr Singh was sentenced to life imprisonment with a minimum period of imprisonment (MPI) of 17 years.¹ He appeals that sentence on the grounds the MPI was manifestly excessive.

Procedural issues

Extension of time

[3] Mr Singh's appeal against conviction and sentence was filed just over three months out of time. He has explained the delay. We note Mr Singh took active steps from the time of sentencing to seek representation for the purposes of an appeal. The Crown is not prejudiced by any delay and an extension of time to appeal is therefore granted.

¹ *R v Singh* [2023] NZHC 2040 [sentencing decision] at [62].

Fresh evidence

[4] Mr Singh has filed an expert report by a Clinical Psychologist, Mr Barry Kirker (the Report). Mr Singh contends that the Report addresses matters beyond the psychiatric reports which were available at the time of sentencing, which focused upon the issue of insanity. The Report instead addresses whether there were mitigating factors relevant for sentencing purposes. Ms Vear submitted that the Report identified highly relevant contributory mental health factors that should have been drawn to the Court's attention at sentencing.

[5] The admissibility of the Report depends on its freshness, credibility and cogency.² The Report is not fresh, in the sense that it could have been obtained for sentencing. However, the Crown does not oppose its admission on the basis its content supports the MPI. We consider the Report is credible and cogent, and are satisfied it is proper to admit it.

Facts of the offending

[6] Mr Singh pleaded guilty to a Crown summary of the facts. The offending was described by the sentencing Judge as follows:³

[3] Farzana Yaqubi was 21 years old when she died. She came to New Zealand from Afghanistan, when she was aged two. Ms Yaqubi came with her mother and siblings to join her father, taking refuge here against the challenges of life in a wartorn country.

[4] Ms Yaqubi flourished in New Zealand. She was smart and independent. She did well at school and started working part-time aged 14. At the end of 2022, Ms Yaqubi had just finished her third year at the Auckland University of Technology's Law School. She should have had a rich and fulfilling life ahead of her.

[5] However, just over two years earlier, in September 2020, she had met you. You noticed her, no doubt on her way to or from her studies at AUT, occasionally passing by the place on Queen Street in Auckland City, where you worked as a security guard.

[6] You engaged her in conversation one time, and you were successful in having her agree to sit down with you for a coffee. From that point, you were able to stay in touch with Ms Yaqubi, including through use of the social media application, Instagram.

² *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273 at [120]; and *Mark v R* [2019] NZCA 121 at [16].

³ Sentencing decision, above n 1.

[7] Over time, she blocked your Instagram messages. You responded during 2021 and 2022 by creating new accounts, and by contacting Ms Yaqubi using these new accounts.

[8] Your messages started to threaten Ms Yaqubi. In one, you threatened to kidnap her, saying you would give her 365 days to fall in love with you. In another, you threatened to throw acid on her face. You also added Ms Yaqubi's family and friends as social media links, so that you could maintain contact with her.

[9] In October 2022, Ms Yaqubi made an online report to police, complaining about your harassment. On 5 December 2022, Ms Yaqubi noticed you following her at Westgate shopping mall, and she approached a security officer for assistance. On 6 December 2022, you used a social media account to send Ms Yaqubi a video taken outside her home.

[10] Understandably, Ms Yaqubi feared for her safety. She went to the Henderson Police Station and made a statement complaining about your "stalking" of her. She provided police with screenshots of your threatening messages.

[11] On 19 December 2022, the last day of Ms Yaqubi's life, she finished work at an outlet store at the Westgate shops. She caught a bus to a nearby suburb and she started to walk along the alleyway that runs beside a badminton centre, before it becomes a pathway bordering parkland and emerges on the street where Ms Yaqubi lived with her family.

[12] You were waiting in your car, parked around the back of the badminton facility away from the road. When you saw Ms Yaqubi, you approached her with a large knife in your hand. When Ms Yaqubi saw you, she attempted to call the police.

[13] Rather than allow that to happen, you approached Ms Yaqubi and commenced what I infer was a frenzied attack upon her. You stabbed her multiple times to the stomach and chest. As she fell to the ground, you stood over her and continued to stab her.

[14] When members of the public approached, you ran back down the pathway, to return to your car and flee.

[15] When Ms Yaqubi died, she died where she fell. She had received 12 stab wounds, four of which would individually have been fatal. The thumb on one of her hands, which she had raised in an attempt to protect herself from you, was partly severed.

[16] You did not approach authorities following your offending. But it was a relatively straightforward matter for police to find you at your home the following day.

Judgment under appeal

[7] After discussing the facts, Johnstone J briefly outlined the law relating to sentencing for murder.⁴ Mr Singh's lawyer had accepted that a sentence of life imprisonment was required.⁵

[8] The Judge referred to the victim impact statements from a range of people connected to the victim, including her father, two siblings and a very close friend.⁶ They spoke of the intense anguish the offending had caused.⁷

[9] The Judge then addressed whether the offending involved the aggravating circumstances set out in s 104 of the Sentencing Act 2002.⁸ If any were found, an MPI of at least 17 years is presumed.⁹ We discuss those aggravating factors in more detail below.¹⁰ In short, the Judge found that calculated or lengthy planning was present, the attack involved a high level of brutality and callousness, and that the victim was in a situation of particular vulnerability.¹¹

[10] Having found that three of the s 104 circumstances applied, the Judge then considered the notional minimum period which would be imposed in the absence of the s 104 presumption and then whether it would be manifestly unjust to impose a minimum period of at least 17 years in light of the notional minimum period.¹²

[11] The Judge undertook a review of a number of cases featuring s 104 circumstances.¹³ He regarded those cases as marginally more serious than that of Mr Singh,¹⁴ a topic to which we will return.¹⁵

⁴ At [17]–[19].

⁵ At [18].

⁶ At [21].

⁷ At [21].

⁸ At [22]–[34].

⁹ At [22]. See Sentencing Act 2002, s 104.

¹⁰ See below at [38]–[67].

¹¹ At [28], [32] and [34].

¹² At [35] and following.

¹³ At [38]–[39], citing: *Singh v R* [2016] NZCA 582 [*Rajeshwar Singh v R*]; *R v Li* [2020] NZHC 3419; and *R v Singh* [2019] NZHC 148 [*R v Rohit Singh*]; aff'd [2019] NZCA 436.

¹⁴ Sentencing decision, above n 1, at [40].

¹⁵ See below at [68]–[69].

[12] The Judge then addressed Mr Singh's personal circumstances.¹⁶ At the time of sentencing Mr Singh was 30 years old.¹⁷ He was born and raised in India, coming to New Zealand as an adult.¹⁸ He claimed he had established himself successfully, although the Judge noted that, by the time of the offending, Mr Singh's visitor permit had expired around six months prior.¹⁹

[13] Mr Singh's parents adhered to a very traditional and conservative form of the Sikh religion.²⁰ The cultural report maintained that Mr Singh grew up accepting it was normal for his father to engender respect through violence and threats of violence.²¹ While Mr Singh had converted to Islam and came to New Zealand independently, the cultural report referred to a sense of expectation on Mr Singh's part that he should be obeyed, especially in relation to dealings with women such as the victim, with whom, despite a limited degree of contact, he saw himself as maintaining some form of relationship.²² The cultural report suggested that Mr Singh's threatening of violence for the purpose of asserting dominance might somehow be understandable, if not acceptable.²³ On that basis, Mr Singh's counsel at sentencing submitted there was a causal nexus between his personal, family and cultural background and his commission of the crime such that culpability was mitigated.²⁴

[14] The Judge roundly rejected that submission.²⁵ He did not accept, in the absence of far more extensive evidence, that such patriarchal values as might be drawn from Mr Singh's upbringing could in any way support the stabbing to death of a lone 21-year-old woman.²⁶ To the extent Mr Singh's own interpretation of his upbringing motivated him to undertake that form of violence, a consequent reduction in the MPI would be inconsistent, in the Judge's view, with the legislative policies underpinning

¹⁶ At [43]–[51].

¹⁷ At [44].

¹⁸ At [44].

¹⁹ At [44].

²⁰ At [45].

²¹ At [45].

²² At [45].

²³ At [45].

²⁴ At [46].

²⁵ At [47].

²⁶ At [47].

ss 103 and 104 of the Sentencing Act of holding him accountable for, and denouncing, the conduct.²⁷

[15] The Judge then referred to the presentence report, which identified Mr Singh's lack of consequential thinking, inability to regulate emotions and maintain healthy boundaries, substance abuse and propensity for violence.²⁸ It suggested there might be underlying mental health concerns exacerbating those factors.²⁹ The Judge noted that Mr Singh had received the benefit of a psychiatric assessment but there was nothing more available to him on that topic.³⁰

[16] The Judge interpreted some of Mr Singh's comments to the probation officer as demonstrating that Mr Singh did not feel a true sense of remorse but rather harboured a sense of disgruntlement.³¹

[17] The Judge concluded that Mr Singh's own circumstances did not justify any reduction in the notional minimum period of imprisonment.³²

[18] Given the timing of Mr Singh's guilty plea and the nature of the case against him, the Judge concluded a one-year reduction to the 17-and-a-half-year notional minimum period would be appropriate.³³

[19] The Judge reiterated he had found three s 104 circumstances, with each one of those circumstances giving rise to the 17-year presumption.³⁴ In light of his notional minimum period of 16 and a half years, he did not consider that manifest injustice would arise in the event the 17-year presumption were applied.³⁵ He therefore sentenced Mr Singh to life imprisonment with an MPI of 17 years.³⁶

²⁷ At [47].

²⁸ At [48].

²⁹ At [48].

³⁰ At [48].

³¹ At [49]–[50].

³² At [51].

³³ At [57].

³⁴ At [61].

³⁵ At [60]–[61].

³⁶ At [62].

Mr Kirker's Report

[20] The relevant aspects of the Report are as follows.

Presentation and mental status

[21] While Mr Singh's cognitive functioning was not formally assessed, there were no indications of impairment or overt signs of significant paranoid thinking. There was fixation in thought in relation to what the victim had done to him and other strongly held views, alongside a general lack of psychological insight and defensiveness.

[22] Mr Singh was described as having "an extreme external attributional style" whereby he attributed causation of events to other people and factors outside his control rather than his internal thoughts, feelings and actions. That contributed to his not taking responsibility for the offending. There was a high degree of egocentricity, which prevented him from showing remorse and considering perspectives beyond his own narratives. When prompted to reflect on the murder, Mr Singh said he was not happy about what happened, "even though it was not my fault". He noted that, given that, there was no need for remorse.

Background

[23] Mr Singh presently has no contact with his parents as he had "cut them off" for not taking responsibility for what he did — Mr Singh considered the violence he was exposed to as a child (along with the actions of the victim) as primarily to blame for the murder he committed, but his parents would not acknowledge this.

[24] Since Mr Singh has been in prison (December 2022), there have been no significant concerns raised about his mental state or mental health by either him, the prison authorities or health services.

Prior psychiatric evaluations

[25] The Report recorded the evaluations carried out by a psychiatrist, James Gardiner, prior to and following Mr Singh's guilty plea. While Dr Gardiner

considered Mr Singh was depressed at the time of the offending, he concluded there were no other mental health conditions present such as bipolar disorder or schizophrenia and therefore Mr Singh could not be considered to have a “disease of the mind”. Dr Gardiner was of the opinion Mr Singh was both aware his actions were morally wrong and understood the nature and quality of what he was doing in killing the victim.

[26] Post-sentencing, Mr Singh was assessed by a second psychiatrist, Dr Rushi Duggal. Mr Singh mentioned to him for the first time he had experienced whispering voices suggesting he harm the victim, but Dr Duggal ruled out hallucinations at the time of the offending, as well as delusions of thought, alienation and passivity. Dr Duggal added that, when he committed the offending, Mr Singh was “jealous, obsessed, and angry after being unable to engage the victim in various ways over a period of time”.

Mr Singh's behaviour towards the victim

[27] Mr Kirker had clearly approached his role assiduously and had a detailed knowledge of the background to the case. Although some of these details were not in the other materials provided to us, given the Report was adduced by the appellant and we were asked to take it into account, we do so. There are a number of relevant matters outlined in the Report, for example:

40 Text messages from November 2022 and phone records indicated that the victim had initiated contact with Mr Singh at times, including in the weeks prior to the murder. This may have been in response to his threats or out of the belief that talking to him about [how] she was feeling may help end Mr Singh’s obsessive behaviour towards her. The content of messages the victim sent to Mr Singh indicated that her mental health was suffering and she wanted (pleaded) him to leave her [alone]. It was indicated from his responses that Mr Singh was showing no concern and was focused on his own wants. None of the victim's messages had any declarations of love towards Mr Singh.

...

48. Despite declarations made in relation to the victim, it was indicated that Mr Singh was also at the same time showing romantic interest in, and pursuing, other women, including two associated with the victim. Mr Singh had asked the female friend he had met alongside ... the victim out also, and sought to keep in touch with her. In 2022 Mr Singh sent messages to that woman (initialled [AB]),... with

derogatory comments about the victim, yet asked her to have the victim contact him. While doing this, he also professed his romantic interest in [her] and asked her to date him. In a message to this woman on 10 July 2022, Mr Singh states he will “have to kill” the victim for his “self-respect and pride” if she does not contact him. In November 2022 he was still attempting to have this woman get the victim to contact him, approaching it with different rationales, positive and negative. On the same day as sending such messages he asked the woman if she wanted to marry him, stating that he had a big crush on her and she was the right sort of Muslim girl for him.

[28] Mr Singh wrote a letter to AB from prison in what he indicated was an “apology” but said the harm he had done was not his fault but rather that of the victim, as her “manipulation” of him had caused him to go insane. He also said he was never interested in the victim.

[29] As the Report identified, in the period leading up to the murder, there appeared to be increasingly persistent harassment behaviour by Mr Singh towards the victim, mostly through social media. The Report described his explicit threats of harming her if she did not do what he demanded, with similar messages given to others to pass on to the victim. The Report stated that, in December 2022, Mr Singh was stalking the victim both at home and at work.

[30] The Report said:

54. On 10 July 2022 Mr Singh stated that if the victim wanted to save her life (and his) she needed to contact him. In messages to others, he stated he will “have to kill” the victim for his “self-respect and pride” if she does not contact him. Mr Singh stated more than once he will need to kill the victim as she has done him wrong and that an example needs to be made even if it would make a good person like him a criminal. He also noted the victim has been given a “final warning”. He noted himself to be a Punjabi with warrior blood and the victim to be an Afghan whore. In one message he stated “she is a whore but I was thinking my love, loyalty, honesty and care for her could change her to good girl; but now realise she is a snake and better to be killed”. Another concerning message was “I will kill her to set example for new generation and put video on Tic-tox so people can understand why I did it”. He told the writer he would have posted on U Tube if [he] had the opportunity before he was arrested.
55. On 22 August 2022 Mr Singh stated “If you won’t talk to me, I will kidnap you and give u 365 days to fall in love with me.” Two days later he stated, “I think I will end up throwing acid on your face” as he did not think she was a good girl.

[31] The Report referred to a text message from Mr Singh to the victim on 3 December 2022, telling the victim to break up with her fiancé, saying “I can’t let you marry him, no matter what”, noting he was not somebody to be ditched: “I am not the one anyone can play with”. He said, “I will never let you win”.

Mr Kirker’s opinion

[32] The Report’s conclusion on the circumstances/account of the offending was:

70. It was clear at interview with the writer that Mr Singh still felt the victim had mistreated and manipulated him and that was one of the things he was ruminating or obsessing about in the lead up to the murder. He was continuing to shift blame to the victim. He presented with some extraordinary views, such as the victim’s family should apologise to him; and if others had intervened, ‘he’ could have prevented the murder.

[33] Mr Kirker concluded that Mr Singh’s self-report was unreliable in a number of aspects, being both fanciful and containing self-serving claims. He described him as having had, and continuing to have, very distorted thinking.

[34] Mr Kirker’s opinion was that Mr Singh was extremely frustrated and angry that the victim was not giving him the answers he wanted and not acknowledging she had done him wrong, despite his extreme efforts to get her to do so. Mr Kirker considered Mr Singh was likely thinking he needed to show her how serious things had become and he would need to follow through on his prior “final warning”. He then said:

It appears that he had been thinking about killing her for a number of months, and he had exhausted the use of threats to gain compliance. It became time to move to the next level, with acts of actual violence.

[35] Mr Kirker opined that Mr Singh is severely personality disordered, with narcissistic traits predominant, and obsessional and histrionic traits also prevalent. Mr Singh has antisocial attitudes and personality traits, including seemingly a mindset that he can do whatever he wants, and whatever it takes to get what he wants, even if at the expense of others or society.

[36] An analysis of the nature of Mr Singh’s relationship with the victim indicated Mr Singh’s view of it was definitely distorted, with erotomania delusions in particular

possibly present. Erotomania delusions involve an individual thinking and believing that another specific person is in love with them when they are clearly not. However, Mr Kirker's opinion was that, at both a cognitive and emotional level, Mr Singh lacked capacity to love any person in a healthy way and his obsessive behaviour towards the victim was more about him wanting to be right and win than pursuing somebody he really cared for. He said that it was likely Mr Singh's state of mind did become delusional with erotomania at times but that was not so on the actual day of the murder.

[37] In Mr Kirker's opinion, when Mr Singh stabbed the victim, he was no longer thinking that she loved him but was angry with her for (in his mind) leading him on and wanted her to be held to account for doing so.

Was the Judge correct to find that any of the circumstances in s 104 applied?

[38] Section 104 of the Sentencing Act relevantly provided:³⁷

104 Imposition of minimum period of imprisonment of 17 years or more

(1) The court must make an order under section 103 imposing a minimum period of imprisonment of at least 17 years in the following circumstances, unless it is satisfied that it would be manifestly unjust to do so:

...

(b) if the murder involved calculated or lengthy planning, including making an arrangement under which money or anything of value passes (or is intended to pass) from one person to another; or

...

(c) if the murder was committed with a high level of brutality, cruelty, depravity, or callousness; or

...

(g) if the deceased was particularly vulnerable because of his or her age, health, or because of any other factor; or

...

(i) in any other exceptional circumstances.

³⁷ Section 104 has since been amended by the Sentencing (Reinstating Three Strikes) Amendment Act 2024, but the amendments are of no moment for present purposes.

...

[39] In Ms Vear's submission, when each s 104 factor is objectively assessed, the threshold for s 104 was not met in respect of any of the identified factors. She emphasised that the Judge considered Mr Singh's history of stalking-type behaviour contributed to each factor he found present: calculated or lengthy planning, brutality and callousness, and vulnerability. In Ms Vear's submission, it was an error to use the same circumstances in respect of each of the s 104 factors. She noted that stalking-type behaviour is not a standalone s 104 factor, yet the High Court regarded this as the main aggravating factor.

[40] As this Court noted in *Marong v R*, when some aspects of the offender's conduct may qualify as going to more than one of the s 104 features, the level to which any feature is present must be measured individually.³⁸ That answers one of Ms Vear's criticisms: the Judge was correct to use Mr Singh's stalking of the victim in respect of his consideration of each of the s 104 factors.

Did the murder involve calculated or lengthy planning?

[41] The Judge did not accept Mr Singh's assertion that his use of the knife, or his offending generally, was spontaneous.³⁹ He said the history of Mr Singh's stalking-type behaviour demonstrated he knew the victim wanted nothing to do with him, referring to Mr Singh changing social media profiles to circumvent the victim's decision not to receive his messages.⁴⁰ He referred to Mr Singh following the victim at Westgate Shopping Centre knowing she did not want to speak with him.⁴¹ The Judge noted it was clear Mr Singh had not been invited to the victim's home because, once she received the video Mr Singh took of himself outside her home, she went straight to the police.⁴²

[42] In those circumstances, the Judge concluded that Mr Singh's decision to intercept the victim as she walked home could only have been taken after tracking her

³⁸ *Marong v R* [2020] NZCA 179 at [28].

³⁹ At [24]–[25].

⁴⁰ At [25].

⁴¹ At [25].

⁴² At [26].

movements on a previous occasion and after consideration of the best location at which he might be able to find her alone.⁴³

[43] The Judge found that, given that context, it was apparent that the purpose of Mr Singh taking a knife with him to the location was to use it against the victim should she refuse to bend to his will.⁴⁴ Mr Singh would have known that the use of the knife against the victim in those circumstances would be likely to risk her death.⁴⁵

[44] While the planning was not “competent or sophisticated”, the Judge viewed it as more than just thinking in the abstract about killing a person.⁴⁶ In the Judge’s view, it involved calculation and was developed over at least some period of time, meaning this s 104 factor was present.⁴⁷

[45] In Ms Vear’s submission, Mr Singh’s harassing behaviour had little bearing on the extent to which he was planning to murder the victim. She said neither Mr Singh’s knowledge that his attention was unwanted by the victim nor the fact he knew where to intercept the victim proved Mr Singh engaged in calculated or lengthy planning to kill the victim. She contended the presence of the knife and waiting to intercept the victim indicated limited planning only and there was no “proximate objective evidence” Mr Singh planned the murder.

[46] In Ms Bell’s submission, for the respondent, the planning developed over a period of time and involved more than simply thinking in the abstract about killing someone, as the Judge correctly concluded.

[47] Whether a murder involves calculated or lengthy planning is a matter of fact and degree.⁴⁸ While the planning need not be sophisticated, it must be present to a heightened degree, “either because of the period of time over which it has taken place or because of the degree of thought which has gone into it”.⁴⁹

⁴³ At [26].

⁴⁴ At [27].

⁴⁵ At [27].

⁴⁶ At [28], citing *Desai v R* [2012] NZCA 534 at [59].

⁴⁷ At [28].

⁴⁸ *Desai v R*, above n 46, at [60].

⁴⁹ At [59].

[48] Ms Vear referred to the case of *Momoisea v R*, where Ms Momoisea planned to kill her victim two days before the offending and waited for the victim for around three hours in his garage while armed with a knife.⁵⁰ Mr Momoisea first spoke of killing her victim two days earlier.⁵¹ The High Court, while noting Ms Momoisea unquestionably planned to kill the victim, was not satisfied the planning was lengthy.⁵²

[49] That case can be readily distinguished from the present. A review of the evidence shows that Mr Singh had made reference to killing the victim as early as 10 July 2022 (the murder occurring on 19 December 2022). Mr Kirker was of the opinion that Mr Singh had been thinking about killing the victim for a number of months and had exhausted the use of threats to gain compliance. It was then that he moved to the next level.

[50] Ms Vear then referred to the High Court’s reliance on the case of *Rajeshwar Singh v R*, where the defendant murdered his estranged wife after stalking her in breach of a protection order, broke into her home and stabbed her as she tried to call the police.⁵³ He had brought a knife with him and confessed in a suicide note prior to the murder.⁵⁴ Ms Vear distinguished the present case on the basis that there was no objective evidence such as a written note indicating a heightened extent of planning, that there was no history of actual violence between Mr Singh and the victim, and that the escalation in Mr Singh’s behaviour by carrying the knife did not in and of itself demonstrate an intention to use it or the planning of the infliction of serious violence.

[51] We do not regard these contrasting factors as particularly persuasive given the circumstances of the present case. In particular, we do not accept that the fact of Mr Singh carrying a knife did not demonstrate an intention to use it when viewed in the context of his overall stalking behaviour, threats to the victim and lying in wait for her.

⁵⁰ *Momoisea v R* [2018] NZHC 1577 at [3]–[4] and [7]–[14].

⁵¹ At [3].

⁵² At [23]. The Judge said the offending fell “just short” of crossing the threshold.

⁵³ *Rajeshwar Singh v R*, above n 13, at [3]–[6].

⁵⁴ At [6].

[52] Ms Vear also relied on the High Court decision in *R v Rohit Singh*, where the High Court observed that obsessive stalking behaviour was not in itself evidence of calculated or lengthy planning for murder.⁵⁵ While that might be so, it is certainly part of the context and a factor to be taken into account when analysing whether the circumstances fall into any of the s 104 categories.

[53] In any event, the High Court did consider that Rohit Singh had been engaged in calculated or lengthy planning of the murder by reason of his having been observed the day before the murder with a large knife visiting the victim's home and, on the day of the murder, maintaining a vigil outside her house with multiple weapons.⁵⁶

[54] Focusing on the specifics of another case in order to contend that there was no calculated or lengthy planning in Mr Singh's case overlooks the relevant evidence. As discussed above, even the Report filed for the purposes of supporting Mr Singh's appeal confirms the lengthy period over which he had been ruminating over the victim, threatening her both directly and by way of the comments he made to others.

[55] We consider the Judge approached this s 104 factor correctly and came to the right conclusion.

Was the murder committed with a high level of brutality, cruelty, depravity, or callousness?

[56] Accepting that most murders are likely to involve brutality, cruelty, depravity or callousness in some way, the Judge referred to the fact the murder in the present case involved a frenzied attack comprising 12 stabbings, four of which would on their own have been sufficient to achieve Mr Singh's objective of killing the victim.⁵⁷ To the extent the victim sought physically to resist with a bare hand, he "simply cut through it".⁵⁸ The Judge noted the attack would have terrified the victim and that, as Mr Singh approached her with his knife, the victim would have realised her attempts to avoid his attention over many prior months had been fruitless.⁵⁹ At that moment,

⁵⁵ *R v Rohit Singh*, above n 13, at [10].

⁵⁶ At [11]–[12].

⁵⁷ Sentencing decision, above n 1, at [29]–[30].

⁵⁸ At [30].

⁵⁹ At [31].

the Judge said, Mr Singh simply did not care and was acting to impose his will on her.⁶⁰

[57] The Judge considered Mr Singh's attack on the victim involved a high level of brutality and callousness.⁶¹

[58] Ms Vear sought to distinguish Mr Singh's behaviour from other cases where this factor has been found to be present, saying they involved more wounds, for example *Preston v R* involved 38 stab wounds,⁶² and *R v Wilson* involved 39 wounds comprising 10 cuts and 18 stabs to the victim's chest and further cuts and stabs to her head and neck.⁶³

[59] We consider comparison with other cases in this way adds little to our assessment which must focus on the particular circumstances before us.

[60] Ms Vear also submitted that, if a victim dies almost instantly, this s 104 factor is unlikely to be engaged. In making that submission, she relied on the decision of *R v Kinghorn*.⁶⁴ We do not regard that case as authority for the proposition asserted by Ms Vear. That case involved a Solicitor-General appeal against a murder sentence with an MPI of 13 years on the grounds that either s 104(1)(d) or, relevantly, s 104(1)(e) was engaged.⁶⁵ Mr Kinghorn had murdered a pedestrian by driving directly at her without braking until the point of impact.⁶⁶ She was knocked unconscious by the impact and never recovered consciousness.⁶⁷ The focus of the appeal was whether the murder was committed in the course of some sort of sexual assault or kidnapping, and that involved the bulk of this Court's analysis.⁶⁸ The Court noted that Mr Kinghorn had run the victim down and she died almost instantly, and observed that did not meet the test in s 104(1)(e).⁶⁹ We do not interpret that as meaning what Ms Vear contends. A murder where the victim dies almost instantaneously could

⁶⁰ At [31].

⁶¹ At [32].

⁶² *Preston v R* [2016] NZCA 568, [2017] 2 NZLR 358 at [10].

⁶³ *R v Wilson* [2023] NZHC 2376 at [8].

⁶⁴ *R v Kinghorn* [2014] NZCA 168.

⁶⁵ At [2].

⁶⁶ At [8].

⁶⁷ At [10].

⁶⁸ At [14]–[44].

⁶⁹ At [47].

certainly have been committed with a high level of brutality, cruelty, depravity or callousness, depending upon the circumstances.

[61] Ms Vear maintained that the sole reason supporting a finding of callousness was the victim's fear. But that is not correct as the outline of the Judge's reasoning set out above confirms. The Judge referred to the frenzied attack involving 12 stabbings, four of which were sufficient to be fatal on their own, and that her thumb was almost severed as she tried to defend herself.⁷⁰ We agree with Ms Bell's submission that Mr Singh committed a brazen and frenzied attack in public which involved a high level of violence and Mr Singh's actions leading up to the day and on the day, as confirmed by the Report, were evidence of a hardened state of mind and a level of callousness. Mr Singh's feelings towards the victim were also reflected in the presentence report.

[62] As Ms Bell observed, the victim clearly knew she was in danger and started screaming to the extent of attracting attention of members of the public driving by. She received a number of stab wounds to her abdomen before she fell to the ground but Mr Singh inflicted more stab wounds on her. One witness described the victim yelling at Mr Singh to leave her alone, that when she pushed him off he started punching her and it "looked like he was trying to whack the hell out of her". The witness saw a knife in Mr Singh's hand, saw the victim fall to the ground and then saw Mr Singh beginning to stab her quickly, saying it looked like he had sped up, stabbing her faster than the previous blows, "stabbing her all over the place". He described the victim throwing herself all over the place on the ground and she had stopped yelling by that point. He described Mr Singh showing no emotion at all.

[63] Although the circumstances of Mr Singh's offending can obviously be distinguished from other cases, both those where this factor was found established and those where it was not, it is the particular circumstances which need to be considered. In our view, the Judge was correct to consider this aspect in the wider context of Mr Singh's stalking and harassment of the victim leading up to the day in question. We agree this factor was engaged.

⁷⁰ Sentencing decision, above n 1, at [30] and [15].

Was the victim particularly vulnerable?

[64] The Judge also found this factor engaged.⁷¹ In his view the victim was in a situation of particular vulnerability and indeed that was why Mr Singh selected the place he did to intercept her on her way home.⁷² He knew she would be on her own and powerless to resist.⁷³ He had previously threatened her over social media and physically tracked her movements, heightening her sense of vulnerability.⁷⁴ To this we would add that the victim had gone to the police twice in respect of Mr Singh's harassment of her, something which, as a young woman from an immigrant family, would likely have not been undertaken lightly.

[65] Vulnerability requires an assessment of the victim's particular circumstances and susceptibility to attack. We reject the submission that the victim's location did not suggest particular vulnerability. The circumstances confirm this factor was present. The victim was attacked as she was walking along an alleyway, meaning those who heard her screams from their cars were unable to reach either the victim or Mr Singh in time to stop the attack.

[66] Again, we agree with the Judge that this factor was engaged.

Do any other exceptional circumstances exist?

[67] We accept that, taken individually, Mr Singh's offending could be seen to be at the lower end of each of the three factors, particularly when compared with other cases. While we do not resile from our agreement with the Judge on all three factors being engaged, we would also observe that the particular circumstances of this case constitute exceptional circumstances for the purpose of s 104(1)(i). It is the stalking behaviour and Mr Singh's attitude towards the victim which makes this offending particularly chilling and which, in our view, means that the purpose behind the MPI of 17 years is engaged. The legislative policy is to ensure a 17-year MPI for the most serious murder cases.⁷⁵

⁷¹ At [34].

⁷² At [34].

⁷³ At [34].

⁷⁴ At [34].

⁷⁵ *R v Williams* [2005] 2 NZLR 506 (CA) at [66].

Was the notional minimum period of imprisonment of 17 and a half years excessive?

[68] The Judge undertook a case comparison. We have already discussed *Rajeshwar Singh*, where a notional minimum period of 18 years was identified.⁷⁶ *R v Li* was a case where the defendant persistently harassed his ex-wife in breach of a protection order.⁷⁷ The defendant murdered her by approaching her with a hunting knife and intercepting her as she walked to work, stabbing her 10 times.⁷⁸ A notional minimum period of 19 years was identified.⁷⁹ The Judge considered that case similar to the present case, except that the campaign of harassment there had occurred over a longer period.⁸⁰ The Judge also referred to *R v Rohit Singh*, also discussed above, where a 19-year MPI was imposed.⁸¹

[69] The Judge concluded all three cases were marginally more serious than the present.⁸² We agree.

[70] Ms Vear referred to the case of *Purutanga v R*, where a notional minimum period of 17 and a half years was identified, submitting the gravity of the offending in that case exceeded that of the present case.⁸³ The offending in *Purutanga* took place in the context of long-term domestic violence.⁸⁴ After the victim called 111, Mr Purutanga obtained a knife and stabbed the victim 17 times while she lay down on the floor with a four-month-old child between her legs and a four year old also in the room.⁸⁵ The wounds almost completely divided her spinal cord.⁸⁶ While we accept that case involved a higher level of brutality, sentencing in these types of cases does not require a notional minimum period to be reduced simply because the circumstances are less serious than one particular case, notwithstanding that there are other cases which support the notional minimum period. In the present case, *Li* can

⁷⁶ *Rajeshwar Singh v R*, above n 13, at [17] and [20]. See above at [50]–[51].

⁷⁷ *R v Li*, above n 13, at [7]–[12].

⁷⁸ At [14] and [16].

⁷⁹ At [37].

⁸⁰ At [38(b)].

⁸¹ At [39], citing *R v Rohit Singh*, above n 13, at [28]. See above at [52]–[53].

⁸² Sentencing decision, above n 1, at [40].

⁸³ *Purutanga v R* [2023] NZCA 442 at [10]. At [37], this Court observed that a higher notional minimum period would have been within range.

⁸⁴ At [4].

⁸⁵ At [4].

⁸⁶ At [4].

be considered the most factually similar and a notional minimum period of 19 years was taken.⁸⁷

[71] When the purposes and principles of sentencing are considered, the most relevant being accountability and denunciation as identified by the Judge,⁸⁸ the notional minimum period of 17 and a half years (before the one-year guilty plea reduction) was within range.

Were Mr Singh's personal circumstances appropriately recognised?

[72] In Ms Vear's submission, the High Court erred in determining there was no causal nexus between Mr Singh's personal, family and cultural background and the offending.

[73] We cannot accept the submission that Mr Singh's exposure to violence in the home within a conservative culture predisposed him to react as he did when he felt his control within a close relationship was at risk. First, he was not in a close relationship with the victim. He was stalking her and had been told on numerous occasions his attentions were unwelcome. Secondly, any exposure to violence in the home and predisposition to react with threats and violence cannot be considered to have a causal nexus to the commission of a murder of a particularly vulnerable victim, which involved planning, brutality and callousness. In any event, the cultural report is contextualised by the new evidence contained in the Report from Mr Kirker.

[74] The Supreme Court decision of *Berkland v R*, while clarifying that a causative contribution of an offender's background to the offending can merit recognition at sentencing, confirms that an offender's background does not reduce the importance of acknowledging through sentencing the harm they have caused.⁸⁹ And other purposes and principles of sentencing, such as deterrence, denunciation and community protection, will usually be more powerfully engaged where the offending is particularly serious.⁹⁰

⁸⁷ *Li v R*, above n 13, at [37].

⁸⁸ Sentencing decision, above n 1, at [19].

⁸⁹ *Berkland v R* [2022] NZSC 143, [2022] 1 NZLR 509 at [107]–[108] and [94].

⁹⁰ At [94].

[75] We agree with the Crown submission that, in the context of murder cases, the need to give effect to the legislative policy of the Sentencing Act further constrains the courts' ability to give discounts for background factors.⁹¹

[76] Ms Vear also contended there should be recognition of the matters identified in the Report, in particular Mr Singh's extreme ruminative thinking linked to a depressive state and obsessional personality features, distorting his view of his relationship with the victim.

[77] We do not accept that the Report identifies any factors which could be considered to diminish Mr Singh's moral culpability. Mr Kirker expressly opined that, although at times Mr Singh may have been delusional with erotomania, he was not on the day of the murder. This can be contrasted with other cases, for example *Thompson v R*, where Mr Thompson's delusional beliefs were recognised in sentencing.⁹²

[78] Indeed, in our view, the Report identified factors emphasising the need for accountability and denunciation.

Was the imposition of the 17-year MPI manifestly unjust?

[79] Finally, we do not accept the submission that the imposition of the 17-year MPI was manifestly unjust. Examples of where the minimum 17-year term may be manifestly unjust are where the s 104 qualifying factor is of peripheral significance only, the culpability of the particular offending is relatively low by comparison with the range of cases caught by s 104 or the mitigating personal circumstances of the offender are powerful.⁹³

[80] The Judge was correct in his view that the minimum 17-year term was not manifestly unjust.⁹⁴ The s 104 qualifying factors are of significance, Mr Singh's

⁹¹ *Webber v R* [2021] NZCA 133 at [33].

⁹² *Thompson v R* [2020] NZCA 355 at [55].

⁹³ *R v Williams*, above n 75, at [68] and [66].

⁹⁴ Sentencing decision, above n 1, at [61].

culpability sits well within the range of cases caught by s 104 and his personal mitigating circumstances are weak.

Result

[81] The application for an extension of time is granted.

[82] The application to adduce further evidence is granted.

[83] The appeal against sentence is dismissed.

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